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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–119–2]

RIN 0579–AB78

Importation of Small Lots of Seed Without Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This change is necessary because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The change makes it feasible for those entities to import small lots of seed and ensures prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service with necessary information about the quality, quantity, and diversity of the imported material.

DATES: *Effective Date:* May 15, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Tschanz, Senior Staff Officer, Regulatory Coordination Staff, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation into the United States of certain plants and plant products to prevent the introduction of plant pests and noxious weeds into the United States. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (sections 319.37 through 319.37–14, referred to below as the regulations) prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, seeds, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not widely distributed in the United States are listed in the regulations as prohibited articles. Prohibited articles may not be imported into the United States, unless imported by the U.S. Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

All other nursery stock, plants, seeds, and other propagative plant material that can be inspected, treated, or handled to prevent them from introducing plant pests are considered restricted articles. Restricted articles may be imported into the United States if they are imported in compliance with conditions that include a phytosanitary certificate and port of entry inspection and that may include the need for a permit, treatment, or postentry quarantine.

On April 29, 2004, we published in the **Federal Register** (69 FR 23451–23456, Docket No. 02–119–1) a proposed rule to amend the nursery stock regulations to allow the importation of small lots of seed under an import permit, with specific conditions, as an alternative to the current phytosanitary certificate requirement. We proposed this change because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. Our proposed change was intended to make it feasible for those entities to import small lots of seed and ensure prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing the Animal and Plant Health Inspection Service (APHIS) with necessary information about the quality, quantity, and diversity of the imported material.

We solicited comments on our proposal for 60 days ending on June 28, 2004. We received 45 comments by that date, from private citizens, hobbyists, researchers, horticultural societies, industry group representatives, and foreign plant protection organizations. In all, 42 commenters generally supported the proposed rule, although 18 of these commenters suggested specific changes. Three commenters opposed the proposed rule. The issues raised by the commenters are discussed below.

Three commenters stated that the proposed changes represented a lessening of restrictions which would allow the introduction of plant pests into the United States.

We disagree. We are confident that the same assurances and information gained through the use of a phytosanitary certificate will be obtained through the permitting process described in this final rule. A phytosanitary certificate, as defined in § 319.37–1 of the regulations, is ''A document relating to a restricted article, which is issued by a plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (APHIS' Plant Protection and Quarantine [PPQ] program), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.''

The first part of that definition can be characterized as being administrative in nature (who issues the certificate, when

it is issued, and to whom it is addressed). With respect to the remainder of the definition, we offer the following comparisons:

• ''Which contains a description of the restricted article intended to be imported into the United States.'' This will be covered by the permit application, in which we ask for approximate quantity (which, for small lots of seed, is limited by the regulations) and kinds (botanical designations) of articles intended to be imported, and on the permit itself, which will identify the amount and nature of the articles authorized importation by the permit.

• ''Which certifies that the article has been thoroughly inspected.'' The permit will direct that the seeds first go to the Plant Germplasm Quarantine Center in Beltsville, MD, or to a USDA plant inspection station where a thorough inspection will occur.

• ''Is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests.'' The outcome of the inspection cited above will be determinative of whether the seeds are allowed entry into the United States; if pests are found, the shipment will be treated, re-exported, or destroyed.

• ''Is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States.'' We will ascertain this during our review of the permit application, based on the applicant's description of the articles for which a permit is being sought.

• ''And which contains any specific additional declarations required under this subpart.'' Under section 319.37–4(d)(2) of this final rule, seeds that require an additional declaration (such requirements are contained in section 319.37–5 of the regulations) are not eligible for importation without a phytosanitary certificate.

Given the above, we believe that the permitting process for small lots of seed provided for in this rule will ensure a level of protection equivalent to that provided by a phytosanitary certificate.

In the proposed rule, section 319.37–4(d)(3) provided, among other things, that there be a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet, with a maximum of 50 seed packets per shipment, and that the seed packets be in gas permeable packages. Several commenters pointed out that some seeds, such as orchid seeds, are very small in size and asked that we include a maximum weight per packet as an alternative to the maximum number of seeds per packet. Other commenters, noting that some types of seed must be kept moist to remain viable, asked that we remove the requirement for gas permeable packaging.

We agree with the points raised by these commenters and have modified section 319.37–4(d)(3) in this final rule to allow either a maximum seed number or maximum seed weight for each taxon in a seed packet, either 50 seeds of 1 taxon per packet or 10 grams of seed of 1 taxon per packet.

We have also modified section 319.37–4(d)(3) in this final rule to allow the use of any typical seed packaging (*e.g.*, clear plastic resealable packets, gas permeable packets, etc.). In connection with this change, we note that shipping small lots of seed in clear plastic, resealable packets, where the seed occupies less than a single layer in the packet, may potentially expedite these shipments through the inspection process, as this type of packaging allows inspectors, in most cases, to view the seed directly through the plastic, rather than opening the packets and emptying the seed for inspection.

Five commenters were concerned that the process and cost for obtaining the import permits required as outlined in the proposed rule were still too restrictive and cost prohibitive to hobbyists and seed exchange organizations.

This rule is designed to eliminate the difficulties small entities have obtaining phytosanitary certificates for small lots of seed by allowing the importation of small lots of seed under an import permit with specific conditions as an alternative to the current phytosanitary certificate requirement. However, as discussed above, in order to provide a level of protection equivalent to that provided by the phytosanitary certificate, it is necessary that we have specific requirements that must be met in order for shipments of small lots of seed to qualify for importation.

We believe the specific requirements contained in this rule are feasible for those entities, and will ensure prompt and consistent service for such importers. APHIS does not charge a fee for the issuance of the permit required under this rule. Further, the shipping costs incurred by importers of small lots of seed as a result of these changes are likely to be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted in the proposed rule, vary by country but can be as much as $100 or more and can be equal to several times the value of the commodity itself. These changes are expected to decrease the current economic burden on importers of small lots of seed.

In section 319.37–4, we proposed several additional requirements that would have to be met in order for shipments of small lots of seed to qualify for importation under a permit. One of the requirements would be that the shipment must be free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms such as parasitic plants, pathogens, insects, snails, or mites. One commenter suggested that we clarify this language to make it clear that this requirement does not necessitate the removal of normal integral parts or appendages of the seeds. The commenter stated that removal of these appendages is very difficult, if not impossible, and damage to the seeds while trying to remove them could be severe enough to reduce or destroy seed viability.

We believe that our inspectors will be readily able to differentiate between normal integral parts or appendages of seed and those articles listed in the proposed rule and this final rule as prohibited (*e.g.*, plant material other than seed or other foreign matter or debris). Thus, we do not believe it is necessary to include the clarification sought by the commenter in this final rule.

In section 319.37–4, we also proposed that shipments of seed would have to be free from pesticides. One commenter suggested that we allow the importation of seeds treated with effective fungicides, such as Thiram, because much of the small lots of seed available in retail commerce abroad are already treated with fungicides.

Treated seeds are not permitted because fungicides are difficult to distinguish from one another and may mask the presence of pathogens. Also, some fungicides/pesticides are toxic and may pose health hazards to inspectors. Therefore, we believe that it is necessary to keep this restriction to protect against the introduction of plant pests into the United States.

Two commenters were concerned that prohibited or restricted seed would be imported without the proper regulatory review and encouraged APHIS to clarify the requirements that apply to the importation of small lots of such seed (*e.g.*, genetically modified seed or potato seed).

This rule applies only to seeds that are already enterable under the current regulations. We stated in section 319.37–4(d)(2) of the proposed rule that permits in lieu of phytosanitary certificates would be available only for seed that is not of any prohibited genera

as listed in section 319.37–2 of the regulations; is not of any noxious weed species listed in 7 CFR part 360; does not require an additional declaration on a phytosanitary certificate in accordance with section 319.37–5 of the regulations; does not require treatment in accordance with section 319.37–6 of the regulations; and is eligible for importation under the regulations regarding plant pests in 7 CFR part 330 and the imported seed regulations in 7 CFR part 361.

We believe that these conditions make it clear that seed that is prohibited or subject to additional restrictions under other provisions of our regulations would not be eligible for importation under permit in lieu of a phytosanitary certificate. However, the commenter's mention of genetically modified seed has led us to include a reference to our regulations in 7 CFR part 340 regarding genetically modified organisms in section 319.37–4(d)(2) of this final rule. Specifically citing part 340 will make it clear that seeds subject to the regulations in that part are not eligible for importation under the permitting provisions described in this final rule.

One commenter suggested that we change the import permit to allow ''worldwide'' as an acceptable country of origin, or that we allow importers to make Internet updates to requested countries of origin on a yearly, or more frequent, basis. The commenter also suggested that we remove the ''predict quantity of seeds in shipment'' data element from the permit application.

Normally, we use country-of-origin information to help us determine a commodity's eligibility for importation. However, given that the regulations in section 319.37–4(d)(2) clearly spell out the kinds of seed that are eligible for importation under a small lots of seed permit (*i.e.*, the seed is not of any prohibited genera listed in section 319.37–2; is not of any noxious weed species listed in 7 CFR part 360, etc.), we believe that specific country-of-origin information in this case is not as necessary as it might be otherwise. While we would expect that an applicant would indicate a specific country or countries on the permit application if he or she had a particular source for the seeds in mind, we agree with the commenter's suggestion and will allow ''worldwide'' to be used as the origin of shipments covered under a small lots of seed permit and will include information to that effect in the instructions that will accompany the permit application.

In its current configuration, APHIS' Internet-based permitting mechanism—the APHIS Import Authorization System—cannot accept amendments to or renewals of the type of permit that will be issued for small lots of seed (*i.e.*, PPQ Form 587, Application for Permit to Import Plants or Plant Products). However, the instructions that accompany PPQ Form 587 do include information and instructions for requesting an amendment to or renewal of a current permit, so the update option suggested by the commenter is also available, albeit not through the Internet at this time.

With respect to the commenter's suggestion that we remove the ''predict quantity of seeds in shipment'' data element from the permit application, we had expected to use that information to allow the permit specialist to determine whether the quantity of seeds the permit applicant was seeking to import was within the eligibility limits set for the small lots of seed permit. However, given that the regulations do limit the quantity of seed that may be imported under a small lots of seed permit (*i.e.*, a maximum of 50 seeds of 1 taxon per packet or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet, up to a maximum of 50 packets per shipment), we agree that it is not necessary for the applicant to predict the quantity of seeds in a shipment. Because the form that will be used (PPQ Form 587) is also used for other articles, the ''predict quantity'' data element will remain on the form; however, the instructions that will accompany the permit application will direct applicants seeking to import seed in quantities within those eligibility limits to indicate that he or she is requesting a permit to import small lots of seed, which removes the need for the applicant to predict quantities in such cases.

PPQ will update its ''Plants and Plant Products Permits'' Web site (*http://www.aphis.usda.gov/ppq/permits/plantproducts/nursery.html*) to provide information on those plant taxa (*e.g.*, noxious weeds, plants that are prohibited or otherwise restricted under the regulations, etc.) that are not eligible for import under the small lots of seed permit. This Web site will also contain instructions for obtaining and completing a permit application and requesting an amendment to or renewal of a current permit, as well as other related information.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In this document, we are amending the nursery stock regulations to allow the importation of small lots of seed under an import permit with specific conditions, as an alternative to the current phytosanitary certificate requirement. This change is necessary because several entities that import small lots of seed—individual importers, scientists, horticultural societies, arboreta, and small businesses—have had difficulty obtaining the necessary certificates and have been adversely affected by the phytosanitary certificate requirement. The change makes it feasible for those entities to import small lots of seed and ensures prompt and consistent service for such importers while continuing to protect against the introduction of plant pests into the United States and providing APHIS with necessary information about the quality, quantity, and diversity of the imported material.

For this final rule, we have prepared an economic analysis, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects of this rule on small entities as required by the Regulatory Flexibility Act.

Seed production and trade play important roles in the U.S. economy. The total market value of seeds purchased by farmers in 2001 was about $7.6 billion, and cash receipts from these crops were valued at about $96 billion for the same year.[1] The United States is a net exporter of seeds. During the 2001–2002 seed marketing year, which runs from July through June, the United States exported 1,963 million pounds of planting seeds, valued at approximately $823 million, and imported 653 million pounds of seeds, valued at approximately $398 million.

Although U.S. exports of planting seeds are widely distributed among several different trading partners, there are 10 countries that together account for about 75 percent of the total U.S. seed exports (table 1). Imports of planting seed into the United States also come from several different countries. The top 10 suppliers together account for approximately 84 percent of the total U.S. imports of planting seed (table 1).

[1] USDA/National Agricultural Statistics Service, Agricultural Statistics 2002, June 2002.

TABLE 1.—U.S. EXPORTS AND IMPORTS OF PLANTING SEEDS IN 2001–2002

U.S. exports (in million $)		U.S. imports (in million $)	
Mexico	249.9	Chile	105.8
Canada	125.6	Mexico	105
Japan	59.1	Netherlands	36.5
Italy	40.6	Argentina	21.2
France	36.6	China	17.9
Netherlands	32.2	Japan	14
Spain	24.2	Finland	11.1
China	16.1	Australia	8.3
Korea	15.4	Denmark	7.5
Saudi Arabia	13.8	India	7.1

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

Many varieties of seed are traded between the United States and other countries. The major categories include grasses, other forages, pulses, vegetables, field crops, and miscellaneous varieties of plants (flowers, trees, and shrubs). Field crops are the largest category of seed exports and imports (table 2).

TABLE 2.—TYPES AND VALUE OF SEED TRADED BETWEEN THE UNITED STATES AND TRADING PARTNERS

Type of seed	Export (in million $)	Import (in million $)
Field crops	315	131
Vegetable	251	104
Grasses	103	35
Miscellaneous	67	60
Forage	49	21
Pulses	40	49

Source: USDA/Foreign Agricultural Service, *Foreign Agricultural Trade of the United States*, Revised March 2003; USDA/Foreign Agricultural Service, U.S. Planting Seed Trade Archives, August 2002.

The availability of seeds of good quality contributes to domestic production of food grains, field crops, cotton, oil crops, vegetables, herbs, flowers, trees, and shrubs. There are close to 900 seed companies in the United States that engage in certified seed trade (domestic and international). In addition, specialized groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, and donate specialty seeds and often import small lots of seed.

Costs and Benefits

The changes in this rule will not result in any increase in mandatory spending for the Federal Government, which already provides permitting and port of entry inspection services. The changes in procedures for small lots of seed will be accomplished through normal workload adjustment; although specialists may be spending slightly more time in the near future issuing permits for and inspecting seed packages than in the past, we will handle this work in the same way we handle all normal fluctuations of work for permitting and inspection. Our permitting and inspection costs overall will not increase as a result of this action.

The changes are expected to generate several benefits without increasing costs for affected private entities. Plant specialists, gardeners, arboreta, and horticultural societies will be able to more widely acquire new kinds of seeds to expand plant diversity, such as plant species that are drought- or disease-resistant or other unique types of plants. Private gardeners will benefit from an increased availability of special seeds. Also, the entry of imported seeds through plant inspection stations will provide APHIS with a more accurate picture of seed import activity, using data generated from permit issuance and the actual importation data from U.S. ports of entry. Finally, we expect that the risk of the introduction or dissemination of plant diseases will be reduced, to the extent that any seeds that are currently being imported illegally because of the costs or other difficulties associated with obtaining a phytosanitary certificate are replaced by seeds that are legally imported under permit and subjected to inspection. Compared to the costs associated with obtaining a phytosanitary certificate, shipping costs, which will be discussed in the following paragraphs, should not be a burden on importers of small lots of seed and should not be appreciably more than shipping costs importers must already pay in order to import seeds from overseas suppliers.

Shipping Costs

As discussed in the proposed rule and as provided in this final rule, importers will be responsible for transportation costs from the overseas seed supplier to the PPQ plant inspection station and the costs of shipping the seed from the plant inspection station to the importer's address. APHIS–PPQ has estimated shipping costs for importers of small lots of seed using a worst case scenario of a shipment of 50 packets of 50 corn seeds per packet (the maximum shipment size that would be allowed under this rule), which would weigh less than 2 pounds. Currently, this shipment would cost $4.49 for parcel post and $5.75 for priority mail to ship the seeds from the inspection station at Beltsville, MD, to the farthest destination within the United States. Corn seed was used in this example because it is considerably heavier than most ornamental seed, which is the type expected to be shipped. Shipping costs for smaller, lightweight seeds would be much less than those in the example.

Currently, importers who import articles that require inspection, such as will be the case with small lots of seed, cover the costs of shipping the article from the plant inspection station to the importer's address, using one of two options: (1) Provide a shipping container and the estimated amount of postage necessary to the overseas supplier who would then send it along with the shipment to the plant inspection station, or (2) provide an account number for the United States Postal Service or for a commercial shipping service to be charged by the inspectors at the plant inspection station.

In general, the shipping costs incurred by importers of small lots of seed as a result of these changes would be much less than the costs of obtaining a phytosanitary certificate as required under the current regulations, which, as noted previously, vary by country but can be as much as $100 or more and can be equal to several times the value of the commodity itself. These changes are expected to decrease the current economic burden on importers of small lots of seed.

Impact on Small Entities

The Small Business Administration (SBA) has established size standards based on the North American Industry Classification System (NAICS) to determine and to classify which economic entities can be considered small entities. The SBA classifies seed companies (NAICS 422910) [2] as small if they employ 100 or fewer workers. There are close to 900 seed companies that are involved in certified seed trade (domestic and international) in the United States. About 97 percent of these companies would be considered small by SBA standards. In addition, groups such as horticultural societies, arboreta, and individual hobbyists collect, grow, exhibit, preserve, exchange, donate, and import small lots of seeds. The size of these entities is difficult to determine, and the exact number of seed importers is not known. This final rule will primarily affect those entities who import small lots of seed. Based on information that we have received from several horticultural societies and from various individuals and small businesses that currently import small lots of seed, we expect approximately 2,000 import permit applications over the first 5 years, so approximately 400 import permit applications are expected per year.

[2] U.S. Census Bureau, 1997 Economic Census, Wholesale Trade-Subject Series, August 2000.

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 12988

This final 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 0579–0285.

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 rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37–3 is amended as follows:

■ a. In paragraph (a)(16), by removing the period at the end of the paragraph and adding a semicolon in its place.

■ b. In paragraph (a)(17), by removing the period at the end of the paragraph and adding the word ''; and'' in its place.

■ c. By adding a new paragraph (a)(18) to read as set forth below.

§ 319.37–3 Permits.

(a) * * *

(18) Small lots of seed imported in accordance with § 319.37–4(d) of this subpart.

* * * * *

■ 3. Section 319.37–4 is amended as follows:

■ a. In paragraph (a), by removing the word ''Any'' and adding the words ''Except for small lots of seed imported in accordance with paragraph (d) of this section, any'' in its place.

■ b. By adding a new paragraph (d) to read as set forth below.

■ c. By adding an OMB control number citation at the end of the section to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

* * * * *

(d) *Small lots of seed.* Lots of seed may be imported without a phytosanitary certificate required by paragraph (a) of this section under the following conditions:

(1) The importation of the seed is authorized by a written permit issued in accordance with § 319.37–3.

(2) The seed is not of any prohibited genera listed in § 319.37–2; is not of any noxious weed species listed in part 360 of this chapter; does not require an additional declaration on a phytosanitary certificate in accordance with § 319.37–5; does not require treatment in accordance with § 319.37–6; is not restricted under the regulations in parts 330 and 340 of this chapter; and meets the requirements of part 361 of this chapter.

(3) The seed meets the following packaging and shipping requirements:

(i) Each seed packet is clearly labeled with the name of the collector/shipper, the country of origin, and the scientific name at least to the genus, and preferably to the species, level;

(ii) There are a maximum of 50 seeds of 1 taxon (taxonomic category such as genus, species, cultivar, etc.) per packet; or a maximum weight not to exceed 10 grams of seed of 1 taxon per packet;

(iii) There are a maximum of 50 seed packets per shipment;

(iv) The seeds are free from pesticides;

(v) The seeds are securely packaged in packets or envelopes and sealed to prevent spillage;

(vi) The shipment is free from soil, plant material other than seed, other foreign matter or debris, seeds in the fruit or seed pod, and living organisms

such as parasitic plants, pathogens, insects, snails, mites; and

(vii) At the time of importation, the shipment is sent to either the Plant Germplasm Quarantine Center in Beltsville, MD, or a port of entry listed in § 319.37–14(b) and designated by an asterisk.

(Approved by the Office of Management and Budget under control number 0579–0285)

Done in Washington, DC, this 6th day of April 2006.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 06–3554 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH89

Revision of NRC Form 7, Application for NRC Export/Import License, Amendment, or Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that govern the export and import of nuclear material and equipment concerning the use of NRC Form 7, ''Application for NRC Export/Import License, Amendment, or Renewal.'' Recently, the Commission revised NRC Form 7 to consolidate all license requests (i.e., applications for export, import, combined export/import, amendments and renewals) in one application form. Previously, NRC Form 7 was used only for applications for export of nuclear material and equipment. Import license applications, production or utilization facility export applications, and license amendment and renewal applications were filed by letter. As a result of the revision, these requests previously made by letter, now will be made using NRC Form 7. The purpose of this change is to amend the regulations that govern export and import of nuclear material and equipment to reflect that all license requests are to be made using NRC Form 7, as revised.

DATES: The final rule will become effective June 27, 2006, unless a significant adverse comment on the direct final rule is received by May 15, 2006. If the rule is withdrawn as a result of such a comment, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after May 15, 2006 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH89 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submissions.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.* Comments also can be submitted via the Federal eRulemaking Portal *http://regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2347, e-mail *bgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Direct Final Rule Process

This direct final rule amends 10 CFR part 110 to reflect revisions made to NRC Form 7 regarding the method for filing import and export license requests. All licensing requests, i.e., exports, imports, combined export/import, amendment, and renewal applications will be made using revised NRC Form 7. Import license applications, production or utilization facility export license applications, and import/export license amendment and renewal applications will no longer be filed by letter. This direct final rule codifies the revisions to NRC Form 7 in 10 CFR part 110.

Because the NRC believes that this action is not controversial, the NRC is using the direct final rule process for this rule. The direct final rule will become effective on June 27, 2006. However, if the NRC receives a significant adverse comment on this direct final rule by May 15, 2006, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**. The comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

II. Background

The NRC is amending its regulations under 10 CFR part 110 concerning the use of NRC Form 7. NRC Form 7, ''Application for Export of Nuclear Material and Equipment'' is being revised as NRC Form 7, ''Application for NRC Export/Import License, Amendment or Renewal.'' All licensing requests (i.e., exports, imports, combined export/import, amendment, and renewal applications) will be made using revised NRC Form 7.

Previously, NRC Form 7 was used only for applications for export of nuclear material and equipment. Import license applications and production or utilization facility export applications were filed by letter under 10 CFR 110.31(c) (OMB Clearance Number 3150–0036). Section 110.31(c) is amended to require import license applications and production and utilization facility export applications to be filed using revised NRC Form 7. Previously, applications for export/import license amendments and license renewals were filed by letter under 10 CFR 110.51(a) (OMB Clearance Number 3150–0036). Section 110.51(a) is amended to require applications for license amendments and license renewals to be filed using NRC revised Form 7.

This direct final rule, by revising the method of filing license applications for import licenses, production and utilization export licenses, and import/export license amendment and renewal requests, will eliminate the burden under the Paperwork Reduction Act to those applicants and licensees previously filing applications under 10 CFR part 110 (OMB Clearance No. 3150–0036) and transfers that burden to the NRC Form 7 (OMB Clearance No. 3150–0027). Sections 110.7(b) and (c) are amended by this direct final rule to reflect this change.

Below is a summary of the type of information required in NRC Form 7, as revised. NRC Form 7 is divided into five parts. Part A is for the NRC's internal use. Part B must be completed by all applicants and requires that the applicant provide its name, contact, physical address, phone number, type of licensing action, first and last shipment date, and proposed expiration date. Part C must be completed for export or combined export/import licenses, amendments, or renewal requests. The type of information required in Part C includes names and addresses of suppliers and other parties to the export, names and addresses of intermediate and ultimate locations, type of licensing action, functions to be performed, physical addresses where correspondence should be sent, and where exports could be inspected. Part C also requires a description of key characteristics including physical and chemical forms of the radioactive materials, sealed sources, nuclear facilities, equipment, or components. The maximum total volume, element weight, or total activity also must be provided. Part D must be completed for import or combined export/import licenses, amendments, or renewal requests. It requires information similar to that required in Part C; however, Part D also requires that the applicant provide the NRC or Agreement State Materials License number(s) including the expiration date(s) for each U.S. consignee. Part E must be completed by all applicants. In Part E, the applicant must verify whether domestic recipients' authorizations required for Appendix P materials are included with the application. The applicant also must provide a signature certification that all information in the application is prepared in conformity with 10 CFR part 110, and that all information provided is correct to the best of the applicant's knowledge.

The NRC has determined that this rule will pose no unreasonable risk to the public health and safety or the common defense and security.

Plain Language

The Presidential memorandum ''Plain Language in Government Writing'' published June 10, 1998 (63 FR 31883) directed that the Government's documents be in clear and accessible language. The NRC requests comments on the direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this notice.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This direct final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable. The NRC is amending 10 CFR part 110 to require all applications for export, import, combined export/import, amendments and renewals to be submitted using NRC Form 7.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), clearance numbers 3150–0027 and 3150–0036. The rule transfers existing information collection requirements to process license requests that previously were filed by letter from 10 CFR part 110 (OMB Clearance No. 3150–0036) to NRC Form 7 (OMB Clearance No. 3150–0027). There is no change in burden to each respondent of an average 2.4 hours to complete the application because respondents only complete applicable sections of NRC Form 7, depending on the nature of the license request. Send comments on any aspect of these information collections, including suggestions for further reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *BJS1@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0027 and 3150–0036), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public. The NRC has sole control of 10 CFR part 110 and NRC Form 7. There is no alternative to amending the regulations at 10 CFR part 110 to reflect changing circumstances.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities. This minor, non-substantive amendment merely changes the method of filing certain license applications. As such, it has no economic impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter I.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 2. In § 110.7, paragraphs (b) and (c)(1) are revised to read as follows:

§ 110.7 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 110.7a, 110.23, 110.26, 110.27, 110.32, 110.50, 110.52, and 110.53.

(c) * * *

(1) In §§ 110.19, 110.20, 110.21, 110.22, 110.23, 110.31, 110.32, and 110.51, NRC Form 7 is approved under control number 3150–0027.

* * * * *

■ 3. In § 110.31, paragraph (c) is revised to read as follows:

§ 110.31 Application for a specific license.

* * * * *

(c) Applications for an export, import, combined export/import, amendment or renewal licenses under 10 CFR Part 110 shall be filed on NRC Form 7.

* * * * *

■ 4. In § 110.51, paragraph (a) is revised to read as follows:

§ 110.51 Amendment and renewal of licenses.

(a) A licensee shall submit an application to renew a license or to amend a license on a completed NRC Form 7.

* * * * *

Dated at Rockville, Maryland, this 7th day of March, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06–3551 Filed 4–12–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19680; Directorate Identifier 2003–NM–215–AD; Amendment 39–14558; AD 2006–08–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This AD requires performing a test of the bonding resistance between the engine fuel feed tube fitting and the front spar, applying sealant on a hex nut inside the dry bay, and performing any applicable corrective actions. This AD results from a report that the engine fuel feed tubes were found not electrically bonded to the front spar. We are issuing this AD to prevent an ignition source from entering the fuel tank during a lightning strike event, which could cause a fuel tank explosion.

DATES: This AD becomes effective May 18, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 18, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6513; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office

(telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767 series airplanes. That NPRM was published in the **Federal Register** on November 24, 2004 (69 FR 68272). That NPRM proposed to require performing a test of the bonding resistance between the engine fuel feed tube fitting and the front spar, applying sealant on a hex nut inside the dry bay, and performing any applicable corrective actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Requests To Revise Surface Preparation Procedures

Two commenters, Continental Airlines and Britannia Airlines, note that the preparation of the mating surface on the dry bay side of the front spar for bonding requires the use of a stainless steel brush. The commenters recommend that the preparation of the mating surface be accomplished using cleaning procedures 1, 2, or 3, described in Section 20–20–00 of the Boeing Standard Wiring Practices Manual (SWPM), or other cleaning procedures; ideally, by the use of fine abrasive material (100 grit or finer). One of the commenters states, ''Since the objective is to achieve a satisfactory bond, any approved cleaning method, which achieves that objective, should be acceptable.'' Continental Airlines notes disadvantages to the other two cleaning procedures, which involve using a stainless steel brush, or using a rotary abrasive disk. Specifically:

- There is a high possibility of damaging the mating surface when using the stainless steel rotary brush.
- Using a stainless steel rotary brush would introduce unwelcome contamination in the fuel tank area.
- Using a steel rotary brush when attached to an electrical motor tool would create a fire hazard in a fuel vapor area.
- Current flap or shot peen equipment cannot or is very difficult to fit in the area due to access issues.
- Current flap or shot peen equipment is also equipped with an electrical motor which creates a fire hazard in a fuel vapor area.

We agree with the use of fine abrasive material as the primary method for preparing the mating surface for bonding. Since we issued the NPRM, we have reviewed Boeing Service Bulletins 767–28A0071 and 767–28A0072, both Revision 2, both dated December 8, 2005. These service bulletins specify appropriate procedures for preparing the mating surface for bonding. We have determined that the use of a rotary abrasive disk as described in cleaning procedure 3, in Section 20–20–00 of the Boeing SWPM, should not be allowed as a cleaning method for this AD, for the same reasons/justifications the commenters used against the use of a stainless steel rotary brush. This determination is consistent with Revision 2 of the service bulletin instructions. We recognize that both the stainless steel brush and abrasive disk require the use of an electrical motor tool. However, using the stainless steel brush is not considered to pose such a significant fire hazard to the degree/point that we would not allow it to be used as an alternate procedure to the fine abrasive material, as noted in Revision 2 of the service bulletins. We have revised paragraph (f) of this AD to reference Revision 2 of the service bulletins as the appropriate source of service information. We have also revised paragraph (c) of this AD to reference Revision 2 of the service bulletins, and added paragraph (h) to give credit for actions previously accomplished in accordance with Boeing Alert Service Bulletins 767–28A0071 and 767–28A0072, both Revision 1, both dated January 22, 2004.

Request To Extend the Compliance Time

The Air Transport Association (ATA), on behalf of U.S. Airways, requests that the compliance time be extended from 48 months to 60 months after the effective date of this AD. The ATA notes that we issued AD 2004–10–06, amendment 39–13636 (69 FR 28046, May 18, 2004), which addresses a similar unsafe condition in Boeing Model 737 and 747 airplanes. In AD 2004–10–06, we determined that a 60-month compliance time maintained an acceptable level of safety. Further, the AD requires fuel tank entry, which involves unique scheduling of facilities and resources. Since other initiatives to eliminate potential ignition sources will result from the SFAR 88 effort, and since some will also require fuel tank entry, flexibility in planning those entries should be preserved to the greatest extent that provides an acceptable level of safety to avoid unnecessary fuel tank entries.

We agree to extend the compliance time to 60 months. We have determined that a 60-month compliance time is consistent with the requirements of existing ADs 2004–10–06 and 2005–04–01, amendment 39–13973 (70 FR 7841, February 16, 2005) (also an SFAR 88 AD). This new compliance time is consistent with Boeing's new recommendation specified in Revision 2 of the service bulletins (described previously). We have also determined that extending the compliance time will not adversely affect safety. We have revised paragraph (g) of this AD to require the new compliance time.

Request To Revise Order of Tasks

ATA, on behalf of United Airlines, requests that we allow accomplishment of the sealant application in paragraph 3.B.7. of Revision 1 of the service bulletins to be performed after the leak checks in paragraph 3.B.8. of Revision 1 of the service bulletins. The commenter explains that sealing of the coupling could mask leaks during the leak checks of the fuel feed line, and an undetected leak could manifest into subsequent related problems. The commenter states that Boeing concurred with this re-sequencing.

We agree. Boeing has revised the service bulletins to re-sequence the steps in Revision 2 of the service bulletins. As explained previously, we have revised paragraph (g) to require accomplishment of actions in accordance with Revision 2 of the service bulletins.

Request To Allow Use of an Alternative Material

United Airlines requests that we allow the use of CRES lock-wire, part number (P/N) MS20995C32, as an option to the Monel lock-wire, P/N MS20995NC32, that is defined in the service bulletin. The commenter states that the CRES lock-wire is listed as an acceptable standard parts substitution for the Monel lock-wire in Boeing Drawing 012W6100—Materials, Parts and Process Substitution and Equivalents. The commenter also states that Boeing did not state any technical objection to this substitution.

We do not agree to allow the use of the CRES stainless-steel lock-wire. Pieces of the CRES lock-wire could be in the fuel tank due to breakage or be left in the tank during the lock-wire installation process. These pieces of lock-wire could then be ingested into the fuel pump inlets, and contact stainless-steel components in the fuel pump. Such contact in the fuel pump between stainless-steel materials could produce sparks or excessive heat.

Neither the commenter nor the manufacturer has provided any data that would indicate whether pieces of CRES lock-wires could create sparks when ingested by the fuel pump. While Boeing did not state any objection to United's substitution, it did not include the CRES wire as an option in Revision 2 of the service bulletins either. In light of the properties of stainless-steel, and the absence of any sparking characteristics data that can be used to show that the level of safety with stainless-steel wire is acceptable, we currently cannot determine that the potential impact to the level of safety is acceptable. The commenter is welcome to submit a request for an alternative method of compliance (AMOC) with sparking characteristics data to support the request. We have not changed the AD in this regard.

Request To Revise Cost Estimate

American Airlines states that it is accomplishing the actions proposed in the NPRM, and estimates that the bonding test of the engine fuel feed tube will require approximately 21 work hours. We infer that the commenter wants the cost estimate to be revised.

We disagree with the commenter's request. Our estimate of the work hours required is based on information provided by the manufacturer, without any follow-on/conditional corrective actions, or access/close-up actions included. We have not changed the cost estimate of this AD.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 867 airplanes of the affected design in the worldwide fleet. This AD will affect about 400 airplanes of U.S. registry. The actions will take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $78,000, or $195 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–08–04 Boeing: Amendment 39–14558. Docket No. FAA–2004–19680; Directorate Identifier 2003–NM–215–AD.

Effective Date

(a) This AD becomes effective May 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, as identified in Boeing Service Bulletin 767–28A0071, Revision 2, dated December 8, 2005; and Model 767–400ER series airplanes, as identified in Boeing Service Bulletin 767–28A0072, Revision 2, dated December 8, 2005; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the engine fuel feed tubes were found not electrically bonded to the front spar. We are issuing this AD to prevent an ignition source from entering the fuel tank during a lightning strike event, which could cause a fuel tank explosion.

Compliance

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

Service Bulletin Definition

(f) The term ''service bulletin,'' as used in this AD, means the Work Instructions of the following service bulletins, as applicable:

(1) For Model 767–200, –300, and –300F series airplanes: Boeing Service Bulletin 767–28A0071, Revision 2, dated December 8, 2005; and

(2) For Model 767–400ER series airplanes: Boeing Service Bulletin 767–28A0072, Revision 2, dated December 8, 2005.

Investigative and Corrective Actions

(g) Within 60 months after the effective date of this AD: Do a test of the bonding resistance between the engine fuel feed tube fitting and the front spar, apply sealant on a hex nut inside the dry bay, and do all applicable corrective actions, by accomplishing all of the actions in the applicable service bulletin. Do all applicable corrective actions before further flight.

Previous Actions

(h) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0071, Revision 1, dated January 22, 2004; or Boeing Alert Service Bulletin 767–28A0072, Revision 1, dated January 22, 2004, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 767–28A0071, Revision 2, dated December 8, 2005; or Boeing Service Bulletin 767–28A0072, Revision 2, dated December 8, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 4, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3478 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22109; Directorate Identifier 2005–NE–32–AD; Amendment 39–14557; AD 2006–08–03]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat (Formerly Farner); Cabin Attendant Seats Series 150 Type FN and Series 151 Type WN

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Sicma Aero Seat (formerly Farner) cabin attendant seats series 150 type FN and series 151 type WN. This AD requires installing two protection fairings over the upper seat structure to cover the gap between the upper and lower seats and prevent any contact with the bottom seat folding mechanisms. This AD results from a child catching its fingers in the folding mechanism of the bottom of the attendant seat. We are issuing this AD to prevent injury resulting from contact with the bottom folding mechanism.

DATES: This AD becomes effective May 18, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 18, 2006.

ADDRESSES: You can get the service information identified in this AD from Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 Issoudun, France; telephone 33 (0) 2 54 03 39 39, fax 33 (0) 2 54 03 15 16.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Sicma Aero Seat (formerly Farner) cabin attendant seats series 150 type FN and series 151 type WN. We published the proposed AD in the **Federal Register** on October 4, 2005 (70 FR 57804). That action proposed to require installing two protection fairings over the upper seat structure to cover the gap between the upper and lower seats and prevent any contact with the bottom seat folding mechanisms.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

There are about 5,584 Sicma Aero Seat (formerly Farner) cabin attendant seats, series 150 type FN and 151 type WN of the affected design installed on 698 airplanes of U.S. registry. We estimate that it will take about 3 work hours per airplane to perform the actions, and that the average labor rate is $65 per work hour. Sicma has advised us that they will supply the modification kits at no cost. Based on the labor rate to install the kits, the total cost of the AD to U.S. operators will be $136,110.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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 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:

2006–08–03 Sicma Aero Seat (formerly Farner): Amendment 39–14557. Docket No. FAA–2005–22109; Directorate Identifier 2005–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sicma Aero Seat (formerly Farner) cabin attendant seats series 150 type FN and 151 type WN, all part and serial numbers. These attendant seats are installed on, but not limited to, Airbus A319, A320, and A321 series airplanes.

Unsafe Condition

(d) This AD results from a child catching its fingers in the folding mechanism of the bottom of the attendant seat. We are issuing this AD to prevent injury resulting from contact with the bottom folding mechanism.

Compliance

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

Installing Protective Fairings

(f) Within 90 days after the effective date of this AD, install two protective fairings, part number (P/N) 160100–49, on each affected cabin attendant seat. Use the instructions in paragraph 2 of Sicma Aero Seat Service Bulletin 150–25–036, Issue 1, dated February 10, 1999, and Sicma Aero Seat Service Bulletin 151–25–037, Issue 1, dated February 10, 1999.

(g) After installing the fairings, add or complete a modification placard, part number (P/N) 00–5179, indicating that the service bulletin has been completed. Use the instructions in paragraph 3 of Sicma Aero Seat Service Bulletin 150–25–036, Issue 1, dated February 10, 1999, and Sicma Aero Seat Service Bulletin 151–25–037, Issue 1, dated February 10, 1999.

Alternative Methods of Compliance

(h) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Direction Generale de L'Aviation Civile airworthiness directive 1999–004 (AB), dated January 13, 1999, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use the Sicma Aero Seat Service Bulletins specified in Table 1 to perform the installations required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 Issoudun, France; telephone 33 (0) 2 54 03 39 39, fax 33 (0) 2 54 03 15 16 for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin No.	Page	Issue	Date
150–25–036 Total Pages: 8	ALL	1	February 10, 1999.
151–25–037 Total Pages: 8	ALL	1	February 10, 1999.

Issued in Burlington, Massachusetts, on April 5, 2006.

Peter A. White,

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

[FR Doc. 06–3479 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24429; Directorate Identifier 2006–NM–003–AD; Amendment 39–14559; AD 2006–08–05]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0100 airplanes. This AD requires reinforcing the fuselage at the emergency locator transmitter system's antenna area. This AD results from a report that certain structural provisions for an optional antenna are of insufficient strength. We are issuing this AD to prevent reduced structural integrity of the airplane.

DATES: This AD becomes effective April 28, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 28, 2006.

We must receive comments on this AD by June 12, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F.28 Mark 0100 airplanes. The CAA–NL advises that in 2003 and 2004 the manufacturer developed two optional modifications for airplanes with an emergency locator transmitter (ELT) system installed in production. These modifications included removing existing structural provisions in the rear fuselage, and installing new structural provisions for a new antenna and tuner. Recent investigations showed that the new structural provisions for the new antenna are of insufficient strength. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–53–100, dated February 28, 2005, including Drawing W98488, Sheets 07 and 08, Issue F, dated February 9, 2004, and Sheets 09 and 10, Issue F, dated February 10, 2004. The service bulletin describes procedures for reinforcing the fuselage at the ELT system's antenna area. The reinforcement involves installing new, improved angles at the existing attachment holes. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–004, dated April 29, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent 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.

Therefore, we are issuing this AD to prevent reduced structural integrity of the airplane. This AD requires accomplishing the actions specified in the service information described previously.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Required parts are free of charge. Based on these figures, the estimated cost of the AD would be $240 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24429; Directorate Identifier 2006–NM–003–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that 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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–08–05 Fokker Services B.V.: Amendment 39–14559. Docket No. FAA–2006–24429; Directorate Identifier 2006–NM–003–AD.

Effective Date

(a) This AD becomes effective April 28, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0100 airplanes, certificated in any category; serial numbers 11290, 11296, 11323, 11329, and 11330, if modified in accordance with Fokker Service Bulletin SBF100–25–038 or SBF100–25–096.

Unsafe Condition

(d) This AD results from a report that certain structural provisions for an optional antenna are of insufficient strength. We are issuing this AD to prevent reduced structural integrity of the airplane.

Compliance

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

Installation

(f) Within 24 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first: Reinforce the fuselage at the emergency locator transmitter system's antenna area in accordance with Part 1 or Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–100, dated February 28, 2005, including Drawing W98488, Sheets 07 and 08, Issue F, dated February 9, 2004, and Sheets 09 and 10, Issue F, dated February 10, 2004.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Dutch airworthiness directive NL–2005–004, dated April 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100–53–100, dated February 28, 2005, including Drawing W98488, Sheets 07 and 08, Issue F, dated February 9, 2004, and Sheets 09 and 10, Issue F, dated February 10, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. Fokker Service Bulletin SBF100–53–100 contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–9	Original	February 28, 2005.
Drawing W98488		
07, 08	F	February 9, 2004.
09, 10	F	February 10, 2004.

The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 4, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3480 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24446; Directorate Identifier 2005–SW–15–AD; Amendment 39–14561; AD 2006–08–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–360C, SA–365C, SA–365C1, and SA–365C2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model SA–360C, SA–365C, SA–365C1, and SA–365C2 helicopters. This action requires inspecting the main gearbox (MGB) base plate for a crack and replacing the MGB if a crack is found. This amendment is prompted by the discovery of a crack in a MGB base plate. The actions specified in this AD are intended to detect a crack in a MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

DATES: Effective April 28, 2006.

Comments for inclusion in the Rules Docket must be received on or before June 12, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: (202) 493–2251; or
- 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.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

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: This amendment adopts a new AD for Eurocopter Model SA–360C, SA–365C, SA–365C1, and SA–365C2 helicopters with an MGB base plate, part number (P/N) 360A32–2311–02 or P/N 360A32–2311–03. This action requires visually inspecting the MGB for a crack in the MGB base plate, close to the attachment hole, using a 10x or higher magnifying glass. Stripping paint from the inspection area is also required, but only before the initial inspection. This amendment is prompted by the discovery of a crack in the MGB base plate of a MGB installed in a Eurocopter Model AS–365 N2 helicopter, which is of similar type design to the helicopter models affected by this AD. The cause of the crack is under investigation; therefore, this AD is an interim action until the cause of the crack can be determined. The crack was located very close to the attachment points of one of the laminated pads, and it propagated to the inside of the MGB base plate and then continued into the MGB casing. This condition, if not detected, could result in failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter.

We have previously issued AD 2004–16–15, Amendment 39–13771 (69 FR 51358), that applies to Eurocopter Model AS–365N2, AS 365 N3, EC 155B, EC155B1, SA–365N and N1, and SA–366G1 helicopters with an MGB base plate, P/N 366A32–1062–03 or P/N 366A32–1062–06. Since the issuance of that AD, the Direction Générale de L'Aviation Civile (DGAC), the airworthiness authority for France, notified us that an unsafe condition may also exist on Eurocopter Model SA 360 C and SA 365 C, C1, C2, and C3 helicopters. The SA 365 C3 is not type certificated in the United States. The DGAC advises of the discovery of a crack on the MGB base plate of a Model AS 365 N2 helicopter.

Eurocopter has issued Alert Service Bulletin No. 05.25, dated February 17, 2005 (ASB), which specifies visually inspecting the MGB base plate for the absence of cracks. In addition, the ASB states that a 10x magnifying glass can be used to facilitate the crack inspection. If in doubt about the existence of a crack, the ASB specifies inspecting for a crack using a dye-penetrant crack detection inspection. The ASB also states that after the crack was discovered on the Eurocopter Model AS365 N2 helicopter, the Eurocopter Model SA360 C and SA365C, C1, C2, and C3 helicopters were excluded from monitoring requirements. However, after issuing an Alert Telex, further cases of cracks were reported on helicopters covered by the monitoring requirement. Also, since the issuance of their initial service information, additional investigations and examinations have shown that the helicopter versions initially excluded from the monitoring requirements are also concerned by the potential risk and their MGB bottom plate must also be monitored. The DGAC classified this ASB as mandatory and issued AD No. F–2005–036, dated March 2, 2005, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD is being issued to detect a crack in the MGB base plate and prevent failure of a MGB attachment point to the frame, which could result in severe vibration and subsequent loss of control of the helicopter. This AD requires initial and repetitive inspections of the MGB base plate for cracking at the following intervals:

For any MGB that:	Accomplish the AD actions:
(a) Has less than 26,900 cycles and has never been overhauled or repaired.	On or before accumulating 26,900 cycles and thereafter at intervals not to exceed 55 hours time-in-service (TIS).
(b) Has 26,900 or more cycles and has never been overhauled or repaired.	Before further flight and thereafter at intervals not to exceed 55 hours TIS.
(c) Is installed that has been overhauled or repaired	Before further flight and thereafter at intervals not to exceed 55 hours TIS.

One cycle equates to one helicopter landing in which a landing gear touches the ground.

None of the Eurocopter Model SA–360C, SA–365C, SA–365C1, and SA–365C2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would take approximately 0.5 work hour for the initial inspection and 0.25 work hour for each recurring inspection. Replacing the MGB, if necessary, would take approximately 4 work hours to accomplish, at an average labor rate of $65 per work hour. It would cost approximately $25,000 to repair a cracked MGB base plate. Based on these figures, the cost impact of this AD would be $25,455, assuming that one helicopter is imported and inspected 11 times (the initial inspection plus 10 recurring inspections) and the MGB is replaced once.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–200X–XXXXX; Directorate Identifier 2005–SW–15–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Regulatory Findings

We have determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. We have also determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the AD docket.

Authority for This Rulemaking

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

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

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:

2006–08–06 Eurocopter France: Amendment 39–14561. Docket No. FAA–2006–24446; Directorate Identifier 2005–SW–15–AD.

Applicability

Model SA–360C, SA–365C, SA–365C1, and SA–365C2 helicopters with a main gearbox (MGB) base plate, part number (P/N) 360A32–2311–02 or P/N 360A32–2311–03 installed, certificated in any category.

Compliance

Required as indicated in the following compliance table, unless accomplished previously, and before installing a replacement main gearbox (MGB).

COMPLIANCE TABLE

For any MGB that:	Accomplish the AD actions:
(a) Has less than 26,900 cycles and has never been overhauled or repaired.	On or before accumulating 26,900 cycles and thereafter at intervals not to exceed 55 hours time-in-service (TIS).
(b) Has 26,900 or more cycles and has never been overhauled or repaired.	Before further flight and thereafter at intervals not to exceed 55 hours TIS.
(c) Is installed that has been overhauled or repaired	Before further flight and thereafter at intervals not to exceed 55 hours TIS.

One cycle equates to one helicopter landing in which a landing gear touches the ground.

To detect a crack in a MGB base plate and prevent failure of one of the MGB attachment points to the frame, which could result in severe vibration and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the initial inspection at the time indicated in the compliance table, strip the paint from area ''D'' on both sides (''B'' and ''C'') of the MGB base plate as depicted in Figure 1 of this AD.

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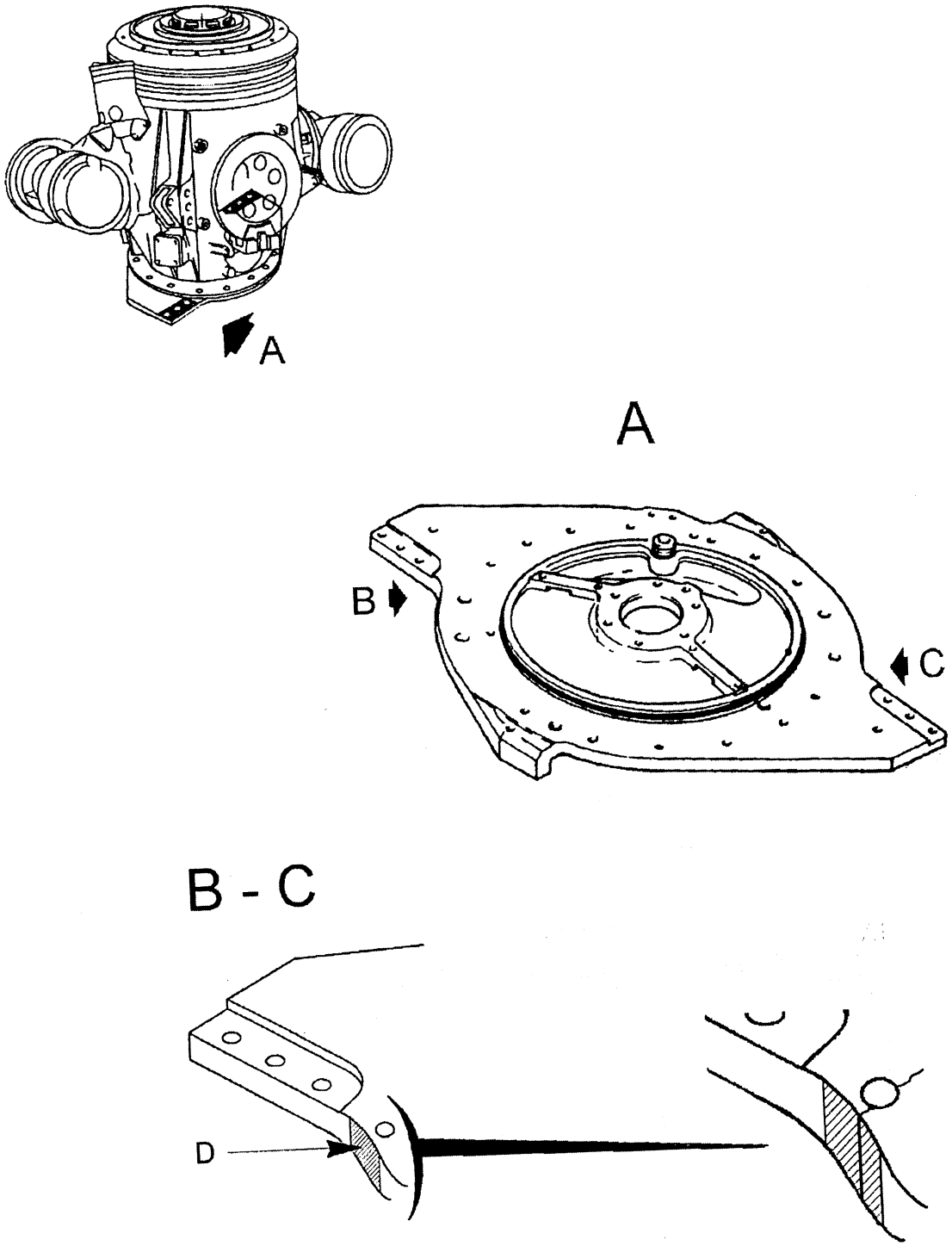

Figure 1

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(b) At the times indicated in the compliance table, inspect area ''D'' of the MGB base plate for a crack using a 10x or higher magnifying glass. Area ''D'' to be inspected is depicted in Figure 1 of this AD.

Note 1: Eurocopter France Alert Service Bulletin No. 05.25, dated February 17, 2005, pertain to the subject of this AD.

(c) If a crack is found in a MGB base plate, remove and replace the MGB with an airworthy MGB before further flight.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Ed Cuevas, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(e) This amendment becomes effective on April 28, 2006.

Note 2: The subject of this AD is addressed in Direction Générale de L'Aviation Civile (France) AD No. F–2005–036, dated March 2, 2005.

Issued in Fort Worth, Texas, on April 5, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–3535 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24438; Directorate Identifier 2006–NM–061–AD; Amendment 39–14560; AD 2006–04–13 R1]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GIV–X and GV–SP Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Gulfstream Model GIV–X and GV–SP series airplanes. That AD currently requires revising the Limitations section of the airplane flight manual (AFM) by incorporating new procedures to follow in the event that the cockpit displays go blank or malfunction. This AD allows for the use of alternative AFM revisions for a certain subset of the existing applicability. This AD results from a report that all four of the cockpit flight panel display units simultaneously went blank during flight. We are issuing this AD to ensure that the flightcrew is advised of the appropriate procedures to follow in the event that the cockpit displays go blank or malfunction, which could result in a reduction of the flightcrew's situational awareness and possible loss of control of the airplane.

DATES: The effective date of this AD is March 13, 2006.

On March 13, 2006 (71 FR 9436, February 24, 2006), the Director of the Federal Register approved the incorporation by reference of certain other publications.

We must receive any comments on this AD by June 12, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

On February 14, 2006, we issued AD 2006–04–13, amendment 39–14495 (71 FR 9436, February 24, 2006). That AD applies to certain Gulfstream Model GIV–X and GV–SP series airplanes. That AD requires revising the Limitations section of the airplane flight manual (AFM) by incorporating new procedures to follow in the event that the cockpit displays go blank or malfunction. That AD resulted from a report that all four of the cockpit flight panel display units simultaneously went blank during flight. The actions specified in that AD are intended to ensure that the flightcrew is advised of the appropriate procedures to follow in the event that the cockpit displays go blank or malfunction, which could result in a reduction of the flightcrew's situational awareness and possible loss of control of the airplane.

Actions Since AD Was Issued

Since we issued AD 2006–04–13, the European Aviation Safety Agency (EASA) informed us that the information contained in the Joint Aviation Authority (JAA) Gulfstream AFM revisions is considered acceptable for airplanes operated under and in accordance with the JAA and EASA regulations, supervision, and oversight, and should be added to the AD. We inadvertently omitted that information from AD 2006–04–13; therefore, we have added a new Note 2 to this AD to give credit for those revisions.

Relevant Service Information

We have reviewed the revisions to the Limitations section of Gulfstream G350, G450, G500, and G550 AFMs, as listed in the table below:

GULFSTREAM AFM REVISIONS

Affected airplane models	AFM	Revision level	Revision date
Model GIV–X	Gulfstream G350 GAC–AC–JAA–G350–OPS–0001	3	January 25, 2006.
Model GIV–X	Gulfstream G450 GAC–AC–JAA–G450–OPS–0001	3	January 25, 2006.
Model GV–SP	Gulfstream G500 GAC–AC–JAA–G500–OPS–0001	3	January 25, 2006.

GULFSTREAM AFM REVISIONS—Continued

Affected airplane models	AFM	Revision level	Revision date
Model GV–SP	Gulfstream G550 GAC–AC–JAA–G550–OPS–0001	5	January 25, 2006.

The revisions describe procedures to follow in the event that all four cockpit flight panel display units simultaneously go blank or malfunction. The procedures include identifying the malfunctioning components and taking appropriate corrective action to return certain displays to a functional condition. The procedures also include weather minimums designed to mitigate the effects of display blanking events during takeoff or landing.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2006–04–13. This new AD retains the requirements of the existing AD. This AD also provides for accomplishing the actions specified in the AFM revisions described previously for a certain subset of the existing applicability.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a software modification that will address the unsafe condition identified in this AD, which will constitute terminating action for the AFM revisions required by this AD action. Once this modification is developed, approved, and available, we may consider additional rulemaking. However, the planned compliance time for the modification will allow enough time to provide notice and opportunity for prior public comment on the merits of the modification.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–24438; Directorate Identifier 2006–NM–061–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Dockets

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that 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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by removing amendment 39–14495 (71 FR 9436, February 24, 2006) and adding the following new airworthiness directive (AD):

2006–04–13 R1 Gulfstream Aerospace Corporation: Amendment 39–14560. Docket No. FAA–2006–24438; Directorate Identifier 2006–NM–061–AD.

Effective Date

(a) The effective date of this AD is March 13, 2006.

Affected ADs

(b) This AD revises AD 2006–04–13.

Applicability

(c) This AD applies to Gulfstream Model GIV–X series airplanes, certificated in any category, serial numbers 4001 and subsequent; and Gulfstream Model GV–SP series airplanes, certificated in any category, serial numbers 5001 and subsequent; on which Gulfstream Modification ASC–904 or production equivalent has been incorporated.

Unsafe Condition

(d) This AD results from a report that all four of the cockpit flight panel display units simultaneously went blank during flight. We are issuing this AD to ensure that the flightcrew is advised of the appropriate procedures to follow in the event that the cockpit displays go blank or malfunction, which could result in a reduction of the flightcrew's situational awareness and possible loss of control of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Except as provided by paragraph (g) of this AD: Within 10 days after March 13, 2006 (the effective date of AD 2006–04–13), revise the Limitations section of the Gulfstream G350, G450, G500, and G550 AFMs to include the information in the applicable revision listed in Table 1 of this AD. Thereafter, operate the airplane according to the limitations and procedures in the applicable revision. Any further revisions to the AFM must contain the identical procedures in the Limitations section of the AFM revisions as required by this AD.

TABLE 1.—GULFSTREAM AFM REVISIONS

Affected airplane models	Applicable Gulfstream AFM
Model GIV–X	GAC–AC–G350–OPS–0001, as specified in Revision 6, dated January 24, 2006.
Model GIV–X	GAC–AC–G450–OPS–0001, as specified in Revision 7, dated January 24, 2006.
Model GV–SP	GAC–AC–G500–OPS–0001, as specified in Revision 13, dated January 24, 2006.
Model GV–SP	GAC–AC–G550–OPS–0001, as specified in Revision 15, dated January 24, 2006.

Note 1: The actions required by paragraph (f) of this AD may be done by inserting a copy of the applicable Gulfstream revisions listed in Table 1 of this AD into the applicable AFM.

Note 2: For airplanes that are operated under and in accordance with the Joint Aviation Authority (JAA)/European Aviation Safety Agency regulations, supervision, and oversight: Revising the Limitations section of the Gulfstream G350, G450, G500, and G550 AFMs to include the information in the applicable revision listed in Table 2 of this AD is acceptable for compliance with the requirements of paragraph (f) of this AD.

TABLE 2.—JAA GULFSTREAM AFM REVISIONS

Affected airplane models	Applicable Gulfstream AFM
Model GIV–X	GAC–AC–JAA–G350–OPS–0001, as specified in Revision 3, dated January 25, 2006.
Model GIV–X	GAC–AC–JAA–G450–OPS–0001, as specified in Revision 3, dated January 25, 2006.
Model GV–SP	GAC–AC–JAA–G500–OPS–0001, as specified in Revision 3, dated January 25, 2006.
Model GV–SP	GAC–AC–JAA–G550–OPS–0001, as specified in Revision 5, dated January 25, 2006.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(h) You must use the documents listed in Table 3 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On March 13, 2006 (71 FR 9436, February 24, 2006), the Director of the Federal Register approved the incorporation by reference of the documents listed in Table 3 of this AD.

(2) Contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 3.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Gulfstream service information	Revision level	Revision date
Gulfstream G350 Airplane Flight Manual GAC–AC–G350–OPS–0001	6	January 24, 2006.
Gulfstream G450 GAC–AC–G450–OPS–0001	7	January 24, 2006.
Gulfstream G500 GAC–AC–G500–OPS–0001	13	January 24, 2006.

TABLE 3.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE—Continued

Gulfstream service information	Revision level	Revision date
Gulfstream G550 ..... GAC–AC–G550–OPS–0001	15	January 24, 2006.

Issued in Renton, Washington, on April 5, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3540 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23436; Airspace Docket No. 05–ASO–10]

RIN 2120–AA66

Establishment of Area Navigation Instrument Flight Rules Terminal Transition Route (RITTR); T–210; Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a waypoint (WP) listed in the description of route T–210 in a final rule published in the **Federal Register** on March 27, 2006 (71 FR 15027), Airspace Docket No. 05–ASO–10. This action also makes an editorial change to the order of the points listed in the route description.

DATES: *Effective Date:* 0901 UTC, June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 27, 2006, a final rule for Airspace Docket No. 05–ASO–10 was published in the **Federal Register** (71 FR 15027). This rule established RITTR route T–210 in the Jacksonville, FL, terminal area. In the description for route T–210, the coordinates for the OHLEE, FL, WP were incorrect. The correct latitude and longitude coordinates for OHLEE are lat. 30°16′06″ N., long. 82°06′33″ W. The action corrects the error. In addition, the order of the points listed in the rule for the route T–210 legal description did not match the order as listed in flight inspection documentation. The rule listed the points from east to west while the flight inspection document listed the points from west to east. This action simply reverses the order of the points listed in the route T–210 description to agree with the flight inspection documentation. This change does not affect the alignment of the route.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions for T–210 as published in the **Federal Register** on March 27, 2006 (71 FR 15027), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

* * * * *

T–210 Taylor, FL to BRADO, FL [Corrected]

Taylor, FL (TAY)	VORTAC	(Lat. 30°30′17″ N., long. 82°33′10″ W.)
OHLEE, FL	WP	(Lat. 30°16′06″ N., long. 82°06′33″ W.)
BRADO, FL	Fix	(Lat. 29°55′22″ N., long. 81°28′08″ W.)

* * * * *

Issued in Washington, DC, on April 7, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 06–3559 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9244]

RIN 1545–BC05; 1545–BE88

Determination of Basis of Stock or Securities Received in Exchange for, or With Respect to, Stock or Securities in Certain Transactions; Treatment of Excess Loss Accounts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9244), that was published in the **Federal Register** on Thursday, January 26, 2006 (71 FR 4264). This regulation provides guidance regarding the determination of the basis of stock or securities received in exchange for, or with respect to stock or securities in certain transactions.

DATES: This correction is effective January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9244) that are the subject of these corrections are under sections 356, 358 and 1502 of the Internal Revenue Code.

Need for Correction

As published, TD 9244 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

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 * * *

§ 1.358–1 [Corrected]

■ **Par. 2.** Section 1.358–1 is amended by removing the seventh and eighth sentences of paragraph (b), *Example,* and adding the following sentence in their place:

§ 1.358–1 Basis to distributes.

* * * * *

(b) * * *

Example * * * The basis to A of the one share of stock Corporation Y is $90, that is, the adjusted basis of the one share of stock of Corporation X ($90), decreased by the sum of the cash received ($10) and the fair market value of the other property received ($30) and increased by the sum of the amount treated as a dividend ($5) and the amount treated as a gain from the exchange of property ($35). * * *

* * * * *

§ 1.358–2 [Corrected]

■ **Par. 3.** Section 1.358–2 is amended as follows:

■ a. By revising paragraph (a)(2)(viii).

■ b. By revising paragraph (ii) in paragraph (c), *Examples 4, 5, 6,* and *11*.

The corrections read as follows:

§ 1.358–2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(viii) This paragraph (a)(2) shall not apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and section 354 or section 356, if, in connection with the exchange, the shareholder or security holder exchanges property for stock or securities in an exchange to which neither section 354 nor section 356 applies or liabilities of the shareholder or security holder are assumed.

* * * * *

(c) * * *

Example 4. * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under § 1.356–1(b), because the terms of the exchange do not specify that shares of Corporation Y stock or cash are received in exchange for particular shares of Class A stock or Class B stock of Corporation X, a pro rata portion of the shares of Corporation Y stock and cash received will be treated as received in exchange for each share of Class A stock and Class B stock of Corporation X surrendered based on the fair market value of such stock. Therefore, J is treated as receiving one share of Corporation Y stock and $5 of cash in exchange for each share of Class A stock of Corporation X and one share of Corporation Y stock and $5 of cash in exchange for each share of Class B stock of Corporation X. J realizes a gain of $140 on the exchange of shares of Class A stock of Corporation X, $100 of which is recognized under § 1.356–1(a). J realizes a gain of $80 on the exchanges of Class B stock of Corporation X, all of which is recognized under § 1.356–1(a). Under paragraph (a)(2)(i) of this section, J has 10 shares of Corporation Y stock, each of which has a basis of $2 and is treated as having been acquired on Date 1, 10 shares of Corporation Y stock, each of which has a basis of $4 and is treated as having been acquired on Date 2, and 20 shares of Corporation Y stock, each of which has a basis of $5 and is treated as having been acquired on Date 3. Under paragraph (a)(2)(vii) of this section, on or before the date on which the basis of a share of Corporation Y stock received becomes relevant, J may designate which of the shares of Corporation Y stock received have a basis of $2, which have a basis of $4, and which have a basis of $5.

Example 5. * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under § 1.356–1(b), because the terms of the exchange specify that J receives 40 shares of stock of Corporation Y in exchange for J's shares of Class A stock of Corporation X and $200 of cash in exchange for J's shares of Class B stock of Corporation X and such terms are economically reasonable, such terms control.'' in its place. J realizes a gain of $140 on the exchange of shares of Class A stock of Corporation X, none of which is recognized under § 1.356–1(a). J realizes a gain of $80 on the exchange of shares of Class B stock of Corporation X, all of which is recognized under § 1.356–1(a). * * *

Example 6. * * *

(ii) *Analysis.* Under paragraph (a)(2)(ii) of this section and under § 1.354–1(a), because the terms of the exchange specify that J receives 10 shares of stock of Corporation Y in exchange for J's shares of Class A stock of Corporation X and a Corporation Y security in exchange for its Corporation X security and such terms are economically reasonable, such terms control. * * *

* * * * *

Example 11. * * *

(ii) *Analysis.* Because the value of the common stock indicates that the liquidation preference associated with the Corporation Y preferred stock could be satisfied even if the reorganization did not occur, it is not appropriate to deem the issuance of additional Corporation Y preferred stock. * * *

* * * * *

§ 1.1502–19T [Corrected]

■ 3. Section 1.1502–19T is amended by:

■ a. Revising the section heading.

■ b. Revising paragraph (b)(2) through (c).

■ c. Revising the text of paragraph (h)(2)(iv).

The corrections read as follows:

§ 1.1502–19T Excess loss accounts (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.1502–19(a) through (c).

* * * * *

(h)(2)(iv) * * * For guidance regarding determinations of the basis of the stock of a subsidiary acquired in and intercompany reorganization on or after January 23, 2006, see paragraphs (d) and (g) *Example 2* of this section.

* * * * *

§ 1.1502–32 [Corrected]

■ 4. Section 1.1502–32 is amended by revising the text of paragraph (h)(8) to read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(h) * * *

(8) * * * Paragraph (b)(5)(ii) *Example 6* of this section applies only with respect to determinations of the basis of the stock a subsidiary on or after January 23, 2006. For determinations of the basis of the stock of a subsidiary before January 26, 2006, see § 1.1502–32(b)(5)(ii) *Example 6* as contained in the 26 CFR part 1 edition revised as of April 1, 2005.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 06–3527 Filed 4–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–06–003]

RIN 1625–AA09

Drawbridge Operation Regulation; Carquinez Strait, Benicia and Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Benicia-Martinez Railroad Drawbridge across the Carquinez Strait, mile 7.0, between Benicia and Martinez, CA. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period. This deviation is necessary for the bridge owner, Union Pacific Railroad Company, to perform essential cable replacement and repair work at the bridge.

DATES: This deviation is effective from 7 a.m. on April 17, 2006 to 5 p.m. on April 21, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Section office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: On March 13, 2006, the Union Pacific Railroad Company requested a temporary change to the operation of the Benicia-Martinez Railroad Drawbridge, mile 7.0, Carquinez Strait, between Benicia and Martinez, CA. The Benicia-Martinez Railroad Drawbridge navigation span provides vertical clearance of 70 feet above Mean High Water in the closed-to-navigation position. Presently, the draw opens on signal as required by 33 CFR 117.5. Navigation on the waterway consists of both commercial and recreational watercraft. The Union Pacific Railroad Company requested the drawbridge be allowed to remain closed to navigation from 7 a.m. on April 17, 2006 to 5 p.m. on April 21, 2006. During this time replacement and repair to the bridge cables, and associated maintenance on the lift assembly, will occur. This temporary drawbridge deviation has been coordinated with the waterway users. No objections to the proposed temporary rule were raised. Vessels can pass underneath the bridge in the closed position. The drawbridge can open in an emergency upon five hours advance notice.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the drawbridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2006.

Robert C. Lorigan,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 06–3562 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–017]

RIN 1625–AA00

Safety Zone; Maple-Oregon Bridge Boring Program, Sturgeon Bay Ship Canal, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Sturgeon Bay Ship Canal in Sturgeon Bay, WI. This zone is intended to restrict vessels from a portion of the Sturgeon Bay Ship Canal during the Maple-Oregon Bridge Boring Program. This temporary safety zone is necessary to protect vessels from hazards associated with underwater drilling operations.

DATES: This rule is effective from 5:30 a.m. (local), March 30, 2006 until 10 p.m. (local), April 28, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–06–017] and are available for inspection or copying at U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Dr, Milwaukee, WI, 53207 between 7 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Brad Hinken, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This safety zone is necessary to ensure the safety of vessels transiting the Sturgeon Bay Ship Canal and the workers on the Teng and Associates Drilling Barge Configuration. Based on accidents that have occurred in other Captain of the Port zones, and the hazards associated with underwater drilling, the Captain of the Port Lake Michigan has determined underwater drilling operations in close proximity to vessel traffic pose significant risk to public safety and property. Establishing a safety zone to control vessel movement around the location of the Teng and Associates Drilling Barge Configuration will help ensure the safety of persons and property during these operations and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of vessels transiting the Sturgeon Bay Ship Canal and workers on the Teng and Associates Drilling Barge Configuration. The safety zone will be in effect from 5:30 a.m. (local), March 30, 2006 until 10 p.m. (local), April 28, 2006.

The safety zone will encompass all waters of the Sturgeon Bay Ship Canal within 50-ft of the Teng and Associates Drilling Barge Configuration. The Captain of the Port Lake Michigan, or his designated on-scene representative, has the authority to terminate the event.

All persons and vessels shall comply with the instructions of the Captain of the Port Lake Michigan or the

designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated representative may be contacted at the Sector Lake Michigan Command Center via landline at 414–747–7182 or via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Sturgeon Bay Ship Canal approximately 700 ft. south of the Michigan Avenue Bridge in Sturgeon Bay, WI on each day from March 30th and April 28th, 2006.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect when there is little to no recreational and commercial vessel traffic. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management

system practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary section 165.T09–017 is added as follows:

§ 165.T09–017 Safety zone; Maple-Oregon Bridge Boring Program, Sturgeon Bay Ship Canal, Sturgeon Bay, WI.

(a) *Location.* The following area is a temporary safety zone: All waters of the Sturgeon Bay Ship Canal within 50-ft of the drilling rig.

(b) *Effective period.* This rule is effective from 5:30 a.m. (local), March 30, 2006 until 10 p.m. (local), April 28, 2006. This zone will be enforced during the entire effective period.

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

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

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted by calling the Coast Guard Sector Lake Michigan Command Center at 414–747–7182 or VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: March 30, 2006.

S.P. LaRochelle,

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

[FR Doc. 06–3512 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD17–05–002]

RIN 1625–AA87

Security Zone; High Capacity Passenger Vessels and Alaska Marine Highway System Vessels in Alaska

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent moving security zones around all escorted High Capacity Passenger Vessels (''HCPV'') and escorted Alaska Marine Highway System Vessels (''AMHS vessels'') during their transits in the navigable waters of the Seventeenth Coast Guard District. All commercial fishing vessels, as defined by applicable United States Code, are exempt from the provisions of this rule only while they are actively engaged in fishing.

DATES: This final rule is effective May 15, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket CGD17–05–002 and are available for inspection or copying at United States Coast Guard, District 17 (dpi), 709 West 9th Street, Juneau, AK 99801 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Matthew York, District 17 (dpi), 709 West 9th Street, Juneau, AK 99801, (907) 463–2821.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 9, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area and Security Zones; High Capacity Passenger Vessels in Alaska'' in the **Federal Register** (70 FR 11595), docket number CGD17–05–002. The NPRM included provisions for a 250-yard speed restriction zone, a 25-yard security zone around moored and anchored vessels, and a waiver request process.

On October 31, 2005, we published a Supplemental Notice of Proposed Rulemaking (SNPRM) entitled ''Security Zone; High Capacity Passenger Vessels and Alaska Marine Highway System Vessels in Alaska'' in the **Federal Register** (70 FR 62261), docket number CGD17–05–002. The SNRPM removed those three provisions from the proposed rule. The revised proposed security zone was then limited to High Capacity Passenger Vessels (HCPV) and Alaska Marine Highway System Vessels (AMHS) vessels during transit in the waters of the Seventeenth Coast Guard District. The SNRPM proposed the security zones would only apply to HCPV and AMHS vessels transiting under an escort as defined in the SNPRM. These permanent security zones were carefully designed to minimally impact the public while providing protections for HCPV and AMHS vessels.

On February 28, 2006, the Coast Guard published a Second Supplemental Notice of Proposed Rulemaking (SSNPRM) entitled, ''Security Zone; High Capacity Passenger Vessels and Alaska Marine Highway System Vessels in Alaska'' in the **Federal Register** (71 FR 9984), docket number CGD17–05–002. The

SSNPRM exempted all commercial fishing vessels, as defined by 46 U.S.C. 2101(11a), only while actively engaged in fishing. We did not receive any comments on the SSNRPM. No public hearing was requested, and none was held.

Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for Maritime Homeland Security, has determined that the District Commander and the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to utilize multiple means in different geographic areas to successfully carry out their terrorist missions, highlighted by the recent subway bombings in London.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); and Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, the Coast Guard has determined the need for additional security measures during their transit. A security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of these vessels. The District Commander has made a determination that it is necessary to establish a security zone around HCPV and AMHS vessels that are escorted to safeguard people, vessels and maritime traffic.

Discussion of Comments and Changes

We did not receive any comments on the Second Supplemental Notice of Proposed Rulemaking. Therefore, we are issuing this final rule without change from the proposed rule published February 28, 2006, in the SSNPRM with the exception of putting the definitions in alphabetical order.

Discussion of Rule

This rule establishes permanent 100-yard security zones around HCPV and AMHS vessels that are being escorted by a Coast Guard surface, air, or by other state or federal law enforcement agency designated by the Captain of the Port (COTP) during their transit through the Seventeenth Coast Guard District. Persons desiring to transit within 100 yards of an escorted HCPV or AHMS vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted HCPV or AMHS vessels. The boundaries of the Seventeenth Coast Guard District are defined in 33 CFR 3.85–1(b). This includes territorial waters 12 nautical miles from the territorial sea baseline as defined in 33 CFR part 2 subpart B.

Stationary vessels that are moored or anchored must remain moored or anchored when an escorted HCPV or AMHS vessels approaches within 100 yards of the stationary vessel unless the designated on scene representative has granted approval for the stationary vessel to do otherwise.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the on scene designated representatives.

Small Entities

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

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This permanent security zone only applies to HCPV and AMHS vessels that are transiting with an escort. It does not apply when the vessels are moored or anchored. Furthermore, vessels desiring to enter the security zone may contact the designated on scene representative and request permission to enter the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Matthew York, District 17 (dpi), 709 West 9th St., Room 753, Juneau, Alaska 99801. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1711 to read as follows:

§ 165.1711 Security Zones; Waters of the Seventeenth Coast Guard District

(a) *Definitions.* As used in this section—

Alaska Marine Highway System vessel (''AMHS vessel'') means any vessel owned or operated by the Alaska Marine Highway System, including, but not limited to: M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU, and the M/V TUSTUMENA.

Designated on Scene Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.85, to act on his or her behalf, or other Federal, State or local law enforcement Officers designated by the COTP.

Escorted HCPV or AMHS vessel means a HCPV or AMHS vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) State, Federal or local law enforcement assets displaying the applicable agency markings and or equipment associated with the agency.

Federal Law Enforcement Officer means any Federal government law enforcement officer who has authority to enforce federal criminal laws.

High Capacity Passenger Vessel (''HCPV'') means a passenger vessel greater than 100 feet in length that is authorized to carry more than 500 passengers for hire.

State law enforcement Officer means any State or local government law enforcement officer who has authority to enforce State or local criminal laws.

(b) *Location.* The following areas are security zones: all waters within 100 yards around escorted High Capacity Passenger Vessels or escorted Alaska Marine Highway System vessels in the navigable waters of the Seventeenth Coast Guard District as defined in 33 CFR 3.85–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 100 yards of an escorted HCPV or escorted AMHS vessel during their transits within the navigable waters of the Seventeenth Coast Guard District.

(2) Moored or anchored vessels that are overtaken by this moving zone must remain stationary at their location until the escorted vessel maneuvers at least 100 yards away.

(3) The local Captain of the Port may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(4) Persons desiring to transit within 100 yards of a moving, escorted HCPV or AMHS vessel in the Seventeenth Coast Guard District must contact the designated on scene representative on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) to receive permission.

(5) If permission is granted to transit within 100 yards of an escorted HCPV or AMHS vessel, all persons and vessels must comply with the instructions of the designated on scene representative.

(6) All commercial fishing vessels as defined by 46 U.S.C. 2101(11a) while actively engaged in fishing are exempted from the provisions of this section.

Dated: April 3, 2006.

James C. Olson,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 06–3564 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–TN–0008–200534(a); FRL–8157–8]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to Volatile Organic Compound Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation (TDEC) on September 7, 1998. This revision adds 16 compounds to the list of compounds excluded from the definition of ''Volatile Organic Compound'' (VOC).

DATES: This direct final rule is effective June 12, 2006 without further notice, unless EPA receives adverse comment by May 15, 2006. If adverse comment is received, EPA 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: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–TN–0008, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. E-mail: *hou.james@epa.gov.*
3. Fax: (404) 562–9019.
4. Mail: ''EPA–R04–OAR–2005–TN–0008,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–TN–0008.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Mr. Hou can also be reached via electronic mail at *hou.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On September 7, 1998, the TDEC submitted a revision to the Tennessee SIP. In response to EPA's revision to its definition of VOC, published on August 25, 1997, in the **Federal Register** (62 FR 4490), the State of Tennessee has changed Chapter 1200–3–18 Tennessee Code Annotated, by adding 16 compounds to the list of compounds excluded from the definition of VOC, on the basis that these compounds have negligible contribution to tropospheric ozone formation. The 16 compounds added to the list of negligibly reactive compounds are shown below in Table 1. Additionally, the State of Tennessee has added methyl acetate and perflurocarbon compounds to the list of compounds excluded from the definition of VOC in accordance with EPA's VOC definition, as published on April 9, 1998, in the **Federal Register** (63 FR 17331). Methyl acetate and perflurocarbon compounds excluded from the definition of VOC are those that fall into the following categories:

(i) Cyclic, branched, or linear; completely fluorinated alkanes;

(ii) Cyclic, branched or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perflouocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

COMPOUNDS ADDED TO THE LIST OF NEGLIGIBLY REACTIVE COMPOUNDS

Compound	Chemical name
HFC–32	Difluoromethane.
HFC–161	Ethylfluoride.
HFC–236fa	1,1,1,3,3,3-hexafluoropropane.
HFC–245ca	1,1,2,2,3-pentafluoropropane.
HFC–245ea	1,1,2,3,3-pentafluoropropane.
HFC–245eb	1,1,1,2,3-pentafluoropropane.
HFC–245fa	1,1,1,3,3-pentafluoropropane.
HFC–236ea	1,1,1,2,3,3-hexafluoropropane.
HFC–365mfc	1,1,1,3,3-pentafluorobutane.
HCFC–31	Chlorofluoromethane.
HCFC–123a	1,2-dichloro-1,1,2-trifluoroethane.
HCFC–151a	1-chloro-1-fluoroethane.
$C_4F_9OCH_3$	1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane.
$(CF_3)_2CFCF_2OCH_3$	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane.
$C_4F_9OC_2H_5$	1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane.
$(CF_3)CFCF_2OC_2H_5$	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane.

II. Final Action

EPA is approving the aforementioned changes to the State of Tennessee SIP, because they are consistent with EPA policy and the Clean Air Act (CAA). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 12, 2006 without further notice unless the Agency receives adverse comments by May 15, 2006.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 12, 2006 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Review

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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 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 June 12, 2006. 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, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 31, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 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 (RR)—(Tennessee)

■ 2. Section 52.2220(c) is amended by revising the entry for ''Section 1200–3–18–.01'' to read as follows:

§ 52.220(c). Identification of plan.

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(c) * * *

EPA-APPROVED (TENNESSEE) REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	**Federal Register** notice
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1200–3–18–.01	Definitions	09/01/99	04/13/06	[Insert first page of publication]
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[FR Doc. 06–3490 Filed 4–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2006–0277; FRL–8157–9]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: Commonwealth of Massachusetts Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects an error in the language of a final rule pertaining to EPA's approval granting the Commonwealth of Massachusetts the authority to implement and enforce its perchloroethylene air emissions regulations in place of the Federal dry cleaning NESHAP for area sources.

DATES: Effective April 13, 2006.

FOR FURTHER INFORMATION CONTACT: John Courcier, at (617) 918–1659 or by e-mail at *courcier.john@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 16, 2002 (67 FR 58339), EPA published a final rulemaking action granting the Commonwealth of Massachusetts the authority to implement and enforce its perchloroethylene air emissions regulations. In that document, EPA incorrectly cited the wrong Massachusetts Department of Environmental Protection rule. This action corrects the typographical error.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of April 13, 2006. 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 correction to the rule (310 CMR 7.26) for Massachusetts is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: April 3, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E—[Amended]

■ 2. Section 63.99 is amended to correct paragraph (a)(21)(ii)(A) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(21) * * *

(ii) * * *

(A) The material incorporated in the Massachusetts Department of Environmental Protection 310 CMR 7.26 and 310 CMR 70.01 pertaining to dry cleaning facilities in the Commonwealth of Massachusetts jurisdiction, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAPs for Perchloroethylene Dry Cleaning Facilities (subpart M of this part) for area sources only, as defined in § 63.320(h).

* * * * *

[FR Doc. 06–3488 Filed 4–12–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 5

RIN 1093–AA10

Making Pictures, Television Productions, or Sound Tracks on Certain Areas Under the Jurisdiction of the Department of the Interior

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is revising regulations found at 43 CFR 5.1 to allow implementation of legislation that directs the establishment of a reasonable fee for commercial filming activities or similar projects and still photography where a permit is required.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240, telephone: 202–513–7092, or e-mail: *Lee_Dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION: Public Law 106–206 (codified at 16 U.S.C. 460*l*–6d) directs the Secretaries of the Interior and Agriculture to establish a reasonable fee system (referred to as a location fee in this publication) for commercial filming and still photography activities on lands under the Secretaries' jurisdiction.

The Department of the Interior (DOI) regulations at 43 CFR part 5 prohibit the National Park Service (NPS) from collecting fees ''for the making of motion pictures, television productions or sound tracks * * *''. The Office of the Secretary is revising the current regulation by removing the prohibition.

Background

Lands of the United States were set aside by Congress or the Executive Branch to conserve and protect areas of untold beauty and grandeur, historical importance, and uniqueness for future generations. Often it is the uniqueness of the land that attracts filmmakers. This tradition started with explorers who traveled with paint and canvas or primitive photo apparatus before the areas were designated as a national park, wildlife refuge, or forest. Generally, land management agencies allow commercial filming and still photography when it is consistent with their mission and will not harm the resource or interfere with the visitor experience.

While many commercial filming and still photography permits issued by the land management agencies are for small productions involving educational material or commercial advertising, a significant number of commercial filming permits have been issued to makers of major motion pictures.

Public Law 106–206 specifically requires permits, reasonable fees for use of federal lands and reimbursement of costs incurred by the government as a result of both commercial filming and certain still photography activities. Congress recognized in this law that when commercial filming and certain

still photography activities are allowed on Federal lands, it is necessary to manage the activity through a permitting process to minimize the possibility of damage to the cultural or natural resources or interference with other visitors to the area and the agencies will incur costs in providing this management.

Key Issues

The Department of the Interior (DOI) regulations at 43 CFR part 5 which prohibit the NPS from collecting fees for commercial film productions are in conflict with the Pub. L. 106–206. Therefore, to implement the fee requirement of the law the Office of the Secretary is revising the current regulation by removing the prohibition.

In June 2004, the Government Accountability Office (GAO) at the request of some members of Congress began a review of NPS policy and guidance related to issuing special use permits for special events and for commercial filming and still photography. In a report issued May 6, 2005, the GAO concluded that the NPS could have collected and retained at least $1.6 million in location fees for commercial filming and still photography activities permitted on park lands if Pub. L. 106–206 had been implemented. One recommendation of the report was that the NPS ''Expedite the implementation of the law that requires the Park Service to collect location fees and costs for commercial filming and still photography, when appropriate.''

In order to expedite the implementation of Pub. L. 106–206, the Office of the Secretary will implement this final rule which will remove from current regulations found in 43 CFR 5.1(b)(1) the statement that prohibits the National Park Service from charging a fee ''for the making of motion pictures, television productions or sound tracks. * * *'' This rule will allow the NPS to charge fees during an interim period while a Department-wide rule, which includes the Bureau of Land Management and the U.S. Fish and Wildlife Service, is promulgated. The Department-wide rule will establish a fee schedule specific to this rule.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) 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.

(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.

(4) While this rule follows the direction of Congress by implementing the provisions of Public Law 106–206, OMB has determined that the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking 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.*).

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:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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.

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.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

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 proposed regulation requires individuals and companies wishing to do commercial filming and still photography park lands to obtain a permit from the superintendent managing the park land. The permit holder is also responsible for reimbursing the agency for costs incurred and to pay a land use fee. The mechanics of applying for the permit and the forms involved are not addressed in this proposed regulation, but are addressed in existing NPS regulations and internal guidance. The NPS uses application forms NPS 10–931 (Film—Short Form) and NPS 10–932 (Film—Long Form). Both forms are assigned OMB Control Number 1024–0026 and expire December 31, 2006. Therefore, these regulations do not contain information collection requirements that the OMB must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses that might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared.

The location fee authorized by Public Law 106–206 and governed by this proposed regulation is a fee collected when a permit is issued by the NPS for a commercial filming or still photography activity. Any analysis required by the NEPA, as well as the National Historic Preservation Act, would be conducted in conjunction with the permitting process and would

evaluate the impact of the requested activity on the resource.

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 22961), and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example § 14.10 Purpose). (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, DOI, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*

Administrative Procedure Act

In this rulemaking, we are revising existing regulations in order to implement Public Law 106–206, a law to allow the Secretary of the Interior to establish a fee system for commercial filming and certain still photography activities on Federal land. The existing regulations at 43 CFR 5.1 prohibit charging fees for these activities and the new law, Public Law 106–206, (codified at 16 U.S.C. 4601–6d), requires the Secretary to charge fees for these same activities. This rulemaking will delete the prohibition in the existing regulation. Therefore, we are publishing this action without prior proposal because we view this as a nondiscretionary revision that is required by law. We find good cause, pursuant to 5 U.S.C. 553(b) and 553(d), that notice and public procedure are unnecessary and this rule will take effect upon publication. However later this year we will publish in the **Federal Register** and request comments on a proposed rule on commercial filming and still photography activities for Department of the Interior agencies, including the National Park Service, Fish and Wildlife Service, and Bureau of Land Management.

List of Subjects in 43 CFR Part 5

Motion pictures, Recordings, Television.

■ For the reasons set forth in the preamble, the Department of the Interior amends 43 CFR part 5 as follows:

PART 5—MAKING PICTURES, TELEVISION PRODUCTIONS OR SOUND TRACKS ON CERTAIN AREAS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

■ 1. The authority for part 5 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

§ 5.1 [Amended]

■ 2. Revise § 5.1(b)(1) to read as follows:

* * * * *

(b) * * *

(1) No fees will be charged for the making of motion pictures, television productions or sound tracks on areas administered by the U.S. Fish and Wildlife Service. The regular general admission and other fees currently in effect in any area under the jurisdiction of the National Park Service are not affected by this paragraph.

* * * * *

Dated: April 6, 2006.

P. Lynn Scarlett,

Deputy Secretary of the Interior.

[FR Doc. 06–3529 Filed 4–12–06; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

Grade Crossing Signal System

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 200 to 299, revised as of October 1, 2005, in part 234, on page 569, the first ''Authority'' is removed.

[FR Doc. 06–55514 Filed 4–12–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 040706G]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2006 total allowable catch (TAC) of pollock specified for the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 10, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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.

In accordance with § 679.20(c)(3)(ii), the 2006 TAC of pollock specified for the West Yakutat District of the GOA is 1,792 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 TAC of pollock specified for the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,742 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated

groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 7, 2006.

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

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

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

Dated: April 7, 2006.

James P. Burgess,

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

[FR Doc. 06–3534 Filed 4–10–06; 10:56 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 71
Thursday, April 13, 2006

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 205

[Docket Number: TM–05–14]

RIN 0581–AC57

National Organic Program (NOP)—Access to Pasture (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advanced notice of proposed rulemaking with request for comments.

SUMMARY: The United States Department of Agriculture (USDA) invites comments from producers, handlers, processors, food manufacturers, exporters, consumers, scientists, industry representatives, and all other interested parties on how USDA should address the relationship between ruminant animals, particularly dairy animals, and pasture or land used for grazing under the NOP regulations. During the development of the NOP, and since its implementation, various parties, including the National Organic Standards Board (NOSB), have expressed concern about the role of pasture in organic management of ruminant animals—particularly dairy animals.

The NOP is authorized by the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) (OFPA). The Agricultural Marketing Service (AMS) administers the NOP. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. This action is being taken by AMS to ensure that NOP regulations are clear and consistent, stimulate growth of the organic sector, satisfy consumer expectations, and allow organic producers and handlers flexibility in making site-specific, real-time management decisions.

DATES: Comments on this ANPR must be submitted on or before June 12, 2006.

ADDRESSES: Interested parties may comment on this ANPR using the following procedures:

- Mail: Comments may be submitted by mail to: Mark A. Bradley, Associate Deputy Administrator, Transportation and Marketing Programs, National Organic Program, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.
- E-mail: Comments may be submitted via the Internet to: *NOP.Livestock@usda.gov.*
- Internet: *http://www.regulations.gov.*
- Fax: Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this ANPR should be identified with the docket number TM–05–14.
- Commenters should identify the issue or questions of this ANPR to which the comment refers. Comments should directly relate to issues or questions raised by the ANPR.
- Comments should be supported by reliable data. Commenters may include a copy of articles or other references that support their comments. Only relevant material should be submitted.

It is our intention to have all comments to this ANPR, whether submitted by mail, e-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this ANPR also will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Parties wanting to visit the USDA South Building to view comments received in response to this ANPR are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Mark A. Bradley, Associate Deputy Administrator, Transportation and Marketing Programs, National Organic Program, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250. Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: This action has been determined to be significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

When the OFPA was drafted in 1990, many private certification standards did not require pasture for ruminant animals. Certification standards for dairy herds permitted a wide range of practices, from pasture-based systems to conventional dry-lot operations. The OFPA, therefore, contains no provisions regarding the role of pasture or conditions for livestock confinement in organic livestock production systems.

Appropriate access to pasture has been a topic of discussion in the organic community for many years, including by the NOSB, because of a lack of statutory language and widely varying private certification standards for the relationship between ruminant animals, particularly dairy animals, and pasture.[1] The NOP final regulations on livestock feed, health care, and living conditions were based on recommendations made by the NOSB and public comment offered through various issue papers and two proposed rules, from 1994 through 2000. In addition, the NOSB has further explored the issue several times in public meetings since the NOP regulations were implemented in October 2002. The NOSB has also drafted several recommendations and guidance which it has proposed to AMS at various times either for guidance or rulemaking under the NOP.

Background

Over the period 1994–2005, the NOSB made six recommendations regarding access to the outdoors for livestock, pasture, and conditions for temporary confinement of animals. Also during this period, USDA issued two proposed rulemakings and a final regulation regarding national standards for production and handling of organic products, including livestock and their products. The NOSB as well as the public commented on these rulemakings with regard to these issues.

(1) In 1994, the NOSB recommended that certified operations provide ''access to shade, shelter, fresh air, and daylight suitable to the species, the stage of production, the climate, and the environment.'' The NOSB also proposed

[1] The NOSB is appointed by the Secretary of Agriculture and is comprised of representatives from the following categories: farmer/grower; handler/processor; retailer; consumer/public interest; environmentalist; scientist; and certifying agent (7 U.S.C. 6518).

that design of animal housing must accommodate ''the natural maintenance, comfort behaviors, and the opportunity to exercise'' required by specific species.

(2) In 1995, the NOSB modified its recommendation on organic livestock living standards by specifying the conditions under which temporary confinement may be justified. These conditions were inclement weather, the health, safety and well being of the livestock and protection of soil and water quality.

(3) In 1998, the NOSB reaffirmed its earlier positions on confinement and recommended that no exceptions be made for large livestock concentrations. However, the NOSB did not further define or add context to the phrase ''large livestock concentrations''.

In our December 1997 first proposed rule (62 FR 65850, December 16, 1997), based on NOSB recommendations, we proposed that, if necessary, animals could be maintained under conditions that restrict the available space for movement or access to outdoors if other living conditions were still met so that an animal's health could be maintained without the use of a permitted animal drug.

The provision for temporary confinement considered the effects of climate, geographical location, and physical surroundings on the ability of animals to have access to the outdoors. Our understanding was considered in balance with other animal health issues, such as the need to keep animals indoors during extended periods of inclement weather. The determination of ''necessary'' was to be based on site-specific conditions described by the producer in an organic system plan, which requires approval from the certifying agent. We stated in the preamble to that first proposed rule that such flexibility ''would allow operations without facilities for outdoor access to be certified for organic livestock production and would permit animals to be confined during critical periods such as farrowing.[2] As a part of the 1997 proposal, we specifically requested public comment as to the conditions under which animals may be maintained to restrict the available space for movement or access to the outdoors.

In October 1998, we released an issue paper, ''Livestock Confinement in Organic Production Systems'' to obtain further input on this issue and improve the drafting of the Department's second proposed rule that was published in March 2000 (65 FR 13512, March 13, 2000). In response to the March 2000 proposed rule, commenters stated that the requirement that ruminants receive ''access to pasture'' did not adequately describe the relationship that should exist between ruminants and the land they graze. Many of these commenters requested that the final rule *require* that ruminant production be ''pasture-based.'' The NOSB shared this perspective and also requested that the final rule require that ruminant production systems be pasture-based.

Other comments we received stated that a uniform, prescriptive definition of pasture was inappropriate to be applied universally over all dairy farms. These comments stated that the diversity of growing seasons, environmental variables, and forage and grass species could not be captured in a single definition and that certifying agents should work with livestock producers to evaluate pasture on an individual farm basis. These comments disagreed with a pasture-based requirement and stated that pasture should be only one of several components of balanced livestock nutrition. These comments said that making pasture the foundation for ruminant management would distort this balance; it would also deprive crop producers of the revenue and rotation benefits they could earn by growing livestock feed.

The Department considered all these comments but ultimately decided to retain the proposed ''access to pasture'' requirement in the final regulations published in December 2000 (65 FR 80548, December 21, 2000). No comments were submitted that defined a pasture-based system or how a pasture-based system would replace access to pasture.

The March 2000 proposed rule also retained provisions allowing for temporary confinement for animals: inclement weather, stage of production, conditions under which the health, safety, or well-being of the animal is jeopardized, or risk to soil or water quality.

Many comments were received that expressed concern that the exemption for stage of production might be used to deny an animal's access to the outdoors during naturally occurring life stages, including lactation for dairy animals. Commenters overwhelmingly opposed such an allowance, stating that the stage of production exemption should be narrowly applied. Commenters stated that a dairy operation, for example, might have seven or eight distinct age groups of animals, with each group requiring distinct living conditions. Under these circumstances, these commenters maintained that a producer should be allowed to temporarily house one of these age groups indoors to maximize use of the whole farm and the available pasture. In drafting the final rule, we retained the stage of production exemption because of the difficulty of adding further restrictions to the confinement exemption based on species, age group, production stage, or in relation to pasture.

Following both the March 2000 proposed rule and December 2000 final regulations, the NOSB continued work on a recommendation to address the relationship between ruminant animals, conditions for temporary confinement of ruminant animals, and pasture.

(4) In June 2000, the NOSB recommended that ''the allowance for temporary confinement should be restricted to short-term events such as birthing of newborn, finish feeding for slaughter stock, and should specifically exclude lactating dairy animals.''

(5) In June 2001, the NOSB recommended that ''ruminant livestock must have access to graze pasture during the months of the year when pasture can provide edible forage, and the grazed feed must provide a significant portion of the total feed requirements.'' The NOSB further recommended that ''the producer of ruminant livestock may be allowed temporary exemption to pasture because of conditions under which the health, safety, or well-being of the animal could be jeopardized, inclement weather or temporary conditions which pose a risk to soil and water quality.''

(6) In February 2005, the NOSB modified its June 2001, recommendation by proposing to further amend the livestock living condition requirement for access to pasture (section 205.239). Under this requirement, the producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including providing ''access to pasture.'' The NOSB proposed to replace the phrase ''access to pasture'' with the phrase ''ruminant animals grazing pasture during the growing season.''

The NOSB also proposed exceptions to the general requirement for pasturing: for birthing, for dairy animals up to 6 months of age and for beef animals during the final finishing stage—not to exceed 120 days. Finally, the NOSB recommendation noted that lactation of dairy animals is not a stage of life that may be used to deny pasture for grazing.

At the same time, the NOSB asked the NOP to issue guidance to interpret the

[2] **Federal Register**, Vol. 62. No.241, Proposed Rules, 7 CFR 205, Preamble, p. 65881, December 16, 1997.

existing NOP pasture requirements, and the NOSB drafted the guidance that it wanted NOP to issue. The NOSB guidance would have, for the first time, imposed specific requirements within a livestock producer's organic system plan (OSP). An organic system plan is the basic business plan that must be developed by each organic operation and agreed to by an accredited certifying agent (ACA) (section 205.201). An OSP has six required elements and is a fundamental requirement of the NOP final regulations. Under the NOSB guidance, the requirements would have imposed the following for livestock producers:

- The OSP shall have the goal of providing grazed feed greater than 30 percent of the total dry matter intake on a daily basis during the growing season but not less than 120 days;
- The OSP must include a timeline showing how the producer will satisfy the goal to maximize the pasture component of total feed used in the farm system;
- For livestock operations with ruminant animals, the OSP must describe: (1) The amount of pasture provided per animal; (2) the average amount of time that animals are grazed on a daily basis; (3) the portion of the total feed requirement that will be provided from pasture; (4) circumstances under which animals will be temporarily confined; and (5) the records that are maintained to demonstrate compliance with pasture requirements.

The NOSB's guidance also addressed temporary confinement and the conditions of pasture. In NOSB's guidance, temporary confinement would be permitted only during periods of inclement weather such as severe weather occurring over a period of a few days during the grazing season; conditions under which the health, safety, or well being of an individual animal could be jeopardized, including to restore the health of an individual animal or to prevent the spread of disease from an infected animal to other animals; and to protect soil or water quality. The guidance also stated that appropriate pasture conditions shall be determined according to the regional Natural Resources Conservation Service Conservation (NRCS) Practice Standards for Prescribed Grazing (Code 528) for the animals in the OSP.

The NOSB requested public comments on organic system plan requirements; temporary confinement; and what constitutes ''appropriate pasture conditions.'' In particular, NOSB asked for input on specific dry matter intake from pasture language; reference to regional NRCS prescribed grazing standards; and whether or not any of the text described above should be recommended to the NOP for rule change.

USDA posted the NOSB guidance and received comments from the public, including farmers, consumers, and at least one accredited certifying agent. Many consumers that supported the NOSB guidance stated that they expected organic dairy animals to be grazed on pasture. Many commenters identified themselves as organic dairy producers and said they would support the NOSB guidance. But many other organic dairy farmers provided comments that did not support the NOSB guidance. These commenters said that although they were organic farmers in compliance with the NOP regulations and that they supported the principles of organic management and production, they would be decertified under the minimum number of days required on pasture or the minimum amount of dry matter intake (DMI) required from pasture for livestock feed.

Other comments questioned the source of the minimum DMI and days on pasture, suggesting that these requirements came from studies conducted at Cornell University and Michigan State University. If so, these commenters stated that such minimums would not necessarily be applicable or suitable for all areas of the United States, because they meet a particular climate and topography, namely a homogeneous climate with respect to growing season, precipitation, and vegetation. One certifying agent said that at least half of their responding livestock operations, most with fewer than 50 dairy cows, would not be able to meet the guidance criteria put forth by the NOSB despite meeting all other NOP requirements. Other commenters found the reference to the NRCS Conservation Guide troubling as it was designed for beef cattle operations and they stated it could not be adapted easily to dairy operations or to various operations in differing parts of the country easily. Several commenters wrote that the most complicating issue with the NOSB guidance would be the difficulty for both producers and certifying agents in measuring and verifying the minimums for feed derived from pasture for a single cow or an entire herd, because of multiple variables that change constantly over time. Such variables include: factors affecting the animals themselves—age of the animals, nutritional needs in relation to reproductive cycle, body condition, etc; and factors affecting the quality of the pasture—precipitation, animal-units per acre, species of grasses, sunlight, temperature, etc. These commenters asked how a producer is to calculate the minimum specified for each dairy cow at any particular point in time in order to avoid risk of losing their organic certification. One commenter said that if farmers want to get around the pasture requirement, they can get around the pasture requirement even if it is made stricter; the issue is enforcement, not the regulations.

Under NOP's Good Guidance Practices (70 FR 5129, Feb. 1, 2005), guidance documents do not establish legally enforceable rights or responsibilities and are not legally binding on the public or the program. Guidance statements also do not introduce new requirements on the regulated community. Because guidance is not binding, words that describe a mandatory action such as ''shall,'' ''must,'' ''require,'' and ''requirement,'' are not used unless they describe an existing legal requirement. Thus, we could not accept the NOSB guidance in its recommended format. The nature and specificity of the NOSB's recommendations, moreover, are more appropriately dealt with through amendment of the NOP regulations.

Questions for Consideration in Commenting on This ANPR

The topics and questions below are designed to assist in commenting on potential changes to the NOP. Input on these questions will aid USDA in determining whether there is sufficient interest in changing the role of pasture and whether there is adequate information to change the role of pasture in the regulations.

Consumer Preferences

- Are there market-based or other types of research to substantiate an expectation by consumers that organic milk comes from dairy cows raised on pasture?
- Is there evidence, data, or other types of research that the role of pasture as it exists in the regulations does not support consumers' beliefs about the relationship between organic milk and organic dairy cows?

Access to Pasture

- Is there evidence in dairy or animal science literature that supports an appropriate minimum amount of time that dairy cows (or other ruminant animals) should be kept on pasture?
- Is there evidence in dairy or animal science literature that supports a minimum amount of feed that should come from pasture?

• Should age and reproductive cycle of the animal be taken into account in determining the minimum amount of time an animal spends on pasture or the amount of feed derived from pasture?

Ruminant Animal Nutrition

• What is the appropriate contribution of pasture to ruminant animal nutrition?

• What would the effect be to require a minimum dry matter intake (DMI) of 30 percent derived from pasture? Is this an achievable goal? What evidence is available to support 30 percent as a benchmark?

• What factors could affect a minimum DMI variable?

• Does pasture quality affect DMI? Can DMI be affected by factors beyond producers' control, such as weather-related events (*e.g.*, flood or drought)?

• Is it useful to establish a single benchmark or measure, such as minimum DMI, for all dairy operations in the United States and all foreign organic operations who want to be certified to the NOP standard?

• Please provide input on how the regulations should address forage nutritional quality factors such as crude protein, acid detergent fiber, neutral detergent fiber and net energy for lactation? Is this level of detail adequate to ensure the role of pasture is met for organic livestock management under the NOP regulations?

Minimum Pasture Requirements

• Please provide input on the implications of adopting a minimum pasture requirement, such as required that dairy animals should spend at least 120 days on pasture. How would the 120 days be counted?

• What evidence in dairy science or animal literature helps explain the appropriate amount of minimum time that dairy cows should be kept on pasture?

• Is the minimum time spent on pasture based primarily on the quality of the pasture, or the quantity of the feed provided by the pasture?

• How is the pasture requirement affected by drought, flood, or other natural disaster?

• Should pasture condition or quality be considered? Should there be a minimum pasture quality requirement?

• Should specific animal-unit stocking rates per acre be considered? How?

• In lieu of a uniform pasture requirement, could a time range (based on the field quality, number of cows, type of operation, and other farm-specific factors included in the organic system plan) adequately or appropriately define the role of pasture in organic livestock management?

• Should a livestock feed requirement uniformly specify how much feed comes from pasture?

Measurement, Enforcement, and Compliance

• How would an accredited certifying agent appropriately measure compliance with specific measures adopted to change the role of pasture? For example, if dry matter intake is used as a benchmark, should it be measured as the average DMI over a certain time period, such as a calendar year or average 12 months?

• How should producers and certifying agents verify compliance over time for a herd of cows that are at various stages of growth or have varying states of nutritional needs? Can the producer and certifying agent determine this in the organic system plan?

Market and Other Impacts

• What are the effects on a dairy operation's cost of production (both fixed and variable) if the regulation is amended to include requirements such as minimum time or minimum amount of feed derived from pasture?

• Is there a relationship between the number of cows and number of acres on a farm and the producer's ability to comply with minimum pasture requirements?

• How do the age of the animal, its stage of development, and feed from pasture, interact to affect milk output?

• How would a larger role for pasture affect supplies of organic and non-organic milk and milk products? Please provide any evidence or research to support your discussion.

• What are the effects on consumer prices for dairy products if the NOP regulations include a larger role for pasture on dairy livestock producers?

• How would a larger role for pasture affect the geographical distribution of organic dairy production operations within the United States and foreign countries? Please provide any evidence or research to support your discussion.

Scope of the ANPR

In this ANPR, USDA is seeking input on the following issues:

(1) Is the current role of pasture in the NOP regulations adequate for dairy livestock under principles of organic livestock management and production?

(2) If the current role of pasture as it is described in the NOP regulations is not adequate, what factors should be considered to change the role of pasture within the NOP regulations. Provide any available evidence in support of concerns raised.

(3) Which parts of the NOP regulations should be changed to address the role of pasture in organic livestock management? Pasture appears in the NOP definitions (subpart B, section 205.2), and in subpart C of production and handling requirements under livestock feed (section 205.237), livestock healthcare (section 205.238), and livestock living conditions (section 205.239). Should the organic system plan requirements (section 205.201) be changed to introduce a specific means to measure and evaluate compliance with pasture requirements for all producers of dairy or other livestock operations? Or, should a new standard be developed just for pasture alone?

All interested parties are encouraged to comment on the issues raised in the scope of this ANPR. Please be specific in your comments. This action is being taken by the NOP to ensure its regulations are clear and consistent, stimulate growth of the organic sector, satisfy consumer expectations, and allow organic producers flexibility in making site-specific, real-time management decisions.

Authority: 7 U.S.C. 6501–6522.

Dated: April 10, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3541 Filed 4–10–06; 1:14 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 05–041–2]

Importation of Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have added San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. The proposed rule would also have removed provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas and that prohibit the movement of such cattle into areas of Texas quarantined because of fever ticks. We are taking this action after considering the comments we received

following the publication of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, Technical Trade Services Team, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. In section 93.426, paragraph (a) states that all ruminants offered for entry into the United States from Mexico must be inspected at the port of entry and found to be free from communicable diseases and fever tick infestation and to not have been exposed to communicable diseases and fever tick infestation. Under section 93.427(b)(2), cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except that portion of the State quarantined because of fever ticks, either at one of the land border ports in Texas listed in section 93.403(c) of the regulations, or at the port of Santa Teresa, NM, provided that certain conditions are met.

On November 9, 2005, we published in the **Federal Register** (70 FR 67933–67935, Docket No. 05–041–1) a proposed rule to amend the regulations in 9 CFR part 93 to: (1) Add San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States; (2) remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas; and (3) remove provisions that prohibit the movement of such cattle into areas of Texas quarantined because of fever ticks.

We solicited comments concerning our proposal for 60 days ending on January 9, 2005. We received a total of 11 comments by that date. They were from representatives of the cattle industry, State agriculture and animal health departments, and private citizens. Three of the commenters supported the proposed rule. The remaining commenters were opposed to the proposed rule, citing concerns about importing Mexican cattle, maintaining and staffing the new port, or increasing the risk of spreading bovine piroplasmosis (another name for splenetic, southern, or tick fever) to domestic cattle within Texas or California.

APHIS is further analyzing the animal health risks associated with the changes we proposed and is therefore withdrawing the November 9, 2005, proposed rule referenced above. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding changes to the fever tick regulations are developed.

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 7th day of April 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–5509 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH89

Proposed Rule; Revision of NRC Form 7, Application for NRC Export/Import License, Amendment, or Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern export and import of nuclear material and equipment concerning the use of NRC Form 7, ''Application for NRC Export/Import License, Amendment, or Renewal.'' Recently, the Commission revised NRC Form 7 to consolidate all license requests (*i.e.*, applications for export, import, combined export/import, amendments and renewals) in one application form. Previously, NRC Form 7 was used only for applications for export of nuclear material and equipment. Import license applications, production or utilization facility export applications, and license amendment and renewal applications were filed by letter. As a result of the revision, these requests, previously made by letter, now would be made using NRC Form 7. The purpose of this proposed change is to amend the regulations that govern export and import of nuclear material and equipment to reflect that all license requests are to be made using NRC Form 7, as revised.

DATES: The comment period for this proposed rule ends on May 15, 2006. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH89 in the subject line of your comments. Comments on rulemaking submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*. Comments also can be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville Maryland. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2347, e-mail *bgs@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule of the same title published in the Rules and Regulations section of this **Federal Register**.

Because the NRC believes that this action is not controversial, the NRC is using the direct final rule process for this rule. The direct final rule will become effective on June 27, 2006. However, if the NRC receives significant adverse comments on this direct final rule by May 15, 2006, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

2. In § 110.7, paragraphs (b) and (c)(1) are revised to read as follows:

§ 110.7 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 110.7a, 110.23, 110.26, 110.27, 110.32, 110.50, 110.52, and 110.53.

(c) * * *

(1) In §§ 110.19, 110.20, 110.21, 110.22, 110.23, 110.31,110.32, and 110.51, NRC Form 7 is approved under control number 3150–0027.

* * * * *

3. In § 110.31, paragraph (c) is revised to read as follows:

§ 110.31 Application for a specific license.

* * * * *

(c) Applications for an export, import, combined export/import, amendment or renewal licenses under 10 CFR part 110 shall be filed on NRC Form 7.

* * * * *

4. In § 110.51, paragraph (a) is revised to read as follows:

§ 110.51 Amendment and renewal of licenses.

(a) A licensee shall submit an application to renew a license or to amend a license on a completed NRC Form 7.

* * * * *

Dated at Rockville, Maryland, this 7th day of March, 2006.

For the Nuclear Regulatory Commission.

Luis Reyes,

Executive Director for Operations.

[FR Doc. E6–5497 Filed 4–12–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24431; Directorate Identifier 2006–NM–011–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 airplanes. This proposed AD would require a detailed inspection for cracks and marks on the carbon blades of the ram air turbine (RAT), and replacement of the RAT with a new or serviceable RAT if necessary. This proposed AD results from a report of three chord-wise cracks on the aft side of one carbon blade of a certain RAT. We are proposing this AD to detect and correct cracks and/or marks on the RAT carbon blades, which could result in reduced structural integrity of the carbon blade, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency.

DATES: We must receive comments on this proposed AD by May 15, 2006.

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

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• 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.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24431; Directorate Identifier 2006–NM–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 airplanes. The DGAC advises that, during routine maintenance inspections, three chord-wise cracks were found on the aft side of one carbon blade of the Sundstrand ram air turbine (RAT), part number (P/N) 762308. Investigations revealed that the carbon fibers of the carbon blades were installed in the incorrect position during manufacturing, which reduced the structural integrity of the blades and caused the cracks. Cracks and/or marks on the carbon blades of the RAT, if not corrected, could result in reduced structural integrity of the carbon blade, and consequent loss of the RAT as a source of hydraulic and electrical power during an emergency.

Relevant Service Information

Airbus has issued Service Bulletin A320–29–1124, dated November 23, 2005. The service bulletin describes procedures for a detailed inspection for cracks and marks on the carbon blades of the RAT, and replacement of the RAT with a new or serviceable RAT if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–212 on December 21, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the inspection and replacement if necessary specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 34 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,720, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–24431; Directorate Identifier 2006–NM–011–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 15, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes identified in Table 1 of this AD, certificated in any category; except those airplanes on which no modification/replacement of the RAT has been done since incorporating Airbus modification 27014 (installation of a Sundstrand ram air turbine (RAT), part number (P/N) 766352) or 28413 (reinstallation of the Dowty RAT) in production.

TABLE 1.—APPLICABILITY

Airbus model	Equipped with
(1) A320 airplanes	A Sundstrand RAT, P/N 762308, installed by incorporating Airbus modification 27189 in production.
(2) A319 and A321 airplanes	A Sundstrand RAT, P/N 762308, installed by incorporating Airbus modification 25364 in production or Airbus Service Bulletin A320–29–1075 in service.

Unsafe Condition

(d) This AD results from a report of three chord-wise cracks on the aft side of one carbon blade of a certain RAT. We are issuing this AD to detect and correct cracks and/or marks on the RAT carbon blades, which could result in reduced structural integrity of the carbon blade, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency.

Compliance

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

Inspection and Replacement

(f) Within 600 flight hours after the effective date of this AD, do a detailed inspection for cracks and marks on the carbon blades of the RAT, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1124, dated November 23, 2005. If any crack or mark is found to be outside the limits specified in the service bulletin, before further flight, replace the RAT with a new or serviceable RAT in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Parts Installation

(g) As of the effective date of this AD, no person may install a Sundstrand RAT, P/N 762308, on any airplane, unless it has been inspected in accordance with paragraph (f) of this AD and found to be within the limits specified in the referenced service bulletin.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) French airworthiness directive F–2005–212, issued December 21, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on April 4, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5476 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24439; Directorate Identifier 2006–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145XR Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–145XR airplanes. This proposed AD would require modification of the flap system interface wiring. This proposed AD results from a finding that the aural and visual warnings, which should be activated when the flaps are set to 22 degrees during takeoff, were not enabled during the manufacture of certain Model EMB–145XR airplanes. We are proposing this AD to prevent overrunning the runway during takeoff.

DATES: We must receive comments on this proposed AD by May 15, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• 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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24439; Directorate Identifier 2006–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–145XR airplanes. The Model EMB–145XR airplane is not certified to takeoff with the flaps set to 22 degrees; under this condition, aural and visual warnings should be activated to warn the flightcrew. However, the DAC advises that these aural and visual warnings were not enabled during the manufacture of certain airplanes. This condition, if not corrected, could result in an overrun of the runway during takeoff.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–27–0113, dated December 6, 2005. The service bulletin describes procedures for modifying the flap system interface wiring. The modification includes the following steps:

• Installing and connecting diodes CR0231 and CR0232 to splices SP4159, SP4160, and SP4161.

• Disconnecting electrical wires W101–4176–24, W101–4178–24, and W101–4786–24 from electrical connectors J0739 and J0741, and rerouting and connecting them to splices SP4160, SP4159, and SP4161, respectively.

• Routing electrical wires W101–5783–24, W101–5787–24, and W101–5789–24 and connecting them to electrical connectors J0739 and J0741.

The DAC mandated the service information and issued Brazilian airworthiness directive 2006–02–01, dated February 24, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 97 airplanes of U.S. registry. The proposed actions would take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $60 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $44,620, or $460 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24439; Directorate Identifier 2006-NM–039–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 15, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–145XR airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145–27–0113, dated December 6, 2005.

Unsafe Condition

(d) This AD results from a finding that the aural and visual warnings, which should be activated when the flaps are set to 22 degrees during takeoff, were not enabled during the manufacture of certain Model EMB–145XR airplanes. We are issuing this AD to prevent overrunning the runway during takeoff.

Compliance

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

Modification

(f) Within 2,500 flight hours after the effective date of this AD, modify the flap system interface wiring, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0113, dated December 6, 2005.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Brazilian airworthiness directive 2006–02–01, dated February 24, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on April 5, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5474 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24430; Directorate Identifier 2006–NM–048–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31, DC–9–32, DC–9–32F, DC–9–33F, DC–9–34, and DC–9–34F Airplanes; and Model DC–9–40 and DC–9–50 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain transport category airplanes, identified above. This proposed AD would require installing a bonding jumper from the boost pump volute to the fuel tank structure, and related investigative/corrective actions. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent point-contact arcing or filament heating in the fuel tank, which, in the event of a short or ground fault inside the fuel tank, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 30, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24430; Directorate Identifier 2006–NM–048–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment 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 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received a report indicating that, on certain McDonnell Douglas Model DC–9 airplanes with a 580-gallon forward auxiliary fuel tank, the volute of the fuel boost pump is bonded to the inlet basket assembly but not to the tank structure. At the pump run-out fuel level, the pump, which receives 155VAC power, is uncovered and there is fuel vapor in the area. Installing a new bonding jumper will minimize the possibilities of point-contact arcing or filament heating in the fuel tank which, in the event of a short or ground fault condition, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–28–214, dated December 16, 2005. The service bulletin describes procedures for installing a bonding jumper from the boost pump volute to the fuel tank structure. The installation includes the related investigative and corrective actions of testing the bonding between the jumper and the pump mounting lug, between the clip and the lower stanchion support stud, and between the jumper and the clip, to verify that the resistance is less than 2.5 milliohms; and reworking, if necessary, until the resistance is less than 2.5 milliohms. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

Although the service bulletin recommends doing the installation at the next scheduled fuel tank entry, but not to exceed 10 years, we have determined that interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to do the installation. In light of all of these factors, we find that a compliance time of 60 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Costs of Compliance

There are about 250 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 152 airplanes of U.S. registry. The proposed actions would take about 9 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $2,385 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $471,960, or $3,105 per airplane.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–24430; Directorate Identifier 2006–NM–048–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 30, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–31, DC–9–32, DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes, certificated in any category; as identified in Boeing Service Bulletin DC9–28–214, dated December 16, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent point-contact arcing or filament heating in the fuel tank, which, in the event of a short or ground fault inside the fuel tank, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation

(f) Within 60 months after the effective date of this AD, install a bonding jumper from the boost pump volute to the fuel tank structure, and do all applicable related investigative and corrective actions before further flight; by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–214, dated December 16, 2005.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on April 4, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5472 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24440; Directorate Identifier 2006–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145XR Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–145XR airplanes. This proposed AD would require replacement of certain segments of the passenger seat tracks with new, improved seat tracks. This proposed AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are proposing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

DATES: We must receive comments on this proposed AD by May 15, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–2125.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24440; Directorate Identifier 2006–NM–058–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date

and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–145XR airplanes. The DAC advises that the shear plungers of the passenger seat legs are not adequately fastened as required. The incorrect longitudinal machined section of certain seat track segments caused the inadequate fastening of the shear plungers. This condition, if not corrected, could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–53–0059, dated July 1, 2005. The service bulletin describes procedures for replacing the internal and external passenger seat tracks with new, improved seat tracks at the following fuselage locations: between x=7,563.4 and x=10,738.4, between x=11,500.4 and x=13,100.7, between x=13862.6 and x=15,604.7, and between x=16,402.6 and x=19,577.6. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2006–01–01, dated February 2, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Brazilian Airworthiness Directive.''

Difference Between the Proposed AD and Brazilian Airworthiness Directive

Brazilian airworthiness directive 2006–01–01, dated February 2, 2006, is applicable to ''all Embraer ERJ–145XR ( ) aircraft models in operation.'' However, this does not agree with EMBRAER Service Bulletin 145–53–0059, dated July 1, 2005, which states that only certain EMB–145XR airplanes are affected and identifies them by serial number. This proposed AD would be applicable only to the airplanes listed in the service bulletin. This difference has been coordinated with the DAC.

Costs of Compliance

This proposed AD would affect about 97 airplanes of U.S. registry. The proposed actions would take about 10 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $82 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $85,554, or $882 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24440; Directorate Identifier 2006–NM–058–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 15, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–145XR airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145–53–0059, dated July 1, 2005.

Unsafe Condition

(d) This AD results from instances where the shear plungers of the passenger seat legs were not adequately fastened. We are issuing this AD to prevent inadequate fastening of the seat leg shear plungers, which could result in failure of the passenger seat tracks during emergency landing conditions and consequent injury to passengers.

Compliance

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

Replacement of Passenger Seat Tracks

(f) Within 5,000 flight hours after the effective date of this AD, replace segments of the internal and external passenger seat tracks with new, improved seat tracks, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0059, dated July 1, 2005.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) Brazilian airworthiness directive 2006–01–01, dated February 2, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on April 5, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5470 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24432; Directorate Identifier 2005–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 737 series airplanes. The existing AD currently requires inspection of the elevator tab inboard hinge support structure to detect fatigue cracking and corrective action if necessary. That AD also provides an optional terminating action. This proposed AD would add airplanes to the applicability and would require new repetitive inspections. For airplanes having elevators with laminated rear spars, this proposed AD would require repetitive inspections for interlaminar corrosion, delamination, or disbonding in the rear spar, repetitive inspections for cracking in the spar web, and repair including related investigative/corrective actions if necessary. For airplanes having elevators with solid rear spars, this proposed AD would require repetitive inspections for cracking in the spar web and repair including related investigative/corrective actions if necessary. This proposed AD results from reports of cracks in the elevator rear spar web at the tab hinge bracket locations. We are proposing this AD to detect and correct cracking, corrosion, interlaminar corrosion, delamination, and disbonding in the elevator rear spar, which may reduce elevator stiffness and lead to in-flight vibration. In-flight vibration may lead to elevator and horizontal stabilizer damage and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 30, 2006.

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

- DOT Docket Web site: *Go to http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–24432; Directorate Identifier 2005–NM–227–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or can visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management

Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On June 7, 1989, we issued AD 76–11–05 R1, amendment 39–6234 (54 FR 25709, June 19, 1989), for certain Boeing Model 737 series airplanes. That AD requires repetitive inspections of the elevator tab inboard hinge support structure to detect fatigue cracking and corrective action if necessary. That AD also provides an optional terminating action. That AD resulted from the determination that additional airplanes were manufactured to the same design as airplanes identified in AD 76–11–05 and are subject to the same failure. We issued that AD to detect fatigue cracking, which could result in vibration and possible flutter.

Other Relevant Rulemaking

On January 16, 1990, we issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), applicable to certain Boeing Model 737 series airplanes, which would require incorporation of certain structural modifications. That AD refers to Boeing Document D6–38505, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 737–100/–200/–200C,'' which references Boeing Service Bulletins 737–55A1020 and 737–55–1022 for certain modifications. We issued that AD to prevent structural failure.

Actions Since Existing AD Was Issued

Since we issued AD 76–11–05 R1, we have received reports of cracks in the elevator rear spar web at the tab hinge bracket locations, on Model 737–100, –200, and –200C series airplanes. These airplanes had 6,100 to 56,000 total flight hours and 2,400 to 66,000 total flight cycles. Some airplanes had modifications and repairs done in accordance with Boeing Service Bulletins 737–55A1020 and 737–55–1022. Accomplishing the actions specified in Section III, Part II, including installation of the bolt retainer clips, of Boeing Alert Service Bulletin 737–55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988; or the preventive modification specified in Section III, Part II of Boeing Service Bulletin 737–55–1022, dated April 15, 1977; are terminating action for AD 76–11–05 R1 and required modifications for AD 90–06–02, amendment 39–6489. Because cracking has continued to occur, the actions described in Boeing Service Bulletins 737–55A1020 and 737–55–1022 do not eliminate the need for repetitive inspections for cracking.

Analysis shows that the cracks in the elevator rear spar web are caused by deflection stresses. Excessive web cracking at multiple locations will reduce the elevator support stiffness. The reduced stiffness will lead to in-flight vibrations and consequent damage to the elevator and horizontal stabilizer. This condition, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, which replaces Boeing Service Bulletins 737–55A1020 and 737–55–1022. Boeing Alert Service Bulletin 737–55A1078 is referenced as the appropriate source of service information for doing the actions in this proposed AD.

Appendix A of Boeing Alert Service Bulletin 737–55A1078 describes procedures for determining the elevator configuration number or elevator group number of the rear spar. The number indicates if elevators have laminated rear spars or solid rear spars, as well as other configuration differences.

For airplanes having elevators with laminated rear spars, the alert service bulletin describes procedures for repetitive detailed inspections for cracking at hinge bracket locations and for interlaminar corrosion of the rear spar as specified in Part I of the Accomplishment Instructions. For airplanes having elevators with laminated rear spars, the alert service bulletin also describes procedures for repetitive detailed and special detailed inspections for interlaminar corrosion, delamination, and disbonding of the rear spar as specified in Part III of the Accomplishment Instructions.

For airplanes having elevators with solid rear spars, the alert service bulletin describes procedures to do repetitive detailed inspections for cracking at the hinge bracket locations in the spar web as specified in Part II of the Accomplishment Instructions.

For all airplanes, if no cracking or interlaminar corrosion is found during any inspection, the alert service bulletin specifies to install a hinge bolt retainer clip if necessary.

For all airplanes, if any interlaminar corrosion or cracking is found during any inspection, the alert service bulletin specifies to do applicable repairs including related investigative actions and corrective actions as specified in Parts IV through VIII (Interim Repair Options A through D) and Part IX (Time-limited Repair) of the Accomplishment Instructions. Appendix C of the alert service bulletin describes how to determine which interim repair option and time-limited repair can be used. The service bulletin describes the repairs, including related investigative and corrective actions, as follows:

- Part IV—Option A Interim Repair—Spar Splice: The spar splice repair consists of removal of a cracked segment or segments of the elevator rear spar and installation of a new replacement spar segment or segments. The repair includes inspecting holes for signs of loose or damaged fasteners, repair if necessary, and contacting the manufacturer for certain repair instructions. The repair also includes making sure balancing requirements are met for the elevator and the tab after the corrective actions are done.
- Parts V and VI—Option B or D Interim Repair—Spar Replacement Without Replacement of Thin Tee Clips with Thick Tee Clips (for certain elevator configurations): The Option B or D spar replacements consist of removal of the hinge brackets and rear spar ribs from the spar, removal of the existing spar, installation of a new replacement spar, and reinstallation of the hinge brackets and rear spar ribs to the new spar. These spar replacement options include inspecting holes for signs of loose or damaged fasteners, repair if necessary, and contacting the manufacturer for certain repair instructions. These spar replacement options also include making sure balancing requirements are met for the elevator and the tab after the corrective actions are done.
- Parts VII and VIII—Option C Interim Repair—Spar Replacement With Replacement of Thin Tee Clips with Thick Tee Clips (for certain elevator configurations): The Option C spar replacement consists of removal of the hinge brackets, rear spar ribs, and thin tee clips from the spar, removal of the existing spar, installation of a new replacement spar and thick tee clips, and reinstallation of the hinge brackets and rear spar ribs to the new spar. This replacement option includes inspecting holes for signs of loose or damaged fasteners, repairing if necessary, and contacting the manufacturer for certain repair instructions. This replacement

option also includes making sure balancing requirements are met for the elevator and tab after the corrective actions are done.

• Part IX—Time-limited Repair: The repair consists of installation of repair components and an eddy current inspection for crack containment at the stop-drilled hole. The repair instructions include contacting the manufacturer if any crack is outside the limit specified in the alert service bulletin. The repair also includes making sure balancing requirements are met for the elevator and tab after the corrective actions are done. If the time-limited repair is done, the alert service bulletin specifies that the Option A or D interim repair must done within 24 months, 2,000 flight hours, or 1,500 flight cycles, whichever occurs first, after the time-limited repair is done.

The alert service bulletin specifies the following compliance times for doing the inspections in paragraph 1.E. Compliance and Appendix B of the alert service bulletin:

• Part I Initial Inspection: Within 1,000 flight hours or 750 flight cycles after the release date of the alert service bulletin, whichever occurs first; or within 2,000 flight hours or 1,500 flight cycles after the release date of the alert service bulletin, whichever occurs first; depending on elevator group number/configuration number.

• Part I Repetitive Inspections: At intervals not to exceed 1,000 flight hours or 750 flight cycles, whichever occurs first; or at intervals not to exceed 2,000 flight hours or 1,500 flight cycles, whichever occurs first; depending on elevator group number/configuration number.

• Part II Initial Inspection: Within 1,000 flight hours or 750 flight cycles after the release date of the alert service bulletin, whichever occurs first; or 2,000 flight hours or 1,500 flight cycles after the release date of the alert service bulletin, whichever occurs first; or 24,000 flight hours or 18,000 flight cycles, whichever occurs first, on the elevator since new or since the modification specified in Boeing Service Bulletin 737–55–1022 has been done, provided it can be positively determined from the operator's records; depending on elevator group number/configuration number.

• Part II Repetitive Inspections: At intervals not to exceed 6,000 flight hours or 4,500 flight cycles, whichever occurs first; or at intervals not to exceed 1,000 flight hours or 750 flight cycles, whichever occurs first; depending on elevator group number/configuration number. For certain elevators, accomplishing any Option C or Option D interim repairs defers the accomplishment of the next Part II inspection to within 24,000 flight hours or 18,000 flight cycles since the repair.

• Part III Initial Inspection: Within 1,000 flight hours or 750 flight cycles, whichever occurs first; or within 2,000 flight hours or 1,500 flight cycles, whichever occurs first; depending on elevator group number/configuration number.

• Part III Repetitive Inspections: At intervals not to exceed 8,000 flight hours or 6,000 flight cycles, whichever occurs first.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Alert Service Bulletin.''

Differences Between the Proposed AD and the Alert Service Bulletin

The alert service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Where Table B.4 in Appendix B of the alert service bulletin specifies a compliance time in flight hours or flight cycles, this proposed AD would require the actions specified in Table B.4 be done at the earlier of the compliance times in flight hours or flight cycles.

Clarification of Inspection and Corrective Action

Operators should note that step 3. of Part III of the alert service bulletin specifies to do a special detailed inspection for spar interlaminar corrosion as given in Figure 3. Figure 3 specifies to do a detailed inspection for corrosion and disbonding and a special detailed inspection for interlaminar corrosion and delamination. Thus, in Part III of the alert service bulletin, operators must inspect for interlaminar corrosion, delamination, and disbonding.

Operators should note that Figure 3 of the alert service bulletin also specifies that a spar should be rejected if interlaminar corrosion, delamination, or disbonding is found. However, step 3.a. of Part III of the alert service bulletin only specifies that if interlaminar corrosion is found, spar replacement is required in accordance with Appendix C; step 3.C. of Appendix C of the alert service bulletin specifies that for laminated spars that have interlaminar corrosion, only repair options B, C, and D are permitted. Step 3.a. of Part III of the alert service bulletin and step 3.C. of Appendix C of the alert service bulletin do not specify what to do if delamination or disbonding is found.

Step 3.a. of Part III of the alert service bulletin should have specified that spar replacement is required if interlaminar corrosion, delamination, or disbonding is found. Step 3.C. of Appendix C of the alert service bulletin should have specified that for laminated spars that have interlaminar corrosion, delamination, or disbonding, only repair options B, C, and D are permitted. We have included this clarification in paragraph (o) of this proposed AD.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Correction of Typographical Error for Service Bulletin Date

AD 76–11–05 R1 referred to Boeing Service Bulletin 737–55–1022, Section III, Part II, dated April 15, 1987. However, the service bulletin is dated April 15, 1977. We have fixed this typographical in the service bulletin reference in this proposed AD.

Change to Existing AD

This proposed AD would retain certain requirements of AD 76–11–05 R1. Since AD 76–11–05 R1 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 76–11–05 R1	Corresponding requirement in this proposed AD
Paragraph B	paragraph (f).
Paragraph C	paragraph (g).

REVISED PARAGRAPH IDENTIFIERS—Continued

Requirement in AD 76–11–05 R1	Corresponding requirement in this proposed AD
Paragraph D	paragraph (h).

Costs of Compliance

There are about 1,355 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	10–100	$80	$800–$8,000, per inspection cycle.	230	$184,000–$1,840,000, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6234 (54 FR 25709, June 19, 1989) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24432; Directorate Identifier 2005-NM–227-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 30, 2006.

Affected ADs

(b) This AD supersedes AD 76–11–05 R1.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, and –200C series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005.

Unsafe Condition

(d) This AD results from reports of cracks in the elevator rear spar web at the tab hinge bracket locations. We are issuing this AD to detect and correct cracking, corrosion, interlaminar corrosion, delamination, and disbonding in the elevator rear spar, which may reduce elevator stiffness and lead to in-flight vibration. In-flight vibration may lead to elevator and horizontal stabilizer damage and reduced controllability of the airplane.

Compliance

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

Restatement of Certain Requirements of AD 76–11–05 R1

(f) For Model 737–100, –200, and –200C series airplanes, line number 001 through 491 inclusive: Within the next 300 hours time-in-service after July 24, 1989 (the effective date of AD 76–11–05 R1), unless accomplished within the last 700 hours time-in-service, and at intervals thereafter not to exceed 1,000 hours time-in-service, conduct the inspection required by paragraph (g) of this AD. Accomplishing the initial inspections specified in paragraph (j) of this AD terminates the requirements of this paragraph.

(g) For Model 737–100, –200, and –200C series airplanes, line number 001 through 491 inclusive: At the times specified in paragraph (f) of this AD, inspect for excessive deflection of the elevator tab, right and left hand, in accordance with the inspection procedures specified in Section III, Part I, paragraphs C. and D., of Boeing Alert Service Bulletin 737–55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988. If the elevator tab-to-elevator relative deflection exceeds 1/10 inch, prior to further flight, modify the elevator in accordance with paragraph (h) of this AD. Accomplishing the initial inspections specified in paragraph (j) of this AD terminates the requirements of this paragraph.

(h) For Model 737–100, –200, and –200C series airplanes, line number 001 through 491 inclusive: Installation of one of the modifications specified in Boeing Alert Service Bulletin 737–55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988; Section III, Part II, including installation of the bolt retainer clips or the preventive modification specified in Boeing Service Bulletin 737–55–1022, Section III, Part II, dated April 15, 1977; is considered terminating action for the

inspection requirements of paragraph (g) of this AD.

New Requirements of This AD

Determine Elevator Group Number or Elevator Configuration Number

(i) Within 1,000 flight hours or 750 flight cycles after the effective date of this AD, whichever occurs first, determine the elevator group number or the elevator configuration number in accordance with Appendix A of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005.

Initial and Repetitive Inspections

(j) At the applicable time specified in Tables 2 and 3 of paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, except where the alert service bulletin specifies a compliance time from the release date of the alert service bulletin, this AD requires the compliance time after the effective date of this AD: Do the applicable initial detailed and special detailed inspections for interlaminar corrosion, cracking, delamination, or disbonding in the rear spar by doing all the applicable actions specified in Parts I, II, and III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005; except where step 3. of Part III of the alert service bulletin specifies to do a special detailed inspection for spar interlaminar corrosion as given in Figure 3, this AD requires all actions specified in Figure 3 to be done (a detailed inspection for interlaminar corrosion and disbonding and a special detailed inspection for interlaminar corrosion and delamination). Doing the initial inspections terminates the requirements of paragraphs (f) and (g) of this AD.

(k) Repeat the inspections specified in paragraph (j) of this AD at the applicable time specified in Tables 4 and 5 of paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005; except where Table B.4 in Appendix B of the alert service bulletin specifies compliance times in flight hours or flight cycles, this AD requires the actions specified in Table B.4 be done at the earlier of the compliance times in flight hours or flight cycles.

Corrective Actions

(l) If any interlaminar corrosion, cracking, delamination, or disbonding is found during any inspection required by this AD: Before further flight, use Appendix C of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, to determine the permitted repairs, and do the applicable repair, including related investigative and corrective actions, by doing all the applicable actions specified in Parts IV through VIII (Interim Repairs) and Part IX (Time-limited Repair) of the Accomplishment Instructions of the alert service bulletin, except as provided by paragraphs (n) and (o) of this AD.

(m) If the time-limited repair specified in Part IX of the alert service bulletin is done: At the time specified in Table 6 of paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, do the applicable repair, including related investigative and corrective actions, by doing all the applicable actions specified in Parts IV through VI (Interim Repairs). Thereafter, do the repetitive inspections specified in paragraph (k) of this AD.

(n) Where Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, specifies to contact the manufacturer for appropriate action for the inspar rib replacement or for more instructions if any crack is outside the limit specified in the service bulletin: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (p) of this AD.

(o) Where step 3.a. of Part III of the alert service bulletin specifies that if interlaminar corrosion is found, spar replacement is required, this AD requires spar replacement if interlaminar corrosion, delamination, or disbonding is found. Where step 3.C. of Appendix C of the alert service bulletin specifies that for laminated spars that have interlaminar corrosion, only repair options B, C, and D are permitted, this AD specifies that for laminated spars that have interlaminar corrosion, delamination, or disbonding, only repair options B, C, and D are permitted.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Accomplishing the Interim Repair Option C or D specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1078, dated October 27, 2005, is an AMOC for the structural modification requirements specified in paragraph A of AD 90–06–02, amendment 39–6489, that are done in accordance with Boeing Service Bulletins 737–55A1020 or 737–55–1022 only. All provisions of AD 90–06–02 that do not specifically reference these service bulletins remain fully applicable and must be complied with.

(5) AMOCs approved previously in accordance with AD 76–11–05 R1, are approved as AMOCs for the corresponding provisions of paragraphs (f) through (h) of this AD.

Issued in Renton, Washington, on April 3, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5469 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23708; Airspace Docket No. 06-AAL–1]

RIN 2120–AA66

Proposed Modification of Control 1234L Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Control 1234L, Offshore Airspace Area in Alaska. Specifically, this action proposes to modify Control 1234L in the immediate vicinity of the Saint Paul Island Airport, AK, by lowering the airspace floor from 2,000 feet above ground level (AGL) to 700 AGL. Additionally, outside the vicinity of the airport this proposal lowers the airspace floor from 2,000 AGL to 1,200 feet AGL within a 73-mile radius of the St. Paul Island Airport. The FAA is proposing this action to provide additional controlled airspace for aircraft instrument operations (IFR) at the St. Paul Island Airport.

DATES: Comments must be received on or before May 30, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2006–232078 and Airspace Docket No. 06–AAL–01, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–23708 and Airspace Docket No. 06–AAL–01) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–23708 and Airspace Docket No. 06–AAL–01.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.,* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Service Area Office, Air Traffic, Federal Aviation Administration, 222 West 7th Avenue 14, Anchorage, AK 99513.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Control 1234L Offshore Airspace Area, AK by lowering the floor to 700 feet AGL in the vicinity of the St. Paul Island airport, AK, and 1,200 feet AGL within a 73-mile radius of the airport. The purpose of this proposal is to establish controlled airspace to support IFR operations at the St. Paul Island Airport, Alaska. The FAA Instrument Flight Procedures Production and Maintenance Branch developed new instrument approach procedures for the St. Paul Island Airport. New controlled airspace extending upward from 700 feet AGL and 1,200 feet AGL in international airspace would be created by this action. The proposed airspace is sufficient to support instrument operations at the St. Paul Island Airport.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and

effective September 15, 2005, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

Control 1234L [Amended]

That airspace extending upward from 700 feet above the surface within 8 miles west and 6 miles east of the 360°(T)/350°(M) bearing from the St. Paul Island Airport to 14 miles north of the St. Paul Airport, and within 6 miles west and 8 miles east of the 172°(T)/162°(M) bearing from the St. Paul Island Airport to 15 miles south of the St. Paul Island Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Paul Island Airport, and the airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., south along long. 160°00′00″ W. until it intersects the Anchorage Air Route Traffic Control Center boundary; thence southwest, northwest, north, and northeast along the Anchorage Air Route Traffic Control Center boundary to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC, on April 6, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–5523 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–002]

RIN 1625–AA09

Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the SR 175 Bridge, at mile 3.5, at Chincoteague, Virginia. The proposal would allow the bridge to open on demand from midnight to 6 a.m., and every hour and a half from 6 a.m. to midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw need not be opened. The proposed change would reduce vehicular traffic congestion to increase public safety and to extend the structural and operational integrity of the movable span while still balancing the needs of marine and vehicular traffic.

DATES: Comments and related material must reach the Coast Guard on or before May 30, 2006.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, CGD05–06–002, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Virginia Department of Transportation (VDOT) owns and operates this swing-type bridge. The current regulation allows the SR 175 Bridge to open on demand from midnight to 6 a.m., and on the hour from 6 a.m. to midnight; except from 7 a.m. to 5 p.m. on the last Wednesday and Thursday in July of every year, the draw need not open.

The Chincoteague Town Council has requested a change to the existing regulations for the SR 175 Bridge. This proposal is an effort to further reduce traffic congestion for public safety by reducing the number of drawbridge openings; and to extend the structural and operational integrity of the movable span while balancing the needs of mariners and vehicular traffic transiting in and around this seaside resort area. The SR 175 highway is also the principle arterial route that serves as the major evacuation highway in the event of emergencies or tidal flooding.

On June 28, 2004, we published a notice of temporary deviation from the regulations and request for comments entitled ''Drawbridge Operation Regulations; Chincoteague Channel, VA'' in the **Federal Register** (69 FR 36011). The temporary deviation was in operation to test an alternate drawbridge operation schedule for 90 days and solicit comments from the public. From July 2, 2004 through September 29, 2004, the draw of the bridge opened every two hours on the even hour from 6 a.m. to Midnight; except from 7 a.m. to 5 p.m., on the last Wednesday and Thursday, the draw need not be opened. At all other times, the draw need not open.

The Coast Guard received six letters and four petitions commenting on the provisions of the temporary deviation. Several comments from residents of the Town of Chincoteague favored the two-hour opening schedule. The commercial vessel owners favored a less restrictive hourly opening schedule.

On December 30, 2004, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (69 FR 78373).

The NPRM allowed hourly openings of the draw year-round from 6 a.m. to Midnight; except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw need not be opened. At all other times, the draw need not open. We received six comments on the NPRM. Five comments were from Chincoteague Island residents and the other comment was from Coast Guard (CG) Group Eastern Shore. All favored an hourly opening schedule year round and CG Eastern Shore also suggested the bridge

open on demand from midnight to 6 a.m.

On April 18, 2005, the Coast Guard published a final rule entitled ''Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (70 FR 20051). The final rule required the draw to open on demand from midnight to 6 a.m., and on the hour from 6 a.m. to midnight, except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw need not be opened.

In October 2005, the Chincoteague Town Council adopted a resolution that requested a change in the scheduled openings of the bridge. The resolution details the Town's concerns based on the following factors: the number of openings have actually increased since the last modification; the boats north of the bridge frequently sail and return one-at-a-time; due to inconsistencies in the openings, the Town has received many motorists' complaints; and openings on the even hours as needed will not significantly impact the boaters.

This proposed change is being requested to make the operation of the SR 175 Bridge more efficient. It will reduce vehicular traffic congestion to increase public safety and to extend the structural and operational integrity of the movable span while still balancing the needs of marine and vehicular traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.1005 by inserting a new provision to require the draw to open on demand from midnight to 6 a.m., and limit the required openings of the draw year-round to every one and a half hours from 6 a.m. to midnight, with a closure period from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1005 is revised to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight; except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened.

Dated: March 31, 2006.

Larry L. Hereth,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–5521 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–034]

RIN 1625–AA87

Security Zone; Potomac River, Washington Channel, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary security zone in certain waters of Washington Channel on the Potomac River off Fort Lesley J. McNair, Washington, DC during the May 25, 2006, U.S. Coast Guard Commandant's Change of Command ceremony. The security zone is necessary to provide for the security and safety of life and property of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, Maryland, or designated representative.

DATES: Comments and related material must reach the Coast Guard on or before May 15, 2006.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791. Coast Guard Sector Baltimore, Waterways Management Division, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector Baltimore, Waterways Management Division, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–06–034), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector Baltimore, Waterways Management Division, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq, as well as continued threats by al Qaeda and other similar organizations to conduct armed attacks on U.S. interests worldwide, have made it prudent for U.S. ports and waterways to be on a higher state of alert. Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port, Baltimore,

Maryland must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Coast Guard will conduct a Change of Command ceremony at Fort McNair in Washington, DC. To address the aforementioned security concerns during the event, the Captain of the Port, Baltimore, Maryland proposes to establish a security zone upon certain waters of the Washington Channel. This proposed security zone will help the Coast Guard to prevent vessels or persons from engaging in waterborne terrorist actions during the U.S. Coast Guard Commandant's Change of Command ceremony. Due to the catastrophic impact a terrorist attack during the ceremony would have against the large number of dignitaries, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Proposed Rule

On Thursday, May 25, 2006, The U.S. Coast Guard Commandant's Change of Command ceremony will be held at Fort Lesley J. McNair, in Washington, DC. The event will consist of several high-ranking dignitaries and a background comprised of U.S. Coast Guard vessels anchored adjacent to Fort McNair on the confined waters of the Washington Channel on the Potomac River. A security zone is needed from 11 a.m. through 4 p.m. on May 25, 2006 to safeguard event participants and prevent vessels or persons on certain waters of the Washington Channel of the Potomac River from approaching Fort McNair and thereby bypassing the security measures established on shore during the event. U.S. Coast Guard patrol vessels will be provided to prevent the movement of persons and vessels in an area approximately 200 yards wide and 450 yards long within Washington Channel. Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. The Captain of the Port will issue Broadcast Notices to Mariners to publicize the security zone and notify the public of changes in the status of the zone. Such notices will continue until the ceremony is complete.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This temporary rule affects a limited area of the Washington Channel, approximately 200 yards wide and 450 yards long, for approximately five hours. The operational restrictions of the security zone are tailored to provide the minimal disruption of vessel operations necessary to provide immediate, improved security for persons and vessels on certain waters of the Washington Channel. Additionally, this security zone is temporary in nature any hardships experienced by persons or vessels are outweighed by the national interest in protecting high-ranking dignitaries from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities: the owners or operators of vessels intending to operate, remain or anchor within certain waters of the Washington Channel, in an area approximately 200 yards wide and 450 yards long, encompassed by lines connecting the following points, beginning at 38°52′03″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′07″ W. This security zone will not have a significant economic impact on a substantial number of small entities because of the limited size and duration of the zone. Before the effective period, we would issue maritime advisories widely available to users of the Washington Channel.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Ronald L. Houck, at Coast Guard Sector Baltimore, Waterways Management Branch, at telephone number (410) 576–2674. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone less than one week in duration. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–034 to read as follows:

§ 165.T05–034 Security Zone; Potomac River, Washington Channel, Washington, DC.

(a) *Definitions.* (1) The Captain of the Port, Baltimore, Maryland means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Washington Channel, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°52′03″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′07″ W. These coordinates are based upon NAD 1983.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in § 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 11 a.m. through 4 p.m. on May 25, 2006.

Dated: April 4, 2006.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. E6–5522 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–TN–0008–200534(b); FRL–8157–7]

Approval and Promulgation of Implementation Plans; Tennessee: Revisions to Volatile Organic Compound Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Tennessee State Implementation Plan (SIP), submitted by the Tennessee Department of Environment and Conservation on September 7, 1998. This revision adds 16 compounds to the list of compounds excluded from the definition of ''Volatile Organic Compounds.'' In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision 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 significant, material, and adverse comments are received in response to this rule, 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 on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 15, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–TN–0008, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: hou.james@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–TN–0008,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Mr. Hou can also be reached via electronic mail at *hou.james@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: March 31, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 06–3489 Filed 4–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8158–2]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing that the comment period to the proposed rule entitled National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, published on March 23, 2006, is being extended until May 8, 2006. In the proposed rule, EPA is requesting comment on a revised new source particulate matter standard for cement kilns that burn hazardous waste. We are also requesting comment on corresponding changes to the new source particulate matter standards for incinerators and liquid fuel boilers that burn hazardous waste.

DATES: The comment period for this proposed rule is extended from the original closing date of April 24, 2006 to May 8, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: 202–566–1741.
- Mail: U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- Hand Delivery: In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305W), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, Washington, DC 20460. Clearly mark the part or all of the information that you claim to be CBI. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The 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. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: *Comment Period.* We are extending the comment period by two weeks in response to a commenter's request for more time to respond to issues in the proposed rule published on March 23, 2006 (71 FR at 14665). Therefore, the public comment period will now end on May 8, 2006.

Regulated Entities. Categories and entities potentially affected by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.	562211	4953	Incinerator, hazardous waste.
	327310	3241	Cement manufacturing, clinker production.
	327992	3295	Ground or treated mineral and earth manufacturing.
	325	28	Chemical Manufacturers.
	324	29	Petroleum Refiners.
	331	33	Primary Aluminum.
	333	38	Photographic equipment and supplies.
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials.
	422	51	Chemical and Allied Products, N.E.C.
	512, 541, 561, 812	73	Business Services, N.E.C.
	512, 514, 541, 711	89	Services, N.E.C.
	924	95	Air, Water and Solid Waste Management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is available at *http://www.epa.gov/hwcmact.* This website also provides other information related to the NESHAP for hazardous waste combustors.

Submitting CBI. Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the address listed in the **ADDRESSES** section of this document. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 5, 2006.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E6–5493 Filed 4–12–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU50

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Laguna Mountains Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed rule to designate critical habitat for the Laguna Mountains skipper (Pyrgus ruralis lagunae) under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested parties with an additional opportunity to submit written comments on the proposed designation. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision. We also will hold two public hearings on this proposed designation of critical habitat.

DATES: We will accept comments and information until 5 p.m. on May 15, 2006, or at the public hearings. Any comments received after the closing date may not be considered in the final decision on the proposed designation of critical habitat.

The public hearings will take place on April 27, 2006, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California.

ADDRESSES: *Hearings:* The public hearings will be held at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California.

Comments: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. You may hand-deliver written comments and information to our Office at the above address.

3. You may fax your comments to 760–431–9624.

4. You may send comments by electronic mail (e-mail) to: *FW8pchskipper@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section below.

5. You may submit comments via the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

The proposed rule is available on the Internet at *http://carlsbad.fws.gov* or in hard copy form by contacting the Carlsbad Fish and Wildlife Office. Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for the Laguna Mountains skipper, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from the proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat for the Laguna Mountains skipper. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat for the Laguna Mountains skipper as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Laguna Mountains skipper habitat; which areas should be included in the designation that contain the physical and biological features that are essential to the conservation of the species and why; and which areas not occupied at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

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, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act (5 U.S.C. 552). We will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments received will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. Please submit electronic comments in ASCII file format, and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: RIN 1018–AU50'' in the subject line, and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the Carlsbad Fish and Wildlife Office at telephone number 760/431–9440.

Background

On December 13, 2005, we published a proposed rule in the **Federal Register** (70 FR 73699) to designate critical habitat for the Laguna Mountains skipper on approximately 6,662 acres (2,696 hectares) of land in two units, divided into a total of seven subunits, on Laguna and Palomar Mountains in San Diego County, California. The initial public comment period for the proposal was open for 60 days, ending February 13, 2006.

Critical habitat identifies specific areas containing features essential to the conservation of a listed species and that

may require special management considerations or protection. If the proposed critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of the species or result in the destruction or adverse modification of critical habitat.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic, and any other relevant, impacts of specifying any particular area as critical habitat.

Public Hearings

Section 4(b)(5)(E) of the Act requires one public hearing be held if any person requests a hearing within 45 days of the publication of a proposed rule. In response to a request from the U.S. Forest Service's Cleveland National Forest, the Service will conduct two public hearings on the date and at the address provided in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearings. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearings, please contact the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Patti Carroll at 503–231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this notice is available in alternative formats upon request.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 7, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–3577 Filed 4–11–06; 10:06 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU49

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for *Penstemon grahamii* (Graham's beardtongue) With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed rule to determine threatened status and to designate critical habitat for *Penstemon grahamii* (Graham's beardtongue) under the Endangered Species Act of 1973 as amended (Act). Reopening the public comment period will allow an additional opportunity for interested parties to comment on the proposed rule. Comments previously submitted on the proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision. We will also hold a public hearing on the proposed rule.

DATES: *Comments:* We will accept written comments on the proposed rule until May 19, 2006. Any comments received after the closing date may not be considered in the final determination on the proposal. *Public Hearing:* The public hearing will be held on Wednesday, April 26, 2006, from 7 p.m. to 9 p.m.

ADDRESSES: *Comments:* If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

2. You may fax your comments to Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office at 801–975–3331.

3. You may send comments by electronic mail (e-mail) to *fw6_penstemongrahamii@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

All comments and materials received, as well as supporting documentation used in preparation of the proposed rule, will be available for public inspection, by appointment, during normal business hours at the Utah Field Office.

Public Hearing: The public hearing will be held at the Uintah County Building, 152 East 100 North, Vernal, Utah.

FOR FURTHER INFORMATION CONTACT: John L. England, Utah Field Office (address above), telephone 801–975–3330, extension 138.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We expect any final rule resulting from the proposal to be as accurate and effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Comments particularly are sought concerning:

Critical Habitat

We seek specific information on:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species;

(3) Current or planned activities in the subject area and their possible impacts on this species;

(4) Reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat.

It is our practice to make all comments, including names and addresses of respondents who provide that information, available for public review following the conclusion of the rulemaking process. Individuals may request that we withhold their name and/or address from public disclosure. If you wish to do this, you must state this prominently at the beginning of your comment. We will honor such requests to the extent allowable by law, but you should be aware that we may still be required to disclose your name and address pursuant to the Freedom of Information Act (5 U.S.C. 552). 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES**).

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. Please submit electronic comments in ASCII file format, and avoid the use of any special characters or any form of encryption. Also, please include ''Attn: RIN 1018–AU49'' in the subject line, and your name and return address in your e-mail message.

Background

On January 19, 2006, we published a proposed rule in the **Federal Register** (71 FR 3158) to determine *Penstemon grahamii* (Graham's beardtongue), a plant species from Colorado and Utah, to be a threatened species under the Act (16 U.S.C. 1531 *et seq.*). We further proposed to designate critical habitat for this plant. We accepted public comments on the proposed rule for 60 days, ending March 20, 2006.

Penstemon grahamii is an herbaceous perennial plant that exists in a series of small populations that extend in a narrow band from Raven Ridge west of the town of Rangely in Rio Blanco County, Colorado, westward to the vicinity of Sand Wash near the point where Carbon, Duchesne, and Uintah Counties meet in Utah's Uinta Basin. The species' habitat is a discontinuous series of exposed raw shale knolls and slopes derived from the Parachute Creek and Evacuation Creek members of the geologic Green River Formation. Most populations are associated with the surface exposure of the petroleum bearing oil shale Mahogany ledge.

Threats to the species may include degradation of the species' habitat by oil and gas exploration, drilling and field development, and tar sand and oil shale mining. Off-road vehicle use, overutilization by domestic and wild grazers, and overutilization for horticultural use also may affect some populations. These threats, in combination with small population sizes and limited distribution, could result in species' vulnerability to natural and human-caused stochastic events. The proposal, if made final, would determine threatened status for this plant and implement Federal protection under the Act.

In addition, we proposed to designate 2,102 hectares (3,504 acres) as critical habitat for *P. grahamii* in five units in Rio Blanco County, Colorado, and Duchesne and Uintah Counties, Utah.

Public Hearing

We will conduct a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the even there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Utah Field Office (see **ADDRESSES**).

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact the Utah Field Office at 801–975–3330 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 7, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–3578 Filed 4–11–06; 10:06 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 71

Thursday, April 13, 2006

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

Farm Service Agency

Request for Revision and Extension of a Currently Approved Information Collection; Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request renewal of the information collection currently approved and used in support of the FSA Farm Loan Programs (FLP).

DATES: Comments on this notice must be received on or before June 12, 2006, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523; Telephone (202) 720–7862; Electronic mail: *mel.thompson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Expiration Date: November 30, 2006.

Type of Request: Revision and Extension of a Currently Approved Information Collection.

Abstract: Section 331 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1981, (''CONACT'') in part, authorizes the Secretary of Agriculture to modify, subordinate and release terms of security instruments, leases, contracts, and agreements entered into by FSA. That section also authorizes transfers of security property, as the Secretary deems necessary, to carry out the purpose of the loan or protect the Government's financial interest. Section 335 of the CONACT (7 U.S.C. 1985), provides servicing authority for real estate security; operation or lease of realty; disposition of property; conveyance of real property interest of the United States; easements; and condemnations. The information collection relates to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a Government loan. The information collected is primarily financial data not already on file, such as borrower asset values, current financial information and public use and employment data.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average .52 hours per response.

Respondents: Individuals, associations, partnerships, or corporations.

Estimated Number of Respondents: 226.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 117.5 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mel Thompson, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on April 6, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–5466 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eldorado National Forest; California; Freds Fire Reforestation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Eldorado National Forest will prepare an environmental impact statement (EIS) to restore, reforest, and reduce fuels on approximately 4,300 acres that burned in the Freds Fire of 2004. The Freds Fire Reforestation project area is located in El Dorado County, California, on the Eldorado National Forest, Placerville and Pacific Ranger Districts. The project area is located immediately north of U.S. Highway 50, near the town of Kyburz. The legal description is: Township 11 North, Range 14 East, Sections 13, 14, 23, 24, 25; Township 11 North, Range 15 East, Sections 14–23, 27–30; Township 11 North, Range 16 East, Sections 17–20, 30, MDM.

DATES: Comments concerning the scope of the analysis must be received by May 19, 2006. The draft environmental impact statement is expected in July 2006 and the final environmental impact statement is expected in October 2006.

ADDRESSES: Send written comments to Kathryn D. Hardy, Placerville Ranger District, 4260 Eight Mile Road, Camino, CA 95709, Attention: Freds Fire Reforestation Project.

FOR FURTHER INFORMATION CONTACT: Robert Carroll, Project Leader, Placerville Ranger District, 4260 Eight Mile Road, Camino, CA 95709, or by telephone at 530–647–5386.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

On areas impacted by the Freds Fire of 2004 the purpose of the project is to:

1. Reestablish a forested landscape and promote its survival and growth; 2. incorporate fuel treatments to reduce wildfire spread and intensity or interrupt fire spread; and 3. restore aquatic and riparian habitats to improve water quality and provide for the native plant and animal species associated with these ecosystems. The Freds Fire resulted in adverse effects to forest resources such as soil, riparian areas, and wildlife habitat, and caused extensive tree mortality. Removal of most of the fire-killed trees occurred in 2005. Live and dead trees remain, distributed across the landscape as described in the Freds Fire Restoration FEIS. Without additional treatment to restore the fire area, additional impacts are likely over the short and long term. The goal of this project is to move the project area more quickly toward desired future conditions for the land allocations within the fire area, as defined by the Sierra Nevada Forest Plan Amendment (SNFP). These land allocations are threat zone, defense zone, general forest, protected activity centers for spotted owls, spotted owl home range core areas, and riparian conservation areas adjacent to perennial, seasonal and ephemeral streams.

Proposed Action

The proposed action would consist of combinations of site preparation, reforestation, release, noxious weed, and fuel treatments. Site preparation treatments would be by chemical methods, utilizing ground-based herbicide applications (glyphosate or triclopyr). Reforestation treatments would include planting and re-planting if needed. Release treatments would include hand grubbing and ground-based herbicide (glyphosate, triclopyr, or hexazinone) applications. Noxious weed treatments would include hand treatments by manual and chemical (glyphosate and clopyralid) methods. Fuel treatments would include manual and chemical methods. No road construction is proposed.

The proposed action is consistent with the 1989 Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (2004).

Possible Alternatives

Other alternatives will be developed based on significant issues identified during the scoping process for the environmental impact statement. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition. Alternatives being considered at this time include: (1) The Proposed Action and (2) No Action.

Responsible Official

Kathryn D. Hardy, District Ranger, Placerville Ranger District, Eldorado National Forest, is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Nature of Decision To Be Made

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to plant trees, take steps to promote their survival and growth, or conduct fuel treatments.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individual or organizations who may be interested in or affected by the proposed action. To facilitate public participation, information about the proposed action will be mailed to all who express interest in the proposed action and notification of the public scoping period will be published in the Mountain Democrat, Placerville, CA.

Comments submitted during the scoping process should be in writing and should be specific to the proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth.

(c) Eliminating nonsignificant issues or those previously covered by a relevant previous environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the proposed action and alternatives.

A public meeting will be held on Tuesday, May 9, 2006, from 7 p.m. to 9 p.m. at the County Fire Station 16, Kyburz, California.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section

21) The final EIS is scheduled to be completed in June, 2005. In the final EIS, The Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

Dated: April 6, 2006.

Judie L. Tartaglia,

Acting Forest Supervisor.

[FR Doc. 06–3539 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wallowa-Whitman National Forest, Oregon and Washington; Wallowa-Whitman National Forest Invasive Plants Treatment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Wallowa-Whitman National Forest proposes to treat approximately 25,000 acres of invasive plants located across the 2.4 million acre National Forest. The Forest anticipates to treat approximately 4,000 acres of invasive plant sites annually. The proposed treatment methods include: manual pulling and hand tools, mechanized hand tools, herbicides, and biological controls. The method proposed for a given site would depend largely on the protection of resources and the effectiveness of the method on the target invasive plant species.

DATES: Comments regarding the proposed action must be received by May 17, 2006. The draft environmental impact statement is expected in March, 2007 and the final environmental impact statement is expected in September, 2007.

ADDRESSES: Please address written comments about this project to Steven A. Ellis, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, OR 97814. Electronic comments can be mailed to: *comments-pacificnorthwest-wallowa-whitman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Gene Yates, Wallowa-Whitman National Forest, PO Box 907, Baker City, OR 97814. Phone: 541–523–1390 or e-mail *gyates@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Proposed and Need for Action

Using a technologically modern approach to control or eradicate invasive plants, the purpose of this action is to maintain or improve the diversity, function, and sustainability of desired native plant communities and other natural resources that can be adversely impacted by invasive plant species. Specifically, there is an underlying need on the Forest to: (1) Implement treatment actions to contain and reduce the extent of invasive plants at existing inventoried sites, and (2) rapidly respond to new or expanded invasive plant sites as they may occur in the future.

Proposed Action

A detailed project description can be requested by using the information request form at this Internet address: *http://www.fs.fed.us/r6/w-w/contact/feedback.shtml* or by contacting the person listed above.

In 2005 the Pacific Northwest Region completed an FEIS and ROD for *Preventing and Managing Invasive Plants*, which provided new direction to Forests for preventing and managing invasive plant sites including an updated list of herbicides that are approved for use. These new herbicides offer many advantages over the more limited set previously allowed, including greater selectivity for invasive plants, less harm to desired vegetation, reduced application rates, and lower toxicity to wildlife and people. The proposed invasive plant treatments will be guided by this FEIS.

Various methods would be used to contain, control or eradicate invasive plants including herbicides, manual or power tools and biological control. The *approximate* cumulative area of invasive plant sites that would be treated by these methods are: (a) Herbicides: 19,950 acres: (b) biological control: 4975 acres, (c) manual or mechanical methods: 300 acres. A description of each method follows.

Herbicide Treatments: Chemical herbicides would be applied in accordance with USDA Forest Service regulations, policies, Forest Plan Standards and the manufacturer's product label requirements. Herbicides approved for use in the *Pacific Northwest Region Invasive Plant Program Preventing and Managing Invasive Plants FEIS* (Regional Invasive Plant EIS), April 2005 and *Record of Decision.* These herbicides include: chlorosulfuron, clopyralid, glyphosate, imazapic, imazapyr, metsulfuron methyl, picloram, sethoxydim, sulfometuron methyl, and triclopyr. The application rates and methods will depend on the target invasive plant species and environmental conditions, such as soil type; depth to the water table; the distance to open water sources; wetland or upland status; proximity to sensitive, rare or endemic plants; and the requirements of the herbicide manufacturer's label. Follow-up treatments may be needed depending on the effectiveness of level of control attained by the initial treatment.

Ground based or aerial application methods would be chosen based on the accessibility, topography and size of a given treatment area. The following are examples of the proposed methods of application:

- Spot spraying—The applicator sprays individual plants usually from a backpack sprayer, but the method can also be used with a hose originating from a tank mounted on a truck or ATV.
- Wicking—The applicator wipes an herbicide-saturated sponge or cloth over the target plant. This is often used in sensitive areas, such as near water, to avoid herbicide drift or contact with the soil and non-target vegetation.
- Stem injection—A new hand application technique currently being used on Japanese knotweed in western OR & WA. A tool is used to inject herbicide directly into a plant.
- Broadcast application—Herbicide is applied to a broad area of ground rather than individual plants. This method is used when the target invasive plant is so large and dense that spot spraying becomes impractical. Broadcast application is normally accomplished with a boom apparatus mounted on a truck or ATV.
- Aerial application—a boom is mounted on a helicopter or fixed-wing aircraft. This method is used where invasive plant sites are too large, remote, or steep to be reached by ground based equipment.

If needed, sites would be restored using native seed, where practical.

Manual Treatment Methods: These methods include non-mechanized approaches, such as hand pulling or using hand tools to dig or grub out plants or cut off seed heads. Handsaws, axes, shovel, rakes, machetes, grubbing hoes, mattocks, brush hooks, and hand clippers may all be used to remove invasive plant species.

Mechanical Treatment Methods: This method uses power tools and includes one or more of the following actions: mowing, weed whipping, road brushing, tilling or steaming.

Biological Control: Biological control is the release of inspects, parasites, or disease pathogens which feed on or parasitize specific invasive plants. Presently, insects are the primary biological control agent in use. Mites, nematodes, and pathogens are occasionally used. Biological control

treatments do not eradicate the target species but reduce invasive plant cover to an acceptable level. Biological control release sites would be monitored to determine the success of the treatments.

Invasive plant prevention measures have been adopted with the Pacific Northwest Region Invasive Plant *Program Preventing and Managing Invasive Plants* Record of Decision and FEIS and will be implemented with this action as required.

Responsible Official

The Forest Supervisor, Steven A. Ellis, will be the responsible official for making the decision and providing direction for the analysis. He may be contacted at the address listed above.

Nature of Decision To Be Made

The responsible official will decide what type of methods and how they will be used to control invasive plants on the Wallowa-Whitman National Forest.

Scoping Process

The public is asked to provide the responsible official with written comments describing their concerns about this project.

Comment Requested

This notice of intent begins the scoping process in the development of the environmental impact statement. The most useful comments to developing or refining the proposed action would be site specific concerns and those that can help us develop treatments that would be responsive to our goal to control, contain, or eradicate invasive plants as well as being cost effective.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will commence 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: April 6, 2006.

Steven A. Ellis,

Forest Supervisor.

[FR Doc. 06–3553 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to review 2006 projects, and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on April 25, 2006, 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitterroot National Forest, Supervisor Office, Conference Room, 1801 North First Street, Hamilton, Montana. Send written comments to Daniel Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: April 7, 2006.

David T. Bull,

Forest Supervisor.

[FR Doc. 06–3537 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Broad Creek Watershed, Delaware

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Broad Creek Watershed project, Kent and Sussex Counties, Delaware, effective on March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Jon F. Hall, State Conservationist, Natural Resources Conservation Service, 1221 College Park Drive, Suite 100, Dover, Delaware 19904, 302–678–4160.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Jon F. Hall,

State Conservationist.

[FR Doc. E6–5508 Filed 4–12–06; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (USCCR), that a meeting of the North Dakota State Advisory Committee will convene at 1 p.m. (CDT) and adjourn at 4 p.m. (CDT), Thursday, April 20, 2006, at the Radisson Hotel, 201–5th Street, N, Fargo, ND 58102. The purpose of the meeting is to conduct orientation for new advisory committee members, provide an overview of the USCCR including recent Commission activities and new policies affecting advisory committees, brief Committee members on civil rights developments in the state including predatory lending, discrimination, race relations, and the administration of justice. The Committee will also discuss the regional project, ''Confronting Discrimination in Reservation Border Town Communities'' in North Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact John F. Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting. . It was not possible to publish this notice 15 days in advance of the meeting date because of internal processing delays.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 28, 2006.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 06–3552 Filed 4–10–06; 12:29 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems, Technical Advisory Committee; Notice of Open Meeting

The Information Systems Technical Advisory Committee will meet on April 26 and 27, 2006, in the Herbert C. Hoover Building, Room 3884, 14th and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to computer systems and technology.

Agenda

1. Opening Remarks and Introductions.
2. Update on BIS Programs and Activities.
3. Summary of Export Control Workshop at SEMICON.
4. Introduction of Proposals for Category 5.
5. Frequency Synthesizer Assembly Overview.
6. VoIP Networks.
7. 4A3b vs 4A3c Discussions.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to Yvette Springer at *Yspringer@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Yvette Springer on (202) 482–4814.

Dated: April 7, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–3555 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on April 25, 2006, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 30, 2006, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Yvette Springer on (202) 482–4814.

Dated: April 7, 2006.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 06–3518 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–837]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Reconsideration of Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is initiating a review to reconsider the five-year (''sunset'') review that resulted in revocation of the antidumping duty order on large

newspaper printing presses and components thereof, whether assembled or unassembled, from Japan.

EFFECTIVE DATE: April 13, 2006.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136, or (202) 482–4929 respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2002, the Department revoked the antidumping duty order on large newspaper printing presses (LNPP) from Japan under a five–year sunset review pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), because the only domestic interested party in the sunset review, Goss International Corporation (Goss), withdrew its participation and thus its interest in the review. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five-Year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002).

On May 5, 2005, the Department self–initiated a changed circumstances review to consider information contained in a federal court decision, *Goss International Corp. v. Tokyo Kikai Seisakusho, Ltd.*, 321 F.Supp.2d 1039 (N.D. Iowa 2004). *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Initiation of Changed Circumstances Review*, 70 FR 24524 (May 10, 2005). On March 8, 2006, the Department published the final results of that changed circumstances review. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review* (71 FR 11590) (*CCR Final Results*). In the final results, the Department stated that it would reopen for reconsideration the sunset review that resulted in revocation of this order. The Department further stated that it would conduct this reconsideration of the sunset review following the procedures outlined in section 751(c) of the Act and 19 CFR 351.218.

Initiation of Reconsideration of Sunset Review

As detailed in *CCR Final Results*, particularly at Comments 2 and 3 of the accompanying Issues and Decision Memorandum, the misconduct of the respondent Tokyo Kikai Seisakusho, Ltd. (TKS) during the 1997–1998 administrative review of the LNPP antidumping duty order, which ultimately led to its company–specific revocation from the underlying order, substantially tainted the integrity of the proceeding, and may have significantly undermined the integrity of the sunset review results, including the parties' decisions whether or not to participate in the sunset review. As such, the results of that sunset review are unreliable. Accordingly, the Department will reconsider the sunset review it conducted when the order was in place, but when the Department was unaware of misstatements made by TKS with the purpose of avoiding a determination of dumping. This action is warranted because the Department has the responsibility and authority to defend the integrity of its past determinations and to ensure the integrity of its future proceedings against deliberate, misleading behavior. Therefore, we are conducting anew the five–year sunset review of LNPP from Japan. As in a situation when a suspension agreement is terminated and an investigation is resumed, the Department will examine and collect information from the prior sunset review period (i.e., September 4, 1996, through September 4, 2001). *See, e.g., Final Determination of Sales at Less Than Fair Value: Uranium from the Republic of Kazakhstan*, 64 FR 31179 (June 10, 1999). *See also Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, Intent to Resume Antidumping Investigation, and Request for Comments on the Use of Updated Information*, 67 FR 43278 (June 27, 2002).

In reconsidering this sunset review, as with any sunset review, the Department will report to the International Trade Commission (''ITC'') whether or not there is a likelihood of continuation of dumping; however, the Department by itself cannot order the continuation of an antidumping order without an affirmative injury finding by the ITC. *See* section 751(c) of the Act; Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc No. 103–316, vol. 1, at 879 (1994) (the Department determines whether the revocation of the order would lead to recurring or continuing dumping, but the ITC determines the likelihood of recurring or continuing injury).

The Department's procedures for the conduct of sunset reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*''). These procedures and guidance will apply in this reconsideration.

Filing Information

All submissions in this reconsideration of the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for this proceeding. To facilitate the timely preparation of the service list, it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of this notice.

As the deadlines in this review may be short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), or (G) of the Act and 19 CFR 351.102(b)) wishing to participate in this reconsideration of the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate

from at least one domestic interested party by the 15-day deadline, the Department will terminate this reconsideration of the sunset review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive a notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice. The required contents of a substantive response are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

Dated: April 6, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–5500 Filed 4–12–06; 8:45 am]

Billing Code: 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Countervailing Duty Investigation of Certain Softwood Lumber Products From Canada: Notice of NAFTA Panel Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 22, 2005, the Department of Commerce (''Department'') issued its Fifth Remand Determination *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review (''Fifth Remand Determination''). On March 17, 2006, a North American Free Trade Agreement (''NAFTA'') Panel upheld the Department's Fifth Remand Determination. *See* Decision of the Panel on Fifth Remand, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, March 17, 2006 (''Panel Decision on Fifth Remand''). Subsequently, the NAFTA Panel directed the NAFTA Secretariat to issue a Notice of Final Panel Action on March 28, 2006.

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 the Panel Decision on Fifth Remand and the Notice of Final Panel Action issued by the NAFTA Secretariat are not ''in harmony'' with the Department's original results.

EFFECTIVE DATE: April 7, 2006.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2002, the Department published a notice of final determination in the countervailing duty investigation on certain softwood lumber products from Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Final Determination*) and accompanying Issues and Decision Memorandum: Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada (March 21, 2002). The *Final Determination* was subsequently amended. *See Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36070 (May 22, 2002). Respondent parties subsequently challenged the Department's final determination before the United States–Canada Binational Panel, pursuant to Article 1904 of NAFTA. The parties briefed and argued the case before the Panel, and on August 13, 2003, the Panel issued its decision, affirming in part and remanding in part the Department's determination. *See* Decision of the Panel, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, August 13, 2003. On January 12, 2004, the Department issued its first remand determination continuing to find that Canadian softwood lumber was subsidized but at a country–wide rate of 13.23 percent *ad valorem*. *See* Remand Determination *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, January 12, 2004. On June 7, 2004, the Panel issued its decision on remand, affirming in part and remanding in part the Department's determination. *See* Decision of the Panel, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, June 7, 2004. On July 30, 2004, the Department issued its second remand determination continuing to find that Canadian lumber is subsidized but at a country–wide rate of 7.82 percent *ad valorem*. *See* Second Remand Determination *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, July 30, 2004 (Second Remand Determination). On December 1, 2004, the Panel issued its decision on second remand, affirming in part and remanding in part the Department's determination. *See* Decision of the Panel on Second Remand, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, December 1, 2004. On January 24, 2005, the Department issued its third remand determination continuing to find that Canadian lumber is subsidized but at a country–wide rate of 1.88 percent *ad valorem*. *See* Third Remand Determination *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, January 24, 2005 (Third Remand Determination). On May 23, 2005, the Panel issued its decision on third remand, affirming in part and remanding in part the

Department's determination. *See* Decision of the Panel on Third Remand, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, May 23, 2005. On July 7, 2005, the Department issued its fourth remand determination again continuing to find that Canadian lumber is subsidized but at a country–wide rate of 1.21 percent *ad valorem*. *See* Fourth Remand Determination *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, July 7, 2005. On October 5, 2005, the Panel issued its decision on fourth remand, affirming in part and remanding in part the Department's determination. *See* Decision of the Panel on Fourth Remand, *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA–CDA–2002–1904–03 NAFTA Binational Panel Review, October 5, 2005. The Panel directed the Department to use the figure of C$4.34 in determining the profit earned by sellers of logs in the Province of Quebec for the purpose of developing a log–based benchmark price. The Department continued to object to the Panel's decision, but, on November 22, 2005, filed its Fifth Remand Determination in compliance with the Panel's directions, finding a country–wide subsidy rate of 0.80 percent which is *de minimis*. By decision on March 17, 2006, the Panel affirmed the Fifth Remand Determination and subsequently directed the NAFTA Secretariat to issue a Notice of Final Panel Action on March 28, 2006.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(c)(1) and 1516a(e), the Department must publish notice of decision of the Court of International Trade which is ''not in harmony'' with the Department's results. *See Timken*, 893 F.2d at 340. Because NAFTA panels step into the shoes of the courts they are replacing, they must apply the law of the national court that would otherwise review the administrative determination. Therefore, we are publishing notice that the NAFTA Panel's March 28, 2006, Notice of Final Panel Action and its Panel Decision on Fifth Remand, decision are ''not in harmony'' with the *Final Determination*. Publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. In addition, this notice will serve to suspend liquidation of entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 7, 2006, *i.e.*, 10 days from the issuance of the Notice of Final Action, at the current cash deposit rate.

Dated: April 6, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–5498 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public meetings of the Ad Hoc Shrimp Effort Working Group (SEWG).

DATES: The SEWG meeting will convene at 9 a.m. on Thursday, April 27, 2006 and conclude no later than 3 p.m. on Friday, April 28, 2006. The second SEWG meeting will convene at 9 a.m. on Tuesday, May 23, 2006 and conclude no later than 3 p.m. on Wednesday, May 24, 2006.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service (NMFS) Galveston Laboratory, Building 216, 4700 Avenue U, Galveston, TX; telephone: (409) 766–3507.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council will convene meetings of the SEWG to begin evaluating shrimp effort in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico. The working group, appointed by the Council during its March 2006, regular meeting, is charged with providing the Council with alternatives for determining the appropriate level of effort in the shrimp fishery in the EEZ. The group also will discuss the level of effort necessary to achieve optimum yield in the shrimp fishery and what level of effort would derive the maximum benefits of that fishery. The SEWG includes fishery biologists, economists and others knowledgeable about shrimp effort in the Gulf of Mexico.

Although other non-emergency issues not on the agenda may come before the SEWG for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SEWG will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 7, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5423 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706I]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council); its Bycatch Committee; its Research Set-Aside Committee; its Protected Resources Committee; its Squid, Mackerel, Butterfish Committee; its Surfclam, Ocean Quahog, Tilefish Committee; its Ad Hoc Magnuson-Stevens Act (MSA) Reauthorization Committee; its Ecosystem Committee;

and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, May 2, 2006 through Thursday, May 4, 2006. See **SUPPLEMENTARY INFORMATION** for a meeting agenda.

ADDRESSES: The meetings will be held at the Sheraton Oceanfront Hotel, 36th & Atlantic Avenue, Virginia Beach, VA 23451, telephone: (757) 425–9000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION:

Tuesday, March 2, 2006

8:30 a.m. until 2 p.m.—As an integral part of the Standardized Bycatch Reporting Methodology (SBRM) Committee, the Council's Bycatch Committee will participate in a meeting of the SBRM Committee to review the Fishery Management Action Team's (FMAT) progress report on development of an SBRM Amendment and continue discussions related to issues to address in the SBRM Amendment.

1 p.m. to 5 p.m.—The Research Set-Aside (RSA) Committee will meet to review technically evaluated 2007 RSA project proposals and provide recommendations regarding which proposals best meet Council priorities for 2007.

2 p.m. to 3 p.m.—The Protected Resources Committee will meet to review the recent update of the Atlantic Large Whale Take Reduction Plan and consider establishing a Committee advisory panel.

3 p.m. to 4:30 p.m.—The Squid, Mackerel, Butterfish Committee will meet to review and update progress on Amendment 10, and initiate discussion regarding changes to 2007 specification.

7 p.m. to 8:30 p.m.—A previously noticed (March 28) scoping meeting for Amendment 15 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan (FMP) will be held.

Wednesday, May 3, 2006

8:30 a.m. to 10 a.m.—The Surfclam, Ocean Quahog, Tilefish Committee will meet to review the status of stock update for tilefish, review the current tilefish management practice, review the Monitoring Committee's recommendation for 2006/07 fishing year and beyond regarding tilefish harvest level, develop and recommend tilefish harvest levels for 2006/07 and beyond for Council consideration and action.

10 a.m. to 11:30 a.m.—The Ad Hoc Magnuson-Stevens Act (MSA) Reauthorization Committee will meet from to review House versions of MSA Reauthorization Bills and develop comments for Congressional feedback.

11:30 a.m. to 12 noon—The Ecosystems Committee will meet to develop strategies to reduce bycatch mortality through the adoption and use of circle hooks in selected recreational fisheries.

1 p.m. to 3:30 p.m.—The Council will convene to conduct its regular business session to approve March 2006 Council meeting minutes, approve actions from the March meeting, and receive various reports.

3:30 to 4:30 p.m.—The Council will review Surfclam, Ocean Quahog, Tilefish Committee's recommendations regarding tilefish harvest levels for the 2006/07 fishing year and beyond, and adopt tilefish harvest levels for the 2006/07 fishing year and beyond.

Thursday, May 4, 2006

8 a.m. to 9 a.m.—The Executive Committee will meet to review actions taken at the April Northeast Regional Coordinating Council meeting.

9 a.m.—The Council will convene to receive a presentation by the U.S. Coast Guard on Rescue 21, receive Committee reports, and address any continuing or new business.

Although non-emergency issues not contained in this agenda may come before the Council and its Committees for discussion, these issues may not be the subject of formal Council or Committee action during this meeting. Council and Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: April 7, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5465 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706H]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel and General Category Scallop Advisory Panel in May, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: These meetings will be held on Tuesday, May 2, 2006 at 8:30 a.m. and Wednesday, May 3, 2006, at 8:30 a.m.

ADDRESSES: These meetings will be held at the Hampton Inn, 2100 Post Road, Warwick, RI 02886; telephone: (401) 739–8888; fax: (401) 739–1550.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The panel's schedule and agenda for the following meetings are as follows:

Tuesday, May 2, 2006; General Category Scallop Advisory Panel Meeting.

Wednesday, May 3, 2006; Joint General Category Scallop Advisory Panel and Scallop Advisory Panel Meeting.

The advisory panels will make recommendations for measures to be considered in the Draft Supplemental Environmental Impact Statement (DSEIS) being developed for Amendment 11 to the Sea Scallop Fishery Management Plan (FMP). The recommendations will be forwarded to the Scallop Oversight Committee for consideration, and ultimately the full

Council is scheduled to approve final alternatives at the June 2006 Council meeting.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 7, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5464 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Monday, May 1, 2006, from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Tuesday, May 2 through Friday, May 5, 2006, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The GMT meeting will be held at the Pacific Fishery Management Council office, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT working meeting is to develop a preliminary draft environmental impact statement (DEIS) for harvest specifications and management measures for 2007/08 West Coast groundfish fisheries and Amendment 16–4 revisions to groundfish rebuilding plans. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of the preliminary DEIS and recommendations for consideration by the Council at its June meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305a) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 7, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–5424 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706J]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Precious Corals Plan Team (PCPT) meeting, in Honolulu, HI.

ADDRESSES: The PCPT meeting will be held at the Western Pacific Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

DATES: The meeting of the PCPT will be held on Thursday, April 20, 2006, from 9 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The PCPT will meet on April 20, 2006, to discuss the following agenda items:

1. Introductions
2. Review of last plan team meeting and recommendations.
3. Report on current gold coral research.
4. Update on black coral management.
5. Preliminary report on black coral workshop.

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda. The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during this meeting. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: April 10, 2006.

James P. Burgess,

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

[FR Doc. E6–5513 Filed 4–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Access to Emerging Technologies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327C.

Dates: Applications Available: April 13, 2006.

Deadline for Transmittal of Applications: May 30, 2006.

Deadline for Intergovernmental Review: July 27, 2006.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $1,130,000.

Estimated Average Size of Awards: $376,650.

Maximum Award: We will reject any application that proposes a budget exceeding $376,650 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priorities: This competition contains one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: Technology and Media Services for Individuals with Disabilities—Access to Emerging Technologies.

Background: The Individuals with Disabilities Education Act (IDEA) supports captioning and video description appropriate for use in the classroom setting of: Television programs; videos; and other materials, including programs and materials associated with new and emerging technologies, such as CDs, DVDs, video streaming, and other forms of multimedia.

The purpose of this priority is to support the use of technology in the areas of captioning and video description to promote the accessibility of educational programs in order to enhance learning opportunities for children with disabilities. The following are examples of advances in technology that could be utilized to enhance access: (1) Digital freeze-frame technologies that allow time for expanded descriptions for the blind; (2) Avitars (computer animated characters) using sign language incorporated into videos; (3) Digital video recording technologies that enable users to capture television programming to the computer hard disk storage for later viewing, thereby merging television and computer technologies; and (4) ''Hot links'' that are embedded in a television program and that link to Web pages where background information, clarification of terms, or other additional information may be accessed.

Priority: The purpose of this priority is to enhance learning opportunities for children with disabilities and support the development and demonstration of advances in technology to promote the accessibility of educational programs. All projects must ensure that the programming or material contains descriptions and/or captions. New technologies may be used, for example, to provide enhanced Web, CD, or DVD delivery of programming to the student or classroom by utilizing expanded descriptions, definitions of captioned material, real-time simulations, clarification of program content, or other enhancements that may benefit students with disabilities.

In its application, each applicant must:

(a) Identify new and emerging technology (or technologies) to be developed and demonstrated, and identify how they will promote the accessibility of educational materials to the student or classroom.

(b) Present a justification, based on scientifically rigorous research or theory, that supports the potential effectiveness of the new and emerging technology in promoting the accessibility of educational materials to students in the classroom.

(c) Identify the total number of program or material hours the project will make accessible and the total cost per hour for the program or material, if the project is developing or demonstrating a technology that involves captioning or video description of program or material that has not already been captioned or video described.

(d) Identify the extent to which the technological application will be widely available and discuss the shelf-life and range of distribution of the new technology.

(e) Demonstrate the willingness of program providers or owners of materials to permit and facilitate the use of their program or material.

In addition, projects funded under this priority must—

(a) Identify and support a consumer advisory group, including parents and educators, which must meet at least annually. Use the expertise of this consumer advisory group to provide feedback regarding the extent to which the technological devices are appropriate for use in the classroom setting, focusing on the educational needs of students, including intellectual/cognitive or social/emotional needs.

(b) Monitor the extent to which full accessibility is provided and use this information to make refinements in project operations.

(c) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 10 points to an application from a small business. Applicants must document their status as a small business according to the definition for their business category as provided by the Small Business Administration (SBA) (for more information see SBA Web site at: *http://www.sba.gov/size/index.html*).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,130,000.

Estimated Average Size of Awards: $376,650.

Maximum Award: We will reject any application that proposes a budget exceeding $376,650 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the résumés, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 13, 2006.

Deadline for Transmittal of Applications: May 30, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 27, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2006. Access to Emerging Technologies—CFDA Number 84.327C is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Access to Emerging Technologies—CFDA Number 84.327C competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by

the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327C), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327C), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your

application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jo Ann McCann, U.S. Department of Education, 400 Maryland Avenue, SW., room 4067, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7434.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 10, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–5520 Filed 4–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–308]

Application to Export Electric Energy; First Commodities Ltd.

AGENCY: Office Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: First Commodities Ltd. (FC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 15, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office Electricity Delivery and Energy Reliability (Mail Code OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 21, 2006, the Department of Energy (DOE) received an application from FC to transmit electric energy from the United States to Canada. FC is a private corporation formed in Barbados with its principal place of business in Christ Church, Barbados. FC is a wholly-owned subsidiary of First Commodities International Inc., a holding company based in Barbados. The electric energy which FC proposes to export to Canada would be purchased from electric utilities and Federal power marketing agencies within the U.S.

FC proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin

Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by FC as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the FC application to export electric energy to Canada should be clearly marked with Docket EA–308. Additional copies are to be filed directly with Jean-Jacques Taza, Director, First Commodities Ltd, Worthing Corporate Center, Worthing, Christ Church, Barbados BB15008.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, select ''Pending Proceedings.''

Issued in Washington, DC, on April 7, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–5501 Filed 4–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–289–A]

Application to Export Electric Energy; Intercom Energy, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Intercom Energy, Inc., (Intercom) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 15, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

Intercom is a California company with its principal place of business in Chula Vista, California. Intercom does not own or control electric generation or transmission assets in the United States or Mexico. In addition, Intercom has no franchised electric service area.

On May 19, 2004, the Department of Energy (DOE) issued Order No. EA–289 authorizing Intercom to transmit electric energy from the United States to Mexico as a power marketer. That two year authorization will expire on May 18, 2006.

On March 9, 2006, Intercom filed an application with DOE for renewal of the export authority contained in Order No. EA–289 for an additional five-year term. Intercom proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power & Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the dates listed above.

Comments on the Intercom application to export electric energy to Mexico should be clearly marked with Docket EA–289–A. Additional copies are to be filed directly with Ernesto Pallares, Chief Executive Officer, Intercom Energy, Inc., 303 H Street, Suit 401, Chula Vista, CA 91910, *and* Jon L. Brunenkant, James W. Moeller, Brunenkant & Haskell, LLP, 805 15th Street, NW., Suite 1101, Washington, DC 20005, *and* Daniel J. Mogin, The Mogin Law Firm, P.C., 110 Juniper Street, San Diego, CA 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, select ''Pending Proceedings.''

Issued in Washington, DC, on April 7, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–5502 Filed 4–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–216–B]

Application to Export Electric Energy; Transalta Energy Marketing (U.S.) Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Transalta Energy Marketing (U.S.) Inc. (TEMUS) has applied to renew its authority to transmit electric energy from the United States to Canada

pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before May 15, 2006.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 31, 1999, the Department of Energy (DOE) issued Order No. EA–216 authorizing TEMUS to transmit electric energy from the United States to Canada as a power marketer. On August 31, 2001, in Order No. EA–216–A, DOE renewed the TEMUS authorization for a five-year term that expires on August 31, 2006.

On March 15, 2006, TEMUS filed an application with DOE for renewal of the export authority contained in Order No. EA–216–A for an additional five-year term. TEMUS proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company, Inc., and Vermont Electric Transmission Company.

Procedural Matters

Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the TEMUS application to export electric energy to Canada should be clearly marked with Docket EA–216–B. Additional copies are to be filed directly with Sterling Koch, General Counsel, TransAlta Energy Marketing (U.S.) Inc., Calgary, Alberta, Canada T2P 2M1, *and* Stephen Angle, William E. Wolf, Vinson & Elkins L.L.P., 1455 Pennsylvania Ave., NW., Washington, DC 20004–1008.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov/programs/electricityregulation/*. Upon reaching the Home page, select ''Pending Proceedings.''

Issued in Washington, DC, on April 7, 2006.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E6–5504 Filed 4–12–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–141]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 30, 2006, ANR Pipeline Company (ANR) tendered for filing a negotiated rate service agreement between ANR and Anadarko Energy Services Company, effective April 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5461 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–150]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Constellation Energy Commodities Group, Inc. CEGT has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT to be effective April 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5450 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–151]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Anadarko Energy Services Company. CEGT has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT to be effective April 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–5451 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–350–013]

Colorado Interstate Gas Company; Notice of Amending Stipulation and Agreement

April 6, 2006.

Take notice that on March 29, 2006, Colorado Interstate Gas Company (CIG) filed a Petition to Amend Stipulation and Agreement approved in Docket No. RP01–350–000, *et al.*, on August 25, 2002.

CIG requests that the Commission approve the petition to amend the Stipulation and Agreement on or before April 28, 2006, in order to allow the parties to settle its next rate case before it is filed.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on April 10, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5449 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–686–000]

DeGreeff DP, LLC; Notice of Issuance of Order

April 6, 2006.

DeGreeff DP, LLC (DeGreeff DP) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. DeGreeff DP also requested waiver of various Commission regulations. In particular, DeGreeff DP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by DeGreeff DP.

On April 5, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DeGreeff DP 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 5, 2006.

Absent a request to be heard in opposition by the deadline above, DeGreef DP 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 DeGreeff DP, 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 DeGreeff DP's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 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 eLibrary 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. E6–5445 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–016]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 6, 2006.

Take notice that on March 31, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective April 1, 2006:

Third Revised Sheet No. 1409
Third Revised Sheet No. 1414
Original Sheet No. 1422
Sheet Nos. 1423–1499

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5458 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA05–63–001]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

April 6, 2006.

Take notice that on March 29, 2006, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the Audit Letter issued on November 28, 2005, by the Division of Operational Audits.

East Tennessee states that copies of the filing were served on parties on the official service list in the captioned proceeding, as well as all affected customers of East Tennessee and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to

the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on April 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5447 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–635–000]

Edgecombe Genco, LLC; Notice of Issuance of Order

April 6, 2006.

Edgecombe Genco, LLC (Edgecombe Genco) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sale of energy, capacity, and ancillary services at market-based rates. Edgecombe Genco also requested waiver of various Commission regulations. In particular, Edgecombe Genco requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Edgecombe Genco.

On April 5, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Edgecombe Genco 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 5, 2006.

Absent a request to be heard in opposition by the deadline above, Edgecombe Genco 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 Edgecombe Genco, 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 Edgecombe Genco's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 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 eLibrary 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. E6–5444 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–087]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

April 6, 2006.

Take notice that on March 31, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Thirty-Second Revised Sheet No. 15, to become effective April 1, 2006.

GTN states that this sheet is being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–5439 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–064]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, Gulf South Pipeline Company, LP (Gulf

South) filed with the Commission a negotiated rate contract between Gulf South and Atmos Energy Resources Corp., (Atmos), Contract No. 29865, effective April 1, 2006.

Gulf South states that copies of the filing have been served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E6–5453 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–065]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a negotiated rate contract between Gulf South and Atmos Energy Corporation, (Mississippi Division), Contract No. 31137, effective April 1, 2006.

Gulf South states that copies of the filing have been served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5454 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–066]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a negotiated rate contract between Gulf South and Centerpoint Energy Resources Corp., (Centerpoint), Contract No. 33487, effective April 1, 2006.

Gulf South states it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5455 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–067]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a negotiated rate contract between Gulf South and Atmos Energy Resources Corp., (Atmos), Contract No. 29865, effective April 1, 2006.

Gulf South states that copies of the filing have been served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5456 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–068]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 6, 2006.

Take notice that on March 31, 2006, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission a negotiated rate contract between Gulf South and Atmos Energy Resources Corp., (Atmos), Contract No. 29865, effective April 1, 2006.

Gulf South states that copies of the filing have been served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5457 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–464–000 and ER06–464–001]

The Highlands Energy Group, LLC; Notice of Issuance of Order

April 6, 2006.

The Highlands Energy Group LLC (Highlands Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Highlands Energy also requested waiver of various Commission regulations. In particular, Highlands Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Highlands Energy.

On April 5, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by

Highlands 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 5, 2006.

Absent a request to be heard in opposition by the deadline above, Highlands 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 Highlands 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 Highlands Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 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 eLibrary 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. E6–5442 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–020]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rates

April 6, 2006.

Take notice that on March 31, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on March 1, 2006 and April 1, 2006:

Fifth Revised Sheet No. 6
First Revised Sheet No. 6G
First Revised Sheet No. 6H
Second Revised Sheet No. 7
Original Sheet No. 7A
Original Sheet No. 7B

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5460 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–31–002]

Iroquois Gas Transmission System, L.P.; Notice of Filing

April 6, 2006.

Take notice that on March 29, 2006, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, CT 06484–6211, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for an amendment to the certificate of public convenience and necessity issued in this proceeding on October 31, 2002. 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Iroquois requests authority to modify certain facilities previously certificated in this docket and to construct limited additional facilities in order to provide 100,000 dekatherms per day (dth/d) of new firm transportation service to Consolidated Edison Company of New York, Inc. (Con Edison). Iroquois requests to: (1) Reduce the proposed size of the compressor unit, located in Brookfield, Connecticut, from 10,000 horsepower to 7,700 horsepower; (2) install new cooling facilities at Brookfield; and (3) install new cooling facilities at Iroquois's existing compressor station at Dover, New York. The estimated cost of these facilities is approximately $41,600,000. Iroquois also requests a predetermination that the costs associated with the project will receive rolled-in rate treatment to Iroquois's Eastchester rates in its first NGA section 4 rate proceeding to become effective after the in-service date for the proposed facilities. In order to meet Co Edison's requested November 1, 2007 in-service date, Iroquois proposes to commence construction by April, 2007.

Any questions regarding the application are to be directed to M. Lisanne Crowley, Troutman Sanders LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004–2134; phone number (202) 274–2814.

On November 30, 2005, the Commission staff granted Iroquois's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–6–000 to staff activities involving the Market Access Project. Now, as of the filing of this application on March 29, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP02–31–002, as noted in the caption of this Notice.

Any person wishing to obtain legal status by becoming a party to the proceeding for this project should, on or before the below listed comment date, 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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons may also wish to comment further only on the environmental review of this project. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents issued by the Commission, and will be notified of meetings associated with the Commission's environmental review process. Those persons, organizations, and agencies who submitted comments during the NEPA Pre-Filing Process in Docket No. PF06–6–000 are already on the Commission staff's environmental mailing list for the proceeding in the above dockets and may file additional comments on or before the below listed comment date. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, environmental commentors are also not parties to the proceeding and will not receive copies of all documents filed by other parties or non-environmental documents issued by the Commission. Further, they will not have the right to seek court review of any final order by Commission in this proceeding.

Motions to intervene, protests and 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. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on April 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5462 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR06–4–000 and PR06–4–001]

J–W Pipeline Company; Notice of Shortened Comment Period

April 6, 2006.

Take notice that on April 4, 2006, J–W Pipeline Company filed an Offer of Settlement in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Offer of Settlement.

Because no protests were filed in this docket and the Commission Staff supports the Offer of Settlement, we are shortening the date for filing initial comments to and including April 11, 2006. Reply comments should be filed on or before April 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5448 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–024]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

April 6, 2006.

Take notice that on March 31, 2006, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1-A, the following tariff sheets, to be effective April 1, 2006:

Fifteenth Revised Sheet No. 4G
Fourth Revised Sheet No. 4G.01
Sixth Revised Sheet No. 4H
Fifth Revised Sheet No. 4I

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5459 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–058]

Northern Natural Gas Company; Notice of Negotiated Rates

April 6, 2006.

Take notice that on March 31, 2006, Northern Natural Gas Company

(Northern) tendered for filing to become part its FERC Gas Tariff, Fifth Revised Volume No. 1, 38 Revised Sheet No. 66 and 31 Revised Sheet No. 66A, proposed to be effective on April 1, 2006.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5452 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–634–000]

Spruance Genco, LLC; Notice of Issuance of Order

April 6, 2006.

Spruance Genco, LLC (Spruance Genco) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Spruance Genco also requested waiver of various Commission regulations. In particular, Spruance Genco requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Spruance Genco.

On April 5, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Spruance Genco 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 5, 2006.

Absent a request to be heard in opposition by the deadline above, Spruance Genco 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 Spruance Genco, 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 Spruance Genco's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 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 eLibrary 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. E6–5443 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–94–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent to Prepare an Environmental Assessment for the Proposed Ozark Trails Expansion Project and Request for Comments on Environmental Issues

April 6, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Ozark Trails Expansion Project involving construction and operation of facilities by Southern Star Central Gas Pipeline, Inc. (Southern Star) in (Labette and Montgomery counties, Kansas and Christian, Greene, Jasper, and Newton counties, Missouri).[1] The project would include about 2 miles of various diameter pipelines, uprating 13.5 mile of pipeline from a maximum allowable operating pressure (MAOP) of 720 pounds per square inch gauge (psig) to 877 psig, and modifications at two existing compressor stations. No additional horsepower of compression is proposed. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the

[1] Southern Star's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Southern Star provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Southern Star proposes to construct and operate various facilities, including pipeline installation, extensions, replacements, and modifications at the Grabham and Saginaw Compressor Stations, in order to provide 19,562 decatherm per day (Dthd) and 5,000 Dthd of incremental firm transportation to Missouri Gas Energy (MGE), a Division of Southern Union, and Southern Missouri Gas Company, L.P., respectively. The proposed facilities are located in Labette and Montgomery Counties, Kansas and Christian, Greene, Jasper, and Newton Counties, Missouri. The pipeline and ancillary facilities would include:

• *Springfield 20-Inch Loop Extension (Line HS).* Extension of Springfield 20-inch pipeline loop (Line HS) by constructing about 0.9 mile of new 20-inch outside diameter (O.D.) loop from milepost (MP) 52.0 to MP 52.9 in Christian County, Missouri.

• *Springfield 16-Inch Extension (Line HQ).* Extension of Springfield 16-inch pipeline (Line HQ) by about 1.1 miles from at MP 41.35 to MP 42.43 located within the City of Springfield and Greene County, Missouri. The proposed 16-inch extension will be constructed in replacement of about a 1.0 mile segment of Line HQ–8.

Construction of above-ground auxiliary facilities at the eastern terminus of the proposed 16-inch extension line (MP 42.4), which would include a pressure regulator, 16-inch pig receiver, slug catcher, filter separator and a liquid collection tank. Relocate pig receiver from existing regulator site (MP 41.4) to new site.

• *MGE Delivery Meter Facility.* New delivery meter facility to be constructed at about MP 3.7 on Southern Star's Tartan 10-inch (HQ–32) pipeline for delivery to MGE; side valve, 6-inch ultrasonic meter, 6-inch flow control valve, and 350-feet of 10-inch interconnecting pipeline lateral.

• *Southern 20-inch Loop Facilities.* Southern Trunk 20-inch Loop Uprate:

Uprate Southern Trunk 20-inch loop line (Line FR between Southern Star's Grabham compressor station in Montgomery County, Kansas and the Empire ''State Line'' Power Plant in Jasper County, Missouri) between MP 0.0 to MP 13.5 to a MAOP from 720 psig to 877 psig.

Uprate activity would involve replacing various valves and crossovers on the FR Line, replacing pig launchers and receivers, installing a high pressure discharge line, replacing one road crossing, and making other modifications to the Grabham Compressor Station, as detailed below.

Southern Star's proposed modifications on the FR 20-inch pipeline are as follows:

• *Compton Corner Town Border Station.* Replacement of existing 4-inch flanged valve on 20-inch FR line with a new 4-inch riser and 4-inch ANSI 600# valve at MP 1.1 of FR line, east of CR 3700, Montgomery County, Kansas.

Replacement of 80-feet segment of 20-inch FR line with 20-inch pipe to meet design specifications for higher MAOP.

• *Verdad Crossover.* Replacement of existing 20-inch by 16-inch reducing tee with bars with a new 20-inch by 16-inch reducing tees with bars and a 16-inch weld end ANSI 600# ball valve to meet specifications for increased MAOP, at crossover at MP 4.0 of Southern Star's 20-inch FR line and 20-inch F line, Montgomery County, Kansas.*Liberty Town Border Station* Replacement of 2-inch riser and installation of a new 2-inch flanged ANSI 600# ball valve to meet design specifications for the increased MAOP, at MP 8.07, Montgomery County, Kansas.

• *Brown Road Crossover.* Replacement of existing 20-inch by 16-inch reducing tee with bars with a new 20-inch by 16-inch reducing tee with bars and a 16-inch weld end ANSI 600# ball valve, at MP 13.5 crossover between Southern Star's 20-inch FR line and 20-inch FR line, Labette County, Kansas.

Southern Trunk 20-inch Loop (FR Line) Receiver and Regulator Station. Replacement of existing receiver on the Southern Star's FR 20-inch loop line with a receiver designed to meet the increased MAOP, at the end of the Southern Trunk 20-inch Loop line, Jasper County, Missouri.

Back Pressure Regulator Station at Empire Power Plant. Installation of a new back pressure regulator station at MP 2.45 on Southern Star's existing 16-inch FP–1 line, Jasper County, Missouri.

• Compressor Station Modifications

Saginaw Compressor Station Modifications. Installation of auxiliary facilities at Southern Star's Saginaw Compressor Station in Newton County, Missouri includes the following:

• New gas cooler between the two existing gas coolers and about 40 feet of 12-inch (O.D.) above-grade piping and a valve to connect the cooler;

• Modifications to the existing gas compressor cylinders on the GMVH–10 reciprocating unit;

• Modifications to existing discharge piping to separate the two reciprocating units from a common gas aftercooler;

• Modifications to station yard piping required to increase the discharge operating pressure from 900 psig to 960 psig on the Springfield 20-inch line; and installation of about 40 feet of 12-inch (O.D.) above-ground piping and replacement of 20 feet of below-ground 12-inch pipe with 16-inch pipe; and

• Installation of a new regulator on the Jane 20-inch line within the Saginaw station yard.

• Removal of miscellaneous pipeline to be sold for scrap steel and salvaged by the contractor.

Grabham Compressor Station Modifications. Installation of auxiliary facilities at Southern Star's Grabham Compressor Station in Montgomery County, Kansas includes the following:

• Replacement of pulsation dampeners on compressor units 11 and 12;

• Installation of a new gas cooler and modifications of associated yard piping;

• Installation of a new 20-inch discharge header and modifications of associated yard piping to service Line FR 20-inch (about 1,400 feet of 20-inch line and 150 feet of 16-inch line);

• Replacement of 20-inch pig launcher on Line FR 20-inch; and

• Installation of a regulation and an orifice meter.

Southern Star indicates that MGE plans to construct a 3-mile pipeline to interconnect with Southern Star's proposed MGE measurement facility.

The location of the project facilities is shown in Appendix 1.[2]

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (map), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Construction of the proposed facilities would require about 26.9 acres of land. Following construction, about 6.5 acres would be required for operation and maintenance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Cultural resources.
- Vegetation and wildlife.
- Endangered and threatened species.
- Air quality and noise.
- Hazardous waste.
- Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Public or special use lands within 0.25 mile.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have identified the potential issue regarding construction near residences that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern Star. The preliminary issue may be changed based on your comments and our analysis.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP06–94–000.
- Mail your comments so that they will be received in Washington, DC on or before May 8, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5440 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

April 6, 2006.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–2195.

c. *Date Filed:* March 30, 2006.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Clackamas River Hydroelectric Project.

f. *Location:* On the Clackamas River, Clackamas County, Oregon. The Project occupies some U.S. Forest Service and Bureau of Land Management Lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Julie Keil, Portland General Electric Company, 121 SW., Salmon Street, Portland, Oregon 97204, Phone: 503–464–8864.

i. *FERC Contact:* John Blair, at 202–502–6092; e-mail *john.blair@ferc.gov.*

j. *Deadline for Filing Comments:* 20 days from the notice date. Reply comments due 30 days from the notice date.

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.

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.

Comments 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.

k. Portland General Electric Company filed the Settlement Agreement on behalf of the Company and the U.S. Fish and Wildlife Service, Bureau of Land Management, National Marine Fisheries Service, U.S. Department of Agriculture Forest Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, Oregon Parks and Recreation Department, Oregon State Marine Board, Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Grand Ronde, The City of Estacada, Oregon, Clackamas River Water, Sunrise Water Authority, South Fork Water Board, North Clackamas County Water Commission, Oak Lodge Water District, Alder Creek Kayak and Canoe, All Star Rafting, American Rivers, American Whitewater, Blue Sky Rafting, Clackamas River Basin Council, Destination Wilderness, Oregon Trout, The Native Fish Society, Northwest Steelheaders, Playboatingnorthwest.com, River Drifters Whitewater Tours, Trout Unlimited, and WaterWatch of Oregon. The purpose of the Settlement Agreement is to resolve among the signatories, issues regarding the licensing of the Clackamas River Hydroelectric Project. These parties represent the major stakeholders with interests affected by the relicensing of the Project. All Parties have agreed that the Settlement is fair and reasonable and in the public interest. The signatories request that the Commission accept the Offer of Settlement and adopt it as part of a new license without material modification.

l. A copy of the settlement agreement 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 ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5446 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–18–000]

Midwest Independent Transmission System Operator, Inc.; Supplemental Notice of Technical Conference

April 6, 2006.

As announced in the Notice of Technical Conference issued on March 17, 2006, the Commission will hold a technical conference on April 21, 2006 in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, regarding the Midwest Independent Transmission System Operator Inc.'s (Midwest ISO) proposed cost allocation policy, as it pertains to the degree of regional cost sharing for reliability projects at 345 kV and above,

pursuant to the Commission Order issued on February 3, 2006.[1]

Please note that the time of the conference has been changed. The technical conference will begin at 1 p.m. (EDT) and conclude at approximately 5:15 p.m.

This supplemental notice provides additional information and an agenda for the conference. Members and staff of the Federal Energy Regulatory Commission are expected to participate. The conference will be open for the public to attend and advanced registration is not required.

The conference will be transcribed. A transcript of the conference will be immediately available from Ace Reporting Company ((202) 347–3700 or (800) 336–6646) for a fee. It will be available for the public on the Commission's eLibrary system seven (7) calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100) for information about this service as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the conference, please contact either Patrick Clarey at (317) 249–5937 or at *patrick.clarey@ferc.gov* or Eli Massey at (202) 502–8494 or at *eli.massey@ferc.gov.*

Magalie R. Salas,

Secretary.

Cost Allocation Methodology for High Voltage Baseline Reliability Projects in the Midwest ISO Region

April 21, 2006 Commission Technical Conference Agenda[2]

Welcome: 1 p.m.–1:15 p.m.

Panel 1: 1:15 p.m.–3 p.m.

The Commission will request that the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and certain entities that participated in the Midwest ISO's Regional Expansion Criteria and Benefits Task Force (RECB Task Force) present information regarding the basis for the cost allocation methodology for high voltage Baseline Reliability Projects and how the RECB Task Force established the proposal.

Break: 3 p.m.–3:15 p.m.

Panel 2: 3:15 p.m.–5 p.m.

The Commission will invite entities outside the RECB Task Force process to express their perspectives on the proposed cost allocation methodology. The Commission seeks input as to whether the cost allocation methodology arising from the RECB Task Force for high voltage Baseline Reliability Projects is just and reasonable, and if it is not, what cost allocation methodology for high voltage Baseline Reliability Projects would produce just and reasonable results.

Closing Remarks: 5 p.m.–5:15 p.m.

Unless otherwise notified, panelists should limit presentations to no more than five (5) minutes. The Commissioners may ask questions at the conclusion of presentations. If time permits, the audience may also ask questions of the panelists at the conclusion of the Commissioners' questions. Panelists wishing to distribute copies of their presentation should e-mail an electronic copy of their presentation one week prior to the conference to Patrick Clarey and Eli Massey and bring 100 or more hard copies to the conference for distribution. Any such presentation will be placed into the record for this docket. All parties to this proceeding may file comments on the technical conference by close of business on May 5, 2006.

[FR Doc. E6–5441 Filed 4–12–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (2006).

[2] This agenda may change. The Commission will issue a further notice of such changes if time permits.

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings Previously Announced Date and Time: Monday, April 10, 2006, 10 a.m. Meeting Open to the Public. This Meeting Was Cancelled

DATE AND TIME: Tuesday, April 18, 2006, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed To The Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

SPECIAL EXECUTIVE SESSION: Wednesday, April 19, 2006, 10:30 a.m. This Meeting Will Be Closed To The Public Pursuant To 11 CFR 2.4(b)(1) and 2.4(b)(2).

DATE AND TIME: Thursday, April 20, 2006, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2006–07: Representative J.D. Hayworth on behalf of J.D. Hayworth for Congress.

Advisory Opinion 2006–08: Matthew Brooks by counsel, Craig Engle.

Advisory Opinion 2006–09: The American Institute for Certified Public Accountants and The American Institute for Certified Public Accountants Political Action Committee by counsel, Russell L. Smith.

Advisory Opinion 2006–10: EchoStar Satellite LLC by counsel, Robert F. Bauer and Caroline P. Goodson.

Advisory Opinion 2006–11: Washington Democratic State Central Committee by counsel, Marc E. Elias and Caroline P. Goodson.

Advisory Opinion 2006–12: International Association of Machinists and Aerospace Workers (''IAM'') and the Transportation Communications International Union/AM (''TCU/IAM'') by counsel, Laurence E. Gold and Michael B. Trister.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Office, Telephone: 202–694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–3605 Filed 4–11–06; 8:45 am]

BILLING CODE 6715–01–M

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 May 8, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Republic Corporation, Omaha, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of United Republic Bank, Omaha, Nebraska (in organization).

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Skagit State Bancorp, Burlington, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Skagit State Bank, Burlington, Washington.

Board of Governors of the Federal Reserve System, April 10, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5481 Filed 4–12–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: TANF Labor Market Survey.

OMB No.: New Collection.

Description: Understanding the motivations, hiring practices, and work place policies of employers—the demand side of the labor market—can provide considerable information to policy makers interested in promoting work and advancement among welfare recipients and other less-skilled workers. This project will add to our knowledge in this area by surveying employers in the TANF/low-wage labor market. We will survey a national sample of employers, focusing on industry sectors with the most jobs in the low-wage labor market, the employers most relevant for the majority of current and recent TANF recipients. The survey will gather information from employers on their attitudes, practices, and policies toward TANF recipient and other low-skill hires, including information on worker advancement, the use of work force intermediaries in hiring, and the role that child care plays in worker retention. The survey will allow for comparisons of employers in urban-core areas, suburbs, and exurbs/rural areas. It will also measure employment outcomes for TANF recipients and other low-skilled workers, allowing us to draw connections between employer practices and employee outcomes. In short, this national survey of employers in the low-wage labor market can provide key information on what employer practices and policies are and how they are associated with workplace success for welfare recipients and other less-skilled workers.

Respondents: A nationally representative sample of business establishments having 4 or more workers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Labor Market Survey	1,300	1	0.33	429

Estimated Total Annual Burden Hours: 429.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Office. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 6, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3520 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Court Improvement Program New Grants.

OMB No.: New Collection.

Description: The President signed the Deficit Reduction act of 2005, Public Law 109–171, into law on February 8, 2006. The law authorizes and appropriates funds for two new grants under the Court Improvement Program in title IV–B, section 438 of the Social Security Act. The highest State court in a State with an approved title IV–E plan is eligible to apply for either or both of the new grants. The new grants are for the purposes of: (1) Ensuring that the needs of children are met in a timely and complete manner through improved case tracking and analysis of child welfare cases and (2) training judges, attorneys, and other legal personnel in child welfare cases and conducting cross-training with child welfare agency staff and contractors.

The statute requires separate applications for these two new grants. The annual burden estimates below describe the estimated burden for each one of the new grants. ACF proposes to collect information from the States about their work under these grants (applications, program reports) by way of a Program Instruction, which will be issued by June 1, 2006. This Program Instruction will describe the programmatic and fiscal provisions and reporting requirements for each of the grants, specify the application submittal and approval procedures for the grants for fiscal years 2006 through 2010, and identify technical resources for use by State courts during the course of the grants. The agency will use the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual Program Report	52	1	36	1,872
Estimated Total Annual Burden Hours				3,952

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 6, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3521 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Follow-up to the National Survey of Child and Adolescent Well-Being.

OMB No.: 0970–0202.

Description: The Department of Health and Human Services intends to collect data on a subset of children and families who have participated in the National Survey of Child and Adolescent Well-Being (NSCAW). The NSCAW was authorized under section 427 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The survey began in November 1999 with a national sample of 5,501 children ages 0–14 who had been the subject of investigation by child Protective Services (CPS) during the baseline data collection period, which extended from November 1999 through April 2000. Direct assessments and interviews were conducted with the children themselves, their primary caregivers, their caseworkers, and, for school-aged children, their teachers.

Follow-up data collections were conducted 12 months, 18 months, and 36 months post-baseline. The current data collection plan involves a subset of 950 children from the original sample who were ages 12 and older at baseline and who will be ages 18 and older at follow-up. This group will be in early adulthood, and this follow-up will allow for assessing the functioning and service utilization for this age group as they enter independent living situations. The youths will be interviewed with questions covering social, emotional and behavioral adjustment, living arrangements, employment, service needs, and service utilization.

The data collection for the follow-up will follow the same format as that used in previous rounds of data collection and will employ similar instruments to those used for adolescents who had moved into independent living status in previous rounds. Data from NSCAW are made available to the research community through licensing arrangements from the National Data Archive on Child Abuse and Neglect, housed at Cornell University.

Respondents: 950 youths ages 18 and older.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Interview	950	1	1.5	1,425
Estimated Total Annual Burden Hours: 1,425				

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Office. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: April 6, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3522 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Form OCSE–396A: Financial Report; Form OCSE–34A: Quarterly Report of Collections.

OMB No.: 0970–0181.

Description: Each State agency administering the Child Support Enforcement Program under Title IV–D of the Social Security Act is required to provide information to the Office of Child Support Enforcement concerning its administrative expenditures and its receipt and disposition of child support payment from non-custodial parents. These quarterly reporting forms enable each State to provide that information, which is used to compute both the quarterly grants awarded to each State and the annual incentive payments earned by each State. This information is also included in a published annual statistical and financial report, which is available to the general public.

Respondents: State agencies administering the Child Support Enforcement Program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396A	54	4	8	1,728
OCSE–34A	54	4	8	1,728
Estimated Total Annual Burden Hours				3,456

In compliance with the requirements of section 3506(c)(1)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *infocollection@acf.hss.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of the automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 6. 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3523 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Implementation of Head Start National Reporting System on Child Outcomes.

OMB No.: 0970–0249.

Description: The Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS) is requesting comments on plans to implement the Head Start National Reporting System (HSNRS) on Child Outcomes. Child-outcomes information collected by this implementation is expected to enhance Head Start programs' accountability and quality.

HSNRS addresses Presidentially mandated reforms and Congressionally mandated requirements for information on specific child outcomes and provides Head Start program managers and teachers with useful information to support program-improvement strategies.

HSNRS has three major goals. First, HSNRS will provide local Head Start programs with information about the progress of groups of children on a limited number of performance measures by measuring how children are doing at the beginning and at the end of each program year. Second, HSNRS will capture the same set of information across the nation in a consistent manner, allowing for creation of normative comparison groups. Individual programs can use this information to target needs for training and technical assistance. Third, the child-outcomes information captured in HSNRS should serve as one component of the current national program monitoring effort, which involves on-site, systematic review of programs. The Head Start Bureau can use compiled HSNRS data as part of the process for ensuring the effectiveness of services. These results can highlight the needs of specific groups of children, identify local programs' technical assistance and training needs, and contribute to the accountability of Head Start.

The first three rounds of the HSNRS national implementation (2003–04, 2004–05, and 2005–06 program years) were successful. In each round of the data collection, over 400,000 assessments were completed, making this the largest assessment of preschool children ever conducted. Over 99 percent of Head Start programs and Head Start parents and children cooperated fully with the HSNRS procedures. The HSNRS data show good internal reliability, both in terms of Item Response Theory (IRT) reliability and Cronbach's Coefficient Alpha at the individual child-level, for both English-language and Spanish-language assessments. IRT estimates of the internal reliability of the program-level English-language assessment scores were excellent, with most IRT-reliability coefficients greater than .90.

For each program year, participating local Head Start programs received HSNRS Program Reports at the aggregated program-level for the fall assessment (baseline) and the spring assessment (fall-spring growth). These reports provided local Head Start programs with information about the progress of their children in all assessed domains and demonstrated how these scores compared to all other Head Start children (national-level reference tables) as well as children in similar programs (subgroup reference tables).

HSNRS will continue to collect child-outcomes information from children who are four years-old or older and who will enter Kindergarten next year. As in the previous three years, all eligible Head Start children will be assessed twice a year using a standardized direct child-assessment battery. The assessment battery will address a limited set of early literacy, language, and numeracy skills.

Twice a year, HSNRS will also collect teachers' reports of social-emotional development of Head Start children using standardized rating scales. These social-emotional rating scales will be field-tested in spring 2006 prior to national implementation in fall 2006. Head Start teachers will rate children in their classrooms on the aspects of cooperative classroom behaviors, preschool learning behaviors, and problem behaviors.

HSNRS will also collect health and safety information on children and programs, including children's height and weight, immunization status, receipt of dental care, and occurrences of injuries requiring medical attention.

Finally, a computer-assisted version of the HSNRS assessment battery and PDA version of answer forms will be used on a field trial basis starting in fall 2006 with a nationally representative sample of Head Start programs. The purpose of the field trial is to investigate the feasibility of the use of computer and PDA technologies in HSNRS data collection. To collect feedback on the computer-assisted assessment and PDA answer form approaches, brief telephone interviews will be conducted with program staff from participating Head Start programs in fall and spring.

Respondents: Head Start children and Head Start staff.

ANNUAL BURDEN ESTIMATES

Respondents and activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Fall Implementation.				
Head Start Children: Participate in Child Assessments	425,000	1	¼	106,250
Head Start Staff (Assessors): Participate in Training on Child Assessments	25,000	1	4	100,000
Head Start Staff (Local HSNRS Trainers): Participate in Training on Child Assessments	1,800	1	4	7,200
Head Start Staff (Local HSNRS Trainers): Participate in Training on Computer-Assisted Child Assessments and PDA Answer Forms	220	1	12	2,640
Head Start Staff (Assessors): Administer Child Assessments	25,000	17	¼	106,250
Head Start Teachers: Participate in Training on Social-Emotional Development Ratings	38,500	1	1	38,500
Head Start Teachers: Complete Social-Emotional Development Ratings	38,500	11	⅙	70,583
Head Start Teachers: Complete Child Health Questions	38,500	11	1/12	35,292
Head Start Staff, Complete Health and Safety of Program Questions	1,800	1	1/12	150
Head Start Staff: Enter Information on Computer-Based Reporting System (CBRS)	1,800	1	3	5,400
Head Start Staff: Provide feedback on Computer-Assisted Child Assessments and PDA Answer Forms	220	1	1/12	18
Spring Implementation.				
Head Start Children: Participate in Child Assessments	425,000	1	¼	106,250
Head Start Staff (Assessors): Participate in Refresher Training on Child Assessments	25,000	1	4	100,000
Head Start Staff (Local HSNRS Trainers): Participate in Training on Child Assessments	1,800	1	4	7,200
Head Start Staff (Assessors): Administer Child Assessments	25,000	17	¼	106,250

ANNUAL BURDEN ESTIMATES—Continued

Respondents and activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Teachers: Participate in Refresher Training on Social-Emotional Development Ratings	38,500	1	½	19,250
Head Start Teachers: Complete Social-Emotional Development Ratings	38,500	11	⅙	70,583
Head Start Teachers: Complete Child Health Questions	38,500	11	1/12	35,292
Head Start Staff: Complete Health and Safety of Program Questions	1,800	1	1/12	150
Head Start Staff: Enter Information on CBRS	1,800	1	3/2	2,700
Head Start Staff: Provide feedback on Computer-Assisted Child Assessments and PDA Answer Forms	220	1	1/12	18
Total Annual Burden Estimates				919,976

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OBM receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget Paperwork Reduction Project Attn: Desk Officer for ACF E-mail address: *Katherin_T._Astrich@omb.eop.gov.*

Dated: April 16, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3524 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Status Reporting Form for the Program of State Council on Developmental Disabilities.

OMB No.: 0980–0212.

Description: For the program of the State Council on Developmental Disabilities, funds are awarded to State agencies contingent on fiscal requirements in subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, ordinarily mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. Consequently, the proposed streamlined form will substitute for the SF–269 and will allow compliance monitoring and proactive compliance maintenance and technical assistance.

Respondents: State Councils and Designated State Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Status Reporting Form for program of State Council on Developmental Disabilities	55	1	8	440
Estimated Total Annual Burden Hours: 440				

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: April 6, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3525 Filed 4–12–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0364]

Stakeholder Meeting to Discuss the Possible Implementation of Two Review Performance Goals Referenced in the Medical Device User Fee and Modernization Act of 2002; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Stakeholder Meeting to Discuss the Possible Implementation of Two Review Performance Goals referenced in the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). In a letter that accompanied the user fee legislation, the agency committed to a number of review performance goals. These goals include a commitment that 50 percent of the premarket approval applications received in fiscal year (FY) 2007 will have an FDA decision in 180 days and 80 percent of the premarket notifications will have an FDA decision in 90 days. The letter states that these goals are to be re-evaluated following the end of FY 2005 and FDA is to hold a public meeting to consult with its stakeholders and to determine whether the goals are appropriate for implementation in FY 2007.

DATES: The public meeting will be held on May 22, 2006, from 9 a.m. to 12 p.m. However, depending upon the level of public participation, the meeting may end early. Registration is required by May 19, 2006. All individuals wishing to make a presentation on the implementation of these two performance goals in FY 2007 should indicate their intent and provide an abstract of their presentation by May 10, 2006.

ADDRESSES: The public meeting will be held at the Center for Devices and Radiological Health, 9200 Corporate Blvd., rm. 20B, Rockville, MD 20850.

Submit written requests to make an oral presentation to Cindy Garris (see **FOR FURTHER INFORMATION CONTACT**). Include your name, title, firm name, address, telephone, and fax number with your request. All requests and presentation materials should include the docket number found in brackets in the heading of this document. Submit all requests for suggestions and recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Garris, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 121, FAX: 301–443–8818, e-mail: *cynthia.garris@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2002, MDUFMA amended the Federal Food, Drug, and Cosmetic Act (the act) to authorize user fees for the review of certain premarket applications. In addition, in a letter that accompanied the user fee legislation (goals letter found at: *http://www.fda.gov/cdrh/mdufma/pgoals.html*), the agency committed to a number of review performance goals for premarket applications, including premarket approval applications (PMAs) and premarket notifications (510(k)s) that become more challenging with each FY.

Under the goals letter, 50 percent of the PMAs received in FY 2007 are to have an FDA decision in 180 days and 80 percent of the 510(k)s are to have an FDA decision in 90 days. The goals letter further states that these goals are to be re-evaluated following the end of FY 2005, and FDA will hold a public meeting to consult with its stakeholders and to determine whether this goal is appropriate for implementation in FY 2007. If FDA determines that the goal is not appropriate, prior to August 1, 2006, the Secretary of Health and Human Services will send a letter to the Committee on Health, Education, Labor, and Pensions of the Senate and to the Energy and Commerce Committee, Subcommittee on Health of the House of Representatives, stating that the goal will not be implemented and the rationale for its removal.

Since its passage in October 2002, the agency has been working to implement MDUFMA. An important part of this process has been the annual stakeholder meetings, during which interested persons have been afforded the opportunity to share information and views on the implementation of MDUFMA. FDA is continuing this outreach to its stakeholders by holding this public meeting. During this meeting, FDA encourages stakeholders to provide their input and recommendations on the implementation of these two performance goals in FY 2007.

For additional information on MDUFMA, please see the document entitled ''Background on MDUFMA'' at *http://www.fda.gov/cdrh/mdufma/whitepaper.html*.

II. Agenda

On May 22, 2006, FDA is providing the opportunity for interested persons to share their views on the implementation of the FY 2007 PMA and 510(k) performance goals discussed previously in this document. FDA stakeholders may offer their input and recommendations on these two performance goals.

III. Registration

Online registration for the meeting is required by May 19, 2006. Acceptance will be on a first-come, first-served basis. There will be no onsite registration. Please register online at *http://www.fda.gov/cdrh/meetings/052206.html*. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the meeting. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/052206.html* by May 19, 2006. Persons without Internet access may register for the onsite meeting or to listen remotely by calling 301–443–6597, ext. 121 by May 19, 2006.

If you need special accommodations due to a disability, please contact Cindy Garris at least 7 days in advance of the meeting.

IV. Request for Input and Materials

FDA is also interested in receiving input from stakeholders on other issues related to future user fee legislation. Send suggestions or recommendations to the Division of Dockets Management (see **ADDRESSES**).

FDA will place an additional copy of any material it receives on the docket for this document (2005N–0364). Suggestions, recommendations, and materials may be seen at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

Dated: April 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5494 Filed 4–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0022]

International Conference on Harmonisation; Guidance on S8 Immunotoxicity Studies for Human Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''S8 Immunotoxicity Studies for Human

Pharmaceuticals.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides recommendations on nonclinical testing approaches to identify compounds that have the potential to be immunotoxic and guidance on a weight-of-evidence decisionmaking approach for immunotoxicity testing. The guidance is intended to provide recommendations on nonclinical testing for immunotoxicity induced by human pharmaceuticals. The guidance applies to unintended immunosuppression and immunoenhancement, excluding allergenicity or drug-specific autoimmunity.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD, 20857. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Kenneth L. Hastings, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6480, Silver Spring, MD 20993–0002, 301–796–0169.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH steering committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of February 8, 2005 (70 FR 6697), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''S8 Immunotoxicity Studies for Human Pharmaceuticals.'' The notice gave interested persons an opportunity to submit comments by April 11, 2005. After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH steering committee and endorsed by the three participating regulatory agencies in August 2005.

The guidance provides the following information: (1) Recommendations on nonclinical testing approaches to identify compounds which have the potential to be immunotoxic, and (2) guidance on a weight-of-evidence decisionmaking approach for immunotoxicity testing. The guidance is intended to provide recommendations on nonclinical testing for immunotoxicity induced by human pharmaceuticals. The guidance applies to immunosuppression and immunoenhancement, excluding allergenicity or drug-specific autoimmunity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: April 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5495 Filed 4–12–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR–A M2 S–NIBIB Conference Grants.

Date: May 1, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIBIB/NIH/OSR, Democracy II, 6707 Democracy Boulevard, 2nd Floor Conference Room, Bethesda, MD 20892.

Contact Person: David George, Ph.D., Director, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, 301–496–8633, *georged1@mail.nih.gov.*

Dated: April 4, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3514 Filed 4–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–74, Review R21.

Date: May 5, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–81, Review R21.

Date: May 18, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, 45 Center Dr., 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–75, Review of U01s and R21.

Date: July 19, 2006.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yujing Liu, MD, PhD., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing_liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 4, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3515 Filed 4–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Conference Grants.

Date: May 1, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Arthur L. Zachary, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892. (301) 594–2886. *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 4, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3516 Filed 4–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; The Development of Monoclonal Antibodies for Type A Botulinum Neurotoxin.

Date: April 24, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3129, 6700 B Rockledge Drive, Bethesda, MD 20892. (301) 435–3564. *ec17w@nih.gov*.

This notice is being published less than15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Teleconference Review of a Stem Cell Therapy Program Project Application.

Date: May 1, 2006.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3118, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 451–2666. *qvos@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning (R34) Grants.

Date: May 3, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. (301) 402–4596. *hdavid@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 5, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3517 Filed 4–12–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Changes to the National Registry of Evidence-Based Programs and Practices (NREPP); Correction

Authority: Sec. 501, Pub. L. 106–310.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) published a notice regarding changes to the National Registry of Evidence-based Programs and Practices (NREPP) in the March 14, 2006 **Federal Register**. This document contained several comments from the American Psychological Association's Division 50 Committee on Evidence-based Practice that were incorrectly attributed to the full American Psychological Association.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Hennessy, (240) 276–2234.

Correction

In the **Federal Register** of March 14, 2006, FR volume 71, no. 49, the following comments were attributed to the American Psychological Association's Committee on Evidence-based Practice, and should have been attributed to the American Psychological Association's Division 50 Committee on Evidence-based Practice. These comments should be corrected as follows:

Page 13133, Column 3—The American Psychological Association (APA) Division 50 Committee on Evidence-based Practice recommended greater emphasis on the utility descriptors (i.e., those items describing material and resources to support implementation), stating, ''these are key outcomes for implementation and they are not adequately addressed in the description of NREPP provided to date. This underscores earlier concerns noted about the transition from efficacy to effectiveness.'' The APA Division 50 committee noted that generalizability of programs listed on NREPP will remain an issue until this ''gap between efficacy and effectiveness'' is explicitly addressed under a revised review system.

Page 13140, Column 1—the American Psychological Association (APA) Division 50 Committee on Evidence-based Practice recommended more emphasis on the utility descriptors ''as these are key outcomes for implementation and they are not adequately addressed in the description of NREPP provided to date. This underscores earlier concerns noted about the transition from effectiveness to efficacy.''

Page 13140, Columns 1 and 2—The possibility that NREPP will exclude programs due to lack of funding was a concern voiced by several organizations, including the National Association for Children of Alcoholics, the APA Division 50 Committee on Evidence-based Practice the National Association of State Alcohol and Drug Abuse Directors, Community Anti-Drug Coalitions of America, and the California Association of Alcohol and Drug Program Executives.

Page 13140, Column 3—A number of respondents noted the proposed NREPP approach does not acknowledge provider effects on treatment outcomes. The APA Division 50 Committee on Evidence-based Practice wrote, ''Relationship factors in a therapeutic process may be more important than specific interventions and may in fact be the largest determinant in psychotherapy outcome (see Lambert & Barley, 2002). How will NREPP address this concern and make this apparent to users?''

Page 13141, Column 2—The APA Division 50 Committee on Evidence-based Practice suggested that the proposed NREPP approach does not adequately distinguish between ''efficacy'' and ''effectiveness,'' and strongly recommended that SAMHSA look for ways to bridge the two.

Page 13142, Column 1—A group of university researchers recommended that for programs to be included in NREPP, they should be required to provide statistically significant results on drug use and/or mental health outcomes using two-tailed tests of significance at $p < .05$. The APA Division 50 Committee on Evidence-based Practice recommended further discussion and consideration by NREPP of the conceptual distinction between statistical and clinical significance.

Page 13142, Column 3—The APA Division 50 Committee on Evidence-based Practice argued that ''including all of these NREPP products is seen as a desirable feature that reflects the continuous nature of evidence. This may also be critical information for providing reasonable options for

stakeholders when there are not or few evidence-based practices available.''

Page 13143, Column 2—The APA Division 50 Committee on Evidence-based Practice suggested that SAMHSA develop ''a comprehensive glossary that addresses definitions of different constituencies, populations, and settings.''

Page 13144, Column 3—The APA Division 50 Committee on Evidence-based Practice recommended that SAMHSA ''anticipate misuses of NREPP so as to insure that funding bodies do not mistakenly assume that improving treatment comes from confining treatment to a list of recommended techniques.''

Page 13146, Columns 2—The APA Division 50 Committee on Evidence-based Practice suggested using a site glossary to define diagnostic terminology and client populations and communities.

Dated: April 3, 2006.

Charles G. Curie,

Administrator.

[FR Doc. 06–3538 Filed 4–12–06; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of removal of two Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to remove two systems of records from its inventory of record systems because they have become obsolete.

DATES: *Effective Date:* April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202, by telephone (571) 227–3813 or facsimile (571) 227–4171.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the Department of Homeland Security is removing two obsolete systems of records from its inventory of record systems.

The first one is currently being maintained by United States Citizenship and Immigration Services and was formerly maintained by the Immigration and Naturalization Service (INS). This legacy record system is entitled ''Designated Entity Information Management System (DEIMS),'' last published in the **Federal Register** as ''JUSTICE/INS–021,'' (62 FR 39256), when the INS was still a part of the United States Department of Justice. The system became part of the DHS inventory of record systems upon creation of DHS and the merger with INS.

This system was originally established in order to maintain records concerning individuals who applied for and received certification from INS to serve as designated fingerprint service providers. The record system is no longer needed, however, because the INS—and now DHS—no longer uses the services of designated fingerprint service providers. Instead, aliens applying for immigration benefits must have their fingerprints taken by DHS, by state and local law enforcement agencies, by consular offices of the Department of State, or by Department of Defense offices authorized to perform fingerprinting services. Therefore, JUSTICE/INS–021, the ''Designated Entity Information Management System (DEIMS)'' is obsolete and the Department of Homeland Security is removing this system from its inventory of Privacy Act systems.

For similar reasons, DHS proposes to remove another legacy system of records that is now being maintained by the Bureau of Immigration and Customs Enforcement, but which was formerly maintained by INS when it was part of the Department of Justice. This legacy record system is entitled ''Job Exchange System (JOBX).'' and it was last published as JUSTICE/INS–009 in the **Federal Register** on September 7, 2001 (66 FR 46815. JOBX was originally established in order to enable INS employees meeting specific criteria to trade like positions with other INS employees upon supervisor approval. The record system has become obsolete, however, as DHS no longer authorizes job swapping among employees. Therefore, the Department of Homeland Security is also removing JUSTICE/INS–009 from its inventory of Privacy Act systems.

Eliminating these two systems will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: April 4, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

[FR Doc. E6–5350 Filed 4–12–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Protest

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 12, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and

purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Protest.

OMB Number: 1651–0017.

Form Number: Form 19.

Abstract: This collection is used by an importer, filer, or any party at interest to petition CBP, or Protest, any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a bonded warehouse.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 45,330.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 67,995.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 6, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–5484 Filed 4–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Harbor Maintenance Fee

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Harbor Maintenance Fee. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 12, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: CBP Forms 349 and 350.

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,816.

Estimated Total Annualized Cost on the Public: N/A.

Dated: April 6, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–5488 Filed 4–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled with prejudice.

Name	License No.	Issuing port
100 Corporation	20634	Boston.
Commercial International Forwarding, Inc.	12833	Dallas.

Dated: April 5, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–5489 Filed 4–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port name
Sun Ge Lam	2407	Honolulu.
Suzanne C. Noonan	11021	New York.
Gaspar F. Torres	21062	Otay Mesa.
Gene V. Gregg	4150	Los Angeles.

Dated: April 5, 2006.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–5490 Filed 4–12–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Notice of Immigration Pilot Program, File No. OMB–5. OMB Control No. 1615–0061.

On February 27, 2006 the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) published a 60-day notice in the **Federal Register** at 71 FR 10051. In that 60-day notice, USCIS inadvertently referred to the same data that was included in the notice for the I–90 form that was published on the same day.

Accordingly, the Department of Homeland Security, (USCIS) is republishing the 60-day notice for the Immigration Pilot Program and has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 12, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0061 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used by USCIS to determine which regional centers should participate in the immigration pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: April 10, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–3565 Filed 4–12–06; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–19]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Family Self Sufficiency Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD's Office of Policy Development and Research is conducting a five-year study that will track outcomes for a sample of 300 FSS enrollees taken from a sample of twenty Public Housing Authorities operating the FSS program. The study will provide an assessment of the results of the program for participating families and an analysis of the types of program models and features that appear to be associated with successful participant outcomes. The study focuses on the FSS program-serving participants in the Housing Choice Voucher program.

DATES: *Comments Due Date:* May 15, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information.

Title of Proposal: Evaluation of the Family Self Sufficiency Program.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: HUD's Office of Policy Development and Research is conducting a five-year study that will track outcomes for a sample of 300 FSS enrollees taken form a sample of twenty Public Housing Authorities operating the FSS program. The study will provide an assessment of the results of the program for participating families and an analysis of the types of program models and features that appear to be associated with successful participant outcomes. The study focuses on the FSS program serving participants in the Housing Choice Voucher program.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	125	3.4		2.6		1,123

Total Estimated Burden Hours: 1,123.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–5433 Filed 4–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–12]

Notice of Proposed Information Collection: Comment Request; Previous Participation Certification

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* June 12, 2006.

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: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_L_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a

toll-free number) for copies of the proposed forms and other available information.

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 affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Previous Participation Certification.

OMB Control Number, if applicable: 2502–0118.

Description of the need for the information and proposed use: This information is necessary to ensure that responsible individuals and organizations participate in HUD's multifamily housing programs. The information will be used to evaluate participants' previous participation in government programs and ensure that the past record is acceptable prior to granting approval to participate in HUD's multifamily housing programs. The collection of this information will be 80 percent automated.

Agency form numbers, if applicable: HUD–2530.

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 32,952 generating approximately 44,704 annual responses; the frequency of responses is on occasion; the estimated time to respond is estimated to be 30 minutes per submission; and the estimated total annual burden hours are 22,352.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 10, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E6–5511 Filed 4–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964–1410–KC–P; F–19155–21]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are located in the vicinity of Minto, Alaska, are within:

Fairbanks Meridian, Alaska

T. 6 N., R. 8 W.,
Sec. 32, S½;
Sec. 35, S½.
Containing 640 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 15, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13,

Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–5431 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Gila Box Riparian National Conservation Area Advisory Committee—Notice of Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal of the Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's Gila Box Riparian National Conservation Area Advisory Committee.

The purpose of the Committee is to advise the Secretary with respect to the preparation and implementation of the Gila Box Riparian National Conservation Area Management Plan.

FOR FURTHER INFORMATION CONTACT: Maggie Langlas, National Landscape Conservation System (WO–170), Bureau of Land Management, 1620 L Street, NW., Room 301 LS, Washington, DC 20036, telephone (202) 452–7787.

Certification Statement

I hereby certify that the renewal of the Gila Box Riparian National Conservation Area Advisory Committee is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: March 31, 2006.

Gale A. Norton

Secretary of the Interior.

[FR Doc. E6–5432 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–5420–FR–L035; FF–94661 & FF–94662]

Notice of Applications for Recordable Disclaimers of Interest for Lands Underlying Fish Lake and Mark Creek in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has filed applications for recordable disclaimers of interest in certain lands underlying the Fish Lake and Mark Creek in Alaska by the United States.

DATES: Comments on the State of Alaska's applications should be submitted on or before July 12, 2006. Comments on the BLM Draft Land Report should be submitted on or before June 12, 2006.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Callie Webber at 907–271–3167 or you may visit the BLM recordable disclaimer of interest Web site at *http://www.ak.blm.gov.*

SUPPLEMENTARY INFORMATION: On December 22, 2005, the State of Alaska (State) filed applications for recordable disclaimers of interest pursuant to Section 315 of the Federal Land Policy and Management Act and the regulations contained in 43 CFR Subpart 1864 for lands underlying Fish Lake (FF–94661), approximately 690 acres, and Mark Creek (FF–94662), approximately 11 miles in length. Fish Lake and Mark Creek are both located within the Tanana River region of Alaska. A recordable disclaimer of interest, if issued, will confirm the United States has no valid interest in the subject lands. The notice is intended to notify the public of the pending applications and the State's grounds for supporting it. The State asserts that Fish Lake and Mark Creek are navigable and under the Equal Footing Doctrine, Submerged Lands Act of 1953, Alaska Statehood Act, and the Submerged Lands Act of 1988, ownership of these submerged lands automatically passed from the United States to the State at the time of statehood in 1959.

The State's application for Fish Lake (FF–94661) is for ''all submerged lands lying below the ordinary high water line of Fish Lake within Townships 13 and 14 North, Range 19 East, Copper River Meridian, Alaska.'' The State's application for Mark Creek (FF–94662) is for ''all submerged lands lying within the bed of Mark Creek, and the interconnected unnamed lake system, between the ordinary high water lines of the left and right banks, from its origins within Township 13 North, Range 20 East, Copper River Meridian, Alaska downstream through the interconnected unnamed lake system to its confluence with the Chisana River in Township 14 North, Range 19 East, Copper River Meridian, Alaska''. The State did not identify any known adverse claimant or occupant of the affected lands.

A final decision on the merits of the applications will not be made before July 12, 2006. During the 90-day period, interested parties may comment upon the State's applications, FF–94661 and FF–94662, and supporting evidence. Interested parties may comment on the evidentiary evidence presented in the BLM's Draft Land Report on or before June 12, 2006.

Comments, including names and street addresses of commenters, will be available for public review at the Alaska State Office (see address above), during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: February 28, 2006.

Russell D. Blome,

Acting Chief, Branch of Lands and Realty.

[FR Doc. E6–5356 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64228]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64228 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64228 effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 6, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5471 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64229]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64229 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch

of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64229 effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 6, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5473 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–06–1430–EQ; CACA 46909]

Notice of Realty Action; Non-Competitive Land Use Authorization for Public Lands in Yuba County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Operating Engineers Local Union No. 3 Joint Apprenticeship Training Committee has submitted a written proposal to the Bureau of Land Management (BLM) to utilize portions of the following described lands in Yuba County, California for the purposes of constructing and operating a training facility for heavy equipment operators:

T. 16 N., R. 5 E., Mount Diablo Meridian
Sec. 27, Lots 4, 5, and 12,
S½N½NE¼SW¼, S½NE¼SW¼.

The BLM has reviewed the proposal and has determined that the land would be suitable for a non-competitive land use authorization under the provisions of Section 302 of the Federal Land Policy and Management Act.

DATES: Interested parties may submit comments in writing to BLM at the address below not later than May 15, 2006.

ADDRESSES: Bureau of Land Management, Field Office Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Jodi Lawson, Realty Specialist, at address given above, or by telephone at (916) 985–4474.

SUPPLEMENTARY INFORMATION: The proposal is to utilize 57 acres of public land for the construction and operation of an apprenticeship training center for heavy equipment operators. The training center would consist of two 2,400 square-foot stationary buildings, one for maintenance and one for equipment/vehicle washing; and five portable trailers that would serve as classrooms, a restroom, and an administrative building. The training center would require approximately 9,500 square feet of unpaved parking and unpaved roads connecting the parking area to Hammonton Road. Approximately 20 pieces of heavy equipment would be stored on-site within the unpaved parking area which would be fenced to control access and prevent unauthorized entry.

The training center would provide training opportunities in 6-week classes with 20 students at a time. Students would be trained in the use of heavy equipment in rock, sand and gravel operations. The center would also offer 2-week classes for upgrading journeyman equipment operator's skills.

BLM has assessed the proposal and determined the proposed use would be in conformance with the Sierra Planning Area Management Framework Plan, under 43 CFR 1610.8. The site is suitable for the requested land use due to past industrial mining operations that has previously severely disturbed the environment on most of the site. A non-competitive land use authorization may be employed due to the absence of any competitive interest past or present for use of the land for such a purpose.

An environmental analysis was completed in connection with the proposal. The analysis indicated the project would have positive economic impacts and no significant environmental impacts.

Yuba County, in which the area is located, is one of the more economically depressed counties in California. Nearly 21% of the county's population lives below the poverty line and per capita income is one third less than the state average. Projects with positive economic impacts are highly sought after by local government. For this reason and others, the Yuba County Board of Supervisors supports the project and has passed two resolutions indicating their support of the project.

Environmental impacts are benign due largely to the fact that the area in which heavy equipment would be operated has previously been mined. The land was mined by large gold dredges that literally turned the landscape upside down.

On October 13, 2005 a public meeting was held in Marysville, California to discuss the project and the environmental assessment. The meeting was attended by over 120 people. Twenty-five speakers spoke in favor, one in opposition. One speaker spoke in favor but asked for minor amendments to the project specifications. Two current members of the Yuba County Board of Supervisors and one past board member made comments in favor of the project. Six written comments were provided to the BLM at the public meeting, all but one was in support. The letter of opposition was from Western Aggregates, L.L.C. a mining company with substantial interests in this area.

The 45-day public comment period on the environmental assessment yielded five public comments. One was extensive and critical of the environmental assessment. It was provided by the attorney for Western Aggregates, L.L.C. A comment letter was received from the Corps of Engineers which pointed out their omission as an agency with an interest in the area, and a letter was received from the State of California indicating compliance with California State Clearinghouse procedures. The final two comment letters were from individuals supporting the project, though one letter requested certain mitigation measures.

Following publication of this notice, and pursuant to the regulations at 43 CFR part 2920, BLM will accept for processing an application filed by the Operating Engineers Local Union No. 3 Joint Apprenticeship Training Center for a non-competitive land use authorization for the above described public land for use as proposed herein. Copies of the environmental analysis of this proposed action are available for review at the Folsom Field Office.

Comments on BLM's determination of the availability and suitability of the subject lands for the proposed use described herein and its decision to accept an application from the Operating Engineers Local Union No. 3 Joint Apprenticeship Training Committee for a non-competitive land use authorization may be submitted to the BLM at the address stated above within 30 days following publication of this notice. All comments will be evaluated by the BLM Folsom Field Office Manager prior to making a final decision on whether or not to authorize use of the property for a heavy equipment operator training area.

Dated: February 2, 2006.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA–930).

[FR Doc. E6–5477 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

April 4, 2006.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., April 4, 2006. All inquiries should be sent to the Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The Plat (in two sheets) and field notes, of the dependent resurvey and surveys in Township 47 North, Range 4 West, New Mexico Principal Meridian, Colorado, requested by the Bureau of Indian Affairs, in order to identify the boundary of the Ute Mountain Ute lands for management purposes, was accepted October 3, 2005.

The Supplemental Plat of Township 43 North, Range 7 West, New Mexico Principal Meridian, Colorado, creating Tract 51, in unsurveyed T. 43 N., R. 7 W., N.M.P.M., requested by the USFS, was accepted October 11, 2005.

The Supplemental Plat of Township 1 North, Range 71 West, Section 17, Sixth Principal Meridian, Colorado, which amends the erroneously numbered lot 107, as shown on the supplemental plat approved November 29, 1932, to lot 156, is based upon the supplemental plat approved November 29, 1932 and the dependent resurvey plat approved November 16, 1942, and was accepted November 1, 2005.

The Supplemental Plat of Township 43 North, Range 10 West, New Mexico Principal Meridian, Colorado, creates new lots 4 through 9, in the SW¼ of Sec. 25. This was requested by the U.S. Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests, in a letter dated October 17, 2005, in order to facilitate a transfer of lands, with the Telluride Regional Airport Authority, and was accepted November 1, 2005.

The Plat which includes the field notes, and is the entire record of this resurvey, of the survey of Section 13, in Township 40 North, Range 13 West, New Mexico Principal Meridian, Colorado, requested by the USFS to assist with the completion of a land exchange, was accepted December 19, 2005.

The Supplemental Plat of a portion of section 7, and the supplemental plat of a portion of section 20 in Township 1 North, Range 71 West, and the supplemental plat of a portion of section 24 in Township 1 North, Range 72 West, all of the Sixth Principal Meridian, Colorado, requested by the Canon City Field Office Land Surveyor by memorandum dated November 8, 2005, were accepted January 18, 2006.

The Plat and field notes, of the dependent resurvey and surveys in Township 48 North, Range 3 West, New Mexico Principal Meridian, Colorado, requested by the Bureau of Indian Affairs, in order to identify the boundary of Ute Mountain Ute lands for management purposes, was accepted January 25, 2006.

The Plat and field notes, of the dependent resurvey and surveys in Sec. 24, township 49 North, Range 2 West, New Mexico Principal Meridian, Colorado, requested by the Chief of Resource Stewardship and Science, Curecanti National Recreation Area, National Park Service, in order to facilitate an exchange of the sub-surface rights to a parcel of land within the Dickerson Gravel Pit, was accepted February 15, 2006.

The Plat and field notes, of the dependent resurvey and surveys in Section 4, Township 48 North, Range 4 West, New Mexico Principal Meridian, Colorado requested by a private party, through the National Park Service, by a proffer of monetary contribution dated March 25, 2005, to identify the north, south and west boundary of private Lot 11, in Section 4, T. 48 N., R. 4 W., was accepted February 21, 2006.

The Plat which includes the field notes, and is the entire record of this resurvey, in Township 35 North, Range 18 West, New Mexico Principal Meridian, Colorado, requested by the BIA through the Ute Mountain Tribe, to identify lost corners and post boundaries of Ute Mountain Ute lands, was accepted March 16, 2006.

The Plat, and field notes, of the dependent resurvey in Section 9, Township 11 South, Range 70 West, Sixth Principal Meridian, Colorado requested by the Land Surveyor, Pike and San Isabel National Forests, in order to identify National Forest boundaries for a proposed timber sale in conjunction with the Hayman Fire Rehabilitation Project, was accepted March 17, 2006.

The Plat, and field notes of the metes-and-bounds survey in Township 5 South, Range 74 East, Sixth Principal Meridian, Colorado requested by the USFS, in a memorandum dated February 8, 2000, in conjunction with the City of Denver, Mountain Parks and Recreation Division, in order to facilitate the location of the boundaries of both agencies intermingled boundaries, and to further facilitate a land transaction between the two agencies, was accepted March 24, 2006.

Randall M. Zanon,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 06–3566 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–06–1420–BJ–TRST]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harold M. Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and was necessary to determine Individual and Tribal Trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 46 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the 11th Guide Meridian East, through Township 26 North, a portion of the north boundary, a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 1, 2, 10, and 11, a portion of the subdivision of sections 1 and 2, the subdivision of section 11, the adjusted 1986 representation of the 1908 meander of the left bank of the Missouri River, downstream, through the N1/2N1/2 of section 1, the adjusted 1986 meanders of the left bank of the Missouri River, downstream, through the E ½ of section 1 and certain division of accretion lines, and a portion of the

subdivision of sections 1 and 2, and the survey of the informative traverse of the meanders of the present left bank of the Missouri River, downstream, through section 10, the meanders of the present left bank of the Missouri River, downstream, through sections 1, 2, and 11, and certain division of accretion lines in Township 26 North, Range 46 East, Principal Meridian, Montana, was accepted April 5, 2006.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: April 7, 2006.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E6–5478 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) is submitting the following information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35), requesting extension of a currently approved collection (OMB No.: 3117–0190). The USITC has requested an emergency 3-month extension from May 2006 to August 2006 for use of the current form and a decision on the 3-month extension by April 13, 2006.

DATES: *Effective Date:* April 7, 2006.

Purpose of Information Collection: The requested extension of a currently approved collection (USITC DataWeb user registration form) is for use by the Commission. The user registration forms are required to accurately track usage, data reports generated, and costs by user sectors. The forms would appear on the ITC DataWeb Internet site (*http://dataweb.usitc.gov*) and would need to be filled out only once.

Public Comments Regarding the Information Collection: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received not later than 30 days after publication of this notice, at OMB by the Desk Officer/USITC.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of forms:* ITC Tariff and Trade DataWeb: ''Create New User Account Form''.

(3) *Type of request:* Extension.

(4) *Frequency of use:* Single data gathering.

(5) *Description of respondents:* Government and private sector users of the on-line ITC DataWeb.

(6) *Estimated number of respondents:* 20,000 new users annually.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the agency submissions to OMB in connection with this request may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 (telephone no. 202–205–3431). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–3897). Copies of any comments should also be provided to Stephen McLaughlin, Chief Information Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal, (telephone no. 202–205–1810).

Issued: April 7, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5463 Filed 4–12–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), notice is hereby given that on March 31, 2006, a proposed Remedial Design/Remedial Action Consent Decree (''Decree'') in *United States* v. *Dravo Corporation, et al.,* Civil Action No. 8:01–cv–500 (D. Nebraska) was lodged with the United States District Court for the District of Nebraska.

The Decree resolves claims of the United States against Defendants Dravo Corporation, Desco Corporation and Desco Corporation d/b/a Marshalltown Instruments, Inc. under Section 107 of CERCLA, 42 U.S.C. 9607, for recovery of response costs incurred and to be incurred by the United States Environmental Protection Agency (''EPA'') at the Colorado Avenue Subsite (''Subsite'') of the Hastings Ground Water Contamination Superfund Site located in Adams County, Nebraska. The Decree requires the Defendants to pay $7.3 million in partial reimbursement of EPA's past response costs. In addition, the Decree requires the Defendants to continue to implement and complete implementation of several components of the interim remedy selected by EPA for the Subsite, and to pay EPA's costs of oversight. The interim work to be performed by the Defendants is expected to cost about $3.5 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dravo Corporation, et al.,* Civil Action No. 8:01–cv–500 (D. Nebraska) D.J. Ref. 90–11–2–1260/1.

The Decree may be examined at the Office of the United States Attorney for the District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506, and at U.S. EPA Region VII, 901 N. Fifth Street, Kansas City, KS 66101. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy

of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $57.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy without the appendices, please enclose a check in the amount of $12.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–3519 Filed 4–12–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Intent To Fund the Foundation for Peace and Democracy (FUNPADEM)

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of Intent to award up to a total of $7 million to the Foundation for Peace and Democracy (FUNPADEM) to implement a program to support government, worker, and employer initiatives to strengthen compliance with national labor laws in Central America and the Dominican Republic (Guatemala, Honduras, El Salvador, Nicaragua, and the Dominican Republic).

SUMMARY: The free trade agreement between the United States and the CAFTA–DR countries establishes a commitment to effectively enforce domestic labor laws. This project will assist CAFTA–DR countries to develop and implement measures to improve compliance with their national labor laws. The project will build on work currently being carried out by FUNPADEM under the existing cooperative agreement number E–9-K–3–0097 with the Department of Labor, which was awarded through a competitive process in 2003 (SGA 03–20, Vol. 68, No. 139 of the **Federal Register** on July 21, 2003). Utilizing FUNPADEM eliminates unnecessary costs, project duplication, and inconsistencies that would occur with a new implementer. The new funds will allow FUNPADEM to develop new activities and to extend activities currently under way at the national level to additional geographic regions within each country. The activities that FUNPADEM will extend and develop include:

- Develop and implement inspection and mediation case management systems;
- Improve inspection procedures and training for labor inspectors;
- Implement public awareness campaigns and training for workers and employers about labor laws and standards;
- Strengthen mediation centers and training for labor mediators; and
- Provide equipment such as computers and vehicles.

In addition, a specific gender component will be developed and incorporated into the work described above. The component will focus on reducing discrimination against women and sexual harassment in the maquila sector through public awareness, training for workers and employers, and the development or strengthening of gender offices within the Ministries of Labor.

FOR FURTHER INFORMATION CONTACT Lisa Harvey, *Harvey.Lisa@dol.gov,* (202) 693–4750. U.S. Department of Labor, Office of the Assistant Secretary, 200 Constitution Ave., NW., Washington, DC 20210.

Dated: April 5, 2006.

Lisa Harvey,

Grant Officer.

[FR Doc. E6–5514 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Request for Information Concerning Labor Rights in Malaysia and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, United States Department of Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Malaysia and describing the extent to which it has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments must be received no later than 5 p.m. May 30, 2006.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAMalaysia@dol.gov.* Submissions by facsimile may be sent to: Howard R. Dobson, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Howard R. Dobson, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4871, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Malaysia's laws governing exploitative child labor should be addressed to Gregory K. Schoepfle, Acting Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4887, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 8, 2006, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with Malaysia. The notification letters to the Senate and the House of Representatives can be found on the USTR Web site at: *http://www.ustr.gov/assets/Document_Library/Letters_to_Congress/2006/asset_upload_file337_9180.pdf.*

On March 22, 2006, USTR announced its intention to hold a public hearing on May 3, 2006, for the interagency Trade Policy Staff Committee (TPSC) to

receive written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (71 FR, 14558) (March 22, 2006). USTR intends to launch the negotiations in June, 2006.

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, ''Bipartisan Trade Promotion Authority.'' Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to ''address and maintain United States competitiveness in the global economy'' in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President ''in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating,'' and the function in section 2102(c)(9), which requires that the President ''with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.''

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted are expected to be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws of Malaysia, including laws governing exploitative child labor, and that country's implementation and enforcement of its labor laws and regulations;
2. The situation in Malaysia with respect to core labor standards;
3. Steps taken by Malaysia to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Malaysia.

Section 2113(6) of the Trade Act defines ''core labor standards'' as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, it is strongly recommended that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAMalaysia@dol.gov.* Persons making submissions by e-mail are expected to use the following subject line: ''Malaysia: Labor Rights and Child Labor Reports.'' Documents must be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail need not provide separate cover letters; information that might appear in a cover letter is expected to be included in the submission itself. Similarly, to the extent possible, any attachments to the submission are expected to be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Howard R. Dobson at (202) 693–4871. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1 p.m.–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC this 7th day of April 2006.

James Carter,

Deputy Under Secretary for International Labor Affairs.

[FR Doc. E6–5515 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,431]

Kennedy Die Castings, Inc., Currently Known as Thermalcast LLC, Including On-Site Leased Workers From Excel Staffing, Worcester, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (19 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 23, 2005, applicable to all workers of Kennedy Die Castings, Inc., Worcester, Massachusetts, including on-site leased workers from Excel Staffing. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11704).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers produced aluminum and zinc die cast components.

New information provided to the Department by a company official shows that in December 2004, Kennedy Die Castings, Inc., Worcester, Massachusetts, was purchased by Thermalcast LLC, and continued the production of aluminum and zinc die cast components. Therefore, the Department is amending the certification to reflect the new ownership.

The intent of the certification is to include all workers of the firm adversely affected by increased imports of aluminum and zinc die cast components.

The amended notice applicable to TA–W–56,431 is hereby issued as follows:

''All workers of Kennedy Die Castings, Inc., currently known as Thermalcast LLC, Worcester, Massachusetts, including on-site leased workers from Excel Staffing, who became totally or partially separated from employment on or after January 3, 2004, through February 23, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 23rd day of March, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5516 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,802]

Molex, Inc., New England Operations, Gilford, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 2005, applicable to workers of Molex, Inc., New England Operations, Gilford, New Hampshire. The workers are engaged in the production of electrical connectors.

New information provided by the petitioners show their intention was to apply for all available Trade Act benefits at the time of the filing. Therefore, the Department has made a decision to investigate further to determine if the workers are eligible to apply for Alternative Trade Adjustment Assistance.

Information obtained from the company states that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse.

Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met for workers at the subject firm.

Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–56,802 is hereby issued as follows:

''All workers of Molex, Inc., New England Operations, Gilford, New Hampshire, who became totally or partially separated from employment on or after March 23, 2004 through April 14, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 29th day of March 2006.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5517 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of March 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met, and section 246(a)(3)(A)(ii) of the Trade Act have been met.

A–W–58,726; Nelson Acquisition, LLC, Logansport, IN: January 26, 2005.

TA–W–58,726A; Nelson Acquisition, LLC, Columbia, TN: January 26, 2005.
TA–W–58,784; Moretz, Inc., Knitting Facility, Conover, NC: February 2, 2005.
TA–W–58,784A; Moretz, Inc., Newton Facility, Newton, NC: February 2, 2005.
TA–W–58,784B; Moretz, Inc., Warehouse Facility, Newton, NC: February 2, 2005.
TA–W–58,784C; Moretz, Inc., Hickory Facility, Hickory, NC: February 2, 2005.
TA–W–58,805; Collins Aikman Premier Molds, Sterling Heights, MI: February 3, 2005.
TA–W–58,815; Central Coating and Assembly, Inc., Mt. Pleasant, MI: February 26, 2006.
TA–W–58,861; Campbell Hausfeld, A Subsid. of Scott Fetzer, On-Site Leased Workers at Superior Staffing, Leitchfield, KY: February 2, 2005.
TA–W–58,934; Codi, Inc., Pillow, PA: February 27, 2005.
TA–W–58,968; Maryland Plastics, Inc., Federalsburg, MD: March 3, 2005.
TA–W–58,407; Franklin Industries Company, Franklin, PA: November 15, 2004.
TA–W–58,759; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, New Hartford, CT: January 30, 2005.
TA–W–58,760; Olympic Laser Processing, Belleville, MI: January 31, 2005.
TA–W–58,791; NorCap Limited Partnership, Gastonia, NC: January 26, 2005.
TA–W–58,796; Hastings Manufacturing Co., Hastings, MI: February 6, 2005.
TA–W–58,819; Bentwood Furniture, Inc., Grants Pass, OR: February 8, 2005.
TA–W–58,867; Hayes Lemmerz International, Huntington, IN: February 17, 2005.
TA–W–58,872; Manpower, Inc., Carolina Mills, Inc., Newton, NC: February 17, 2005.
TA–W–58,910; Joan Fabrics Corp., Mastercraft Sales and Design, Fall River, MA: February 21, 2005.
TA–W–58,691; Molding, Tooling and Design, Inc., Saco, ME: January 13, 2005.
TA–W–58,858,; Garden State Cutting Co., LLC, Passaic, NJ: February 15, 2005.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,769; American Medical Instruments, Inc., Dartmouth, MA: February 1, 2005.
TA–W–58,789; FCI USA, Inc., Etters, PA: March 27, 2005.
TA–W–58,811; Electrolux Home Care Products North America, On-Site Leased Workers of Southwest Staffing, El Paso, TX: June 18, 2005.
TA–W–58,840; VF Jeanswear Limited Partnership, Irvington, AL: March 12, 2006.
TA–W–58,845; Dura Automotive, Test Center, Pikeville, TN: February 10, 2005.
TA–W–58,851; Dal-Tile Corporation, a Division of Mohawk Industries, Jackson, TN: February 15, 2005.
TA–W–58,852; Motorola, Inc., Integrated Supply Chain Division, Fort Worth, TX: February 9, 2005.
TA–W–58,876; Selmer Apparel, Selmer, TN: February 22, 2005.
TA–W–58,877; Lamdau Uniforms, A Subsidiary of Selmer Apparel, LLC, Olive Branch, MS: May 2, 2004.
TA–W–58,901; Spirit Mountain Logistics, LLC, Workers at Hewlett-Packard Company, Corvallis, OR: February 22, 2005.
TA–W–58,915; Alba Health, LLC, Knoxville, TN: February 24, 2005.
TA–W–58,947; Collins and Aikman, Rantoul Division, Rantoul, IL: March 1, 2005.
TA–W–58,953; Eagle Ottawa, LLC, Cutting Operations, Rochester Hills, MI: March 2, 2005.
TA–W–58,957; Robbins, Inc., Division of Recreational Wood Sports Flooring, Ishpeming, MI: March 2, 2005.
TA–W–58,964; Reach Road Manufacturing Corp., Div. of Glamorise Foundations, Inc., Williamsport, PA: March 3, 2005.
TA–W–58,788; Pulse Specialty Company, Greensboro, MD: February 3, 2005.
TA–W–58,823; Siemens Medical Solutions USA, Ultrason Division, Mountain View, CA: December 20, 2004.
TA–W–58,836; American Greetings, Lafayette, TN: February 13, 2005.
TA–W–58,849; Michaels of Oregon, Oregon City, OR: February 14, 2005.

The following certification has been issued. The requirement of supplier to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,423; Unifi, Inc., Plant 1, Mayodan, NC: November 29, 2004.
TA–W–58,835; Ramtex, Inc., Including On-Site Leased Workers of Defender Services, Ramseur, NC: February 3, 2005.
TA–W–58,842; Spirit Aero Systems, Formerly The Boeing Company, McAlester, OK: February 10, 2005.
TA–W–58,862; La France Industries, A Subsidiary of Mount Vernon Mills, La France, SC: February 7, 2005.

The following certification has been issued. The requirement of downstream producer to a trade certified firm and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,294A; Celanese Emulsions Corporation, RV 45 Emulsions Department, Meredosia, IL.
TA–W–58,294C; Celanese Emulsions Corporation, RV 42 Personal Care, Meredosia, IL.
TA–W–58,294E; Celanese Emulsions Corporation, Lacqer Department, Meredosia, IL.
TA–W–58,865; Butler Veneer Sales, Inc., High Point, NC.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (shift in production to a foreign country) have not been met.

TA–W–58,294; Celanese Emulsions Corporation, B Wing Resins Department, Meredosia, IL.
TA–W–58,294B; Celanese Emulsions Corporation, EVA Emulsions Department, Meredosia, IL.
TA–W–58,680; Leemah Electronics, San Francisco, CA.
TA–W–58,946; Fibre-Metal Products Co., Concordville, PA.

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,294D; Celanese Emulsions Corporation, Solvent Adhesive Compound Department, Meredosia, IL.
TA–W–58,294F; Celanese Emulsions Corporation, Hot Melt Department, Meredosia, IL.
TA–W–58,496; Bosch Fuel Systems, LLC, Subsidiary of Robert Bosch GMBH, Kentwood, MI.
TA–W–58,724; Sanford North America, Paper Mate Division, Santa Monica, CA.
TA–W–58,744; Omco Cast Metals, Inc., Winchester, IN.
TA–W–58,774; Innovex, Inc., Litchfield, MN.

TA–W–58,775; Maytag Herrin Laundry Products, Appliance Division, Herrin, IL.
TA–W–58,783; Mohon International, Div. of Sagus Int'l, Paris, TN.

The investigation revealed that criteria (a)(2)(A)(I.C) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,971; Sotco, Inc., West Paducah, KY.
TA–W–58,979; Tension Envelopes Corp., Manufacturing Department, Minnetonka, MN.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–58,759A; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Wilton, CT.
TA–W–58,759B; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Riverton, CT.
TA–W–58,759C; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Orange, CT.
TA–W–58,759D; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Glastonbury, CT.
TA–W–58,825; Leather Bella, LLC, Randleman, NC.
TA–W–58,854; IBM Application Services, Business Consulting Services, RTP, NC.
TA–W–58,933; Delta Airlines, Inc., Maintenance Dept., Portland, OR.
TA–W–58,939; Kmart, Rainbow City, AL.
TA–W–58,944; Airfoil Technologies International, Mentor, OH.
TA–W–58,951; Delta Airlines, Inc., Technical Operations, Atlanta, GA.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–58,963; Huntington Foam, Greenville, MI.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,294A; Celanese Emulsions Corporation, RV 45 Emulsions Department, Meredosia, IL.
TA–W–58,294C; Celanese Emulsions Corporation, RV 42 Personal Care, Meredosia, IL.
TA–W–58,294E; Celanese Emulsions Corporation, Lacqer Department, Meredosia, IL.
TA–W–58,865; Butler Veneer Sales, Inc., High Point, NC.
TA–W–58,294; Celanese Emulsions Corporation, B Wing Resins Department, Meredosia, IL.
TA–W–58,294B; Celanese Emulsions Corporation, EVA Emulsions Department, Meredosia, IL.
TA–W–58,680; Leemah Electronics, San Francisco, CA.
TA–W–58,946; Fibre-Metal Products Co., Concordville, PA.
TA–W–58,294D; Celanese Emulsions Corporation, Solvent Adhesive Compound Department, Meredosia, IL.
TA–W–58,294F; Celanese Emulsions Corporation, Hot Melt Department, Meredosia, IL.
TA–W–58,496; Bosch Fuel Systems, LLC, Subsidiary of Robert Bosch GMBH, Kentwood, MI.
TA–W–58,724; Sanford North America, Paper Mate Division, Santa Monica, CA.
TA–W–58,744; Omco Cast Metals, Inc., Winchester, IN.
TA–W–58,774; Innovex, Inc., Litchfield, MN.
TA–W–58,775; Maytag Herrin Laundry Products, Appliance Division, Herrin, IL.
TA–W–58,783; Mohon International, Div. of Sagus Int'l, Paris, TN.
TA–W–58,971; Sotco, Inc., West Paducah, KY.
TA–W–58,979; Tension Envelopes Corp., Manufacturing Department, Minnetonka, MN.
TA–W–58,759A; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Wilton, CT.
TA–W–58,759B; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Riverton, CT.
TA–W–58,759C; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Orange, CT.
TA–W–58,759D; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, Glastonbury, CT.
TA–W–58,825; Leather Bella, LLC, Randleman, NC.
TA–W–58,854; IBM Application Services, Business Consulting Services, RTP, NC.
TA–W–58,933; Delta Airlines, Inc., Maintenance Dept., Portland, OR.
TA–W–58,939; Kmart, Rainbow City, AL.
TA–W–58,944; Airfoil Technologies International, Mentor, OH.
TA–W–58,951; Delta Airlines, Inc., Technical Operations, Atlanta, GA.
TA–W–58,963; Huntington Foam, Greenville, MI.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–58,845; Dura Automotive, Test Center, Pikeville, TN.
TA–W–58,759; Buckingham Galleries, D/B/A Hitchcock Fine Home Furnishings, New Hartford, CT.

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,819; Bentwood Furniture, Inc., Grants Pass, OR.
TA–W–58,805; Collins Aikman Premier Molds, Sterling Heights, MI.
TA–W–58,815; Central Coating and Assembly, Inc., Mt. Pleasant, MI.
TA–W–58,861; Campbell Hausfeld, A Subsid. of Scott Fetzer, On-Site Leased Workers at Superior Staffing, Leitchfield, KY.
TA–W–58,273; Elmer's Products, Inc., Bainbridge, NY.
TA–W–58,968; Maryland Plastics, Inc., Federalsburg, MD.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of March 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 30, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–5518 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,485]

Rawlings Sporting Goods Company, a Subsidiary of K2, Inc., Licking, MO; Notice of Revised Determination on Reconsideration

On February 2, 2006, the Department issued an Affirmative Determination

Regarding Application for Reconsideration for the workers and former workers of Rawlings Sporting Goods Company, A Subsidiary of K2, Inc., Licking, Missouri. The Department's Notice was published in the **Federal Register** on February 10, 2006 (71 FR 7076).

The initial negative determination was based on the findings that the subject worker group does not produce an article within the meaning of Section 222(a)(2) of the Trade Act and do not support a domestic production facility that is import-impacted. Workers produced graphic art design for apparel manufactured at affiliated facilities in Costa Rica and Washington, Missouri. Workers were separated when the subject facility closed in 2005.

In the request for reconsideration, the petitioner alleged that art design production shifted to Costa Rica in 2005.

During the reconsideration investigation, the Department contacted a company official who stated that art design shifted to Costa Rica in 2005.

The investigation also revealed that all criteria have been met in regard to Alternative Trade Adjustment Assistance (ATAA). A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that a shift of art design production to Costa Rica contributed importantly to worker separations at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Rawlings Sporting Goods Company, A Subsidiary of K2, Inc., Licking, Missouri, who became totally or partially separated from employment on or after December 5, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 27th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5519 Filed 4–12–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Sago Mine Explosion, Buckhannon, WV, Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: This notice sets a date, time, place and procedures for a public hearing in connection with the Mine Safety and Health Administration's and the State of West Virginia's investigation of the January 2, 2006 explosion at the Sago Mine in Buckhannon, West Virginia.

DATES: The hearing will begin at 9 a.m e.d.t. on May 2, 2006 and at 8:30 a.m. e.d.t. on May 3.

ADDRESSES: Benedum Campus Community Center, West Virginia Wesleyan College, 59 College Avenue, Buckhannon, West Virginia 26201.

FOR FURTHER INFORMATION CONTACT: Mark R. Malecki, Counsel for Trial Litigation, Office of the Solicitor, United States Department of Labor; phone: (202) 693–9341; facsimile: (202) 693–9361; electronic mail: *Malecki.Mark@dol.gov.*

SUPPLEMENTARY INFORMATION: The hearing will be convened pursuant to Section 103(b) of the Federal Mine Safety & Health Act of 1977, *30 U.S.C. Section 813(b).* The purpose of the hearing is to assist the Mine Safety and Health Administration (MSHA) in carrying out its statutory responsibility to (1) Determine the cause(s), including possible contributory causes, of the explosion; (2) identify and develop corrective actions, procedures and strategies to prevent the occurrence of similar accidents; (3) obtain, utilize, and disseminate information related to the health and safety conditions at the Sago Mine; and (4) gather information with respect to mandatory safety and health standards. The hearing will be non-adversarial and fact-finding in nature and questioning will be limited to the statutory purposes.

The hearing will be conducted jointly with officials of the State of West Virginia. The rules of the hearing are as follows:

1. Composition of the Hearing Panel

The Hearing Panel will be composed of representatives of MSHA and representatives of the State of West Virginia. The Hearing Panel will be headed by a Chairperson who shall be selected by the State of West Virginia. The Chairperson shall have the authority to administer oaths, regulate the conduct of the public hearing, and rule on any procedural questions or objections.

2. Witness Testimony

a. Witness testimony will be presented in panels according to topics selected in advance by representatives of MSHA and the State of West Virginia.

b. Each witness shall take an oath and opening statements or presentations on behalf of the witness or the panel will be limited at the discretion of the Chairperson.

c. Witnesses may use visual aids, demonstrative exhibits or documents but should make arrangements in advance with the Chairperson to assure that such materials can be adequately displayed in the allotted time and that there are means by which the objects or documents may be entered into the record.

d. Following the presentation of witness' statements, representatives of MSHA and the State of West Virginia may question the witness and ask clarifying questions.

e. Following the conclusion of the initial statements and questions by the Secretary's representatives and State officials, a designated representative of the families who lost relatives in the mine explosion on January 2, 2006 shall have the opportunity to ask questions of the witnesses on the panel. The Chairperson shall have the authority to consider whether the question is relevant and appropriate, and if so, the witness shall answer the question. Other persons may submit questions in writing to the Chairperson, who shall ask the questions that he believes are relevant and appropriate to ask of the witnesses. All the questions submitted during the hearing shall be retained and entered into the public hearing record. The Chairperson may direct specific questions to particular witnesses to be responded to in writing for inclusion in the hearing record.

f. The testimony of witnesses, including statements and responses to questions shall be transcribed and made part of the public record. The transcripts of witness interviews taken during the joint MSHA—WV Sago accident investigation, including exhibits, shall be made part of the record of this public hearing unless otherwise subject to privilege.

g. Any material or documents gathered pursuant to the Sago accident investigation may be made part of the record of the public hearing at the discretion of MSHA and the State of West Virginia.

3. Issuance of Subpoenas

The Chairperson shall have the authority to issue subpoenas for the purpose of securing the attendance of witnesses to provide testimony and the production of relevant documents or objects or testimony. If a witness appears to testify pursuant to subpoena, MSHA and the State of West Virginia shall pay all normally applicable witness fees.

4. Attendance of Spectators and Media

The public hearing is open to the public; however, MSHA and State of West Virginia have the authority to put reasonable limitations on use of transcription devices, videotape cameras, still cameras, camera lights and camera flash lights. MSHA and State of West Virginia have the right to restrict persons from entering into the hearing room if they believe their conduct will be disruptive and have the right to restrict the number of spectators to the capacity of the meeting room.

Dated: April 10, 2006.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 06–3580 Filed 4–11–06; 11:08 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 716, from 9 a.m. to 5 p.m., on Monday, May 8, 2006.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2006.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Heather Gottry, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6–5468 Filed 4–12–06; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 6794, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Catherine Hines, Acting Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *chines@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–4414.

FOR FURTHER INFORMATION CONTACT: Catherine Hines at (703) 292–4414 or send e-mail to *chines@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0080.

Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.2—''Solicitation and Receipt of Proposals and Information'' prescribes policies and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively

solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of Burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 41,850 hours.

Dated: April 10, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–3556 Filed 4–12–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Workshop on Hurricane Science and Engineering

Date and Time: April 18, 2006, 8 a.m.–6:15 p.m. (CT).

Place: Institute for Human and Machine Cognition, 40 South Alcaniz Street, Pensacola, Florida.

Contact Information: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated Agenda. NSB Office; Mrs. Susan E. Fannoney (703) 292–7000.

Status: This Workshop will be open to the public.

Provisional Agenda

Toward a National Agenda for Hurricane Science and Engineering, Workshop #3: Academic Research Perspectives

8 a.m. Welcoming Remarks—Dr. Warren M. Washington, Chairman, National Science Board.
8:05 a.m. Motivation, Purpose and Goals. Drs. Kelvin K. Droegemeier and Ken Ford, National Science Board Members and co-chairs of Board Task Force on Hurricane Science and Engineering..
8:20 a.m. Process and Logistics for NSB Workshops. Dr. Michael Crosby, Executive Officer, National Science Board.
8:30 a.m. Panel Session I: Physical, Biological and Ecological Sciences.
10:10 a.m. Roundtable Discussion.
10:40 a.m. Break.
10:55 a.m. Panel Session II: Social, Behavioral, and Economic Sciences.
12:15 a.m. Roundtable Discussion.
12:45 a.m. Break.
2 p.m. Panel Session III: Engineering and Infrastructure.
3:40 p.m. Roundtable Discussion.
4:10 p.m. Break-Out Groups (Sessions I, II, III).
5:15 p.m. Break-Out Group Reports and Discussion 5 p.m. Summary and Next Steps.
6:15 p.m. Adjourn.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 06–3607 Filed 4–12–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 110, Export and Import of Nuclear Equipment and Material.

2. *Current OMB approval number:* 3150–0036.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Any person in the U.S. who wishes to export: (a) Nuclear equipment and material subject to the requirements of a specific license, (b) radioactive waste subject to the requirements of a specific license, and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. *The number of annual respondents:* 62.

6. *The number of hours needed annually to complete the requirement or request:* 857 [478 reporting + 379 recordkeeping (0.66 hours per response)].

7. *Abstract:* 10 CFR part 110 provides application, reporting, and recordkeeping requirements for export and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR part 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

Submit, by June 12, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5F53), U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, or by telephone 301–415–7233, or by Internet electronic mail to *INFOCOLLECT@NRC.GOV.*

Dated at Rockville, Maryland, this 6th day of April 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E6–5499 Filed 4–12–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2006 Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: OMB requests comments on 2006 Draft Report to Congress on the Costs and Benefits of Federal Regulation. The full Draft Report is available at *http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html,* and is divided into three chapters. Chapter I presents estimates of the costs and benefits of Federal regulation and paperwork, with an emphasis on the major regulations issued between October 1, 2004 and September 30, 2005. Chapter II provides an update on OMB's ongoing historical examination of the trends in Federal regulatory activity. Chapter III discusses international developments in regulatory policy.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by July 12, 2006.

ADDRESSES: We are still experiencing delays in the regular mail, including first class and express mail. To ensure that your comments are received, we recommend that comments on this draft report be electronically mailed to *OIRA_BC_RPT@omb.eop.gov,* or faxed to (202) 395–7245. You may also submit comments to Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. For Further Information, contact: Lorraine Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10202, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–3084. All comments submitted in response to this notice will be made available to the public, including by posting them on OMB's Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget (OMB) to prepare an annual Report to Congress on the Costs and Benefits of Federal Regulations. Specifically, Section 624 of the FY 2001 Treasury and General Government Appropriations Act, also known as the ''Regulatory Right-to-Know Act,'' (the Act) requires OMB to submit a report on the costs and benefits of Federal regulations together with recommendation for reform. The Act states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Act also states that the report should go through notice and comment and peer review.

Donald R. Arbuckle,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E6–5524 Filed 4–12–06; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27283; 812–12947]

Van Eck Associates Corporation, et al.; Notice of Application

April 7, 2006.

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

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of open-end management investment companies, to issue shares (''Shares'') that can be redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Van Eck Associates Corporation (the ''Adviser''); Market Vectors—Gold Miners ETF (the ''Trust''); and Van Eck Securities Corporation (the ''Distributor'').

Filing Dates: The application was filed on March 25, 2003, and amended on February 3, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 1, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 99 Park Avenue, 8th Floor, New York, NY 10016.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel at (202) 551–6876, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102, telephone (202) 551–5850.

Applicants' Representations

1. The Trust is registered as an open-end management investment company and is organized as a Delaware trust authorized to issue multiple series. The Trust intends to offer and sell shares of one or more series (each an ''Index Fund''), including the Market Vectors—Gold Miners ETF (''Initial Index Fund''). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and will serve as the investment adviser to each Index Fund. In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as ''sub-advisers'' with respect to particular Index Funds. Any sub-adviser will be registered under the Advisers Act or exempt from registration. The

Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), will serve as the principal underwriter and distributor for the Index Funds.

2. Each Index Fund will hold certain securities (''Portfolio Securities'') selected to correspond generally to the price and yield performance, before fees and expenses, of a specified equity securities index (each an ''Underlying Index''). No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, promoter or any sub-adviser to an Index Fund. The Underlying Index for the Initial Index Fund is the Amex Gold Miners Index, a modified market capitalization weighted index comprised of publicly-traded companies involved primarily in mining for gold and silver. The Trust may offer additional Index Funds in the future based on other Underlying Indexes (''Future Index Funds''). Any Future Index Funds will (a) comply with the terms and conditions of any order granted pursuant to the application and (b) be advised by the Adviser.

3. The investment objective of each Index Fund will be to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. An Index Fund will utilize either a ''replication'' or ''representative sampling'' strategy.[1] An Index Fund using a ''replication'' strategy will invest in substantially all of the Component Securities in its Underlying Index in approximately the same weightings as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is illiquid, an Index Fund may use a ''representative sampling'' strategy pursuant to which it will invest in some, but not all of the relevant Component Securities.[2] Applicants anticipate that an Index Fund that utilizes a ''representative sampling'' strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Index Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

4. Shares of the Index Funds will be sold at a price of between $40 and $50 per Share in Creation Units of 50,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust and Distributor (''Authorized Participant''). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Shares of each Index Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser to correspond generally to the price and yield performance, before fees and expenses, of the relevant Underlying Index (the ''Deposit Securities''), together with the deposit of a relatively small specified cash payment (''Cash Component''). The Cash Component is generally an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit) of the Index Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.[3] Applicants state that in some circumstances it may not be practicable or convenient for an Index Fund to operate exclusively on an ''in-kind'' basis. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing a Creation Unit from an Index Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.[4] The maximum Transaction Fees relevant to each Index Fund will be fully disclosed in the prospectus (''Prospectus'') of such Index Fund or statement of additional information (''SAI''). All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the Trust. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

5. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on the American Stock Exchange, LLC, (''Amex''), another U.S. national securities exchange as defined in section 2(a)(26) of the Act, and Nasdaq Stock Market (''Nasdaq'') (each, an ''Exchange''). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market for Shares on the Exchange (the ''Exchange Specialist''), or if Nasdaq is the listing Exchange, one or more member firms of Nasdaq will act as a market maker (''Market Maker'') and maintain a market for Shares.[5] Prices of Shares

[1] Applicants represent that the Index Fund will normally invest at least 95% of its total assets in the component securities that comprise its Underlying Index (''Component Securities''). Each Index Fund also may invest up to 5% of its assets in money market instruments or money market funds that comply with rule 2(a)(7) under the Act, in futures contracts, options, options on futures contracts, swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser believes will help the Index Fund track its Underlying Index.

[2] Under the ''representative sampling'' strategy, the Adviser will seek to construct an Index Fund's portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

[3] The Trust will sell Creation Units of each Index Fund on any day that an Index Fund is open for business, including as required by section 22(e) of the Act (a ''Business Day''). In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each Business Day, the Cash Component effective as of the previous Business Day, per outstanding Share of each Index Fund, will be made available. The Exchanges intend to disseminate, every 15 seconds, during their respective regular trading hours, through the facilities of the Consolidated Tape Association (''CTA''), an approximate amount per Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

[4] Where an Index Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[5] If Shares are listed on the Nasdaq, no particular Market Maker will be contractually obligated to make a market in Shares, although Nasdaq's listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Shares to maintain the listing. Registered Market

Continued

trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

6. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Exchange Specialist, or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[6] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

7. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Index Fund, or tender such Shares for redemption to the Index Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (''Fund Securities''), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

8. Neither the Trust nor any individual Index Fund will be marketed or otherwise held out as an ''open-end investment company'' or a ''mutual fund.'' Instead, each Fund will be marketed as an ''exchange-traded fund,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the method of obtaining, buying or selling Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Index Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or

Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Index Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

8. Applicants state that Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information will be published daily in the financial section of newspapers. In addition, the Trust also intends to maintain a Web site that will include the Prospectus and SAI, the relevant Underlying Index for each Index Fund and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price, the NAV for each Index Fund and information about the premiums and discounts at which the Index Fund's Shares have traded.

9. Applicants will arrange for broker-dealers selling Shares in the secondary market to provide purchasers with a product description (''Product Description'') that describes, in plain English, the relevant Index Fund and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust to acquire shares of an Index Fund beyond the limits of section 12(d)(1)(A) and (B), (Investing Management Companies and Investing Trusts collectively, ''Investing Funds''). Investing Funds exclude registered investment companies that are, or in the future may be, part of the same group of investment companies within the meaning of section 12(d)(1)(G)(ii) of the Act as the Index Funds. In addition, applicants seek relief to permit an Index Fund and the Distributor or any broker or dealer (''Broker'') that is registered under the Exchange Act to knowingly sell shares of the Index Fund to an Investing Fund in excess of the limits of section 12(d)(1)(B). Applicants request that the relief sought apply to (a) Index Funds that are advised by the Adviser and in the same group of investment companies as the Trust, (b) each Investing Fund that enters into a participation agreement with the Index Fund (''Participation Agreement''), and (c) any Broker.[8]

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Investing Fund Advisor'') and may be advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Subadviser''). Any investment adviser to an Investing Fund will be registered under the Advisers Act or exempt from registration. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

[7] Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Shares from the Trust or an underwriter. Applicants further state that the Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the Prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from an Index Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Index Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Index Fund's Prospectus will caution dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

[8] All parties that currently intend to rely on the requested relief from section 12(d)(1) are named as applicants. Any other party that relies on this relief in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in the Index Funds and not in any other registered investment company.

13. Applicants submit that the proposed conditions to the relief requested adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence, excessive layering of fees and overly complex structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Index Funds.[9] To limit the control that an Investing Fund may have over an Index Fund, applicants propose a condition prohibiting an Investing Fund Advisor or a Sponsor, any person controlling, controlled by, or under common control with an Investing Fund Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by an Investing Fund Advisor or Sponsor, or any person controlling, controlled by, or under common control with an Investing Fund Advisor or Sponsor (''Investing Fund Advisor/Sponsor Group'') from controlling (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Subadviser, any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Index Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Subadviser, employee or Sponsor of an Investing Fund, or a person which any such officer, director, member of an advisory board, Investing Fund Advisor, Subadviser, employee, or Sponsor is an affiliated person (except any person whose relationship to the Index Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.)

15. Applicants do not believe the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. In addition, an Investing Fund Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b–1 under the Act) received by the Investing Fund Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Advisor, trustee or Sponsor, from the Index Funds in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Applicants state that any sales loads or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD.

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Index Fund may acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that to ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in an Index Fund in reliance on the requested order will be required to enter into a Participation Agreement between the Index Fund and the Investing Fund. The Participation Agreement will require the Investing Fund to adhere to the terms and conditions of the requested order and participate in the proposed transactions in a manner that addresses concerns regarding the requested relief. The Participation Agreement also will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Index Funds and not in any other investment company. The Participation Agreement will further require any Investing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in Index Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Investing Funds investing in Index Funds, including but not limited to the expense structure and any additional expenses of investing in Index Funds.

Section 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of such company. Section 2(a)(3) of the Act defines an affiliated person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the other person and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants state that if Creation Units of an Index Fund are held by twenty or fewer investors, including an Exchange Specialist or Market Maker, some or all of such investors will be 5% owners of the Index Fund, and one or more investors may hold in excess of 25% of the Index Fund. Such investors would be deemed to be affiliates of the Index Fund.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit any persons that are affiliated persons of the Index Funds solely by virtue of (a) holding 5% or more, or in excess of 25% of the outstanding Shares of the Trust or one or more Index Funds (and affiliated persons of such persons so long as they are not otherwise

[9] An ''Investing Fund Affiliate'' is an Investing Fund Advisor, Subadviser, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities.

affiliated with the Trust or the Index Funds) or (b) holding 5% or more of one or more other registered investment companies (or series thereof) advised by the Adviser, or holding in excess of 25% of the outstanding shares of such registered investment company (or series thereof), to effectuate purchases and redemptions in-kind.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of an Index Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Index Fund.

20. Applicants also seek relief from section 17(a) to permit an Index Fund that is an affiliated person of an Investing Fund because the Investing Fund holds 5% or more of the Index Fund's Shares to sell it's Shares to and redeem its Shares from an Investing Fund.[10] Applicants believe that any proposed transactions directly between Index Funds and Investing Funds will be consistent with the policies of each Investing Fund. The purchase of Creation Units by an Investing Fund directly from an Index Fund will be accomplished in accordance with the investment restrictions of any such Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. The Participation Agreement will require any Investing Fund that purchases Creation Units directly from an Index Fund to represent that the purchase of Creation Units from an Index Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

[10] Applicants believe that an Investing Fund will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from an Index Fund. Nonetheless, an Investing Fund that owns 5% or more of an Index Fund could seek to transact in Creation Units directly with an Index Fund pursuant to the section 17(a) relief requested.

Applicants' Conditions

Applicants agree that any order granting the requested relief to permit the operations of the Index Funds will be subject to the following conditions:

1. Applicants will not register a Future Index Fund of the Trust by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless: (a) applicants have requested and received with respect to such Future Index Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Index Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Index Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in an Index Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Participation Agreement with the Trust regarding the terms of the investment.

3. As long as a Trust operates in reliance on the requested order, the Shares will be listed on an Exchange.

4. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Fund and tender those shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable, and that owners of Shares may purchase those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

5. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Index Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition the Product Description for the Index Fund will state that the website for the Trust has information about the premiums and discounts at which Shares have traded.

6. The Prospectus and annual report for each Index Fund also will include: (a) The information listed in condition 5(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Index Fund): (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

The Applicants agree that any order of the Commission granting the requested relief from section 12(d)(1) will be subject to the following conditions:

8. The members of an Investing Fund Advisor/Sponsor Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Index Fund, an Investing Fund Advisor/Sponsor Group or Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Index Fund, it will vote its shares of the Index Fund in the same proportion as the vote of all other holders of the Index Fund's shares. This condition does not apply to the Subadviser Group with respect to an Index Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

9. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in an Index Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the Index Fund or Index Fund Affiliate.

10. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Advisor and Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an Index Fund or an Index Fund Affiliate in connection with any services or transactions.

11. Once an investment by an Investing Fund in the securities of an Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors/trustees of the Index Fund (''Board''), including a majority of the disinterested Board members, will determine that any consideration paid by the Index Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Index Fund; (b) is within the range of consideration that the Index Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Index Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

12. An Investing Fund Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b–1 under the Act) received from an Index Fund by the Investing Fund Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor or trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, trustee or Sponsor by the Index Fund in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Index Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Index Fund, in connection with the investment by the Investing Management Company in the Index Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

13. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in any Affiliated Underwriting.

14. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Index Fund in an Affiliated Underwriting once an investment by the Investing Fund in the securities of the Index Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Index Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Index Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performances of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Index Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

15. The Index Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in securities of the Index Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

16. Before investing in an Index Fund in excess of the limits in section 12(d)(1)(A), the Investing Fund and the Index Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Index Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Index Fund of the investment. At such time, the Investing Fund will also transmit to the Index Fund a list of names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Index Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Index Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

17. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

18. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

19. No Index Fund will acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

20. The board of directors or trustees of any Investing Management Company and any Index Fund will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the later of (a) the compliance date of the rule or (b) the date on which the Investing Management Company and Index Fund execute a Participation Agreement.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5483 Filed 4–12–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53607; File No. SR–BSE–2006–05]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Modify the Boston Options Exchange's Fee Schedule To Impose Surcharge Fees for Transactions in Options on ETFs on a Retroactive Basis

April 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to retroactively establish certain Boston Options Exchange (''BOX'') licensing fee surcharges applicable to broker-dealer proprietary accounts and market maker accounts for trades in options on certain exchange traded funds (''ETFs''). The Exchange is proposing to apply these surcharge fees retroactively for each product as of the Effective Dates listed in Table 1, below, through January 3, 2006. On January 4, 2006, the Exchange filed an identical amendment to the BOX Fee Schedule,[3] which became immediately effective under section 19(b)(3)(A) of the Act.[4] Because the Exchange seeks to apply the surcharge fees listed in the BOX Fee Schedule on a retroactive basis, the Exchange is submitting this proposal to the Commission pursuant to section 19b(2) of the Act[5] to be published for notice and comment. The current BOX Fee Schedule is available on the BOX Web site at *http://www.bostonoptions.com.* The text of the proposed rule change is available on the BOX's Web site, at the principal office of BOX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend BOX's Fee Schedule to retroactively establish, from the Effective Dates listed in Table 1 below through January 3, 2006, a surcharge fee for certain transactions in ETF options on BOX that are affected by market makers and broker-dealer proprietary accounts.[6] The respective surcharge fees became effective on January 4, 2006 pursuant to a previous proposed rule change submitted by the Exchange.[7]

Name	Symbol	Fee	Effective date
Standard & Poor's Depository Receipts	SPY	$0.10	1/10/05
iShares Russell 2000 Index Fund	IWM	0.10	5/2/05
S&P Energy Select Sector SPDR Fund	XLE	0.09	6/6/05
iShares Russell 2000 Growth Index Fund	IWO	0.10	6/27/05
iShares Nasdaq Biotechnology Index Fund	IBB	0.10	6/27/05
S&P Financial Select Sector SPDR Fund	XLF	0.09	6/27/05

The BOX Fee Schedule that was in effect when these products started trading (*i.e.*, on the Effective Dates specified in Table 1 above), stated in section 2(c) that applicable surcharges applied for options on ETFs that are passed-through by BOX.[8] However, in an administrative oversight, the BSE did not update the list of ETF products that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53454 (March 8, 2006), 71 FR 13439 (March 15, 2006) (SR–BSE–2006–01).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 15 U.S.C. 78s(b)(2).

[6] The surcharge fee for trading in the options listed in Section 2(c) of the BOX Fee Schedule is equal to the cost charged to BOX by the licensor in the associated licensing agreement. BSE represents these fees are only charged to BOX Participants.

[7] *See supra* note 3.

[8] Section 2(c) of the BOX Fee Schedule then stated, as it currently does: ''Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX.''

BOX added and the amount of the pass-through licensing surcharges BOX was charging for each product in conjunction with the licensing agreements. While the BSE should have specifically listed each individual ETF option product and the associated surcharge fee on the BOX Fee Schedule, the BSE also believes that, nevertheless, its Participants were (1) aware that surcharges were applicable for options on ETFs pursuant to the language in Section 2(c) of the BOX Fee Schedule; and (2) aware of the specific pass-through licensing surcharges for each product via their monthly billing statement. The BSE believes it was open and transparent with its Participants regarding the applicable surcharges in the above-mentioned products, notwithstanding the fact that the specific information was not updated on the BOX Fee Schedule. The Exchange now proposes to extend this surcharge fee retroactively to all applicable transactions occurring since, and as of, the Effective Dates listed in Table 1.

In addition, the Exchange proposes to amend the BOX Fee Schedule to clarify the meaning of the current text in section 4(b) (''InterMarket Linkage'') of the BOX Fee Schedule, which includes an explicit reference to the surcharge with respect to Inbound P and PA orders that are billed per contract.[9] The BSE also proposes that the title of section 4(b) of the BOX Fee Schedule be changed from ''Per contract, billed to away market'' to ''Per contract, billed to clearing firm of away market Member'' to provide more clarity as to which party is billed. The BSE believes that the new text is not a substantive change to the BOX Fee Schedule, does not impose any new fees on Linkage Orders, and is consistent with the Linkage Fee pilot program. The Exchange notes that Linkage Orders have always been assessed this surcharge and have been invoiced as such. The Exchange is proposing these changes to section 4 to clarify the BOX Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,[10] in general, and section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSE consents, the Commission shall:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BSE–2006–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BOX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–05 and should be submitted on or before May 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–5482 Filed 4–12–06; 8:45 am]

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[9] Specifically, the Exchange proposes to replace the sentence ''Same as if were BOX Participant'' with ''This charge is the same as that which is applicable to a BOX Participant under section 2. These orders are also subject to any additional pass-through surcharge fees specified in section 2(c), as applicable.'' Telephone conversation between Bill Meehan, General Counsel, BOX, and Richard Holley, Special Counsel, Division of Market Regulation, Commission, on March 28, 2006.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53608; File No. SR–ISE–2006–17]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees on the Russell 1000 Index

April 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 3, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to waive the surcharge for transactions in options on the Russell 1000 Index until September 29, 2006. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to waive the surcharge for transactions in options on the Russell 1000 Index (''RUI'') until September 29, 2006. Options on RUI were previously approved for trading by the Commission.[5] Pursuant to a license agreement entered into by the Exchange with the Frank Russell Company (''Russell''), the Exchange currently charges a ten (10) cent surcharge per contract for trading options on RUI.[6] However, in order to promote trading in options on RUI, the Exchange is proposing to waive all surcharges on RUI for the 2nd and 3rd quarters of 2006 (the ''promotional period'').

Due to competitive pressures, the Exchange does not charge Public Customer Orders[7] this surcharge fee. The surcharge fee is charged only to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders). Accordingly, during the promotional period, the Exchange proposes to waive the surcharge fee on all non-Public Customer Orders and, for a pilot period that is set to expire on July 31, 2006, on all Linkage Orders.[8] The Exchange's normal transaction fees, *i.e.*, an execution fee and a comparison fee, in options on RUI shall continue to apply during the promotional period.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[10] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 51619 (April 27, 2005), 70 FR 22947 (May 3, 2005) (Order approving the trading of options on various Russell Indexes, including RUI).

[6] *See* Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (Notice of filing and immediate effectiveness of fees on various Russell Indexes, including RUI).

[7] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[8] *See* ISE Rules 1900(10) and 1901.

[9] The Exchange represents that these fees are charged only to Exchange members.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 19b–4(f)(2).

Number SR–ISE–2006–17 and should be submitted on or before May 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–5480 Filed 4–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53609; File No. SR–NYSEArca–2006–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Brokers Executing as Principal Orders They Represent as Agent

April 6, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2006, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change the time period that NYSE Arca Brokers (''Brokers'') must wait prior to executing as principal orders they represent as agent. The text of the proposed rule change is available on the Exchange's Web site (*http://www.archipelago.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend NYSE Arca Rule 6.76, ''Priority and Order Allocation Procedures,'' relating to the Exchange's PCX Plus System (''PCX Plus'' or ''System''). NYSE Arca Rule 6.76(c), which governs Crossing Orders on PCX Plus, among other things provides for a Crossing Mechanism that Brokers may utilize to electronically cross two orders.[3] With respect to principal-agency crosses effected electronically on the Exchange but not through the Crossing Mechanism, Rule 6.76(c)(3)(B)(i) stipulates that Brokers may not execute as principal orders that they represent as agent unless the agency orders are first exposed on the Exchange for at least 30 seconds.[4] Rule 6.76(c)(3)(B)(i) was included in the rules to guard against Brokers circumventing the time parameters established in the Crossing Mechanism by immediately executing as principal orders they represent as agent. It is this section of Rule 6.76 that the Exchange proposes to change.

When entering two orders into the Crossing Mechanism, one of the orders must be designated as an Exposed Order.[5] Exposed Orders are exposed to market participants for a period of 3 seconds prior to an electronic cross execution. The exposure period allows an opportunity for OTP Holders and OTP Firms to trade against the Exposed Order.

When NYSE Arca Rule 6.76(c)(2), governing the Crossing Mechanism, was approved by the Commission as part of SR–PCX–2002–36,[6] the rule called for a 30-second exposure period. At the time the rule was approved, PCX Plus was not applicable to all issues traded on the Exchange and not all OTP Holders and OTP Firms were utilizing fully electronic trading systems. It was felt that a 30-second exposure period was needed in order to allow an opportunity for all market participants to enter orders.

Once PCX Plus was fully phased in Exchange-wide, with all issues trading on the System, and once all market participants became electronically connected to the System, it was felt that a 30-second exposure period was no longer necessary to insure adequate exposure of orders. Since the full implementation of the all-electronic PCX Plus System, the Exchange has on two previous occasions filed with the Commission to amend Rule 6.76(c) in order to reduce the exposure period contained in the Crossing Mechanism. The most recent change established the present 3-second exposure period.[7]

To be consistent with exposure periods included in the rules governing the Crossing Mechanism, the Exchange now proposes to shorten the time that a Broker must wait prior to executing as principal orders he or she represents as agent from 30 seconds to 3 seconds. Under the present rules, the Broker that enters an agency order into the PCX Plus System must wait 30 seconds before entering a principal order to execute against the agency order. All other OTP Holders and OTP Firms are given an opportunity to respond to the original order during this period.[8] Since the intent of the original 30-second time period in NYSE Arca Rule 6.76(c)(3)(B)(i) was to prevent circumvention of the 30-second exposure period in the Crossing Mechanism rules, and since the Crossing Mechanism now contains a 3-second exposure period, the Exchange believes that customer orders may be

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Arca Rule 6.76(c)(2), which defines the Crossing Mechanism as ''a process by which a NYSE Arca Broker may facilitate orders or cross two orders.'' As detailed below, the Crossing Mechanism exposes one of the orders to market participants for a specified period of time before executing the cross. *See also* NYSE Arca Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of Rule 6.76(c) as ''two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''Cross Price'').''

[4] Telephone conversation between Glenn Gsell, Director, Regulation, Exchange, and Ira Brandriss, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on April 4, 2006 (''Telephone Conversation of April 4, 2006''). The Broker may also execute a cross in open outcry, pursuant to Rule 6.47. Telephone Conversation of April 4, 2006.

[5] *See* NYSE Arca Rule 6.76(c)(1)(D), which defines ''Exposed Order'' as follows: ''The buy or sell side of a Cross Order that has been designated by a NYSE Arca Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the NYSE Arca Broker must designate one side of the Cross Order as the Exposed Order.''

[6] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

[7] *See* Securities Exchange Act Release Nos. 52814 (November 21, 2005), 70 FR 71591 (November 29, 2005) (order approving a 10-second exposure period in the Crossing Mechanism) and 53384 (February 27, 2006), 71 FR 11280 (March 6, 2006) (order approving a 3-second exposure period in the Crossing Mechanism) (''PCX Plus 3-Second Approval Order'').

[8] Telephone Conversation of April 4, 2006.

subject to unwarranted delays if Brokers must wait 30 seconds to execute as principal an order they represent as agent. Even if agency orders are subjected to a 3-second exposure period, the Exchange asserts that OTP Holders and OTP Firms will still have adequate time to respond to the agency order prior to the Broker entering an order as principal.

The Exchange notes that the proposed rule change is virtually the same as a rule change the Chicago Board of Options Exchange (''CBOE'') proposed in SR–CBOE–2006–09.[9] In that filing, the CBOE proposed a change to the Interpretations and Policies subsection of CBOE Rules 6.45A and 6.45B, so that the rules would read: ''Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least three (3) seconds * * *.''

According to the Exchange, Brokers will be able to provide timelier executions for their customers' orders once the time period that the Broker must wait prior to executing as principal orders they represent as agent is reduced from 30 seconds down to 3 seconds. Timely executions are consistent with the principles under which the PCX Plus system was developed.

2. Statutory Basis

The Exchange notes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[10] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange asserts that the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all orders in the NYSE Arca marketplace.

[9] *See* Securities Exchange Act Release No. 53278 (February 13, 2006), 71 FR 9184 (February 22, 2006). The Commission notes that since the time NYSE Arca filed the instant proposal, the Commission approved SR–CBOE–2006–09. *See* Securities Exchange Act Release No. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (''CBOE Approval Order'').

[10] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–01 and should be submitted on or before May 4, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b) of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange,[12] and in particular with section 6(b)(5) of the Act.[13] The Commission believes that the proposal, which reduces the time that a Broker that enters an agency order into PCX Plus must wait before entering a principal order to execute against the agency order to 3 seconds, is consistent with the exposure period recently approved by the Commission for the Crossing Mechanism,[14] and with rules the Commission has approved at other exchanges.[15] The Commission believes that in an electronic environment like that of PCX Plus, in which market participants utilize trading systems that monitor updates to the market and can automatically respond based on pre-set parameters, an exposure period of 3 seconds for orders entered into the System provides participants an adequate opportunity to compete for those orders.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register** so as not to delay implementation of a rule that establishes a consistent exposure period for orders in PCX Plus. The Commission notes that the Exchange's proposal is substantially similar to a rule the Commission

[11] 15 U.S.C. 78f(b).

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* PCX Plus 3-Second Approval Order.

[15] *See, e.g.,* CBOE Approval Order.

[16] 15 U.S.C. 78s(b)(2).

recently approved for another exchange.[17]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2006–01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–5485 Filed 4–12–06; 8:45 am]

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[17] *See* CBOE Approval Order.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53615; File No. SR–PCX–2006–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Change the Names of the Pacific Exchange, Inc., PCX Equities, Inc., PCX Holdings, Inc., and the Archipelago Exchange, L.L.C.

April 7, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2006, the Pacific Exchange, Inc. (''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On April 5, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Exchange has designated this proposal as one being concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend (i) its rules, including the Options Floor Procedure Advices, (ii) the rules of PCX Equities, Inc., (iii) the Certificate of Incorporation and Bylaws of the Exchange, (iv) the Certificate of Incorporation and Bylaws of PCX Equities, Inc., (v) the Amended and Restated Bylaws of Archipelago Holdings, Inc., and (vi) the Amended and Restated Certificate of Incorporation of PCX Holdings, Inc. (collectively, the ''Operative Documents'') to make changes to the following names: Pacific Exchange, Inc., PCX Equities, Inc., PCX Holdings, Inc., and Archipelago Exchange, L.L.C. The proposed name changes relate to recent ownership changes at the Exchange. The Exchange also proposes to change references to ''Arca Book,'' ''Archipelago Exchange,'' and ''ArcaEx'' in the Operative Documents.

The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.archipelago.com*), at the Exchange's principal office, and at the Commission's Public Reference Room. The text of Exhibit 5 to the proposed rule change (showing proposed changes to the Operative Documents) also is available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.html*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Operative Documents to make changes to the following names: Pacific Exchange, Inc., PCX Equities, Inc., PCX Holdings, Inc., and Archipelago Exchange, L.L.C. The proposed name changes relate to recent ownership changes at the Exchange. On September 26, 2005, Archipelago Holdings, Inc. acquired PCX Holdings, Inc., the parent company of the Exchange. On or about March 7, 2006, Archipelago Holdings, Inc. completed a proposed business combination with the New York Stock Exchange, Inc. As a result of these corporate changes, the Exchange proposes the following specific name changes to the entities listed below:

Current name of entity	Proposed entity name
Pacific Exchange, Inc	NYSE Arca, Inc.
PCX Equities, Inc	NYSE Arca Equities, Inc.
PCX Holdings, Inc	NYSE Arca Holdings, Inc.
Archipelago Exchange, L.L.C	NYSE Arca, L.L.C.

In addition, the Exchange proposes to amend the Operative Documents to change references to ''Arca Book'' to ''NYSE Arca Book'' and to change references to ''Archipelago Exchange'' and ''ArcaEx'' to ''NYSE Arca Marketplace.'' The Exchange represents that the filing reflects name changes only and does not affect in any manner the Exchange's operations and governance structure.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[7] in general, and section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Janet Angstadt, Deputy General Counsel, Exchange, to Heather Seidel, Senior Special Counsel, dated March 30, 2006.

[4] *See* Letter from Janet Angstadt, Deputy General Counsel, Exchange, to Heather Seidel, Senior Special Counsel, dated April 3, 2006.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because it is concerned solely with the administration of the Exchange, the foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(3) [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–PCX–2006–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–PCX–2006–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2006–24 and should be submitted on or before May 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–5486 Filed 4–12–06; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 5, 2006, the date on which the Exchange filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5379]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: English as a Foreign Language Institutes for Egypt and Morocco; Jordan and Syria

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/X–06–06.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline, May 22, 2006.

Executive Summary: The Fulbright Teacher Exchange Branch in the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for an assistance award program to support the development of two teaching enhancement institutes for educators from Egypt and Morocco; Jordan and Syria, during the summer of 2007. Accredited, post-secondary U.S. educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and administer two English as a Foreign Language (EFL) institutes, one for educators from Egypt and Morocco and the other for educators from Jordan and Syria. Approximately 24 qualified English teachers (10–12 from each of the institute's two participating countries) will be selected to attend each intensive six-week academic institute, which will include a 3-day visit to Washington, DC. Following the institutes, participants will return home to conduct in-country workshops for 40–50 local educators in each participating country. In addition, two outstanding teachers from Egypt who excelled in the summer institutes and have shown initiative in implementing in-country follow-on activities will be chosen to attend the Morocco workshop and two outstanding teachers from Morocco will attend the Egypt workshop. Similarly, two teachers from Jordan will be selected to attend the Syria workshop and two from Syria will attend the Jordan workshop. Participation in an additional in-country workshop will provide an opportunity for international professional development, help develop a network amongst participants and underscore the regional emphasis of the program.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

I.1 Overview

The Bureau requests detailed proposals from U.S. institutions of higher education, which have expertise in the field of EFL. Proposals should demonstrate the applicant's understanding of the local educational systems in Egypt, Jordan, Morocco and Syria as well as issues confronting English language education in these countries. Special expertise in handling cross-cultural programs is highly desired. Proposals should outline a design for follow-on programming in each country that will build on the achievements of the institutes while promoting the continued exchanges of

ideas between the participants and their schools, the U.S. grantee organization and the U.S. professional contacts.

I.2 Project Objectives

Proposals should reflect four overall goals: First, to produce two highly focused institutes that update participants in best practices in EFL and U.S. teaching methodology at the primary through secondary levels; second, to provide participants with skills that will enable them to conduct workshops on institute topics in their home countries in the future; third, to provide opportunities for participants to make presentations on their countries' best practices in EFL for one another and their U.S. counterparts; and fourth, to provide participants with opportunities to interact with American students and professionals, thereby allowing them to increase their understanding of U.S. culture and society, both during their time in the U.S. and after their return home.

I.3 Guidelines

I.3a Project Planning and Implementation

In early 2007, the grantee organization will be responsible for conducting an initial planning visit to the four countries to consult with representatives from the Public Affairs Sections of the U.S. Embassies (PAS), the Department of State's Regional English Language Officers (RELOs) based in Egypt, Morocco and Jordan, the Fulbright Commission in Morocco, and local educators. RELOs are credentialed, experienced EFL officers attached to U.S. embassies to work with host-country Ministries of Education, universities and teacher-training officials on targeted English language programs. With the concurrence of the countries' Ministries of Education, participants will be recruited and selected by the PAS, RELOs, and/or the Fulbright Commission in Morocco. For information on contacting the appropriate parties, please refer to the Project Objectives, Goals, and Implementation (POGI).

After the participants have been selected but prior to their departure for the U.S., the PAS, RELOs, or Fulbright Commission in Morocco will conduct a one-day pre-departure orientation session for participants in their respective countries based on information provided by the organization that is awarded the grant. These orientations will provide information about the institute, its goals, and expectations for participants. The sessions will offer a framework for integrating the institutes and their objectives into the participants' previous educational training, and for promoting team-building strategies. The grantee organization will develop orientation packets for each participant that will cover the aforementioned material and be sent to the countries in advance of pre-departure orientations.

I.3b U.S. Based Training

Following each pre-departure orientation, participants will spend approximately six weeks between May and September in the U.S. at one of the two EFL institutes to be organized by the grantee organization. The institutes should meet the needs of the participants through activities designed by U.S. education specialists with appropriate expertise in EFL instruction, curriculum development and training. The institutes should have two components: A five and a half-week intensive academic program and a three-day educational and cultural program in Washington, DC.

The academic program should address innovative EFL teaching methodologies and approaches and their implementation in the respective countries. Significant time should also be allotted for related professional activities outside the classroom such as visits to schools, consultations with U.S. teachers, in-school mentoring, and attendance at professional meetings. Where possible, proposals should offer a one-week experiential component, so that participants can observe best practices in EFL (or English as a Second Language) instruction and training in a U.S. school and team-teach. Among the topics to be addressed during the institutes are: Computer literacy skills for EFL instruction, U.S. methodology for teaching, critical thinking, communication, conflict resolution, analytical and evaluation skills, and student development and motivation in U.S. schools.

Few participants will have visited the United States previously. Accordingly, an orientation to the host institution, its community, and to U.S. society and its system of education should be an integral part of the institutes early in the program. The study program should also include cultural activities that facilitate interaction of the participants with American students, faculty, administrators, and members of the local community to promote mutual understanding between the people of the United States and the people of Egypt, Jordan, Morocco and Syria.

The three-day visit to Washington, DC should occur either midway or toward the end of each institute and should complement and reinforce the academic program. This visit should include meetings with representatives of the Department of State, other government agencies, and private-sector groups as well as visits to local educational and cultural sites as requested by the Fulbright Teacher Exchange Branch.

Administration and management of the academic program and the visit to Washington, DC will be the responsibility of the grantee organization. The grantee organization is also responsible for arrangements for domestic and international travel, lodging, food, and allowances for participants while at the host institution and in Washington, DC.

I.3c In-country Workshops

The grantee organization will organize and conduct a follow-on workshop in each country, which will be attended by all institute participants from that country as well as 40–50 additional local educators. Two outstanding teachers from each country participating in the institutes will travel to their institute's partner country to attend and participate in the in-country workshops.

The grantee organization will work with the PAS, RELOS, or the Fulbright Commission in Morocco to select the additional local educators and plan the in-country workshops. The PAS, RELOs, or the Fulbright Commission in Morocco will also provide administrative support and work with the Ministry of Education to encourage continued communication among all participants.

At these in-country workshops, institute participants will showcase the teaching strategies they developed in the U.S as they practice the teacher training skills acquired during the program. Where possible, technical assistance will also be provided by RELOs and State Department-supported resident English Language Fellows who are experienced U.S. teacher trainers with expertise in TEFL/TESL. Fellows will be assigned to countries to work on the improvement of English teaching capacity in host country educational institutions.

I.4 Relationship between ECA/A/S/X and Grantee Organization

In a cooperative agreement, the Teacher Exchange Branch (ECA/A/S/X) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/S/X activities and responsibilities for this program are as follows:

- Formulation of program policy;
- Clearing of texts and program guidelines for publication; and

• Review and approval of orientation schedules, Washington, DC program, and follow-on workshop schedules.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2006.

Approximate Total Funding: $700,000.

Approximate Number of Awards: 1.

Approximate Average Award: $700,000.

Anticipated Award Date: Pending availability of funds, September 1, 2006.

Anticipated Project Completion Date: May 31, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1 Eligible applicants

Applications may be submitted by accredited, U.S. post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2 Cost Sharing or Matching Funds:

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs, which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $700,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact Patricia Mosley of the Fulbright Teacher Exchange Branch, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 453–8897, fax (202) 453–8890, e-mail: *MosleyPJ@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X–06–06 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Rozina Damanwala and refer to the Funding Opportunity Number ECA/A/S/X–06–06 located at the top of this announcement on all other inquiries and correspondence.

IV.2 To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3 Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission section'' below.

IV.3a You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The grantee will be

responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Cooperating institutions will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4 Describe your plans for: sustainability, overall program management, staffing, and coordination with ECA/A/S/X, Fulbright Commissions, and RELOs. ECA/A/S/X considers program management, staffing and coordination with the Department of State essential elements of the program. Please be sure to give sufficient attention to these elements in your proposal by providing a staffing plan that outlines the responsibilities of each staff person and explains which staff member will be accountable for each program responsibility. Wherever possible please streamline administrative processes. Please refer to the POGI in the Solicitation Package for specific guidelines.

IV.3e Please take the following information into consideration when preparing your budget:

IV.3e.1 Applicants must submit a comprehensive budget for the entire program. The budget should not exceed $700,000 for program and administrative costs. It should indicate the number of participants that can be accommodated at this funding level, based on detailed calculations of program and administrative costs. Applicants may submit separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The summary and detailed administrative and program budgets should be accompanied by a narrative which provides a brief rationale for each line item including a methodology for

estimating an appropriate average maintenance allowance level and tuition costs for the participants. The total administrative costs funded by the Bureau must be reasonable and appropriate. Pending the availability of funds, the grant should begin on September 1, 2006 and should expire on May 31, 2008.

IV.3e.2 Allowable costs for the program: Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f Application Deadline and Methods of Submission:

Application Deadline Date: May 22, 2006.

Reference Number: ECA/A/S/X–06–06.

IV.3f.1 Applications may be submitted in one of two ways:

1. *In hard-copy,* via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. *Electronically* through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.2 Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–06–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

In addition, an electronic copy of the narrative and budget should be sent to Rozina Damanwala (*DamanwalaRR@state.gov*). The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. embassies for their review.

IV.3f.3 Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire application has been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

IV.3g Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1 Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section overseas, where appropriate will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea and program planning: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate substantive expertise in EFL education, curriculum development and teacher training. Proposals should also illustrate effective use of community and regional resources to enhance the educational and cultural experiences of participants. Teaching objectives should be reasonable, feasible, and flexible. Proposals should provide a detailed plan outlining the follow-on workshops that the U.S. grantee organization is responsible for organizing and conducting in each country. In-country workshops should enable institute participants to provide training to local teachers on the skills and teaching strategies acquired in the academic program. Proposal should provide a detailed calendar and relevant work plan and demonstrate how the institution will meet the program's objectives both in the U.S. based institutes and in-country workshops.

2. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages between the United States and the four countries. The proposed strategy should also maximize the program's potential to encourage participants to build on their exchange experience after returning to their home countries.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with the participants. Proposal should show

evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken. Proposals that demonstrate knowledge of the educational systems in the proposed countries as well as an institutional record of successful implementation of exchange programs will receive preference. Proposals should demonstrate an institutional record of responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff.

5. Follow-on Activities: Proposals should include a plan for other follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan to evaluate the institutes' successes, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. The selected grantee organization will be expected to submit quarterly or intermediate reports after each project component is concluded, whichever is less frequent.

7. Cost-effectiveness and cost sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

8. Value to U.S.–Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desks and overseas officers of program need, potential impact, and significance in the partner countries.

VI. Award Administration Information

VI.1a Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants, http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3 Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports: Quarterly financial reports; program reports at the end of each program activity; and final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Rozina Damanwala, Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–6589, fax 202–401–1433, *DamanwalaRR@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–06–06.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 6, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 06–3591 Filed 4–12–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) and a Written Reevaluation for the Evaluation of New Information Regarding Departure Procedures at Hartsfield-Jackson Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a ROD and a Written Reevaluation for the evaluation of new information regarding departure procedures at Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia.

SUMMARY: The Federal Aviation Administration (FAA) is making

available a ROD and a Written Reevaluation for new information concerning departure procedures at Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia.

Point of Contact: Mr. Steve Kelley, Acting Manager, FAA Eastern Terminal Service, Airspace and Procedures, 1 Aviation Plaza, Jamaica, NY 11434–4809, (718) 553–4558.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD and a Written Reevaluation of new information concerning departure procedures at Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia. The purpose of the ROD and Written Reevaluation was to evaluate potential environmental impacts arising from the implementation of departure procedures that deviate from those used in the original environmental study conducted for the 9,000-foot Fifth Runway and Associated Projects Final Environmental Impact Statement.

These documents will be available during normal business hours at the following locations: FAA Eastern Terminal Service Area, Airspace and Procedures Office, 1 Aviation Plaza, Jamaica, NY 11434; and at the Hartsfield-Jackson Atlanta International Airport, 6000 N. Terminal Parkway, Atrium 4th Floor, Atlanta, GA 30320.

Due to current security requirements, arrangements must be made with the point of contact prior to visiting these offices.

Issued in Washington, DC on April 5, 2006.

Carolyn Blum,

Regional Administrator, FAA, Southern Region.

[FR Doc. 06–3581 Filed 4–12–06; 11:08 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–111–05–004]

Lightning Direct Effects Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on Lightning Direct Effects Compliance.

DATES: The final policy was issued by the Transport Airplane Directorate on April 4, 2006.

FOR FURTHER INFORMATION CONTACT: Gregg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on January 10, 2006 (71 FR 1582). One (1) commenter responded to the request for comments, and that commenter agreed with the proposed policy.

Background

The final policy recognizes SAE International Aerospace Recommended Practice 5577, *Aircraft Lightning Direct Effects Certification*, as an acceptable method of compliance to the lightning direct effects requirements of § 25.581. That document is a recognized reference for the certification of part 25 transport category airplane Lightning Direct Effects requirements.

The final policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington on April 4, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3557 Filed 4–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on April 10, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials, Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
MODIFICATION TO EXEMPTIONS			
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	05–31–2006
7280–M	Department of Defense, Ft. Eustis, VA	4	05–31–2006
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	06–30–2006
13488–M	FABER INDUSTRIES SPA (U.S. Agent: Kaplan Industries, Maple Shade, NJ)	4	05–31–2006
13327–M	Hawk FRP LLC, Ardmore, OK	1	06–30–2006
12929–M	Matheson Tri-Gas, East Rutherford, NJ	4	05–31–2006

Application No.	Applicant	Reason for delay	Estimated date of completion
14096–M	United States Enrichment Corporation (USEC), Paducah, KY	4	04–30–2006
11924–M	Wrangler Corporation, Auburn, ME	4	05–31–2006
11903–M	Comptank Corporation, Bothwell, ON	4	06–30–2006
11241–M	Rohm and Haas Co., Philadelphia, PA	1	05–31–2006
NEW EXEMPTION APPLICATIONS			
13266–N	Luxfer Gas Cylinders, Riverside, CA	4	05–31–2006
14138–N	INO Therapeutics, Inc., Port Allen, LA	4	06–30–2006
14163–N	Air Liquide America L.P., Houston, TX	4	05–31–2006
14228–N	Goodrich Corporation, Colorado Springs, CO	1	05–31–2006
14212–N	Clean Harbors Environmental Services, Inc., North Andover, MA	4	05–31–2006
14209–N	ABB Power Technologies AB, Alamo, TN	4	05–31–2006
14221–N	U.S. Department of Energy, Washington, DC	4	05–31–2006
14218–N	Air Logistics of Alaska, Inc., Fairbanks, AK	4	05–31–2006
14197–N	GATX Rail Corporation, Chicago, IL	4	05–31–2006
14199–N	RACCA, Plymouth, MA	4	05–31–2006
14184–N	Global Refrigerants, Inc., Denver, CO	4	05–31–2006
14167–N	Trinityrail, Dallas, TX	4	04–30–2006
14263–N	U.S. Department of Energy (DOE), Washington, DC	4	05–31–2006
14257–N	Origin Energy American Samoa, Inc., Pago Pago, AS	4	06–30–2006
14252–N	Hobo Incorporated, Lakeville, MN	4	04–30–2006
14237–N	Advanced Technology Materials, Inc. (ATMI), Danbury, CT	1	05–31–2006
14239–N	Marlin Gas Transport, Inc., Odessa, FL	1	05–31–2006
14233–N	U.S. Department of Energy (DOE), Richland, WA	4	05–31–2006
14232–N	Luxfer Gas Cylinders—Composite, Cylinder Division, Riverside, CA	4	05–31–2006
14229–N	Senex Explosives, Inc., Cuddy, PA	4	05–31–2006
14141–N	Nalco Company, Naperville, IL	4	06–30–2006
14038–N	Dow Chemical Company, Midland, MI	1	05–31–2006
13999–N	Kompozit-Praha s.r.o. Dysina u Plzne, Czech Republic, CZ	1	05–31–2006
13582–N	Linde Gas LLC (Linde), Independence, OH	4	05–31–2006
13563–N	Applied Companies, Valencia, CA	4	05–31–2006
13341–N	National Propane Gas Association, Washington, DC	3	05–31–2006
13347–N	Amvac Chemical Corporation, Los Angeles, CA	4	06–30–2006

[FR Doc. 06–3558 Filed 4–12–06; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 519 (Sub-No. 3)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on May 8, 2006, beginning at 11 a.m., E.D.T.

ADDRESSES: The meeting will be held in the Linda J. Morgan Hearing Room (7th Floor) at the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jamie Rennert, (202) 565–1519. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC arose from a proceeding instituted by the Surface Transportation Board's (Board) predecessor agency, the Interstate Commerce Commission (ICC), in *National Grain Car Supply—Conference of Interested Parties,* Ex Parte No. 519. The NGCC was formed as a working group to facilitate private-sector solutions and recommendations to the ICC (and now the Board) on matters affecting grain transportation.

The purpose of this meeting is to continue discussions of private-sector solutions to problems related to the availability of railroad cars for distribution and transportation of grain. In particular, rail carrier members will report on their preparedness to transport the Fall grain harvest.

The meeting, which is open to the public, will be conducted pursuant to the NGCC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: April 7, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–5505 Filed 4–12–06; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Amendment No. 4 to Released Rates Decision No. MC–999]

Released Rates of Motor Common Carriers of Household Goods

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of an application to amend released rates provisions for motor carrier shipments of household goods and request for public comments.

SUMMARY: The Household Goods Carriers' Bureau Committee (Committee), on behalf of its member

motor carriers, seeks authority to amend Released Rates Decision No. MC–999 by changing the index used for annual adjustments to the minimum per-pound valuation and to the charges for protecting the full value of shipments of household goods.

DATES: Comments are due May 15, 2006.

ADDRESSES: Send an original and 10 copies of any comments, referring to Amendment No. 4 to Released Rates Decision No. MC–999, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to the Committee's representative, Thomas M. Auchincloss, Jr., 1707 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 565–1578. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 14706(a)(1), motor carriers of household goods ordinarily are liable for the actual loss or injury that they cause to the property they transport. However, under 49 U.S.C. 14706(f), a household goods carrier may establish, with the Board's permission, ''released rates,'' under which the carrier's liability is limited to a value established by written declaration of the shipper or by written agreement between the carrier and shipper.

In a decision in this proceeding served on December 21, 2001 (*December 2001 Decision*), the Board authorized the Household Goods Carriers' Bureau Committee (the Committee), which is composed of motor carriers of household goods, to change the terms under which its member motor carriers may limit their liability for damage to, or loss of, household goods in their care.[1] The *December 2001 Decision* authorized carriers to provide household goods shippers with two options concerning the level of cargo liability to be assumed by the carrier, depending upon the level of the rate that the shipper wishes to pay for the transportation of its goods. Under one option, the carrier's cargo liability would be limited to 60 cents per pound, per article, and the shipper would pay only a base rate for the shipment. Alternatively, for an additional charge, the shipper could obtain ''full value protection'' (FVP) for the shipped goods, meaning that the carrier would be liable for the replacement value of lost or damaged goods (up to the pre-declared value of the shipment) or, at the carrier's option, for restoring damaged goods to their prior condition.

The second, or FVP, option established charges that would apply to various levels of valuations. It also provided for a minimum declared value of $4.00 per pound (or a lump sum of $5,000, whichever is greater). That means that, if a shipper does not write in a valuation, or writes in a declared valuation lower than $4.00 per pound, the minimum declared value that would be deemed to apply to that shipment is the value derived by multiplying the weight of the shipment in pounds by $4.00, and the shipper would pay a charge based on that valuation.

The *December 2001 Decision* also authorized the Committee to make annual adjustments, without prior Board approval, to this minimum per-pound valuation and also to the charges that would apply when a shipper selects FVP. The annual adjustments that the agency approved were based on changes in the household furnishings and operations index, a subgroup within the Consumer Price Index (CPI), U.S. City Average, published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor.

The Committee has now asked us to modify the *December 2001 Decision*, so that, instead of using the household furnishings and operations index to benchmark the annual adjustments to the minimum per-pound valuation and FVP charges, its members would now use data from BLS's Consumer Price Index—All Urban Consumers (All Items) (CPI-U). The Committee states that the household furnishings and operations index (which has recorded insignificant movement since the base year 1999 and has not resulted in any valuation or charges adjustments since the Board authorized its use in the *December 2001 Decision*) is inappropriate for calculating annual adjustments because several components of the former household furnishings index subgroup were moved to other major groups. In addition, the Committee cites a BLS publication indicating that CPI subgroup indexes are subject to a substantially greater sampling error than the national CPI, and for that reason, it strongly urges users to consider the CPI-U for use in escalator clauses.[2]

The Committee indicates that approval of the proposed amendment would permit household goods carriers immediately to take an increase of 16.7% in the minimum per-pound valuation and in their charges for FVP coverage for shipments of household goods.

We invite comments on the proposed amendment from interested members of the public. We will also serve this decision on the parties that provided comments concerning the *December 2001 Decision* and invite their comments on the proposed amendment.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 6, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–5503 Filed 4–12–06; 8:45 am]

BILLING CODE 4915–01–P

[1] In a subsequent decision served April 22, 2002, the Board clarified that the approach authorized in the *December 2001 Decision* may be used by carriers that are not members of the Committee, as well as those that are.

[2] BLS *Handbook of Methods*, Chapter 17 at 4, available at *http://www.bls.gov/opub/proghome.htm.*

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–586 (Sub-No. 2X)]

North Central Railway Association, Inc.—Abandonment Exemption—in Hardin County, IA

North Central Railway Association, Inc. (NCRA), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 10.54-mile line of railroad between milepost 201.46, near Ackley, IA, and milepost 212.00, near Steamboat Rock, IA, in Hardin County, IA.[1] The line traverses United States Postal Service Zip Codes 50672, 50671, and 50601.

NCRA has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that would have to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49

[1] NCRA's notice of exemption identified the issue line as an 11.70-mile rail line, from milepost 200.30 to milepost 212.00. Subsequently, NCRA was advised of an ongoing need for car interchange and switch moves over a portion of the line between mileposts 200.36 and 201.46. Therefore, by letter filed on March 31, 2006, NCRA amended its notice to pertain to the line segment from milepost 201.46 to milepost 212.00.

CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 13, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 24, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 3, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NCRA's representative: T. Scott Bannister, Attorney for North Central Railway Association, Inc., 111 Fifty-Sixth Street, Des Moines, IA 50312.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NCRA has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 18, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NCRA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NCRA's filing of a notice of consummation by April 13, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 7, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–5487 Filed 4–12–06; 8:45 am]

BILLING CODE 4915–01–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the appropriate filing fee, which is currently set at $1,200, *see* 49 CFR 1002.2(f)(25), but is scheduled to increase to $1,300, effective April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 15, 2006 to be assured of consideration.

Bureau of Public Debt

OMB Number: 1535–0136.

Type of Review: Extension.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations.

Form: PDF 5410.

Description: Used by an organization to request refund of purchase price of United States Savings Bonds.

Respondents: Business or other for-profit and Not-for-profit institutions.

Estimated Total Burden Hours: 300 hour.

Clearance Officer: Vicki S. Thorpe, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–5510 Filed 4–12–06; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 15, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Type of Review: Extension.

Title: Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

Form: IRS Form 4029.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under IRC sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Total Burden Hours: 3,154 hours.

OMB Number: 1545–0817.

Type of Review: Extension.

Title: EE–28–78 (Final) Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.

Description: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 8,538 hours.

OMB Number: 1545–1254.

Type of Review: Extension.

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91) (Final).

Description: Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section I.166–2(d)(3) is necessary to monitor the elections.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1545–1809.

Type of Review: Extension.

Title: Credit for Employer-Provided Child Care Facilities and Services.

Form: IRS Form 8882.

Description: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 5,486,662 hours.

OMB Number: 1545–1985.

Type of Review: Extension.

Title: Interview and Intake Sheet.

Form: IRS Form 13614 SP.

Description: This Spanish version of Form 13614 is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of Spanish speaking taxpayers having low to moderate incomes. These persons need assistance having their returns prepared so they can fully comply with the law.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Total Burden Hours: 17,108 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–5512 Filed 4–12–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, section 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on May 2, 2006 at 11:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association (''Committee'').

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: April 7, 2006.

James A. Clouse,

Acting Deputy Assistant Secretary, Federal Finance.

[FR Doc. 06–3526 Filed 4–12–06; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change and Change in State of Incorporation—National Grange Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: National Grange Mutual Insurance Company, a New Hampshire corporation, has formally changed its name to NGM Insurance Company, effective October 27, 2005, and has redomesticated from the state of New Hampshire to the state of Florida effective June 6, 2005. The Company was last listed as an acceptable surety on Federal bonds at 70 FR 38529, July 1, 2005.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to NGM Insurance Company, Jacksonville, Florida. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $34,890,000 established for the Company as of July 1, 2005, remains unchanged until June 30, 2006. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 revision, on page 38529 to reflect this change.

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: 769–004–05219–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, room 6F01, Hyattsville, MD 20782.

Dated: April 5, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–3543 Filed 4–12–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Nations Bonding Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury

ACTION: Notice.

SUMMARY: This is Supplement No. 14 to the Treasury Department Circular 570, 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptance surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, on page 38530 to reflect this addition:

Nations Bonding Company (NAIC #11595). Business Address: 2100 Fleur Drive, Des Moines, Iowa 50321–1158, Phone: (515) 243–8171. Underwriting Limitation b/: $264,000. Surety Licenses c/: PA, TX. Incorporated In: Texas.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular maybe viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy maybe 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: 769–004–05219–0.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 5, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–3542 Filed 4–12–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0209]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 15, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0209.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0209'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Work-Study Allowance (Chapters 30, 31, 32 or 35, Title 38, U.S.C.; Chapter 1606 and 1607), VA Form 22–8691.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692.

c. Extended Student Work-Study Agreement, VA Form 22–8692a.

d. Work-Study Agreement (Student Services), VA Form 22–8692b.

OMB Control Number: 2900–0209.

Type of Review: Revision of a currently approved collection.

Abstract:

a. Eligible veterans, reservists, and survivors or dependents complete VA Form 22–8691 to apply for work-study benefits.

b. VA Form 22–8692 is used by claimants to request an advance payment of work-study allowance.

c. VA Form 22–8692a is used by the claimant to extend his or her work-study contract.

d. VA Form 22–8692b is used by claimants who do not want a work-study advanced allowance payment.

VA uses the data collected to determine the applicant's eligibility for work-study allowance and the amount payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 19, 2006 at page 3155.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,984.

a. Application for Work-Study Allowance (Chapters 30, 31, 32 or 35, Title 38, U.S.C.; Chapter 1606 and 1607), VA Form 22–8691—9,125 hours.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—1,167 hours.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—275 hours.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—1,417 hours.

Estimated Average Burden Per Respondent:

a. Application for Work-Study Allowance (Chapters 30, 31, 32 or 35, Title 38, U.S.C.; Chapter 1606 and 1607), VA Form 22–8691—15 minutes.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—5 minutes.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—3 minutes.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—5 minutes.

Frequency of Response: Semi-Annually.

Estimated Number of Respondents: 73,000.

a. Application for Work-Study Allowance (Chapters 30, 31, 32 or 35, Title 38, U.S.C.; Chapter 1606 and 1607), VA Form 22–8691—36,500.

b. Student Work-Study Agreement (Student Services), VA Form 22–8692—14,000.

c. Extended Student Work-Study Agreement, VA Form 22–8692a—5,500.

d. Work-Study Agreement (Student Services), VA Form 22–8692b—17,000.

Dated: March 30, 2006.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–5435 Filed 4–12–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–0439)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 12, 2006.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–New (10–0439)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Learner's Perception (LP) Survey, VA Form 10–0439.

OMB Control Number: 2900–New (10–0439).

Type of Review: New collection.

Abstract: VA Form 10–0439 will be used to obtain health care trainees perception of their clinical experience with VA versa non-VA facilities. VA will use the data to identify strengths and opportunities for improvement in VA clinical training programs.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,250.

Dated: March 29, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–5437 Filed 4–12–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The

PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 15, 2006.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0018.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Accreditation of Service Organization Representative, VA Form 21.

OMB Control Number: 2900–0018.

Type of Review: Extension of a currently approved collection.

Abstract: Service organizations are required to file an application with VA to establish eligibility for accreditation for representatives of that organization to represent benefit claimants before VA. VA Form 21 is completed by service organizations to establish accreditation for representatives, recertify the qualifications of accredited representatives, and to cancel representatives' accreditation due to misconduct or lack of competence. VA uses the information collected to determine whether service organizations representatives continue to meet regulatory eligibility requirements and to ensure claimants have qualified representatives to assist in the preparation, presentation, and prosecution of their claims for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 2, 2005, at pages 66485–66486.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit-institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2400.

Dated: March 30, 2006.

By direction of the Secretary.

Denise McLamb,

Program Anaylst, Records Management Service.

[FR Doc. E6–5436 Filed 4–12–06; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 71, No. 71

Thursday, April 13, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 050323081–6079–02; I.D. 031505C]

RIN 0648–AT02

Endangered and Threatened Wildlife and Plants: Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon

Correction

In rule document 06–3326 beginning on page 17757 in the issue of Friday, April 7, 2006, make the following correction:

On page 17757, in the first column, under the **DATES** heading, in the first line, ''June 6, 2006'' should read ''July 6, 2006''.

[FR Doc. C6–3326 Filed 4–12–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
April 13, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Red-Legged Frog, and Special Rule Exemption Associated With Final Listing for Existing Routine Ranching Activities; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AJ16

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Red-Legged Frog, and Special Rule Exemption Associated With Final Listing for Existing Routine Ranching Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the California red-legged frog (*Rana aurora draytonii*) pursuant to the Endangered Species Act of 1973, as amended (Act). We are further finalizing a special rule associated with final listing of the California red-legged frog as threatened for existing routine ranching activities pursuant to section 4(d) of the Act. In total, approximately 450,288 acres (ac) (182,225 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Alameda, Butte, Contra Costa, El Dorado, Kern, Los Angeles, Marin, Merced, Monterey, Napa, Nevada, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Ventura and Yuba counties, California.

DATES: This rule becomes effective on May 15, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, California, 95825 (telephone 916/414–6600). The final rule and economic analysis are available via the Internet at *http://www.fws.gov/pacific/sacramento.*

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Listing Branch Chief, Sacramento Fish and Wildlife Office, at the above address (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat. However, designation of critical habitat does not require specific actions to restore or improve habitat.

Currently, only 473 species, or 37 percent of the 1,272 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,272 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, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to completion to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, 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.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, 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, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse

impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled 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 the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the California red-legged frog, refer to the revised proposed critical habitat designation published in the **Federal Register** on November 3, 2005 (70 FR 66906).

Previous Federal Actions

Previous Federal actions for the California red-legged frog can be found in our revised proposal of critical habitat for the California red-legged frog published in the **Federal Register** on November 3, 2005 (70 FR 66906). That information is incorporated by reference into this final rule. On November 23, 2005, the federal district court in the Eastern District of California granted a motion to extend the deadline for publication of the final critical habitat until March 31, 2006. This final designation is being completed and published in the **Federal Register** in compliance with that court order.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the California red-legged frog published on April 13, 2004 (69 FR 19620). We also requested written comments from the public on the revised proposed designation of critical habitat for the California red-legged frog published on November 3, 2005 (70 FR 66906). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on both the proposed and the revised proposed rule. The comment period for the initial proposed rule opened on April 13, 2004, and closed on June 14, 2004. We extended the period from June 14, 2004 to July 14, 2004 (69 FR 32966). Comments and new information received in response to the first proposed rule which were relevant to the revised proposal and final designation were incorporated in the final rule as appropriate and are summarized with the comments received in response to the revised proposed rule below.

During the comment period for the initial proposed rule, we received a total of 88 comment letters from Federal, State, and local governments, and private individuals. Of those comment letters, 30 commenters generally supported the initial proposed designation of 4.1 million acres (1.6 million hectares) or provided specific information pertaining to the subspecies or habitat, and 58 commenters generally did not support the initial proposed designation as written or did not support the inclusion of certain lands. Of the 88 total comment letters, 39 comment letters focused on land areas that we later determined to be nonessential to the conservation of the subspecies and that we are no longer including in this final designation. In summary, in our revised proposed rule and in this final designation, we used the best scientific information available in determining the areas essential for the California red-legged frog and removed all areas that we determined are not essential for the conservation of this subspecies and therefore do not meet the definition of critical habitat. We re-examined all initially proposed areas and removed any areas that do not contain one or more of the PCEs or that were determined to be nonessential for the conservation of the subspecies 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; and/or (3) other areas within the geographic region were determined to be sufficient to meet the subspecies needs for conservation.

We also considered several criteria in the selection of areas that contain the features essential for the conservation of California red-legged frog and focused on designating units: (1) Throughout the current geographic, elevational, and ecological distribution of the subspecies; (2) that would maintain the current population structure across the subspecies' range; (3) that retain or provide for connectivity between breeding sites allowing for the continued existence of viable and essential metapopulations, despite fluctuations in the status of subpopulations; (4) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics; and (5) that contain sufficient upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We proposed critical habitat units in areas that have the highest likelihood to contain self-sustaining populations of California red-legged frogs based on the presence of the PCEs, the density of California red-legged frog occurrences, and the kind, amount, and quality of habitat associated with those occurrences. We believe this strategy allowed us to narrow our initial focus down to the habitats that meet the definition of critical habitat and are essential to the conservation of the subspecies.

During the comment period associated with the revised proposed rule that opened on November 3, 2005, and closed on February 1, 2006, we received 76 comments directly addressing the revised proposed critical habitat designation and the draft economic analysis. Of these comments, three were from peer reviewers, one from a Federal agency, and 32 from organizations. Five commenters supported the designation of critical habitat for the California red-legged frog, and 55 opposed the designation. Sixteen letters included comments or information, but did not express support or opposition to the revised proposed critical habitat designation. Comments received were grouped into 15 general issues specifically relating to the revised proposed critical habitat designation for the California red-legged frog, and are addressed in the following summary and/or incorporated into the final rule as appropriate. We did not receive any requests for a public hearing; however, we did receive one request for a public workshop from the Calaveras County Farm Bureau. On January 10, 2006, we held a public workshop in San Andreas, California, and on January 17, 2006, we held an additional public workshop for the Calaveras County Board of Supervisors and the general public.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from two of the peer

reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. One peer reviewer generally accepted our methodology and criteria used in the designation of critical habitat, while another peer reviewer generally agreed with our proposed special rule to exempt routine ranching practices. The other peer review comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the California red-legged frog, and addressed them in the following summary.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer questioned how the future increase in the size of Los Vaqueros reservoir would affect critical habitat in Unit ALA–1A.

Our Response: The area surrounding Los Vaqueros reservoir was excluded from critical habitat because of disproportionately high economic costs. See *Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act* below. Additionally, areas that support California red-legged frog populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species, or subspecies, outside their designated critical habitat areas may still result in jeopardy findings in some cases.

(2) *Comment:* One peer reviewer questioned our rationale for not including the documented population of California red-legged frogs at Corral Hollow in San Joaquin County. Additionally, the same peer reviewer expressed concern that California red-legged frog recovery cannot take place only in occupied areas.

Our Response: In our revised proposed designation of critical habitat for the California red-legged frog, we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the subspecies, and that may require special management considerations or protection. We included areas that were occupied at the time of listing as well as some areas subsequently identified as occupied. We proposed critical habitat units in areas whose populations of California red-legged frogs have the highest likelihood to be self-sustaining based on the presence of the PCEs; the density of California red-legged frog occurrences; and the kind, amount, and quality of habitat associated with those occurrences. The proposed units contain sufficient PCEs to support the behaviors that we have determined are essential to the conservation of the subspecies. In this rule, we did not believe that all occupied habitat should be designated as critical habitat, nor did we believe it necessary to designate unoccupied habitat. In the development of the revised proposed rule, we determined the designation of unit ALA–1, which is located to the west of the Corral Hollow area, was sufficient for the conservation of the California red-legged frog in that area. For more information, please see the Criteria Used to Define Critical Habitat section.

(3) *Comment:* One peer reviewer stated that based on the paper published by Shaffer et al. (2004), the California red-legged frog is a full species and should be recognized as such by the Service.

Our Response: Based on mtDNA evidence, Shaffer et al. (2004) concluded that *Rana aurora aurora* (red-legged frog) and *Rana aurora draytonii* do not constitute a monophyletic group and suggests recognition of each as a separate species. Additionally, Shaffer et al. (2004) suggests *Rana cascadae* (Cascades frog) and *Rana aurora draytonii* are more closely related and should be considered sister taxon. We recognize the paper by Shaffer et al. (2004) presents evidence that can be used to support the argument that the California red-legged frog should be considered a full species. In a cursory review of herpetological and special status species web sites, we found one (The Center for North American Herpetology) that noted Shaffer et al.'s (2004) conclusion that the California red-legged frog was a distinct species, but that web site still uses *Rana aurora draytonii.* Another web site (Amphibia Web) uses *Rana draytonii.* Two other web sites (IUCN Red List and Nature Serve) still list the California red-legged frog as *Rana aurora draytonii.* At this time, we do not find that a formal change in taxonomy for the California red-legged frog is necessary.

(4) *Comment:* One peer reviewer asserted that the lack of a metapopulation focus in the development of the critical habitat designation practically guarantees extinction of California red-legged frogs from 15 or more critical habitat units.

Our Response: We disagree that the designation of critical habitat presented in this rule will lead to the extinction (extirpation) of the California red-legged frog in any of the critical habitat units. We used the best scientific information available in determining those areas essential for the California red-legged frog for our revised proposed critical habitat designation. We considered several criteria in the selection of areas that contain the features essential for the conservation of California red-legged frog and focused on designating units: (1) Throughout the current geographic, elevational, and ecological distribution of the subspecies; (2) that would maintain the current population structure across the subspecies' range; (3) that retain or provide for connectivity between breeding sites, allowing for the continued existence of viable and essential metapopulations, despite fluctuations in the status of subpopulations; (4) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics; and (5) that contain sufficient upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We excluded any areas that do not contain one or more of the PCEs or that were determined not to be essential for the conservation of the subspecies 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; and/or (3) other areas within the geographic region were determined to be sufficient to meet the subspecies' needs for conservation. We disagree that critical habitat units need to be connected within very large contiguous blocks. Connecting large areas of unknown occupancy, which may or may not support California red-legged frogs or the PCEs, would not materially contribute to the conservation of the subspecies. For more information, please see the Criteria Used to Define Critical Habitat section.

(5) *Comment:* One peer reviewer questioned our exclusion of large blocks of private and Federal lands from critical habitat, stating that this essentially shifts the responsibility of threatened and endangered species' protection to entities that have different priorities.

Our Response: There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can

provide such protection and management, as can lack of pressure for change (e.g., areas too remote for anthropogenic disturbance). Finally, State, local, or private management plans, as well as management by a Federal agency, can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole, will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion, and the Congressional record is clear that, in making a determination under the section, the Secretary has discretion concerning which factors to consider and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the subspecies. For more information see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

General Comments

Comments Related to Habitat and Subspecies-Specific Information

(6) *Comment:* One commenter stated our discussion of the reduction in the range of the California red-legged frog in the revised proposed rule was misleading.

Our Response: We believe our description of the reduction in the range of the California red-legged frog is accurate. We referred to multiple sources when researching the reduction in the range of the California red-legged frog. We consulted the recovery plan; Jennings and Hayes (1994); Fisher and Shaffer (1996); the California Natural Diversity Database (2004 and 2005); Berkeley Museum of Vertebrate Zoology (2004); and the California Academy of Sciences (2004). The map prepared by Jennings and Hayes (1994) depicts historic and extant (as of 1994) occurrences of the California red-legged frog. Approximately 45 counties comprised the historic range of the California red-legged frog, and approximately 17 counties were found to have extant occurrences in 1994. In 1996, when the subspecies was listed, 243 streams or drainages in 22 California counties were documented to contain populations of California red-legged frogs (California Natural Diversity Database (CNDDB) 2004). At the time of listing, California red-legged frogs were believed to have been extirpated from most of the southern Coastal Mountains from Santa Barbara south to Baja California and east along the Transverse (San Gabriel, San Bernadino, Santa Ynez, and Santa Monica Mountains) and Peninsular (San Jacinto, Santa Rosa, Agua Tibia, Laguna, Santa Ana Mountains) Ranges. Since listing, two additional occurrences south of the Tehachapi Mountains at City Creek in San Bernardino county and Andreas Canyon in Riverside county have been discovered (CNDDB 2005) but may no longer be extant. Four additional occurrences have been recorded in the Sierra Nevada foothills since listing, bringing the total to five extant populations, compared to approximately 26 historical records (Berkeley Museum of Vertebrate Zoology 2004; CNDDB 2004; California Academy of Sciences 2004; Barry in litt. 2005). Currently California red-legged frogs are only known from 3 disjunct regions in 26 California counties, and one disjunct region that is still present in Baja California, Mexico (Grismer 2002; Fidenci 2004; R. Smith and D. Krofta, in litt. 2005). Additionally, through comparison of historical museum records (1890–1980) and field surveys (1990–1992), Fisher and Shaffer (1996) present evidence of the extirpation (local extermination) of California red-legged frogs from 24 of 28 counties in a limited portion of the subspecies' historical range.

(7) *Comment:* One commenter suggested we should have included a reference to a paper published by Shaffer et al. (2004) in the subspecies description section of the revised proposed rule.

Our Response: The Service did consult the paper by Shaffer et al. (2004) in development of the revised proposed rule. As noted by the commenter, we referenced the Shaffer et al. (2004) paper in the Geographic Range section of the revised proposed rule. We also cite Shaffer et al. (2004) in the unit description for RIV–1 in the revised proposed rule in regards to California red-legged frog's genetic lineage in southern California. Based on mtDNA evidence, Shaffer et al. (2004) concluded that *Rana aurora aurora* (red-legged frog) and *Rana aurora draytonii* do not constitute a monophyletic group and suggests recognition of each as a separate species. Additionally, Shaffer et al. (2004) suggests *Rana cascadae* (Cascades frog) and *Rana aurora draytonii* are more closely related and should be considered sister taxa. We recognize the paper by Shaffer et al. (2004) presents evidence that can be used to argue that the California red-legged frog should be considered a full species. However, as discussed earlier in our response to comment 3, we conducted a cursory review of scientific web sites, and based on that review, at this time, we do not find that a formal change in taxonomy for the California red-legged frog is necessary.

Comments Related to Threats to the Subspecies

(8) *Comment:* Several commenters did not believe we adequately assessed the current threats to the California red-legged frog, including introduced predators, grazing, urban run-off, pesticides, and fertilizers.

Our Response: As discussed throughout the proposed rule, in our previous final designation of critical habitat for the California red-legged frog (66 FR 14626; March 13, 2001), and in our final recovery plan for the subspecies (Service 2002), threats to those features that are essential to the conservation of the California red-legged frog (i.e., primary constituent elements) may include but are not limited to:

Trematode and chytrid fungus disease; direct and indirect impacts from some human recreational activities; flood control maintenance activities; water diversions; unmanaged overgrazing activities (summarized by Kauffman and Krueger (1984) and Belsky et al. (1999)); competition and predation by nonnative species, such as warm water fish and bullfrogs (Alvarez et al. 2003); habitat removal and alteration by urbanization; and some agricultural pesticides and fertilizers (Hayes et al. 2006). We also included lists of threats that may require special management for each unit description in the revised proposed rule (70 FR 66906) and in this final rule (see *Special Management Considerations or Protections* below).

(9) *Comment:* One commenter disagreed with our statement that California red-legged frogs can persist in the presence of bullfrogs and nonnative predatory fish.

Our Response: We concluded that there are specific conditions under which California red-legged frogs can persist in the presence of bullfrogs and nonnative predatory fish. In aquatic systems subject to seasonal drying, it may be difficult for bullfrogs to become established. Doubledee et al. (2003) studied the relationship between bullfrogs and California red-legged frog persistence. That study showed that bullfrogs and California red-legged frogs can coexist and persist under certain natural and managed regimes. Fellers and Guscio (2004) suggest since bullfrogs require approximately 16 months to metamorphose, periodic drying would be an effective means of preventing a population from becoming established. Additionally, periodic drying may prevent nonnative warm water fish from becoming established as well. Alvarez et al. (2003) present evidence that nonnative predatory fish can have a significant effect on juvenile California red-legged frog survival. Of 90 ponds surveyed in the Los Vaqueros watershed, 7 were found to have nonnative fish. Over 3 years, one or more ponds with nonnative fish were repeatedly drained, and all fish were exhaustively removed. In comparison to surveys conducted before fish removal and surveys conducted after fish removal and pond recharge, juvenile and adult California red-legged frog abundance increased dramatically after nonnative fish were removed, suggesting a strong link to decreased California red-legged frog survival and nonnative fish presence.

Comments Related to Criteria and Methodology

(10) *Comment:* One commenter asserted our description of the Primary Constituent Elements (PCEs) for the California red-legged frog was insufficient and did not conform to *Home Builders Association of Northern California et al.* v. *U.S. Fish and Wildlife Service*, 268 F.Supp.2d 1197 (E.D.C. 2003) in the use of exclusion criteria to define where essential features are found.

Our Response: We used the best scientific information available in determining the identifiable physical and biological features essential for the conservation of the California red-legged frog (PCEs). PCE 4 (dispersal habitat) includes a description of features that may constitute barriers to dispersal for the California red-legged frog and as such could be interpreted as exclusion criteria. However, features that may constitute barriers to dispersal are merely illustrative and are not to be used as exclusion criteria.

We further used the best scientific information available in determining our descriptions of the areas essential for the California red-legged frog as presented in our revised proposed critical habitat designation. We considered several criteria in the selection of areas that contain the features essential for the conservation of California red-legged frog and focused on designating units: (1) Throughout the current geographic, elevational, and ecological distribution of the subspecies; (2) that would maintain the current population structure across the subspecies' range; (3) that retain or provide for connectivity between breeding sites, allowing for the continued existence of viable and essential metapopulations, despite fluctuations in the status of subpopulations; (4) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics; and (5) that contain sufficient upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We excluded any areas that do not contain sufficient PCEs to support necessary biological functions or that were determined not to be essential for the conservation of the subspecies 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; and/or (3) other areas within the geographic region were determined to be sufficient to meet the subspecies' needs for conservation.

Thus, we believe that the development of the PCEs for this designation of critical habitat for the California red-legged frog and the implementation of the criteria and methods identified herein and in our revised proposed rule conform to the standards set forth in *Home Builders Association of Northern California et al.* v. *U.S. Fish and Wildlife Service*, 268 F.Supp.2d 1197 (E.D.C. 2003).

(11) *Comment:* Two commenters asserted the revised proposed rule fails to identify the physical or biological features essential to the conservation of the California red-legged frog. Another commenter suggested that failure to designate unoccupied habitat runs counter to the recovery goals of the California red-legged frog and the intent of the Act. Additionally, the same commenter asserted that we should have designated all occupied habitat.

Our Response: In our revised proposed designation of critical habitat for the California red-legged frog, we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the subspecies, and that may require special management considerations or protection. We included in the revised proposed designation areas that were occupied at the time of listing as well as some areas subsequently identified as occupied. We proposed critical habitat units in areas that have the highest likelihood to contain self-sustaining populations of California red-legged frogs based on: (1) The presence of the PCEs; (2) the density of California red-legged frog occurrences; and (3) the kind, amount, and quality of habitat associated with those occurrences. The revised proposed units contain sufficient PCEs to support the behaviors that we have determined are essential to the conservation of the subspecies. Pursuant to section 3(5)(C) of the Act, critical habitat shall not include the entire geographical area that can be occupied by the species unless otherwise determined by the Secretary. We do not believe that all occupied habitat is essential to the conservation of the subspecies. Thus, in this rule, we only designate those areas determined to be essential to the conservation of the subspecies based on the methodological criteria (refer to the response to Comment (10) above for a list of these criteria).

(12) *Comment:* One commenter suggested that limiting protection of upland and dispersal habitat to 200 feet (ft) and 0.7 mile (mi), respectively, does

not provide for adequate conservation of the California red-legged frog in part due to the need for juvenile frogs to disperse from natal aquatic habitat.

Our Response: We are not aware of any scientific study that provides estimates of juvenile California red-legged frog movement distances. For reasons that are currently unclear, juveniles tend to disperse away from aquatic habitat occupied by adults. Juvenile dispersal is essential for recolonizing temporarily extirpated habitat and preventing genetic isolation as juveniles disperse in more directions, and for longer distances than do migrating adults (Wright, in litt. 1999; Bulger et al. 2003). Juvenile frogs will disperse through a variety of habitats, provided that habitat contains sheltering vegetation or scattered wetlands or streams. Juvenile frogs have been recorded in forested areas, nonnative grasslands, and even croplands (CNDDB 2005); however, frogs are not known to disperse through urbanized or suburban areas, suburban developments, or areas separated from breeding habitat by impassible barriers. Impassible barriers include wide or fast flowing rivers and streams, lakes greater than 50 ac (20 ha), and heavily traveled roads without underpasses or culverts (Reh and Seitz 1990; Fahrig et al. 1995). Juveniles dispersing along riparian corridors may have higher survivorship, as sheltering vegetation and suitable aquatic habitat are both more common in such corridors (M. Jennings, in litt. 2000). Juveniles appear to have less strict requirements for aquatic habitat than adults, and tend to segregate away from adults in water bodies that are shallower or faster moving than those typically used for breeding (Hayes and Jennings 1989; Bobzien pers. comm. 2000; M. Jennings, in litt. 2000). We encourage further research into California red-legged frog juvenile dispersal distances.

We recognize the importance of upland dispersal for the conservation of the California red-legged frog. Bulger et al. (2003) estimated that approximately 75 percent of adult California red-legged frogs are resident in their aquatic habitats, and approximately 90 percent did not move more than 197 ft (60 meters (m)) from their aquatic habitat in a mesic environment. Additionally, the maximum distance moved by a non-migrating California red-legged frog was 427 ft (130 m). Tatarian (2004) found upland use by California red-legged frogs in a more xeric, inland environment averaged 91 ft (27.7 m). A single female California red-legged frog inhabited an upland area, 302 ft (92 m) from its aquatic habitat, continuously for 50 days. Based on the work of Bulger et al. (2003) and Tatarian (2004), and our previous final critical habitat designation (66 FR 14625), we believe that the PCE 3 (upland habitat) distance of 200 ft (60 m) from aquatic habitat is sufficient to provide upland foraging and dispersal habitat for most California red-legged frogs. We do not believe it practicable or necessary to expand this width to capture all upland habitat that may be available to the subspecies. We also believe that the available scientific information does not support a change to our previous determination of the 0.7 mi (1.1 km) dispersal distance. For more information see the Primary Constituent Elements Section below.

(13) *Comment:* One commenter expressed concern at our apparent lack of recognition of the tenuous situation the California red-legged frog is in due to its apparent dependence on stock ponds as habitat. Additionally, the commenter suggested that the California red-legged frog cannot rely on stock ponds as a substitute for naturally occurring ponds, streams, or other naturally occurring aquatic habitat.

Our Response: As outlined in the revised proposed rule, we recognize stock ponds are usually aquatic habitat of poorer quality than naturally occurring ponds, and we do not consider stock ponds as replacement habitat for naturally occurring ponds or streams. Hydroperiods (amount of time the stock pond contains water) may be so short (e.g., when early drawdown of irrigation ponds occurs) that larvae and tadpoles do not have sufficient time to complete metamorphosis. Artificial ponds also require ongoing maintenance and are often temporary structures. Natural soil erosion, sometimes increased by pond breaching; livestock impacts; and off-road vehicle (ORV) use can cause ponds to silt in after a few decades (Hamilton and Jepson 1940), thereby reducing their quality as frog habitat. Often ponds are not maintained because it may be more economical to construct a new pond when the old pond fills with silt and is no longer functional (Hamilton and Jepson 1940). Finally, stock ponds are often geographically isolated from other seasonal wetlands, and colonization of newly created ponds beyond the normal dispersal range may be slow or nonexistent (Pechmann et al. 1989).

Populations of nonnative introduced predaceous fish and bullfrogs, although less prevalent than in natural habitats, sometimes become established in stock ponds and have been implicated in the decline of other amphibian species (Fisher and Shaffer 1996; Hayes and Jennings 1986; Moyle 1973). We also recognize that stock ponds may facilitate the spread of nonnative organisms by providing aquatic habitats in arid landscapes that otherwise may have served as barriers to the spread of such organisms. Despite these potential adverse impacts, the long-term effect of construction of stock ponds on the subspecies is either neutral or beneficial, because the California red-legged frog would have likely been extirpated from many areas if stock ponds had not been built and maintained for livestock production and ranching.

(14) *Comment:* One commenter stated that the units are too small, need to be connected, and should be large contiguous blocks of critical habitat.

Our Response: We used the best scientific information available in determining those areas essential for the California red-legged frog and thus proposed as critical habitat. During our determination process, we considered several criteria in the selection of areas that contain the features essential for the conservation of California red-legged frog. We disagree that all critical habitat units need to be connected within very large contiguous blocks of habitat. Connecting large areas of unknown occupancy, which may or may not support California red-legged frogs or the PCEs, would not materially contribute to the conservation of the subspecies. For more information, please see the Criteria Used to Define Critical Habitat section.

(15) *Comment:* One commenter disagreed with our time estimate that a water feature must hold water for a minimum of 15 weeks to be considered essential breeding habitat and stated that California red-legged frogs would be more common in vernal pool habitats if 15 weeks was sufficient time to complete breeding and metamorphosis.

Our Response: We agree that setting the minimum time to 15 weeks for essential breeding habitat does not provide sufficient time to complete breeding and metamorphosis. Depending on water temperatures, eggs may hatch in 7 to 14 days (Jennings 1988). Eggs may require approximately 3 weeks to develop into tadpoles, and an additional 11–20 weeks to develop into terrestrial frogs (Storer 1925; Wright and Wright 1949; Bobzien et al. 2000). To be considered essential breeding habitat (PCE 1), we have changed the amount of time a water feature must hold water from 15 weeks to 20 weeks, which is an average of the above estimates required for egg and tadpole development into terrestrial frogs. For more information, see the Primary Constituent Elements section below.

(16) *Comment:* Two commenters questioned why we did not designate critical habitat solely within the California red-legged frog recovery plan core area units.

Our Response: Several critical habitat units fall entirely within, or within portions of, recovery plan core areas. The Recovery Plan for the California red-legged frog was completed in 2002 (Service 2002). In developing this critical habitat designation, we used the latest scientific information available, which includes the 2002 Recovery Plan. We also incorporated more recent survey data (CNDDB 2005) and literature (e.g., Bulger et al. 2003; Alvarez 2004; Fellers and Guscio 2004; Fidenci 2004; Shaffer et al. 2004; Tatarian 2004; Fellers and Kleeman 2005). We used all available data to determine the PCEs and develop a strategy for determining areas (i.e., critical habitat units) essential to the conservation of the subspecies. All the units are described in the Critical Habitat section below. We recognize areas other than those designated as critical habitat, such as those defined in the recovery plan, may be important for the eventual recovery of the California red-legged frog. However, these areas did not meet our criteria for being essential. See also response to Comment 10 above.

Comments Related to Site-Specific Areas

(17) *Comment:* One commenter stated that the Unit MNT–2 in Carmel Valley should not be included in the designation because the area already is subject to county and State controls. The commenter also states that the area is not essential for the subspecies.

Our Response: Based upon the information we received, we cannot confirm that Monterey County and the State of California have instituted regulatory controls that would render the critical habitat designation redundant in Unit MNT–2. We believe that Unit MNT–2 meets the criteria we have adopted for determining whether an area should be considered essential.

(18) *Comment:* Numerous commenters were opposed to the revised proposed designation of critical habitat unit CAL–1. They suggest an alternate designation of lands in the Mokelumne River watershed surrounding Pardee Dam Reservoir (managed by East Bay Municipal Utility District (EBMUD)) and/or lands surrounding New Hogan Dam (managed by the U.S. Army Corps of Engineers), suggesting these areas are more suitable for the conservation of the frog as they are managed as protected open spaces. Several commenters questioned our designation of critical habitat in the proposed unit CAL–1, stating Young's Creek is designated as a seasonal stream and is dry during 3–4 months of an average rainfall year. Additionally, other commenters indicated other ponds in the area are also of a seasonal nature, and may be dry by early June in a typical year.

Our Response: Unit CAL–1 contains all the features identified in the PCEs and meets the definition of being essential for the conservation of the California red-legged frog. However, in order to preserve and encourage ongoing partnership activities, we have excluded all of unit CAL–1 from the final designation of critical habitat for the California red-legged frog. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* below for more information.

(19) *Comment:* One commenter provided information from EBMUD's website that suggests that California red-legged frogs have been found in surveys conducted in the Mokelumne River watershed, and therefore this area would be more appropriate for the designation of critical habitat than CAL–1.

Our Response: EBMUD's website provides information on California red-legged frogs found in surveys of EBMUD lands in their land holdings east of San Francisco Bay (the East Bay area). However there was no mention of California red-legged frogs found in surveys conducted in the Mokelumne River watershed (EBMUD Mokelumne Watershed Wildlife web page viewed January 25, 2005). For further confirmation, we contacted an EBMUD biologist who has extensive field experience in the lower Mokelumne River watershed, and the biologist confirmed that no California red-legged frogs had been found in EBMUD's Mokelumne River holdings (Reeves pers com. 2006). Additionally, we have excluded all of unit CAL–1 from the final designation of critical habitat for the California red-legged frog. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* below for more information.

(20) *Comment:* One commenter stated there is no evidence that the Burnt Bridge Creek watershed supports a population of California red-legged frogs, and a herpetological survey stated that breeding and summer habitat was seemingly absent from Burnt Bridge Creek. Therefore, based on the lack of documentation of the presence of the subspecies, YUB–1 should not be included in the designation of critical habitat.

Our Response: Unit YUB–1 contains all the features identified in the PCEs and meets the definition of being essential for the conservation of the California red-legged frog. In the herpetological report cited by the commenter, Barry (2002) suggests California red-legged frog ''breeding habitat and summer habitat is seemingly absent from accessible sections of Burnt Bridge Creek.'' However, Barry (2002) also states that portions of a terrace and ravine north of Burnt Bridge Creek and east of Oregon Hill Road have dense overgrown blackberry scrub vegetation and that there was some evidence of small ponds or boggy meadows under the vegetation. Prior to a fire in 1999 and discovery in 2000 of California red-legged frogs in Little Oregon Creek, that site was covered by similar blackberry scrub vegetation. Barry (2002), whose surveys were limited to U.S. Forest Service lands, also suggests other locations in the Dobbins and Cottage/Deadwood Creek watersheds that hold promise as California red-legged frog sites; however, due to the prevalence of private land in the area, those and other locations were not surveyed. California red-legged frogs are able to migrate considerable distances overland and have been shown to use small seeps and other wet areas during dispersal events. Additionally, portions of Burnt Bridge Creek are within the known dispersal capabilities of the California red-legged frog (e.g., Bulger et al. 2003) and are considered dispersal habitat as identified in PCE 4.

(21) *Comment:* One commenter requested that the North and South Fork of Webber Creek be excluded from critical habitat since both are fast flowing and would not be conducive to juvenile life stages of the California red-legged frog. However, the commenter suggests both creeks may support adult life stages after reduction of high winter and spring in-stream flows.

Our Response: In areas where streams are subject to high peak winter and spring flows, California red-legged frogs tend to adjust breeding timing and habitat use to coincide with reduction of peak, scouring flows (Fellers pers com. 2004; Bobzien pers com. 2005). Additionally, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the subspecies, that are within areas occupied by the subspecies at the time of listing, and that may require special management considerations and protection. This designation is designed for the conservation of PCEs necessary to support the life history functions of the

subspecies. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

(22) *Comment:* El Dorado County requested to be excluded from the designation of critical habitat based on the County's general plan.

Our Response: We have reviewed El Dorado County's general plan and found no measures specific to the conservation of the California red-legged frog. The County identifies numerous goals in the Conservation and Open Space Element within its general plan; however, no specific measures with respect to the conservation of the primary constituent elements for the California red-legged frog are mentioned. While we value El Dorado County's voluntary agreement in the interagency protection of Spivey Pond, based on the general plan, we have not excluded El Dorado County in its entirety from designated critical habitat. We have, however, excluded those areas being managed by the Bureau of Land Management (BLM) at Spivey Pond in El Dorado County based on an interagency land use management plan (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* below).

(23) *Comment:* One commenter opposed the designation of the Hearst Corporation's Jack Ranch property in SLO–1. The commenter stated that many areas on the portion of the Jack Ranch within SLO–1 are extremely arid and would not support a California red-legged frog population and, therefore, do not meet the definition of critical habitat. The commenter also argued that the Jack Ranch property does not meet the definition of critical habitat because the property does not require special management considerations or protection. The commenter stated that the Jack Ranch has been responsibly managed for over 40 years in a manner that has protected and benefited the various natural habitats on the ranch. Alternatively, the commenter argued, the Jack Ranch property should be excluded from critical habitat because the benefits of excluding the ranch outweigh the benefits of including it. The commenter asserted that, as a result of the current ranch management practices in place on the Jack Ranch, the various habitats and species present on the ranch are generally flourishing and will continue to benefit if these practices are allowed to continue. The commenter argued that designating the ranch as critical habitat would create regulatory uncertainty, impose economic burdens on the landowner, and increase vulnerability to legal challenge that could threaten the area's long-term viability as a working ranch.

Our Response: Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Our criteria for determining features essential to the conservation of the subspecies target areas known to be occupied by California red-legged frog at the time of listing; determined to be occupied since the time of listing; or known to possess high-quality habitat likely to be occupied based on proximity to known occurrences, contiguous habitat, and dispersal capabilities of the California red-legged frog. We included large blocks of contiguous habitat that: Provide geographic distribution across the range of the subspecies; contain high-quality habitat; allow for the long-term viability of the subspecies; represent the full range of habitat and environmental variability the subspecies occupies; avoid conflict with existing commercial and residential development; focus on public lands where available; and, where possible, overlap with other critical habitat designations.

As noted in the unit description for SLO–1, this area was known to be occupied by California red-legged frogs at the time of listing and subsequently and contains the following features that are essential for the conservation for the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). (See unit description for SLO–1, Cholame, below). Also as noted in the unit description, threats that may require special management in this unit include: highway construction, which may remove upland or aquatic habitat; overgrazing of aquatic and riparian habitats; and dewatering of aquatic habitats due to water diversions. Therefore, based on the criteria above, occupancy at the time of listing, and the requirement for special management, we have designated SLO–1 as critical habitat, including a portion of the Jack Ranch property within SLO–1.

We recognize that routine ranching activities may be beneficial to the California red-legged frog. Therefore, in conjunction with the designation of critical habitat, we are promulgating a special rule under the authority of section 4(d) of the Act containing the actions and prohibitions necessary to provide for the conservation of the California red-legged frog. The prohibitions outlined in the special rule do not include the take of California red-legged frog during existing routine ranching practices. We believe that this special rule will encourage landowners and ranchers operating on non-Federal land to continue their livestock-related practices that are not only important for livestock operations, but that also provide habitat for the California red-legged frog. See also response to Comment 38 and Special Rule section below.

(24) *Comment:* One commenter stated that 6,400 acres (2,590 ha) of unit SLO–1 should be excluded from the designation because it does not occur within the Cholame Creek watershed. It is the understanding of the commenter that the Cholame Creek watershed is where California red-legged frogs have been documented to occur.

Our Response: Although the unit description for SLO–1 states it ''includes locations in the Cholame Creek watershed,'' California red-legged frogs have also been documented in 2001 (CNDDB 2005) within the watershed for Jack Canyon, which drains toward the San Joaquin Valley. Therefore, we included the area in question in the critical habitat designation as it is occupied, contains the PCEs, and meets our criteria for determining areas essential for the conservation of the subspecies.

(25) *Comment:* One commenter was opposed to the inclusion of land covered under the Hearst Ranch Conservation Agreement in coastal San Luis Obispo County, a portion of which occurs within units SLO–2 and SLO–3. The commenter argued that, because of the level of protection provided by the Hearst Ranch Conservation Agreement, these areas either do not fall within the definition of critical habitat contained in section 3 of the Act or should be excluded under section 4(b)(2) of the Act. The commenter asserted that California red-legged frogs will be protected through specific measures addressed in Hearst Ranch's draft management plan. In addition, the commenter argued that inclusion of land covered under the Hearst Ranch Conservation Agreement would discourage voluntary conservation initiatives on private lands.

Our Response: We recognize the importance of voluntary conservation measures, such as the Hearst Ranch Conservation Agreement and future management plans, that benefit federally listed, proposed, candidate, or other at-risk species. Both unit SLO–2 and SLO–3 have been excluded under section 4(b)(2) of the Act for economic reasons. See the section *Relationship of Critical Habitat to Economic Impacts*—

Exclusions Under Section 4(b)(2) of the Act below for additional information.

(26) *Comment:* One commenter was opposed to the designation of those portions of the Flood Family Ranch Company's property located in units STB–1 and STB–3. The commenter stated that the continuation of cattle grazing on the ranch would be threatened by the critical habitat designation. The commenter expressed concerns that the designation of critical habitat included areas where new vineyards are planned and that the designation would prevent the development of these vineyards. The commenter also argued that the designation would interfere with existing mining activities that occur along the main stem of the Sisquoc River, which runs through the ranch property. The commenter provided information and maps showing the locations of the planned vineyards and mining areas. Finally, the commenter contended that the designation of the ranch lands as critical habitat for the California red-legged frog is improper and unwarranted. The commenter asserted that the Service did not use the best available science for the designation because the Service did not survey the area for the presence of the subspecies and/or the presence of PCEs. To support this, the commenter contended that California red-legged frogs have never been observed in STB–1, yet we proposed designating this area as critical habitat for the California red-legged frog. The commenter further asserted that the Service did not identify any specific special management considerations and protections required within the revised proposed critical habitat areas.

Our Response: Maps and other information provided by the commenter, which show the location of planned vineyards and mining areas, confirm that these areas were not part of the revised critical habitat proposal (70 FR 66906; November 3, 2005) and are not included in this final designation of critical habitat for the California red-legged frog.

Although we did not conduct surveys for California red-legged frog during the course of designating critical habitat, we did use the best scientific data available, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12. As noted in the unit descriptions (see STB–1, La Brea Creek unit description, and STB–3, Sisquoc River unit description, below) occurrence records from the time of listing exist for both STB–1 and STB–3. The unit descriptions for both STB–1 and STB–3 also included special management considerations for each unit.

We recognize that routine ranching activities may be beneficial to the California red-legged frog. Therefore, as part of this final rule, we are promulgating a special rule under the authority of section 4(d) of the Act containing the actions and prohibitions necessary to provide for the conservation of the California red-legged frog. The prohibitions outlined in the special rule do not include the take of California red-legged frog during existing routine ranching practices. We believe that this special rule will encourage landowners and ranchers operating on non-Federal land to continue their livestock-related practices that are not only important for livestock operations, but also provide habitat for the California red-legged frog.

(27) *Comment:* One commenter stated that the portion of Piru Creek between Pyramid Lake and Lake Piru in Ventura County (unit VEN–3) is a unique fishing area for residents of southern California and would be closed to public access if critical habitat were designated.

Our Response: The designation of critical habitat does not establish a refuge, wilderness, reserve, preserve, or other conservation area, and we do not anticipate that this fishing area would be closed as a result of it being designated as critical habitat for the California red-legged frog. In addition, this area was designated as critical habitat in the March 13, 2001, final critical habitat designation (66 FR 14626), and there was no closure as a result of that designation. The U.S. Fish and Wildlife Service consults regularly with the U.S. Forest Service on various projects within Los Padres National Forest, and can work with the U.S. Forest Service to develop protective measures and conservation measures that are compatible with continued public access.

Comments Related to Mapping

(28) *Comment:* Several commenters on the April 13, 2004, proposed rule stated that the 4.1 million acres proposed was excessive. Some questioned whether a species that can be found on 4.1 million acres should be listed under the Act.

Our Response: The original proposed rule was very expansive, included areas that did not contain one or more of the PCEs, and were not occupied. We do not now consider those areas to be essential to the conservation of the California red-legged frog. As a result of public comment, refined methodologies, and more detailed analyses of the maps, this final designation has been revised to include only those areas with features we consider to be essential to the conservation of the subspecies. As a result, this final designation is much smaller than the original proposed rule.

(29) *Comment:* A number of commenters identified specific areas that they thought should not be designated as critical habitat.

Our Response: We made an effort to avoid developed areas, such as housing and commercial developments, that are unlikely to contribute to the conservation of the California red-legged frog. We also avoided fragmented areas such as those surrounded by development. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, canals, levees, airport runways, other paved areas, lawns, and other urban landscaped areas do not contain the PCEs and, therefore, are not critical habitat and are not included in this designation. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the subspecies and/or the PCEs in adjacent critical habitat. We avoided known areas of intensive agriculture. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. 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. We evaluated the parcels to determine whether modifications to the proposal were warranted. We further examined the proposed critical habitat areas and refined the boundaries to exclude those areas that did not, or were not likely to, contain PCEs for the subspecies, wherever technically feasible. Please refer to the Summary of Changes from the Revised Proposed Rule section for a more detailed discussion.

(30) *Comment:* One commenter requested we remove Snows Quarry from the critical habitat designation which is located within unit ELD–1 because it does not contain the PCEs necessary for the conservation of the California red-legged frog.

Our Response: We have re-evaluated the inclusion of Snows Quarry and concur with the commenter that Snows Quarry does not contain the PCEs necessary for the conservation of the California red-legged frog and therefore should not be included in the critical habitat designation. Due to technical

mapping constraints we did not remove Snows Quarry from unit ELD–1. See the unit description for ELD–1 for more information.

(31) *Comment:* Several commenters requested that we consider designation of alternate areas adjacent to proposed critical habitat or additional areas as critical habitat.

Our Response: We believe we have appropriately designated critical habitat after careful consideration of all the potential areas. See Critical Habitat section for complete discussion of our methods and our response to Comment 10 above.

Comments Related to Regulatory Burden

(32) *Comment:* One individual who provided comments on our April 13, 2004 proposed rule stated that the Service failed to properly document adverse human health or environmental effects of the designation on minority populations and low-income populations, and failed to make those documents public. The commenter did not provide any specific information on whether they believed that disproportionately high human health or environmental impacts would occur to a particular population segment.

Our Response: Executive Order 12898 states that Federal agencies should, to the greatest extent practicable and permitted by law, identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority population and low-income populations. The proposed rules provided information to the public on the designation, areas affected, and types of management actions that may result from the final designation. The designation of critical habitat will not result in any adverse human health or environmental effects on the public, including minority and low-income populations.

(33) *Comment:* Numerous commenters asserted that the designation of critical habitat results in an increased regulatory burden, increased landowner costs, and restricted land uses and property rights.

Our Response: The economic analysis identifies the potential economic costs that may accrue as a result of this designation. These costs will be incurred when a Federal approval or permit is required, or Federal funds are involved with a project proposed on private property. Routine ranching activities are also exempt from take under the new 4(d) rule at 50 CFR 17.43(d).

While the designation of critical habitat does not itself result in the regulation of non-Federal actions on private lands, the listing of the California red-legged frog under the Act may affect private landowner's actions. Actions that could result in take of California red-legged frog (e.g., draining ponds or diverting water from creeks during the breeding season) require authorization for take following consultation under section 7 or an incidental take permit under section 10 of the Act. Because the California red-legged frog has been listed since 1996, proposed actions on private lands that require Federal authorization or funding that may affect the listed entity already undergo consultation under section 7 to ensure that their actions are not likely to jeopardize the continued existence of the subspecies. Future consultations involving private lands will also analyze the effect of the proposed action on designated critical habitat when a Federal nexus exists.

Comments Related to Property Rights

(34) *Comment:* One commenter asserted the designation of critical habitat constitutes an uncompensated taking and is therefore illegal.

Our Response: The designation of critical habitat does not mean that private lands would be taken by the Federal government or reasonable uses would not be allowed. We evaluate this rule in accordance with Executive Order 12630, and we believe that this designation of critical habitat for the California red-legged frog will not have significant takings implications. We determined that: (1) The designation would result in little additional regulatory burden above that currently in place, as the subspecies is already federally listed and the majority of the area designated is occupied by the subspecies; and (2) the designation of critical habitat will not affect private lands on which there is not a Federal nexus. We do not anticipate that property values, rights, or ownership will be significantly affected by the critical habitat designation.

Comments Related to Public Notification

(35) *Comment:* Several commenters stated that we failed to properly notify landowners concerning the proposed critical habitat designation. Furthermore, several commenters have suggested we should extend the public comment period to provide adequate time to address the proposed critical habitat designation.

Our Response: The proposed critical habitat designation was published in the **Federal Register** on April 13, 2004 (69 FR 19364), and we accepted comments from all interested parties for 60 days, ending June 14, 2004. We then extended the public comment period for an additional 30 days (69 FR 32966; June 14, 2004). The revised proposed critical habitat designation was published in the **Federal Register** on November 3, 2005 (70 FR 66906), and we accepted comments from all interested parties for 90 days, ending February 1, 2006. For each rule, the Service also wrote press releases that resulted in newspaper articles throughout California. We held two public workshops where we discussed opportunities for the public to comment and provide input and information. Thus, although we did not specifically notify individual landowners within the designation, we believe we provided adequate opportunity for individuals to review and provide comment on the original and revised proposed rules. We also specifically solicited and received comments from peer reviewers on the revised proposed (70 FR 66906) and previously proposed (69 FR 19620) designation for the California red-legged frog. We have a court-ordered date of March 31, 2006, to finalize a designation for the subspecies. Any additional extensions of the comment period would not have allowed us to complete the designation by that court-ordered date.

Comments Related to Department of Defense Lands

(36) *Comment:* In response to our April 13, 2004, proposed designation (69 FR 19620), the Department of the Army requested that Camp Parks not be designated as critical habitat pursuant to regulations under section 4(a)(3) of the Act. The Army stated that Camp Parks has finalized and implemented an approved INRMP that identifies specific conservation measures for the California red-legged frog.

Our Response: We concur with the Army that it has completed a Service approved INRMP for Camp Parks and that the plan specifically identifies conservation measures for the California red-legged frog. However, as a result of revising our criteria and methodology, we did not identify critical habitat within the Camp Parks area, and, as a result, no section 4(a)(3) determination was necessary. The Camp Parks area is not designated as critical habitat.

(37) *Comment:* The Departments of the Army and Air Force commented that Camp San Luis Obispo (CSLO) has a finalized Integrated Natural Resource Plan (INRMP) that contains management actions that benefit the California red-

legged frog and its habitat. They have requested that CSLO be excluded from designation of critical habitat for the California red-legged frog.

Our Response: We agree with the commenter and, pursuant to the statutory exemption in section 4(a)(3) of the Act for Department of Defense lands that have a completed INRMP that provides a benefit for the subspecies, have not included any lands at CSLO in this final designation based on their INRMP (see the *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below for a detailed discussion).

Comments Related to the Proposed Special (4(d)) Rule

(38) *Comment:* One commenter stated the Service must carry out a NEPA analysis on the special rule because it would reduce protection of the California red-legged frog otherwise afforded to it by its listing in 1996.

Our Response: On recommendation from the Council of Environmental Quality, we have determined that Section 4 listing actions are exempt from NEPA (48 FR 49244). NEPA requires Federal agencies to prepare an environmental impact statement for major Federal actions significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(c)).

In a judicial order and in *Center for Biological Diversity et al.* v *U.S. Fish and Wildlife Service et al.* (Case No. 3:04CV04324–WHA (E.D. Cal) (Filed August 19, 2005) the court confirmed our position and found that NEPA was not required for section 4 listing actions. In the ruling, the court deferred to the Council of Environmental Quality's view that NEPA does not apply to Section 4 actions. The court went on to state that NEPA would, if applicable, confuse matters and the opportunity for public comment, which is part of the section 4 listing and critical habitat designation process under the Act. The process ensures that information regarding how a listing action impacts the public and the environment is part of the decision-making process, and, therefore, it would make no sense to overlay the NEPA scheme on top of Section 4.

(39) *Comment:* Many commenters were generally supportive of the proposed 4(d) rule for the California red-legged frog, but were concerned that we are limiting its definition of ''routine ranching activities'' to only those mentioned in the revised proposed rule. Additionally, one of the commenters questioned whether new ranching management practices or changes to existing, routine ranching management practices would also be exempted.

Our Response: We recognize livestock ranching as a dynamic process, which requires the ability to adapt to changing environmental and economic conditions. However, many of the activities essential to successful ranching are considered routine, and are undertaken at various times and places throughout the year as need dictates. Although the special rule is not intended to provide a comprehensive list of those ranching activities considered routine, some examples include: maintenance of stock ponds; fence construction for grazing management; planting, harvest, and rotation of unirrigated forage crops; maintenance and construction of corrals, ranch buildings, and roads; discing of field sections for fire prevention management; control of noxious weeds by prescribed fire or by herbicides; placement of mineral supplements; and rodent control. The final version of the special rule includes an expanded definition of routine ranching practices and incorporates additional activities we believe are consistent with the conservation of the California red-legged frog. These activities are those that may provide conservation benefits to the California red-legged frog. The ranching activities listed in this document (see also Special Rule section) are merely examples of practices that we consider to be routine to managing an active ranching operation. Our intention is not to limit activities that may be necessary to the operation of a ranch. For further discussion, clarification, and a non-inclusive list of additional activities considered routine ranching practices, see the Special Rule section below.

(40) *Comment:* One commenter requested that we clarify the statement which was included in the special rule section of the re-proposed rule related to stock pond water levels; ''(4) routine management and maintenance of stock ponds and berms to maintain livestock water supplies at levels present at the time of the finalization of this special rule''.

Our Response: We recognize livestock ranching as a dynamic process, which requires the ability to adapt to changing environmental and economic conditions. As such we have exempted the routine hydroperiod management of ranching operation stock ponds. The term levels as used above was not intended to set a particular level of water in a stock pond at the time the special rule is finalized. Stock ponds and water levels can be continued to be maintained as necessary to continue the viability of livestock ranching operations. For more information about stock pond hydroperiod management see the *Special Rule* section below.

(41) *Comment:* One commenter questioned whether non-ranching lands converted to ranching would be covered by the special rule, and whether the special rule applies to ranches when they change ownership.

Our Response: The special rule exempts routine ranching practices and does not constitute an exemption from critical habitat itself. The special rule does not apply to specific owners of ranching property, but to the practices that are used to manage the land. As long as routine ranching management practices are maintained when ownership changes, or instituted when land is converted from another use and subsequently managed as ranchland, incidental take of California red-legged frogs resulting from the practice of routine ranching activities will not be a violation of the prohibition identified in section 9 of the Act. For further discussion, clarification, and a non-inclusive list of additional activities considered routine ranching practices, see the Special Rule section below.

(42) *Comment:* Several commenters requested the 4(d) rule be expanded to include agricultural lands and practices related to managing agricultural lands.

Our Response: In the revised proposed rule, we state that agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to dispersal for the California red-legged frog. We also state agricultural features such as drains, watering troughs, stacks of hay, or other vegetation can serve as temporary shelter for the California red-legged frog during dispersal events. Additionally, ponds used for irrigation of crops in the summer months can provide suitable breeding habitat with proper water management focused on the California red-legged frog life cycle. We also recognize some agricultural practices pose a threat to the California red-legged frog due to loss and modification of habitat. Intensive agriculture often replaces natural varied habitat with monotypic vegetation. Fisher and Shaffer (1996) studied historic records and conducted field surveys for amphibians in the Sacramento and San Joaquin Valleys and the Coast Range. The authors note that amphibian declines may be due in part to introduced exotic species and intensively modified habitat. In the San Joaquin Valley, the authors suggest declines noted there may be due to intense farming, resulting in uninhabitable pools and ponds for

native amphibians and even for introduced exotic species.

While we recognize some agricultural practices, such as routine ranching practices, may provide some beneficial features for the California red-legged frog, we conclude, however, that an exemption for all routine agricultural practices (e.g., dairy, orchard, vineyard, and row crop activities) is not appropriate for the conservation of the California red-legged frog.

(43) *Comment:* Several commenters were opposed to the proposed 4(d) rule because some nonessential routine ranching activities could degrade habitat.

Our Response: The purpose of the 4(d) rule is to recognize the larger conservation value of maintaining existing rangeland habitats that support the California red-legged frog, even though some specific activities may adversely affect the subspecies. Activities likely to occur in those landscapes, should ongoing ranching be removed, such as irrigated agriculture or urban development, remove and fragment upland and aquatic habitats used for breeding, foraging, and migration, which are essential for the subspecies to complete its life cycle. We believe that exemption of the ranching activities described in the special rule results in a net benefit to the conservation of the California red-legged frog (see Special Rule section below).

To the extent ranching activities are compatible with the California red-legged frog, we wish to encourage such activities to continue. We believe that relaxing the general take prohibitions on specific types of non-Federal lands through the special rule is likely to encourage continued responsible ranching, a land use that can provide an overall benefit to the California red-legged frog. We also believe that such a special rule will promote the conservation efforts and partnerships critical for the recovery of the subspecies. We have further described these benefits in our final version of the special rule below. We have committed to monitor the status of the California red-legged frog in areas where exempted activities occur (see section on Special Rule). We hope to enlist the partnership of the ranching community in education and outreach efforts, and through our Conservation Partnerships program.

(44) *Comment:* One commenter stated the 4(d) rule is not necessary or advisable for the conservation of the California red-legged frog.

Our Response: Section 4(d) of the Act imparts the authority to issue regulations necessary and advisable to provide for the conservation of threatened species. Under section 4(d), the Secretary may publish a special rule that modifies the standard prohibitions for threatened species under the implementing regulations for section 9 of the Act at 50 CFR 17.31 with special measures tailored to the conservation of the subspecies. We believe that, in certain instances, easing the general take prohibitions on non-Federal lands may encourage continued responsible land uses that provide an overall benefit to the subspecies. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for subspecies recovery (Wilcove et al. 1996; Knight 1999; Main et al. 1999; Norton 2000; Bean 2002; Conner and Matthews 2002; Crouse et al. 2002; James 2002; Koch 2002).

(45) *Comment:* One commenter stated the Service's conclusion that grazing and ranching are neutral or beneficial to the California red-legged frog is not supported, and the record demonstrates the adverse impacts of grazing on the California red-legged frog.

Our Response: In the 1996 final listing rule for the California red-legged frog (61 FR 25813), we cite livestock grazing as a contributing factor in the decline of the subspecies. We also cited many studies in that rule and in the revised proposed critical habitat designation that overgrazing of riparian areas causes detrimental effects to aquatic systems. Numerous studies, summarized by Kauffman and Krueger (1984) and Belsky et al. (1999), have shown that unmanaged livestock grazing (overgrazing) can negatively affect riparian and instream aquatic habitat. Some of the effects of unmanaged grazing include: higher instream water temperatures resulting from reduction or removal of vegetation; channel down-cutting; lowered water tables and loss of plunge pools, which results in direct loss of pool habitats for the California red-legged frog (Patla and Keinath 2005); and diminished water quality through increased sediment loads and nutrient levels (Belsky et al. 1999). The Service does recognize that overgrazing has contributed to the decline of the California red-legged frog.

However, as we state in the revised proposed rule, our understanding of the threats of livestock grazing and stock pond development described in the previous final listing of the subspecies has changed. Stock pond and small reservoir impoundments can provide suitable breeding habitat for the California red-legged frog. In many areas, the presence of California red-legged frogs is due solely to these small ponded habitats. For example, at the Point Reyes National Seashore in Marin County, an area where there are more than 120 breeding sites with an estimated total adult population of several thousand California red-legged frogs, the majority of the breeding sites are within stock ponds constructed on lands that have been grazed by cattle for over 150 years (Fellers and Guscio 2004). In the East Bay Regional Park District (EBRPD) lands in Contra Costa and Alameda counties, 43 of the 179 ponds surveyed (25 percent), which were exposed to grazing and were characterized as with and without emergent vegetation, supported successful breeding frog populations and often exhibited high rates of annual breeding (Bobzien et al. 2000). Ponds can silt in after being fenced off from moderate levels of grazing. EBRPD is currently removing fences and restoring ponds as California red-legged frog habitat (Bobzien pers com. 2005). We now recognize that managed livestock grazing at low to moderate levels has a neutral or beneficial effect on California red-legged frog habitat (Bobzien pers com. 2005) by keeping a mix of open water habitat and emergent vegetation. Therefore, we believe grazing helps contribute to the conservation of the California red-legged frog and its habitat. For more information on the special rule, see the Special Rule section below.

(46) *Comment:* One commenter stated the Service should impose safeguards and controls on ranching activities that could be harmful to the California red-legged frog.

Our Response: We recognize some routine ranching activities have the potential for take of the California red-legged frog. However, we are adopting a special rule to exempt take of the California red-legged frog due to routine ranching activities because we believe that easing the general take prohibitions on non-Federal lands may encourage continued responsible land uses that provide an overall benefit to the subspecies. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for subspecies recovery (Wilcove et al. 1996; Knight 1999; Main et al. 1999; Bean 2002; Conner and Matthews 2002; Crouse et al. 2002; James 2002; Koch 2002; Norton 2000). However, in easing the take prohibitions under section 9 of the Act, the measures that we have developed in the special rule also contain prohibitions necessary and appropriate to conserve the California red-legged frog. We provide examples of routine ranching practices that are exempt from the take prohibitions under section 9 of

the Act. We also provide suggestions to minimize the take of California red-legged frogs while conducting some routine ranching activities. Our intent is not to create an additional regulatory burden on ranching operations. Our basis for not attempting to regulate routine activities is that, ultimately, we believe that a rancher acting in the best interest of maintaining a sustainable ranching operation is also providing incidental but significant conservation benefits for the California red-legged frog. We recognize that most ranching operations operate on a thin financial margin, and additional regulatory requirements could push some operations to bankruptcy. We believe that sensible ranching operations are compatible with California red-legged frog conservation and recovery, while alternate land uses such as high density urban development, which could replace failed ranching operations, is not compatible. To the extent ranching activities are compatible with the California red-legged frog, we wish to encourage such activities to continue. We believe that relaxing the general take prohibitions on specific types of non-Federal lands through the special rule is likely to encourage continued responsible ranching, a land use that can provide an overall benefit to the California red-legged frog, as opposed to alternative uses. We also believe that such a special rule will promote the conservation efforts and partnerships critical for the recovery of the subspecies. We have further described these benefits in our final version of the special rule. We have committed to monitor the status of the California red-legged frog in areas where exempted activities occur and we hope to enlist the partnership of the ranching community in education and outreach efforts, and through our Conservation Partnerships program. For more information on the special rule, see the Special Rule section below.

Comments From Local Non-Governmental Entities

(47) *Comment:* The Pacific Gas and Electric Company (PG&E) requested that their facilities, including transmission line right-of-ways, be removed from the designation. PG&E stated that the designation of critical habitat would lead to an increased regulatory burden as a result of the section 7 consultation process. PG&E also stated that they are working with us on developing a Habitat Conservation Plan (HCP) and that these areas and areas considered under future Habitat Conservation Plans be excluded from the designation.

Our Response: In our determination of critical habitat, we included only those areas that we determined to contain the features identified in the PCEs and are thus essential to the conservation of the subspecies. To the greatest extent possible, we avoided designating critical habitat adjacent to developed areas and areas containing buildings, electrical substations, and other urban infrastructure related to the distribution and transmission of electricity. However, we did not remove areas under electrical transmission lines or areas within the transmission line right-of-ways from the designation. Although these areas have experienced disturbance in the placement of the transmission line and towers, they still provide at a minimum upland foraging or dispersal habitat, and where the transmission lines cross over streams or ponds, they potentially provide breeding habitat for the California red-legged frog. Because the areas under electrical transmission right-of-ways still contain the PCEs, we did not remove these areas from the designation.

Generally we do not consider excluding critical habitat from an area based on a HCP where the conservation measures have not yet been determined or that has not yet been released to the public for review. Prematurely excluding such areas may significantly influence the outcome of the planning process and limit the effectiveness of the intended conservation activities for the plan. Therefore we have not excluded PG&E transmission right-of-ways from this final designation. For more information on our exclusions see section *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* below.

(48) *Comment:* East Bay Regional Park District (EBRPD) requested clarification of the phrase ''portions of'' in a statement included in the revised proposed rule regarding exclusion of EBRPD lands from critical habitat.

Our Response: We analyzed all EBRPD lands for exclusion from critical habitat and have concluded that EBRPD lands within units CCS–1B and ALA–1A are excluded from the final critical habitat designation. See the section *Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act* below for additional information.

Comments From Other Federal Agencies

(49) *Comment:* In response to our April 13, 2004, proposed designation (69 FR 19620), the U.S. Forest Service provided habitat survey, occurrence record, and distributional information regarding the California red-legged frog in the Sierra National Forest. They stated that our general characterization of the subspecies being typically found from sea level to 5,000 ft (1,500 m) does not accurately reflect the distribution of the subspecies in the Sierra Nevada Mountains.

Our Response: As a result of the comments received, we revised our methodology and criteria for designating critical habitat. In the revised proposed and this final designation, we did not include U.S. Forest Service land in the Sierra National Forest within this final designation. We also reviewed information within our recovery plan (Service 2002) and occurrence record information (CNDDB 2005) and concur with the U.S. Forest Service that the vast majority of occurrences of the subspecies within the Sierra Nevada Mountains occur below 4,000 ft (1,200 m) and that occurrences found above this elevation are atypical for the subspecies. We have revised the final designation to reflect this information.

(50) *Comment:* In response to our April 13, 2004, proposed designation (69 FR 19620), the U.S. Forest Service provided habitat and survey information for the North Fork Feather River, on the Plumas National Forest, reporting only low to moderate quality habitat and absence of California red-legged frog occurrences. Based on this information, the U.S. Forest Service recommended a reduction in the size of unit 1 from the April 13, 2004, proposed critical habitat designation.

Our Response: Based on our revised methodology and criteria and information provided by the U.S. Forest Service, we have reduced the size of unit BUT–1 (formerly unit 1) to more accurately reflect the occurrence of California red-legged frogs in the Sierra foothills and identify areas containing the features essential to the conservation of the California red-legged frog. For more information see the Criteria Used To Identify Critical Habitat section below.

(51) *Comment:* In response to our April 13, 2004, proposed designation (69 FR 19620), the U.S. Forest Service provided habitat and survey information to support designation of an additional critical habitat unit in the area of the Little Oregon Creek California red-legged frog population. The U.S. Forest Service further recommended specific watersheds and sub-watersheds that could comprise the new critical habitat unit.

Our Response: We concur with the U.S. Forest Service that the population of California red-legged frogs at Little Oregon Creek warrants the designation

of critical habitat. Based on our revised methodology and criteria, we have designated critical habitat unit YUB–1, and we have excluded land from the final designation of critical habitat which is managed under the Sierra Nevada Forest Plan by the Plumas National Forest. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

(52) *Comment:* The U.S. Forest Service, Plumas National Forest, requested that we clarify the management direction of units YUB–1 and BUT–1.

Our Response: Those portions of units YUB–1 and BUT–1 that are owned and managed by the U.S. Forest Service, Plumas National Forest, are managed both under the Sierra Nevada Forest Plan Amendment (SNFPA) and the Herger-Feinstein Quincy Library Group (HFQLG) Act direction. HFQLG projects planned or implemented within these units would follow the management direction set out in the 2004 HFQLG Record of Decision (ROD) for the SNFPA and the HFQLR ROD, Final Environmental Impact Statement and Final Supplemental Environmental Impact Statement. Non-HFQLG projects planned or implemented within the two units mentioned above would follow the management direction set forth in the 2004 SNFPA ROD. We have excluded all U.S. Forest Service lands in the Sierra Nevada from this final designation (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* below).

(53) *Comment:* The Plumas National Forest also requested we clarify our description of HFQLG vegetation management that we presented in the revised proposed rule. Additionally, they also requested we remove our term ''avoidance zones'' and replace it with the term ''buffer'', which is original to the HFQLG language.

Our Response: We identified only one of three vegetation management components that can occur under the HFQLG, *e.g.*, defensible fuel profile zones. The other two components of vegetation management that can be implemented under HFQLG are a silvicultural harvest method of Group Selections (1/2-to-2 acre harvest units where all conifer trees less than 30 inches diameter at breast height are removed) and Individual Tree Selection where selected trees are removed to meet desired conditions for canopy cover or basal area retention. Projects that implement vegetation management under HFQLG apply Scientific Analysis Team (SAT) guidelines for riparian area management. Additionally, non-HFQLG projects implement Aquatic Management Strategy guidelines from the SNFPA.

In our description of HFQLG defensible fuel profile zones, we used the term ''avoidance zones'' to describe 300 ft (90 m) areas along (or around) waterways and ephemeral wetlands and 500 ft (150 m) areas around known occupied California red-legged sites. Our use of that term was entirely an editorial decision and in no way suggests our attempt to change the intent of HFQLG or SNFPA. We therefore replace the term ''avoidance zones'' with the term ''buffer'' which is original to the HFQLG language with the revised text reading: ''Buffers would be implemented during DFPZ maintenance activities. A 300 ft (90 m) buffer would be implemented along all waterways and ephemeral wetlands, and a 500 ft (150 m) buffer would be implemented along known occupied California red-legged frog sites.''

Comments Related to the Draft Economic Analysis (DEA)

(54) *Comment:* Several commenters stated that mitigation costs are higher than the figure used in the DEA.

Our Response: Mitigation costs were derived from a survey of mitigation banks, developers, and consultants familiar with the permitting process. We believe that these data represent the best available information on mitigation costs in affected counties.

(55) *Comment:* One commenter stated that the DEA fails to calculate costs for commercial real estate development.

Our Response: The DEA includes costs resulting from California red-legged frog conservation relating to commercial real estate development. These costs are calculated as the price of mitigation credits multiplied by the assumed mitigation ratio multiplied by the expected number of acres of commercial development in critical habitat. This approach does not calculate price changes or consumer surplus losses associated with impacts to commercial development; however, the ''catchall'' nature of the commercial development category precludes accurate estimation of demand-and-supply curves and related surplus measures.

(56) *Comment:* Several commenters stated that the avoidance and mitigation requirements and mitigation costs used in the DEA are inconsistent with the recent *Gifford Pinchot* decision.

Our Response: Avoidance and mitigation requirements and mitigations costs used in the DEA were based on interviews with those familiar with the permitting process, as well as a comprehensive examination of the Service's consultation history. The DEA also assumes that avoidance and mitigation take place within the boundaries of proposed critical habitat. The Ninth Circuit has recently ruled (*Gifford Pinchot,* 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid. As a result, there is some uncertainty involved in considering the costs due to the fact that the consequences of designation are more difficult to predict as the Service cannot rely on decades of factual information based on prior experience.

(57) *Comment:* One commenter stated that the economic analysis fails to quantify costs of critical habitat related to restrictions on timber harvesting on private lands within unit YUB–1 located in Yuba County. The commenter states that the Service has recommended special management measures in its review of various Timber Harvest Plans, including no-harvest buffers of 300 ft on both sides of Class I and Class II watercourses and of 114 ft on both sides of Class III watercourses, and a ban on winter operations.

Our Response: We have provided technical assistance on three timber harvest plans (THPs) on private lands in Yuba County (Oregon Hill THP, Coupe THP, and Flett THP). Technical assistance letters are only recommendations and do not have terms and conditions as do biological opinions. Further, the State did not follow our recommendations in all cases. In the case of the Oregon Hill THP, we recommended five protective measures: no winter timber falling, hauling, or site preparation; directional lighting and other restrictions on pile burning; habitat assessment; dust abatement practices; and application of herbicides by a licensed pest control advisor. In the case of the Coupe THP, we recommended 300-ft buffers on both sides of Class I and Class II watercourses; a ban on winter operations other than directional pile burning; and dustabatement. In the Flett THP, we recommended a ban on winter operations; directional burning; protective measures relating to water intake; a 300-ft buffer on one side of Little Oregon Creek; no herbicide applications within the buffer area; dry-season construction of water crossings; and various restrictions on placement of slash pilings. Our recommendations overlap to a significant degree with the California Forest Practice Rules. These rules generally provide guidance for conducting work outside of riparian areas, location of slash burn piles, erosion control measures, road

construction, threatened and endangered species specific measures, time of operation, and water quality issues. Thus, it is not reasonable to attribute most of the costs of these measures to the conservation of the California red-legged frog; rather they should be treated as part of the regulatory baseline. Furthermore, no HCPs have been completed on private timberland involving the California red-legged frog. Given all these factors, it is our conclusion that the economic impact of critical habitat on private timber operations is minimal and that most recommended conservation measures are properly considered as part of the regulatory baseline.

(58) *Comment:* Several commenters stated that the DEA failed to provide a balanced assessment of economic benefits (such as water filtering and general habitat protection) and costs in relation to the revised proposed critical habitat designation.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (e.g., lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the subspecies and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance.

We note, as a practical matter, it is difficult to develop credible estimates of such values, as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We currently lack both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In summary, we believe that society places significant value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus needs only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

(59) *Comment:* Several comments stated that the DEA did not adequately consider impacts on agricultural landowners and that the designation of critical habitat decreases property values.

Our Response: The DEA calculates the impact of critical habitat on agricultural land values by measuring its effect on the likelihood and profitability of residential and commercial development. One comment stated that farm subsidies may trigger a section 7 consultation and that these costs should be included in the DEA. This linkage is speculative and there is no instance of a farm subsidy being used as the basis for a consultation with the Service. Further, activities including discing, plowing, irrigation, chemical application, harvesting and others that are part of normal agricultural operations are also unlikely to trigger a section 7 consultation. Incremental costs to farming operations may result from construction of stream crossings, water diversion, and sediment removal; these costs are discussed in the final economic analysis.

(60) *Comment:* One comment stated that the DEA is deficient in its treatment of impacts on the agricultural sector and on rural areas generally. The comment asserts that designation of critical habitat may jeopardize or delay the receipt of federal subsidies by requiring a section 7 consultation with the Service. The comment asserts that critical habitat designation may impair the ability of farmers to engage in routine agricultural activities necessary to maintain property by requiring a section 7 consultation. The comment goes on to assert that critical habitat designation for the California red-legged frog can jeopardize the viability of the agricultural service infrastructure.

Our Response: In theory, there are several ways that the agricultural sector may be impacted directly by the designation of critical habitat for the California red-legged frog. First, owners of agricultural land may experience a decline in wealth resulting from a reduced ability to convert this land to alternative uses such as housing. Second, critical habitat designation may restrict allowable farming practices on land currently under cultivation, and may impose additional costs on farm operators. Third, critical habitat may make it more difficult to bring new land into farm production. In addition to these direct impacts, there may be indirect effects flowing from these direct impacts. We discuss each type of direct impacts and then discuss the indirect and regional impacts of critical habitat designation.

The DEA recognizes that critical habitat may result in large economic losses to owners of agricultural land, and describes these impacts in great detail. Producer surplus losses measured in the report include losses experienced by landowners. We note that these losses are changes in wealth since designation of critical habitat will lower the market price of land. In cases where critical habitat results in complete avoidance of certain areas, the per-acre wealth loss will be nearly total since the salvage value of land, especially grazing land, is often very low. Again, these types of impacts are included in the DEA and are described on a highly disaggregated basis.

With respect to impacts to lands currently under cultivation, we note that farmland comprises only a small portion of California red-legged frog critical habitat, and that critical habitat is an even smaller proportion of California farmland. The California Farmland Mapping and Monitoring Program (FMMP), conducted by the California Department of Conservation, is a biennial survey of land use activities in California. FMMP defines prime farmland as land that has been used for agricultural production at some time during the four years prior to the mapping date and meets edaphic criteria established by the U.S. Department of Agriculture. FMMP delineated 5.1 million acres of prime farmland in California in its latest round of surveying. Proposed critical habitat intersects 5,129 of those acres, or roughly 0.1 percent of all prime farmland in California; viewed another way, only 0.7 percent of the proposed habitat is classified as prime farmland. 1,075 acres are in Santa Cruz County;

1,037 are in San Luis Obispo; 935 are in San Mateo; 598 are in Contra Costa; 588 are in San Benito; and the remainder is in Monterey, Riverside, Ventura, Napa, Santa Barbara and El Dorado counties.

There are no recorded section 7 consultations concerning ongoing and traditional farming activities such as those listed in the comment letter. This gap is at least partly due to the fact that the Clean Water Act exempts from the Section 404 program discharges associated with normal farming, ranching, and forestry activities such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices (Section 404(f)(1)(A)). To be exempt, these activities must be part of an established, ongoing operation. Further, there is nothing in the record to support the notion that farm subsidies or program payments would be threatened or delayed by the designation of critical habitat.

This leaves the possibility that designation of critical habitat may make it more difficult to bring new land under cultivation. As a threshold matter, we note that there is a long-term downward trend in cultivated acreage in California. At present, the California Department of Food and Agriculture reports that there are roughly 8.5 million acres devoted to field crops, fruit and nut crops, and vegetables and melons, down from a peak of 9.7 million acres in 1981. Thus, it would appear that far more land is leaving agriculture each year than entering it.

It is difficult to predict with any certainty the specific areas that will be brought into agricultural production for the first time. Further, there are often a large number of substitute sites for any new farming activity, most of which are presumably outside of critical habitat since critical habitat comprises less than one percent of all prime farmland in California. As a result, critical habitat may be expected to produce distributional effects, however data are not readily available that would allow us to reasonably forecast these effects.

With respect to indirect and regional effects of critical habitat designation on rural areas, the comment asserts that critical habitat can jeopardize the viability of the infrastructure needed to service the agricultural sector. Without a critical mass of farms, it is argued, service providers will be unable to operate economically. While this point may be true in theory, it is unlikely that even an extreme outcome like the total loss of all prime farmland within critical habitat would jeopardize the agricultural infrastructure. As noted above, prime farmland within critical habitat accounts for less than one-tenth of a percent of all prime farmland in California.

(61) *Comment:* The Office of Advocacy of the U.S. Small Business Administration suggests that the designation of critical habitat for the California red-legged frog, if finalized as proposed, would likely have a significant economic impact on a substantial number of small entities, and therefore should not be certified under the Regulatory Flexibility Act.

Our Response: Following the completion of the proposed critical habitat designation for the California red-legged frog, we took into consideration the potential economic and other relevant effects of the designation as directed by section 4(b)(2) of the Act. On the basis of this evaluation, we excluded many areas due to potential economic effects resulting from the designation or due to conservation partnerships and programs (please refer to the Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act portion of this final rule). We believe that based on these exclusions, we have reduced or eliminated the potential economic burden to a substantial number of small business entities. Thus, we are certifying in this final rule that we do not anticipate that this final designation of critical habitat for the California red-legged frog will have a significant impact on a substantial number of small business entities. Please refer our response to Executive Order 12866 and the Regulatory Flexibility Act in this final rule for more discussion of this issue.

(62) *Comment:* The Office of Advocacy of the U.S. Small Business Administration requested that we exclude certain areas from the final designation where it is believed that the designation of critical habitat would result in a high cost economic burden.

Our Response: As discussed in the Application of Section 4(b)(2)—Economic Exclusion to 19 Census Tracts section of this final rule, we have excluded the 19 census tracts, totaling approximately 250,329 ac (101,305 ha) (approximately 34 percent of the revised proposed critical habitat), from this final rule under section 4(b)(2) of the Act on the basis of potential disproportionately high economic cost. Please refer to that section of the rule for further discussion of this issue. Thus, we believe, that we have adequately responded to the comments from The Office of Advocacy of the U.S. Small Business Administration and our responsibilities for mitigating potential economic burdens to small businesses under the Regulatory Flexibility Act.

(63) *Comment:* The Office of Advocacy of the U.S. Small Business Administration indicates that we should either be certifying that our designations of critical habitat will not have a significant impact on a substantial number of small business entities at the time of our proposal, or providing an Initial Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act at that time.

Our Response: As we have indicated in previous final designations of critical habitat and discussions with The Office of Advocacy of the U.S. Small Business Administration, we often do not have available to use the relevant economic information and analysis at the time of proposal to either certify that a proposed designation will not have a significant impact on a substantial number of small business entities or to be able to develop an Initial Regulatory Flexibility Analysis. The data to evaluate potential effects on small business entities, as well as the overall effect of the designation becomes available through the draft economic analysis which is produced shortly following the completion of the proposed designation. On the basis of the information in that draft analysis, we then evaluate the potential effects on the designation with regards to small businesses and to the overall public pursuant to section 4(b)(2) of the Act and various Executive Orders and statutes such as Executive Order 12866 and the Regulatory Flexibility Act. We have then been providing our position on certification of compliance with these specific Executive Orders and statutes in the Notice of Availability for the draft economic analyses. We further review potential effects of the rule based on public comment as we develop the final designation and make revision thereto accordingly. Finally, we revaluate our position on certification of compliance with these specific Executive Orders and statutes and iterate that position in the final designation.

We are currently working on internal processes and procedures to allow for the draft economic analysis to be done more concurrently with proposed designations of critical habitat. This will allow us to evaluate potential economic effects much earlier in the critical habitat rulemaking process, and thus provide our position on certification of compliance with these specific Executive Orders and statutes earlier.

Comments From the State

(64) *Comment:* In response to our April 13, 2004, proposed designation (69 FR 19620), the California Department of Fish and Game (CDFG) requested that we exclude lands that they manage and administer for resource conservation (e.g., State Wildlife Areas, Ecological Reserves) and lands that are administered for fishery resources (e.g., hatcheries, fishing access areas). The CDFG stated that they have specific management objectives for State lands within their jurisdiction to protect wildlife and their habitats, including those occupied by the California red-legged frog. The CDFG further stated the application of critical habitat to CDFG lands would provide no added benefit, result in project delays, and divert scarce monetary resources away from on-the-ground preservation and conservation work.

Our Response: We concur with the CDFG that their mission is to protect and conserve State wildlife resources including the California red-legged frog and that the designation of critical habitat would provide little additional protection for the subspecies. As a response in part to comments received, as well as revising our methodology and criteria, we published a revised proposed critical habitat for the California red-legged frog (70 FR 66906). In the revised proposed and this final designation, we did not include CDFG-owned or administered lands within the critical habitat designation.

(65) *Comment:* The California Department of Transportation (CalTrans) requested that we exclude all lands along highway right-of-ways (ROWs). CalTrans has stated that these ROWs undergo continual maintenance activities, and it is unlikely that such lands would contain the PCEs, and thus not be essential, for the California red-legged frog. CalTrans also stated that if a highway be used as a boundary that the boundary be outside of the ROW and that the unit description clearly state that information.

Our Response: In our determination of critical habitat, we included only those areas that we determined to contain the features identified in the PCEs and that are thus essential to the conservation of the subspecies. To the greatest extent possible, we avoided designating critical habitat adjacent to developed areas and areas containing major highways; however, due to mapping constraints, we may not have removed all such areas from the designation. In our analysis on the economic costs of the designation, we identified four future highway projects in Kern, Merced, Riverside, and San Luis Obispo counties along State Routes 46, 79 and 152. We determined that the benefits of including these lands in the designation were outweighed by the economic costs and these ROWs were removed from the designation. For more information on the exclusion see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

Summary of Changes From Revised Proposed Rule

In preparing the final critical habitat designation for the California red-legged frog, we reviewed and considered comments from the public on the proposed designation of critical habitat published on April 13, 2004 (69 FR 19620). Based on review of comments received on this initial proposal, we published a revised proposed critical habitat designation along with a DEA on November 3, 2005 (70 FR 66906). As a result of comments received on the initial proposal, the reproposal, the DEA, and a reevaluation of the revised proposed critical habitat boundaries we made changes to our revised proposed designation, as follows:

(1) We revised the proposed critical habitat units based on peer review, public comments, and biological information received during the public comment period and public workshops. After excluding units based on economics or existing management practices, isolated or small fragments that we determined were not essential to the conservation of the California red-legged frog were removed. Additionally, portions of units that did not contain PCEs were removed from the final designation.

(2) Under section 4(a)(3) of the Act, we did not designate DOD lands that have approved INRMPs in place that benefit the subspecies. Under sections 3(5)(a) and 4(b)(2) of the Act, we excluded Vandenberg Air Force Base and Camp San Luis Obispo because they had adequate management plans that cover the California red-legged frog and its habitat. For more information, refer to *''Application of 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act''* below.

(3) We adjusted the boundaries of the revised proposed units as feasible to remove areas that do not contain the primary constituent elements or were included in the revised proposed rule as a result of a mapping error.

(4) We revised the minimum time of water retention for PCE 1 from 15 to 20 weeks. This is the average time required for egg, larvae, and tadpole development into terrestrial frogs based on peer review comments and the currently accepted information on the California red-legged frog (Storer 1925; Wright and Wright 1949; Jennings 1988; Bobzien et al. 2000).

(5) Collectively, we excluded or removed a total of approximately 287,624 ac (116,397 ha) of land from this final critical habitat designation. Please refer to Table 1 for the differences in the amount of area proposed for designation in the revised proposed rule and the areas designated in this final rule. For a detailed discussion of all exclusions and exemptions, please refer to *''Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act''* below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical 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 geographical 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 under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. Conservation is a process which contributes to improving the status of the species. Individual actions may still be considered conservation even though in and of themselves they do not remove the species' need for protection under the Act.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The

designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the geographical area occupied by the subspecies must first have features that are essential to the conservation of the subspecies. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the subspecies (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the subspecies. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the subspecies require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the subspecies at the time of listing. An area currently occupied by the subspecies but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the subspecies and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. 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 recovery of the subspecies. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted 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 will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the subspecies, and within areas occupied by the subspecies at the time of listing, that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the California red-legged frog are derived from the biological needs of the California red-legged frog as described below and in the revised proposed critical habitat designation published in the **Federal Register** on November 3, 2005 (70 FR 66906).

The areas determined to contain the features essential for the conservation of the California red-legged frog are designed to provide sufficient aquatic habitat for breeding and non-breeding activities and sufficient upland habitat for shelter, foraging, predator avoidance and dispersal.

Aquatic Breeding Habitat

California red-legged frogs typically lay eggs between December and early April. Eggs hatch within 6 to 14 days depending on water temperatures and require approximately 20 days to develop into tadpoles. Tadpoles in turn require anywhere between 11 to 20 weeks to develop into terrestrial frogs (Storer 1925; Wright and Wright 1949; Bobzien et al. 2000). Water bodies suitable for tadpole rearing must remain watered at least until the tadpoles metamorphose into adults, typically between July and September. Adult California red-legged frogs can survive in moist upland areas after breeding habitat has dried, and can live several years to make new breeding attempts. Therefore, aquatic breeding habitat need not be available every year, but it must be available often enough and for appropriate hydroperiods to maintain a California red-legged frog population during most years.

Aquatic breeding habitat is essential for providing space, food, and cover necessary to sustain all life stages of California red-legged frogs. It consists of low-gradient fresh water bodies, including natural and manmade (e.g., stock) ponds, backwaters within streams and creeks, marshes, lagoons, and dune ponds. It does not include deep lacustrine water habitat (e.g., deep lakes and reservoirs 50 ac (20 ha) or larger in size).

The aquatic habitat PCE is essential for frog breeding and for providing space, food, and cover necessary to

sustain the early life history stages of larval and juvenile California red-legged frogs. To be considered essential breeding habitat, the aquatic feature must have the capability to hold water for a minimum of 20 weeks in all but the driest of years. This is the average amount of time needed for egg, larvae, and tadpole development and metamorphosis so that juveniles can become capable of surviving in upland habitats. California red-legged frogs usually have completed metamorphosis between July and September. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis. However, these sites would still contain essential features because they constitute breeding habitat in years of average rainfall. Without aquatic breeding habitats, the California red-legged frog would not survive, reproduce, develop juveniles, and grow into adult California red-legged frogs that can complete their life cycles.

Non-Breeding Aquatic Habitat

The aquatic non-breeding habitat is essential for providing the space, food, and cover necessary to sustain California red-legged frogs. Non-breeding aquatic habitat consists of those aquatic elements identified above, and also includes, but is not limited to, other wetland habitats such as intermittent creeks, seeps, and springs. California red-legged frogs can use large cracks in the bottom of dried ponds as refugia to maintain moisture and avoid heat and solar exposure (Alvarez 2004). Without these non-breeding aquatic features, California red-legged frogs would not be able to survive drought periods, or be able to disperse to other breeding habitat.

Upland Habitat

Upland and riparian habitats associated with essential aquatic habitat are essential to maintain California red-legged frog populations. The associated upland and riparian habitats provide food and shelter sites for California red-legged frogs and assist in maintaining the integrity of aquatic sites by protecting them from disturbance and supporting the normal functions of the aquatic habitat. Upland habitat associated with occupied wetland habitat often contains blackberry (*Rubus* sp.) and other upland perennial species that provide for shelter from predatory species and forage habitat (Service 2002).

Upland habitat that contains the features essential to the conservation of the subspecies consists of natural areas within 200 ft (60 m) of the edge of the riparian vegetation or dripline, or the edge of the watershed boundary, whichever is closer. This is based on the dispersal capabilities of the subspecies (see Dispersal Habitat below), and research identifying the use of upland areas by the subspecies (Rathbun et al. 1993; Bulger et al. 2003; Tartarian 2004). Tatarian (2004) found California red-legged frogs inhabiting upland areas for 50 days at a distance of 302 ft (92 m) from aquatic habitat; Bulger et al. (2003) found that the subspecies is capable of inhabiting upland habitats within 200 ft (60 m) of aquatic habitat for continuous durations exceeding 20 days; and Rathbun et al. (1993) observed California red-legged frogs inhabiting upland riparian habitat for durations up to 77 days. California red-legged frogs often disperse from their breeding habitat to forage and seek suitable upland habitat if aquatic habitat is not available.

Suitable upland habitat includes structure that provides shade, moisture, and cooler temperatures. This structure may be natural, such as the spaces under boulders or rocks and organic debris (e.g., downed trees or logs), or it could be manmade, such as industrial debris and agricultural features (drains, watering troughs, abandoned sheds, or stacks of hay or other vegetation). California red-legged frogs will also use small mammal burrows and moist leaf litter as refugia (Jennings and Hayes 1994; Fellers and Kleeman 2005).

Dispersal Habitat

Dispersal habitat provides connectivity among California red-legged frog breeding (and associated upland) habitat patches. While California red-legged frogs can pass many obstacles, and do not require a particular type of habitat for dispersal, the habitat connecting breeding locations and other aquatic habitat must be free of barriers that prevent California red-legged frogs from dispersing.

Designated dispersal habitat consists of upland and riparian habitat contiguous with breeding and non-breeding aquatic habitat, that is free of barriers, and, that connects two or more patches of aquatic breeding habitat within 0.7 mi (1.2 km) of one another. Dispersal barriers include heavily traveled roads (Vos and Chardon 1998) that possess no bridges or culverts, moderate to high density urban or industrial developments with large expanses of asphalt or concrete that do not contain the PCEs or features essential to conservation of the subspecies, and large reservoirs over 50 ac (20 ha) in size that contain predatory species. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to California red-legged frog dispersal.

California red-legged frogs have been documented to travel as far as 2.2 mi (3.6 km) from non-breeding to breeding habitats (Bulger et al. 2003). These long distance movements are migrations rather than use of corridors for moving between habitats (N. Scott and G. Rathbun, in litt. 1998). These movements have also been found to be with apparent disregard to topography, vegetation type, or riparian corridors (Bulger et al. 2003; Fellers and Kleeman 2005). We conclude the 2.2 mi (3.6 km) is likely the upward limit of dispersal capability for the California red-legged frog and that the 0.7 mi (1.2 km) dispersal distance will ensure that connectivity between breeding habitats will be maintained within areas designated as critical habitat. This 0.7 mi (1.2 km) dispersal element also includes areas of non-aquatic (i.e., upland habitat) habitat for shelter.

Accessible dispersal habitat provides opportunities for the California red-legged frog to move freely across the landscape in search of adjacent breeding and non-breeding habitats. Accessible dispersal habitat is considered essential to the conservation of the subspecies and provides for: (1) Opportunities for movement and establishment of home ranges by juvenile recruits; (2) maintaining gene flow by the movement of both juveniles and adults between subpopulations; and (3) recolonization of or recruitment into breeding habitat after local extirpations.

Primary Constituent Elements (PCEs) for the California Red-Legged Frog

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the California red-legged frog. All areas designated as critical habitat for California red-legged frogs are occupied, are within the subspecies' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the subspecies and the requirements of the habitat to sustain the essential life history functions of the subspecies, we have determined that the California red-legged frog's PCEs are:

(1) *Aquatic Breeding Habitat.* Standing bodies of fresh water (with salinities less than 7.0 parts per thousand (ppt)), including: natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become

inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest of years.

(2) *Non-Breeding Aquatic Habitat.* Fresh water habitats, as described above, that may or may not hold water long enough for the subspecies to hatch and complete its aquatic life cycle but that do provide for shelter, foraging, predator avoidance, and aquatic dispersal for juvenile and adult California red-legged frogs. Other wetland habitats that would be considered to meet these elements include, but are not limited to: plunge pools within intermittent creeks; seeps; quiet water refugia during high water flows; and springs of sufficient flow to withstand the summer dry period.

(3) *Upland Habitat.* Upland areas within 200 ft (60 m) of the edge of the riparian vegetation or dripline surrounding aquatic and riparian habitat and comprised of various vegetational series such as grasslands, woodlands, and/or wetland/riparian plant species that provides the frog shelter, forage, and predator avoidance. Upland features are also essential in that they are needed to maintain the hydrologic, geographic, topographic, ecological, and edaphic features that support and surround the wetland or riparian habitat. These upland features contribute to the filling and drying of the wetland or riparian habitat and are responsible for maintaining suitable periods of pool inundation for larval frogs and their food sources, and provide breeding, non-breeding, feeding, and sheltering habitat for juvenile and adult frogs (e.g., shelter, shade, moisture, cooler temperatures, a prey base, foraging opportunities, and areas for predator avoidance). Upland habitat can include structural features such as boulders, rocks and organic debris (e.g. downed trees, logs), as well as small mammal burrows and moist leaf litter.

(4) *Dispersal Habitat.* Accessible upland or riparian dispersal habitat within designated units and between occupied locations within 0.7 mi (1.2 km) of each other that allows for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats such as agricultural fields, which do not contain barriers to dispersal. (An example of a barrier to dispersal is a heavily traveled road (Vos and Chardon 1998) constructed without bridges or culverts.) Dispersal habitat does not include moderate to high density urban or industrial developments with large expanses of asphalt or concrete, nor does it include large reservoirs over 50 ac (20 ha) in size, or other areas that do not contain those features identified in PCE 1, 2, or 3 as essential to the conservation of the subspecies.

This designation is designed for the conservation of PCEs necessary to support the life history functions and essential to the conservation of the subspecies. Because not all life history functions require all the PCEs, not all areas designated as critical habitat will contain all the PCEs.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the California red-legged frog. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the California red-legged frog. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional Geographic Information System (GIS) coverages. We designated no areas outside the geographical area presently occupied by the subspecies.

In designating critical habitat for the California red-legged frog, we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the subspecies, and that may require special management considerations or protection. We included some areas which were occupied at the time of listing as well as some areas subsequently identified as occupied. We found that the majority of newer occurrence records were within areas already known to support the California red-legged frog. We identified critical habitat units that have the highest likelihood to contain populations of California red-legged frogs based on: (1) The presence of the defined PCEs; (2) the density of California red-legged frog occurrences; and (3) the kind, amount, and quality of habitat associated with those occurrences. The units contain sufficient PCEs to support the behaviors and/or life cycle stages we have determined are essential to the conservation of the subspecies.

Throughout the development process, we avoided identifying areas with single occurrences for designation unless such areas were considered ecologically or biologically unique or had other biological significance. Further, we made an effort to avoid developed areas, such as housing and commercial developments, that are unlikely to contribute to the conservation of the California red-legged frog. We also avoided fragmented areas such as those surrounded by development. Areas within the boundaries of the mapped units such as buildings, roads, parking lots, railroads, canals, levees, airport runways, other paved areas, lawns, and other urban landscaped areas are not critical habitat and are not included in this designation. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the subspecies and/or the PCEs in adjacent critical habitat. We avoided known areas of intensive agriculture. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences.

We considered several criteria in the selection of areas that contain the essential features for the California red-legged frog and focused on designating units: (1) Throughout the current geographic, elevational, and ecological distribution of the subspecies; (2) that would maintain the current population structure across the subspecies' range; (3) that retain or provide for connectivity between breeding sites that allows for the continued existence of viable and essential metapopulations, despite fluctuations in the status of subpopulations; (4) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics; and (5) that contain sufficient upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term.

We first determined the occupancy status of areas on the basis of report data compiled by the CDFG (CNDDB 2005). Occurrence records were reviewed and historical or extirpated records were not considered in the designation. We used the final listing rule to establish those areas occupied at the time of listing. All other areas designations were based on occupancy data collected since listing. Our designation does not include all occupied areas. When determining which occupied areas are essential to the conservation of the subspecies and meet the definition of critical habitat, we considered theories of

metapopulation persistence, on-the-ground survey data, and California red-legged frog longevity. Bulger et al. (2003) found more than 75 percent of California red-legged frogs are resident at permanent aquatic habitats over the course of a year, thereby providing local population stability. Survey data provided to us during the development of the revised proposed critical habitat rule show an average persistence of 19 years for California red-legged frog populations. Additionally, maximum longevity of male and female California red-legged frogs is 8 and 10 years respectively (Jennings et al. in litt. 1992), which also contributes to generational and metapopulation stability.

The extant occurrences within the critical habitat units comprise approximately 63 percent of known extant occurrences within the range of the subspecies. We critically evaluated records in which the exact site location was not precisely identified or could not be confirmed, and removed those locations from our analysis. We then selected areas that are inhabited by populations (source populations) that are capable of maintaining their current population levels and capable of providing individuals to recruit into subpopulations found in adjacent areas. We also selected several areas which have other unique ecological significance, with the goal of maintaining the full range of the habitat variability and evolutionary adaptation in this subspecies. These include areas on the periphery of the current range and elsewhere that represent the distribution of the subspecies, and areas that provide connectivity among source populations or between source populations.

The critical habitat units were delineated by creating approximate areas for the units by screen digitizing polygons (map units) using ArcMap (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying occurrence locations extant-at-time-of-listing and subsequent-to-listing California red-legged frog with a 0.7 mi (1.2 km) radius. This distance was used as a guide for mapping the essential features around locations where California red-legged frog populations are present (see Dispersal Habitat above). As stated above, California red-legged frogs have been documented to disperse from ponds and streams a distance over 2.0 mi (3.2 km) (Bulger et al. 2003). However, based on a review of the most current literature and information gathered in development of the Recovery Plan for the subspecies, we have determined that the 2.0 mi (3.2 km) distance is toward the maximum dispersal distance for the subspecies during a single season, and that the 0.7 mi (1.2 km) distance is more reflective of the average dispersal distance for the California red-legged frog (Rathbun et al. 1993; Scott and Rathbun, in litt 1998; Wright, in litt. 1999; Bulger et al. 2003; Tatarian 2004; Fellers and Kleeman 2005). Although the studies discussed above provide an approximation of the distances that California red-legged frogs can move from their aquatic habitats, breeding ponds, and other wetland habitats in search of suitable upland refugia or other breeding locations, we recognize that upland habitat features will influence California red-legged frog movements in a particular landscape. As a result, we made adjustments to the upland areas to include additional areas up to the watershed boundaries or to include habitat containing the PCEs beyond the 0.7 mi (1.2 km) distance where appropriate to aggregate clumps of occurrences. In some other instances, we reduced the areas to remove areas not exhibiting the PCEs from the revised proposed designation including agricultural, developed, disturbed, or fragmented lands.

We evaluated the resulting units (delineating geographic range and potential suitable habitat), refined elevation and hydrologic ranges, and identified areas not containing the essential features (i.e., not containing PCEs) (see Primary Constituent Elements section). We excluded areas because (1) they do not contain sufficient PCEs to support one or more of the subspecies' life processes or they have low quality PCEs because either the area is highly degraded and is likely not restorable or the area is small, highly fragmented, or isolated and may provide little or no long-term conservation value; and/or (2) other areas within the geographic region were determined to be sufficient to meet the conservation needs of the subspecies.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as: buildings, paved areas, and other structures that lack PCEs for the California red-legged frog. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of such developed areas. Any such structures and the land under them remaining within critical habitat boundaries shown on the maps of this final rule are excluded by text and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the subspecies and/or primary constituent elements in adjacent critical habitat.

Further refinement of the preliminary areas as described above was based on the extent of aquatic habitat, stream reach, upland dispersal distance and watershed boundaries. We focused on areas of high California red-legged frog abundance, areas to maintain connectivity, and/or areas of unique ecological significance. Refined unit boundaries were delineated using watershed boundaries from the State of California's CALWATER watershed classification system (version 2.2) using the smallest (planning watersheds) watershed designation. Visual inspection of mapped California red-legged frog occurrence records revealed un-surveyed regions surrounded by surveyed regions, mostly in highly developed areas. Rather than designating critical habitat in the development fringe, we designated in areas where fewer surveys have been conducted but where California red-legged frogs are likely to occur based on similarity of habitat and presence of PCEs. In areas where planning watersheds were large and/or had been significantly altered hydrologically, we used alternative structural, political, or topographic boundaries (e.g., roads, county boundaries, ridgeline features, elevation contour lines) as critical habitat boundaries because in these areas the benefits of using planning watersheds were limited in that they included areas outside the subspecies' dispersal distance or were of little conservation value for the California red-legged frog.

Units were designated based on sufficient PCEs being present to support California red-legged frog life processes. Some units contained all PCEs and supported multiple life processes. Some units contained only a portion of the PCEs necessary to support the California red-legged frog's particular use of that habitat. Where a subset of the PCEs were present (e.g., water temperature during migration flows), it has been noted that only PCEs present at designation will be protected.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered

by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We have excluded lands covered by the Bonny Doon HCP, the draft East Contra Costa HCP, and the Western Riverside Multiple Species HCP (see *Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act* section below).

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

We believe the areas designated as critical habitat will require some level of management and/or protection to address the current and future threats to the California red-legged frog and maintain the PCEs essential to its conservation in order to ensure the overall conservation of the subspecies. Areas in need of management include not only the immediate locations where the subspecies may be present, but additional areas adjacent to these that can provide for normal population fluctuations and/or dispersal. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the California red-legged frog. Federal activities outside of critical habitat are still subject to review under section 7 of the Act if they may affect the California red-legged frog or its critical habitat (such as development, land use conversions, watershed condition, etc.). Prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat.

A detailed discussion of threats to the California red-legged frog and its habitat can be found in the final listing rule (61 FR 25813, May 23, 1996), the previous critical habitat designation (66 FR 14626, March 13, 2001), and the final Recovery Plan (May 28, 2002). Threats that may warrant special management of those features that define essential habitat (primary constituent elements) for the California red-legged frog include, but are not limited to: trematode and chytrid fungus disease; direct and indirect impacts from some human recreational activities; flood control maintenance activities; water diversions; overgrazing activities; competition and predation by nonnative species; and habitat removal and alteration by urbanization.

Critical Habitat Designation

We are designating 34 units as critical habitat for the California red-legged frog. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, that contain the primary constituent elements essential for the conservation of the subspecies and that may require special management, and those additional areas not occupied at the time of listing but which have been found to be essential to the conservation of the California red-legged frog. The areas designated as critical habitat are identified in Tables 1 and 2 below. Table 1 shows a summary of areas that meet the definition of critical habitat for the California red-legged frog, areas excluded, and areas designated as critical habitat. Table 2 identifies the approximate area designated as critical habitat for the California red-legged frog by land ownership.

TABLE 1.—APPROXIMATE AREA (AC, (HA)) OF LOCATIONS SUPPORTING FEATURES ESSENTIAL TO CONSERVATION OF THE CALIFORNIA RED-LEGGED FROG FITTING THE SELECTION CRITERIA FOR CRITICAL HABITAT, AREAS EXCLUDED FROM CRITICAL HABITAT PURSUANT TO SECTION 4(B)(2) OF THE ACT, AND AREAS DESIGNATED AS CRITICAL HABITAT FOR THE CALIFORNIA RED-LEGGED FROG

Areas with essential features		Excluded areas		Total critical habitat	
ac	ha	ac	ha	ac	ha
737,912	298,622	287,624	116,397	450,288	182,225

TABLE 2.—CRITICAL HABITAT UNITS DESIGNATED FOR THE CALIFORNIA RED-LEGGED FROG [AREA ESTIMATES (AC, (HA)) REFLECT THE ENTIRE AREA WITHIN THE CRITICAL HABITAT UNIT BOUNDARIES; AREAS SUPPORTING PCES MAY BE LESS WITHIN EACH UNIT.]

Unit	Federal		State		Private/Local		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
BUT–1A–B			189	77	1,539	623	1,728	699
YUB–1					3,776	1,528	3,776	1,528
NEV–1	1,656	670	11	5	5,065	2,050	6,733	2,725
ELD–1					8,388	3,395	8,388	3,395
NAP–1					2,529	1,024	2,529	1,024
MRN–1					22,559	9,129	22,559	9,129
MRN–2	25,834	10,455					25,834	10,455
SOL–1					2,844	1,151	2,844	1,151
CCS–1A					4,095	1,657	4,095	1,657
ALA–1A					285	115	285	115
ALA–1B					533	216	533	216
SNM–1A					10,398	4,208	10,398	4,208
SNM–2C			1055	427	1,830	741	2,885	1,168
STC–1A					28,059	11,355	28,059	11,355
STC–1B			14,496	5,866	15,210	6,155	29,706	12,201
SCZ–1			280	113	12,794	5,177	13,074	5,291
SCZ–2	115	46			3,942	1,595	4,057	1,642
MER–1A–B			1,869	756	10,308	4,171	12,176	4,928

TABLE 2.—CRITICAL HABITAT UNITS DESIGNATED FOR THE CALIFORNIA RED-LEGGED FROG [AREA ESTIMATES (AC, (HA)) REFLECT THE ENTIRE AREA WITHIN THE CRITICAL HABITAT UNIT BOUNDARIES; AREAS SUPPORTING PCEs MAY BE LESS WITHIN EACH UNIT.]—Continued

Unit	Federal		State		Private/Local		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
MNT–1	.....	.....	519	210	.....	.....	519	210
MNT–2	1,074	435	91	37	44,256	17,910	45,420	18,381
SNB–1	.....	.....	2,899	1,173	11,386	4,608	14,285	5,781
SNB–2	13	5	.....	.....	9,603	3,886	9,616	3,891
SNB–3	13,820	5,593	.....	.....	6,217	2,516	20,037	8,109
SLO–1A–B	171	69	.....	.....	17,616	7,129	17,787	7,198
SLO–8	11,545	4,672	.....	.....	4,732	1,915	16,277	6,587
STB–1	20,849	8,437	.....	.....	4,262	1,725	25,111	10,162
STB–3	40,013	16,193	.....	.....	7,427	3,005	47,439	19,198
STB–4	.....	.....	.....	.....	7,662	3,101	7,662	3,101
STB–5	1,112	450	1,255	508	8,960	3,626	11,328	4,584
STB–7	29,206	11,819	.....	.....	3,299	1,335	32,505	13,154
VEN–1	5,151	2,085	.....	.....	1,510	611	6,660	2,695
VEN–2	.....	.....	.....	.....	2,915	1,180	2,915	1,180
VEN–3	8,363	3,384	.....	.....	474	192	8,837	3,576
LOS–1	3,909	1,582	.....	.....	322	130	4,231	1,712
Total	162,830	65,895	22,664	9,172	264,793	107,158	450,288	182,225

Presented below are brief descriptions of all units. The units are listed in order geographically north to south and west to east, with exception of the units in the Sierra Nevada foothills, which are listed first, north to south.

BUT–1, Hughes Place Pond (1,728 ac (699 ha))

This unit is located in east-central Butte County, east of State Highway 70 and west of Oroville-Quincy Highway. BUT–1 is essential for the conservation of the subspecies because the area contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. This unit encompasses one of five known extant Sierra Foothill populations identified since the time of listing and is located in the easternmost portion of the subspecies' historic range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is known to be occupied, contains high quality habitat, and contains the features essential for the conservation of the subspecies. The unit consists of private and State land and is mapped entirely from occurrence records subsequent to the time of listing. Threats that may require special management in this unit include necessary wildland fire suppression activities, which may dewater aquatic habitats and thereby resulting in the desiccation of egg masses or direct death of adults from water drafting; timber harvest activities, which can alter or remove upland habitat; and predation by nonnative species. We have excluded land (approximately 60 percent of the revised proposed unit) from the final designation of critical habitat that is managed under the Sierra Nevada Forest Plan by the Plumas National Forest. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

YUB–1, Little Oregon Creek (3,776 ac (1,528 ha))

This unit is located in northeastern Yuba County, north of Marysville Road and south of La Porte Road. YUB–1 is considered an area that is essential for the conservation of the subspecies because it contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. YUB–1 is the second of five known extant Sierra Foothill populations identified since the time of listing and is located in the easternmost portion of the subspecies' historic range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is known to be occupied, contains high quality habitat, and contains the features essential for the conservation of the subspecies. This unit consists of private land and is mapped entirely from occurrence records subsequent to the time of listing. Threats that may require special management in this unit include necessary wildland fire suppression activities, which may dewater aquatic habitats and thereby resulting in the desiccation of egg masses or direct death of adults from water drafting; timber harvest activities, which can alter or remove upland habitat; and predation by nonnative species. We have excluded land (approximately 40 percent of the revised proposed unit) from the final designation of critical habitat that is managed under the Sierra Nevada Forest Plan by the Plumas National Forest. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

NEV–1, Sailor Flat (6,733 ac (2,725 ha))

This unit is located in central Nevada County, approximately 3 mi (5 km) northeast of Nevada City, south of Tyler Foote Road and north of State Highway 20. NEV–1 is considered an area that is essential for the conservation of the subspecies because it contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. NEV–1 is the third of five known extant Sierra Foothill populations and is located in the easternmost portion of the subspecies' historic range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is known to be occupied, contains high quality habitat, and contains the features essential for the conservation of the subspecies. This unit consists of Federal, State, and private land and is

mapped entirely from occurrence records subsequent to the time of listing. Threats that may require special management in this unit include timber harvest activities; removal and alteration of habitat due to potential urban development; necessary wildland fire suppression activities, which may dewater aquatic habitats and thereby result in the desiccation of egg masses or direct death of adults from water drafting; and predation by nonnative species. We have excluded land (approximately 38 percent of the revised proposed unit) from the final designation of critical habitat that is managed under the Sierra Nevada Forest Plan by the Tahoe National Forest. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

ELD–1, Spivey Pond (8,388 ac (3,395 ha))

This unit is located in central El Dorado County, south of State Highway 50 and east of Newton Road. ELD–1 is essential for the conservation of the subspecies because it contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. ELD–1 is the fourth of five known extant Sierra Foothill populations and is located in the easternmost portion of the subspecies' historic range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is known to be occupied, contains high quality habitat, and contains the features essential for the conservation of the subspecies. The unit consists entirely of private land and is mapped entirely from occurrence records subsequent to the time of listing. Threats that may require special management in this unit include necessary wildland fire suppression activities, which may dewater aquatic habitats and thereby result in the desiccation of egg masses or direct death of adults from water drafting; timber harvest activities; and predation by nonnative species. Snows Quarry does not contain the PCEs and has been removed from this final designation of critical habitat. However, due to technical mapping constraints we did not physically remove the area from the map depicting unit ELD–1. We have excluded land (approximately 5 percent of the revised proposed unit) from the final designation of critical habitat which is managed under the Sierra Nevada Forest Plan by the El Dorado National Forest. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

CAL–1, Young's Creek

This unit is the fifth of five known extant Sierra Foothill populations and has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

NAP–1, Wragg Creek (2,529 ac (1,024 ha))

This unit is located in east-central Napa County, is bisected by State Highway 128, and lies largely to the west of State Highway 121. NAP–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). NAP–1 was known to be occupied at the time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The unit provides for connectivity between populations further west in the northbay; represents the northern extent of the subspecies' range in the interior coast range; and contains high quality habitat. The unit consists of private land and is mapped from occurrence records at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include predation by nonnative species, development, and recreational off-road vehicle use.

MRN–1, Salmon Creek (22,559 ac (9,129 ha))

This unit is located in north-central Marin County, east of State Highway 1 and north of Point Reyes Petaluma Road. MRN–1 is occupied and contains occurrence records subsequent to the time of listing. The area contains features essential to the conservation of the subspecies because it contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. MRN–1 provides for connectivity between populations in the northbay region, and represents the northern extent of the subspecies' coastal range. The unit contains permanent and ephemeral aquatic habitats suitable for breeding; upland areas for dispersal, shelter, and food; and high quality habitat. The unit consists entirely of private and local government land and is mapped from occurrence records subsequent to the time of listing. Threats that may require special management in this unit include overgrazing of aquatic and riparian habitats and predation by nonnative species.

MRN–2, Point Reyes Peninsula (25,834 ac (10,455 ha))

This unit is located in western Marin County, west of State Highway 1. MRN–2 contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). MRN–2 was known to be occupied at the time of listing and is currently occupied. The unit contains high quality permanent and ephemeral aquatic habitats suitable for breeding, and upland areas for dispersal, shelter, and food. The unit provides for connectivity between populations further inland and represents the southern portion of the geographic range within the northbay. The unit consists entirely of Federal land (National Park Service) and is mapped from occurrence records at-time-of-listing and subsequent to the time of listing. Threats that may require special management in this unit include overgrazing of aquatic and riparian habitats and predation by non-native species.

SOL–1, Sky Valley (2,844 ac (1,151 ha))

This unit is located in southwestern Solano County and a portion of extreme southeastern Napa County, south of Interstate 80 and west of Interstate 680. SOL–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SOL–1 was known to be occupied at the time of listing and is currently occupied. The unit contains high quality permanent and ephemeral aquatic habitats suitable for breeding, upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and represents the southern extent of the subspecies in the interior coast range north of the Suisun Bay. The unit consists of private land and is mapped from occurrence records at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include

overgrazing of aquatic and riparian habitats, and removal and alteration of habitat due to urbanization.

CCS–1A, Berkeley Hills (4,095 ac (1,657 ha))

This unit is located in western Contra Costa County, south of Alhambra Valley Road and north of Bear Creek Road. CCS–1A contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). CCS–1A was known to be occupied at the time of listing. is currently occupied, and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and is the only critical habitat designated in Contra Costa County. The unit consists of private land and local government land. Threats that may require special management in this unit include removal and alteration of habitat due to urbanization, overgrazing of aquatic and riparian habitats, and predation by nonnative species.

CCS–1B, Mulligan Hill

This unit has been excluded from the final designation. *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

ALA–1A, Los Vaqueros (285 ac (115 ha))

This unit is located in Alameda County, along Vasco Road. ALA–1A contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). ALA–1A was known to be occupied at the time of listing, is currently occupied, and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and represents one of only two areas in Alameda County designated as critical habitat. The unit consists of private land and is mapped from occurrence records at-time-of-listing and subsequent to the time of listing. Threats that may require special management in this unit include overgrazing of aquatic and riparian habitat and predation by nonnative species. We have excluded land (approximately 31 percent of the revised proposed unit) from the final designation of critical habitat because it falls within the draft East Contra Costa County Natural Communities Conservation Plan/Habitat Conservation Plan. The remainder of the unit (approximately 68 percent of the revised proposed unit) was excluded for disproportionately high economic costs. For a further discussion of this exclusion see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

ALA–1B, San Antonio Creek (533 ac (216 ha))

This unit is located in north-central Alameda County, along Collier Canyon. ALA–1B contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). ALA–1B is essential for the conservation of the California red-legged frog since the unit is currently occupied and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and represents one of only two areas in Alameda County designated as critical habitat. The unit consists of private land and is mapped from occurrence records at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include removal and alteration of habitat due to urbanization, overgrazing of aquatic and riparian habitats, and predation by nonnative species. Approximately 85 percent of the revised proposed unit was excluded for disproportionately high economic costs. For a further discussion of this exclusion see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

ALA–1C, San Antonio Reservoir

This unit has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

SNM–1A, Cahill Ridge (10,398 ac (4,208 ha))

This unit is located in northwestern San Mateo County, west of Interstate 280 and east of California Route 1. SNM–1A contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SNM–1A was known to be occupied at the time of listing, is currently occupied, and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The unit represents the only unit in the San Francisco peninsula and would assist in maintaining the California red-legged frog population within the San Francisco area. The unit consists of private land and local government land and is mapped from occurrence records at-time-of-listing and subsequent to the time of listing. Threats that may require special management in this unit include predation by nonnative species.

SNM–1B, Langley Hill

This unit has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

SNM–1C, Peter's Creek

This unit has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

SNM–2A, Gordon Ridge

This unit has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

SNM–2B, Pescadero Creek

This unit has been excluded from the final designation. See *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

SNM–2C, Ano Nuevo (2,885 ac (1,168 ha))

This unit is located in extreme northwestern Santa Cruz County. SNM–2C contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SNM–2C was known to be occupied at the time of listing, is currently occupied, and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and represents the northern extent of the subspecies in the Santa Cruz area. The unit consists of

private and State land and is mapped from occurrence records at-time-of-listing and subsequent to the time of listing. Threats that may require special management in this unit include predation by nonnative species.

STC–1A, Cañada de Pala (28,059 ac (11,355 ha))

This unit is located in northcentral Santa Clara County, south of Sierra Road and west of Mount Hamilton. STC–1A contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). STC–1A was known to be occupied at the time of listing, is currently occupied, and contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to assist in preventing further fragmentation of habitat in this portion of the subspecies' range and represents the northern portion of the two areas designated within the Santa Clara area. This unit consists of private and local government land and is mapped from occurrence records at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include removal and alteration of habitat due to urbanization, overgrazing of aquatic and riparian habitats, and predation by nonnative species.

STC–1B, Henry Coe State Park (29,706 ac (12,021 ha))

This unit is located in southeastern Santa Clara County, east of Anderson Lake and north of State Highway 152. STC–1B contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). STC–1B was known to be occupied at the time of listing and is currently occupied. The unit contains high quality permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and represents the southern portion of two areas designated within Santa Clara County. The unit consists of private and State land and is mapped from occurrence records at-time-of-listing and subsequent to the time of listing. Threats that may require special management in this unit include predation by nonnative species.

SCZ–1, North Coastal Santa Cruz County (13,074 ac (5,291 ha))

This unit is located along the coastline of Santa Cruz County, from approximately Waddell Creek to Yellow Bank Creek. It includes locations within several watersheds that drain into the Pacific Ocean, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. SCZ–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SCZ–1 provides connectivity between occupied sites along the coast and further inland. In addition, it contains high quality habitat, indicated by high density of extant occurrences, permanent and ephemeral aquatic habitat suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit represents one of three areas designated in Santa Cruz County. The unit consists of private and State land. Threats that may require special management in this unit include water diversions, which could dewater portions of aquatic habitat, and thereby lead to desiccation of egg masses or temporal loss of aquatic habitat. We have excluded land (4.9 ac (2 ha)) from the final designation of critical habitat which is managed under the Bonny Doon Habitat Conservation Plan. For a further discussion of this exclusion see *Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act* below.

SCZ–2, Watsonville Slough (4,057 ac (1,642 ha))

This unit is located along the coastal plain in southern Santa Cruz County, north of the mouth of the Pajaro River and seaward of California Highway 1. It includes locations in the Watsonville Slough system, including all or portions of Gallighan, Hanson, Harkins, Watsonville, Struve, and the West Branch of Struve sloughs. The unit is mapped from occurrence records at the time of listing and subsequent to the time of listing. SCZ–2 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SCZ–2 provides connectivity between occupied sites along the coast and further inland. In addition, it contains permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The unit consists of private land and Federal land. Threats that may require special management in this unit include mortality due to agricultural pollution, conversion of habitat by introduced invasive plants, removal and alteration of aquatic and upland habitat due to urbanization, and predation by nonnative species.

MER–1A–B, Pacheco Pass (12,176 ac (4,928 ha))

This unit includes two subunits, MER–1A and MER–1B; and is located in southwestern Merced County and a small portion of southeastern Santa Clara County, west of San Luis Reservoir. MER–1 is essential for the conservation of the subspecies because it contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2), contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4), and is occupied by the subspecies. MER–1 is an area determined to be occupied since the time of listing and is currently occupied. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range. This is the only unit within the central coast range with drainages that flow into the Central Valley. The unit consists of private and State land and is mapped entirely from occurrence records subsequent to time of listing. Threats that may require special management in this unit include overgrazing of aquatic and riparian habitat and predation by nonnative species.

MNT–1, Elkhorn Slough (519 ac (210 ha))

This unit is located along the coastal plain in northern Monterey County, inland from the town of Moss Landing, and it is mapped from occurrence records at the time of listing and subsequent to the time of listing. MNT–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). The designation of MNT–1 is expected to prevent further fragmentation of habitat in this portion of the subspecies' range, contains permanent and ephemeral aquatic habitats suitable for breeding, and contains upland areas for dispersal, shelter, and food. We have determined that these attributes are essential to the conservation of the subspecies. Elkhorn

Slough is unique in that it is a large estuary/freshwater slough system not typically found on the California coast. The unit consists of State land. Threats that may require special management in this unit include mortality due to agricultural pollution, trematode infestation and chytrid fungus infection, and predation by nonnative species.

MNT–2, Carmel River (45,420 ac (18,381 ha))

This unit is located about 3 mi (5 km) south to about 22 mi (35 km) southeast of the city of Monterey and includes locations in the Carmel River Valley and nearby San Jose Creek. It is mapped from occurrence records at the time of listing and subsequent to the time of listing at the Carmel River, and at Las Garzas, San Jose, and San Clemente Creeks. MNT–2 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). MNT–2 is occupied by the subspecies; contains permanent and ephemeral aquatic habitats suitable for breeding; contains sufficient PCEs to support behaviors we have determined are essential to the conservation of the subspecies; and contains accessible upland areas for dispersal, shelter, and food. The unit represents the largest designated habitat within Monterey County. The unit consists of private, State, and Federal land (U.S. Forest Service). Threats that may require special management in this unit include removal and alteration of aquatic and upland habitat due to urbanization, dewatering of aquatic habitat due to water pumping and water diversions, and predation by nonnative species.

SNB–1, Hollister Hills (14,285 ac (5,781 ha))

This unit is located in northwestern San Benito County in the foothills of the Gabilan Range. It is mapped from occurrence records at the time of listing and subsequent to the time of listing near Saint Frances Retreat, San Juan Oaks, Azalea Canyon, Bird Creek, and the Hollister Hills State Vehicle Recreation Area. SNB–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SNB–1 is occupied by the subspecies, is expected to prevent further fragmentation of habitat in this portion of the subspecies' range, and contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit consists of private and State land. Threats that may require special management in this unit include removal and alteration of aquatic and upland habitat due to recreational and residential development, off-road vehicular activities, and predation by nonnative species.

SNB–2, Paicines Reservoir and Tres Pinos Creek (9,616 ac (3,891 ha))

This unit is located in northwestern San Benito County, approximately 8 mi (13 km) southeast of the City of Hollister and is mapped from occurrence records subsequent-to-listing in and near Paicines Reservoir and Tres Pinos Creek. SNB–2 is considered an area that is essential for the conservation of the subspecies. The area contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SNB–2 is essential to the conservation of the subspecies because it provides connectivity between sites on the coast plain and inner Coast Range, contains permanent and ephemeral aquatic habitats suitable for breeding, and contains upland areas for dispersal, shelter, and food. The unit consists of private and Federal land (Bureau of Land Management (BLM)). Threats that may require special management in this unit include removal and alteration of aquatic and upland habitat due to urbanization and predation by nonnative species.

SNB–3, Pinnacles National Monument (20,037 ac (8,109 ha))

This unit is located in the Gabilan Range at Pinnacles National Monument, about 3.5 mi (5.6 km) west of the town of San Benito in southern San Benito County, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. SNB–3 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range; contains permanent and ephemeral aquatic habitat suitable for breeding and accessible upland areas for dispersal, shelter, and food; and is occupied by the subspecies. The unit consists of private and Federal land (National Park Service, BLM). Threats that may require special management in this unit include overgrazing and trampling of aquatic and upland habitat by feral pigs, recreational activities, and predation by nonnative species.

SLO–1A–B, Cholame (17,787 ac (7,198 ha))

This unit consists of two subunits, SLO–1A and SLO–1b; and is located in northeastern San Luis Obispo and northwestern Kern Counties; includes locations in the Cholame Creek watershed; and is mapped from occurrence records at the time of listing and subsequent to the time of listing. SLO–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). SLO–1 contains permanent and ephemeral aquatic habitats suitable for breeding and contains accessible upland areas for dispersal, shelter, and food. The unit is the only area within the southern Coast Range that drains into the Central Valley. The unit consists of private and Federal land (BLM). Threats that may require special management in this unit include highway construction, which may remove upland or aquatic habitat; overgrazing of aquatic and riparian habitats; and dewatering of aquatic habitats due to water diversions.

SLO–2, Piedras Blancas

Lands containing features essential to the conservation of the subspecies in unit SLO–2 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

SLO–3, San Simeon

Lands containing features essential to the conservation of the California red-legged frog in unit SLO–3 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

SLO–4, Santa Rosa Creek

Lands containing features essential to the conservation of the California red-legged frog in unit SLO–4 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

SLO–5, Point Estero to Cayucos Creek

Lands containing features essential to the conservation of the California red-legged frog in unit SLO–5 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

SLO–6, Willow and Toro Creeks

Lands containing features essential to the conservation of the California red-legged frog in unit SLO–6 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.).

SLO–7, San Luis Obispo

Lands containing features essential to the conservation of the California red-legged frog in unit SLO–7 are exempted from critical habitat designation under section 4(a)(3) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

SLO–8, Upper Salinas River (16,277 ac (6,587 ha))

This unit is located at the base of Garcia Mountain about 17 mi (27 km) east of the City of San Luis Obispo, and is mapped from occurrence records subsequent to the time of listing. SLO–8 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and is occupied by the subspecies. The unit represents the only area within the interior coastal mountains within San Luis Obispo County. In addition, it contains permanent and ephemeral aquatic habitats suitable for breeding and contains accessible upland areas for dispersal, shelter, and food. This unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities and predation by nonnative species.

STB–1, La Brea Creek (25,111 ac (10,162 ha))

This unit is located in Los Padres National Forest in northern Santa Barbara County, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. STB–1 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range. The unit represents the northern portion of areas designated within the Transverse Range. The unit also contains permanent and ephemeral aquatic habitats suitable for breeding; sufficient PCEs to support behaviors we have determined are essential to the conservation of the subspecies; and accessible upland areas for dispersal, shelter, and food. This unit is occupied by the subspecies. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities.

STB–2, San Antonio Terrace

Lands containing features essential to the conservation of the California red-legged frog in unit STB–2 are exempted from critical habitat designation under section 4(a)(3) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

STB–3, Sisquoc River (47,439 ac (19,198 ha))

This unit occurs in northern Santa Barbara County, includes locations in the Sisquoc River watershed and is mapped from occurrence records at the time of listing and subsequent to the time of listing. STB–3 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range; it is essential in stabilizing populations of the subspecies in tributaries to the Santa Ynez River; and contains permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities, predation by nonnative species, and water management practices that could be detrimental to California red-legged frog aquatic habitat.

STB–4, Jalama Creek (7,662 ac (3,101 ha))

This unit is located along the coast in southwestern Santa Barbara County about 4.4 mi (7 km) south of the City of Lompoc, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. STB–4 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). STB–4 is occupied by the subspecies and provides connectivity between locations along the coast and the Santa Ynez River watershed, and this unit contains permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. This unit consists of private land. Threats that may require special management in this unit include predation by nonnative species and water management practices which could negatively affect California red-legged frog aquatic habitat. Populations in this unit may also require special management or protection due to their potential importance in stabilizing populations in tributaries to the Santa Ynez River. Some lands managed by Vandenberg Air Force Base containing features essential to the conservation of the subspecies in the western portion of unit STB–2 are exempted from critical habitat designation under section 4(a)(3) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.).

STB–5, Gaviota Creek (11,328 ac (4,584 ha))

This unit is located along the coast in southern Santa Barbara County about 3 mi (5 km) southwest of the town of Buellton, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. STB–5 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). STB–5 is occupied by the subspecies, is expected to prevent further fragmentation of habitat in this portion of the subspecies' range, and contains upland areas for dispersal, shelter, and food. The unit consists of private, State, and Federal land (U.S. Forest Service). Threats that may require special management in this unit include predation by nonnative species and water management practices that could negatively affect California red-legged

frog aquatic habitat. Populations in this unit may also require special management or protection due to their potential importance in stabilizing populations in tributaries to the Santa Ynez River. Approximately 12 percent of the revised proposed unit containing features essential to the conservation of the subspecies in the southeastern portion of unit STB–5 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below).

STB–6, Arroyo Quemado to Refugio Creek

Lands containing features essential to the conservation of the California red-legged frog in unit STB–6 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

STB–7, Upper Santa Ynez River (32,505 ac (13,154 ha))

This unit is located in southeastern Santa Barbara County about 5 mi (8 km) north of the City of Santa Barbara. It includes locations in the middle and upper Santa Ynez River watershed, and is mapped from occurrence records at the time of listing and subsequent to the time of listing. STB–7 contains the following features that are essential for the conservation of the subspecies: Aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). STB–7 is occupied by the subspecies and is expected to prevent further fragmentation of habitat in this portion of the subspecies' range. It contains high quality habitat, indicated by high density of extant occurrences; permanent and ephemeral aquatic habitats suitable for breeding; and accessible upland areas for dispersal, shelter, and food. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include flood control and road maintenance activities, which could cause siltation in and reduce available aquatic habitat and directly remove upland habitat. Additional threats that may require special management include recreational activities and predation by nonnative species. Approximately 10 percent of the revised proposed unit containing features essential to the conservation of the subspecies in the eastern portion of unit STB–7 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

VEN–1, Matilija Creek (6,660 ac (2,695 ha))

This unit is located in western Ventura County at Matilija Creek and is mapped from occurrence records at the time of listing and subsequent to the time of listing. VEN–1 contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). VEN–1 is occupied by the subspecies and important to the subspecies' conservation in that persistence of the subspecies in this area will prevent further isolation of breeding locations in this portion of the subspecies' range. This unit also contains permanent and ephemeral aquatic habitats suitable for breeding; contains upland areas for dispersal, shelter, and food; and is expected to prevent further fragmentation of habitat in this portion of the subspecies' range. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities and predation by nonnative species.

VEN–2, San Antonio Creek (2,915 ac (1,180 ha))

This unit is located in western Ventura County at San Antonio Creek and is mapped from occurrence records at the time of listing and subsequent to the time of listing. VEN–2 contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). VEN–2 is occupied by the subspecies. Persistence of the subspecies in this area will prevent further isolation of breeding locations in this portion of the subspecies' range. This unit also contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food, and it is expected to prevent further fragmentation of habitat in this portion of the subspecies' range. The unit consists of private land. Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities, sedimentation of aquatic habitats, and predation by nonnative species.

VEN–3, Piru Creek (8,837 ac (3,576 ha))

This unit is located in eastern Ventura County and northwestern Los Angeles County and is mapped from occurrence records at the time of listing at Piru Creek. VEN–3 contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). VEN–3 is occupied by the subspecies. Persistence of the subspecies in this area is important to prevent further isolation of breeding locations in this portion of the subspecies' range. This unit also contains permanent and ephemeral aquatic habitats suitable for breeding and upland areas for dispersal, shelter, and food. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration of aquatic and upland habitat by unauthorized off-road vehicle use, conversion of native habitat by introduced invasive plant species, and predation by nonnative species.

VEN–4, Upper Las Virgenes Canyon Open Space Preserve

Lands containing features essential to the conservation of the California red-legged frog in unit VEN–4 are excluded from the critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

LOS–1, San Francisquito Creek (4,231 ac (1,712 ha))

This unit is located in northwestern Los Angeles County and is mapped from occurrence records at the time of listing. LOS–1 contains the following features that are essential for the conservation of the subspecies: aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). LOS–1 contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit consists of private and Federal land (U.S. Forest Service). Threats that may require special management in this unit include alteration and removal of aquatic and upland habitat by residential development, degradation of habitat by recreational activities, sedimentation of

aquatic habitats, conversion of native habitats by introduced invasive plants, contamination by chytrid fungus and predation by African clawed frogs (*Xenopus laevis*), and other nonnative species including bullfrogs and nonnative fish.

RIV–1, Cole Creek

Lands containing features essential to the conservation of the California red-legged frog in unit RIV–1 are excluded from critical habitat designation under section 4(b)(2) of the Act for economic reasons (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Recent decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our regualtory definition for adverse modification. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is now determined on the basis of the Director's December 9, 2004, memorandum on destruction and adverse modification.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we 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 Director believes would avoid jeopardy to the listed species or 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 a new species is listed or critical habitat is subsequently designated that may be affected 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 with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the California red-legged frog or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the California Red-legged Frog and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for California red-legged frog jeopardy analyses that relies heavily on the importance of core

area populations of the California red-legged frog. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum on destruction and adverse modification would be used to complete section 7(a)(2) analyses for Federal actions affecting California red-legged frog critical habitat.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the California red-legged frog detailed in the Director's December 9, 2004, memorandum on destruction and adverse modification. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the California red-legged frog include, but are not limited to:

(1) Actions that significantly alter water chemistry or temperature. Such activities could include, but are not limited to: release of chemicals, biological pollutants, or heated effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source). These activities that alter water conditions beyond the tolerances of the California red-legged frog and result in direct or cumulative adverse affects to these individuals and their life cycles.

(2) Actions that would significantly increase sediment deposition within the stream channel or pond or disturb upland foraging and dispersal habitat. Such activities could include, but are not limited to: excessive sedimentation from livestock overgrazing; road construction; commercial or urban development; channel alteration; timber harvest; unauthorized off-road vehicle or recreational use; and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the California red-legged frog by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

(3) Actions that would significantly alter channel/pond morphology or geometry. Such activities could include, but are not limited to: channelization; impoundment; road and bridge construction; development; mining; dredging; and destruction of riparian vegetation. These activities may lead to changes to the hydrologic functioning of the stream or pond and alter the timing, duration, water flows, and levels that would degrade or eliminate the California red-legged frog and/or its habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the California red-legged frog.

(4) Actions that eliminate upland foraging and/or aestivating habitat, as well as dispersal habitat, for the California red-legged frog. Such activities could include, but are not limited to: road construction; commercial or urban development; timber harvest; unauthorized off-road vehicle or recreational use; and other watershed and floodplain disturbances.

(5) Introducing, spreading, or augmenting nonnative aquatic species in stream segments or ponds used by California red-legged frog. Possible actions could include, but are not limited to: introduction of chytrid fungus or other diseases; fish or bullfrog stocking for sport; aesthetics; biological control; or other related actions. These activities could affect the growth and reproduction of the California red-legged frog by subjecting eggs, larvae, tadpoles, and adult California red-legged frogs to increased predation pressure, which would adversely affect the California red-legged frog's ability to complete its life cycle.

We consider all of the units designated as critical habitat, as well as those previously proposed areas that have been excluded or exempted, to contain features essential to the conservation of the California red-legged frog. All designated units are within the geographic range of the subspecies, all were occupied by the subspecies at the time of or since listing, and all are likely to be used by the California red-legged frog. Federal agencies already consult with us on activities in areas currently occupied by the California red-legged frog, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the California red-legged frog. If you have questions regarding whether specific activities may constitute adverse modification of critical habitat contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

There are multiple ways to provide management for species' habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management and protection of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; and wetland protection, enhancement, and restoration where necessary to support

fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the critical habitat designation for the California red-legged frog were analyzed for statutory exemption under the authority of section 4(a)(3) of the Act.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Relationship of Critical Habitat to Section 4(a)(3) of the Act—Approved Integrated Natural Resource Management Plans (INRMPs)

Vandenberg Air Force Base (Vandenberg)

Vandenberg completed an INRMP in 1997, prior to the passage and implementation of the Sikes Act Improvements Act of 1997; in 2003, Vandenberg revised their INRMP, and we provided comments on the revised INRMP, in a letter dated August 2, 2004. The older plan and the revised INRMP provide conservation measures for the California red-legged frog, as well as for the management of important wetland habitats on the base.

Vandenberg's INRMP benefits California red-legged frogs through: (1) Avoidance of California red-legged frogs and their habitat, whenever possible, in project planning; (2) scheduling of activities that may affect California red-legged frogs outside of the peak breeding period (December-March); (3) coordination with Vandenberg water quality staff to prevent degradation and contamination of aquatic habitats; and (4) prohibiting the introduction of nonnative fishes into streams on-base. In addition, Vandenberg's INRMP provides protection to aquatic and upland habitats for the California red-legged frog by excluding cattle from wetlands and riparian areas through the installation and maintenance of fencing. Vandenberg's INRMP specifies periodic monitoring of the distribution and abundance of California red-legged frog populations on the base, and periodic surveys to provide continuous evaluation of the subspecies' status at known and new sites identified on the base.

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMP will provide benefits to the California red-legged frog and the features essential to the subspecies conservation occurring on Vandenberg Air Force Base. Therefore, Vandenberg Air Force Base is exempt from inclusion in this designation of critical habitat for the subspecies' pursuant to section 4(a)(3) of the Act.

Camp San Luis Obispo (CSLO)

CSLO completed an INRMP in November 2001. We have examined CSLO's INRMP and determined that it does provide conservation measures for the California red-legged frog, as well as for the management of important riparian, wetland, and upland habitats across the base.

CSLO's INRMP benefits California red-legged frogs through: (1) Protection of riparian habitats and wetlands through implementation of erosion-control measures, including the exclusion of cattle through the installation and maintenance of fencing; (2) enhancement of riparian, wetland, and upland habitats through the implementation of revegetation projects using native vegetation; (3) control of nonnative invasive plant species; (4) elimination of military training exercises within riparian, aquatic, and wetland areas; (5) maintenance and protection of a 63-acre riparian exclosure on Chorro Creek; and (6) policies which prohibit possible sources of contamination (e.g., soakage pits, field shower points, water purification points, portable latrines) within 100 feet of surface water or streambeds. In addition, CSLO's INRMP provides management direction on conserving listed and imperiled species and their habitats on the base, including: (1) review of all training and maintenance activities by staff from CSLO's Environmental Division; (2) environmental awareness briefings given to employees, tenants, troops, and contractors, regarding threatened and endangered species at CSLO; and (3) surveys prior to activities that could potentially affect California red-legged frogs. Sites with known populations of the California red-legged frog are protected from disturbance from human activities and grazing through measures appropriate to the given situation. CSLO's INRMP specifies monitoring of California red-legged frog populations on the base, and periodic surveys to provide continuous evaluation of the subspecies' status at known and new sites identified on the base. In addition, CSLO actively consults with us on all actions that may affect California red-legged frogs on the base, and has implemented conservation measures as recommended.

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMP will provide benefits to the California red-legged frog and the features essential to the subspecies' conservation occurring on CSLO. Therefore, CSLO is exempt from inclusion in this designation of critical habitat for the subspecies pursuant to section 4(a)(3) of the Act.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse et al. 2002). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse et al. 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as Habitat Conservation Plans (HCPs), Safe Harbor Agreements, Candidate Conservation Agreements, and conservation challenge cost-share grants and other partnership funding. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to live on their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999; Brook et al. 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999; Bean 2002; Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (e.g., reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species' recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (e.g,. axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species), and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

Secretary Norton's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (e.g., HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Exclusions Under Section 4(b)(2) of the Act

After consideration under section 4(b)(2) of the Act, the following areas of habitat have been excluded from critical habitat for the California red-legged frog: Bonnie Doon Quarries Settlement Ponds HCP; Draft East Contra Costa HCP; East Bay Regional Park District lands; Spivey Pond Management Area (BLM); U.S. Forest Service lands within the Sierra Nevada; Unit CAL–1 in Calaveras County; and other areas where the designation of critical habitat has been determined to show a disproportionately high economic cost

(See *Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act* section below). A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the subspecies or unoccupied areas that are essential to the conservation of the subspecies are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed subspecies or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions with respect to effects upon designated critical habitat resulting from the proposed federal action. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing regional habitat conservation plans (HCPs) or other regional habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a one time consultation under section 7 of the Act for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the California red-legged frog. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, regional HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the revised proposed rule as having habitat containing the features essential to the conservation of the subspecies. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for the California red-legged frog is already well established among State and local governments, and Federal agencies, in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below concerning the benefits of inclusion and exclusion of critical habitat.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden

sufficient to discourage continued participation in plans targeting listed species' conservation.

The benefits of excluding lands within approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

Bonny Doon Quarries Settlement Ponds Habitat Conservation Plan (Bonny Doon HCP)

The Bonny Doon HCP encompasses 4.9 ac (2 ha) of privately-owned lands in the Santa Cruz Mountains near the town of Davenport, Santa Cruz County, California. California red-legged frogs are present in both of the watersheds (San Vicente Creek and Liddell Creek) where settlement ponds were constructed at the Bonny Doon Quarries. The Bonny Doon HCP was completed and finalized in 1998, concurrently with a final environmental assessment on the HCP pursuant to NEPA. We issued a non-jeopardy biological opinion under section 7 of the Act on the Bonny Doon HCP in August 1999. The Bonny Doon HCP contains measures to minimize and mitigate impacts to the California red-legged frog and its habitat from the operations, maintenance, and possible reclamation activities and to further the conservation of the subspecies. The primary components of the minimization and mitigation include: developing and implementing an employee training program and community outreach program; conducting annual breeding and pre-activity surveys at all settlement and mitigation ponds for California red-legged frogs; avoiding or relocating California red-legged frogs and their tadpoles and eggs during maintenance activities; minimizing impacts of water releases to breeding populations of California red-legged frogs; inspecting the ground under vehicles for California red-legged frogs prior to use; establishing a speed limit of 10 miles per hour on roads within the operational area (although the incidental take permit only authorizes incidental take associated with the proposed operation, maintenance, and reclamation activities in the project area, not the entire operational area); using pesticides and herbicides that do not affect aquatic organisms and applying them in accordance with label precautions; disposing of all food-related trash in closed containers; controlling exotic predators; and enhancing habitat suitability of the mitigation ponds and Settlement Pond 1 for the California red-legged frog. The Bonny Doon HCP and its accompanying Implementing Agreement, which delineates the responsibilities of the Service and the permittee for the implementation of the HCP, are designed to allow the operation and maintenance activities of up to seven settlement ponds and the reclamation of two additional settlement ponds in a manner that will result in conservation of the California red-legged frog and its habitat.

Benefits of Exclusion Outweigh Benefits of Inclusion

We expect the Bonny Doon HCP to provide substantial protection of the PCEs and special management of essential habitat features for the California red-legged frog on Bonny Doon HCP conservation lands. We expect the Bonny Doon HCP to provide a greater level of management for the California red-legged frog on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the approved Bonny Doon HCP and its implementing agreement. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation would lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the Bonny Doon HCP, which provides for California red-legged frog conservation. The educational benefits of critical habitat, including informing the public of areas important for the long-term conservation of the subspecies, are still accomplished from material provided on our Web site and through public notice-and-comment procedures required to establish the Bonny Doon HCP. Further, many educational benefits of critical habitat designation will be achieved through the overall designation, and will occur whether or not this particular location is designated. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the Bonny Doon HCP.

We have reviewed and evaluated benefits of inclusion and exclusion of critical habitat for the California red-legged frog. Based on this evaluation,

we find that the benefits of excluding land in the planning area for the Bonny Doon HCP outweigh the benefits of including that portion of critical habitat in unit SCZ–1 as critical habitat.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that this exclusion would result in the extinction of the subspecies because the Bonny Doon HCP provides for subspecies' conservation in this area through the detailed minimization and mitigation measures described above.

Draft East Contra Costa County Habitat Conservation Plan (ECCHCP)

The draft ECCHCP was released to the public on September 6, 2005. We expect a finalized plan before the end of December 2006. Participants in this HCP include the County of Contra Costa; the cities of Brentwood, Clayton, Oakley, and Pittsburg, California; and the Contra Costa Water District. The draft ECCHCP encompasses the eastern portion of Contra Costa County from approximately west of Concord to Sand Mound Slough and Clifton Court Forebay on the east. The draft ECCHCP is also a subregional plan under the State's Natural Community Conservation Planning (NCCP) process and was developed in cooperation with the California Department of Fish and Game. The draft ECCHCP identifies the California red-legged frog as a covered subspecies and has identified areas where growth and development are expected to occur, as well as several conservation measures, including (1) Preserving aquatic and upland California red-legged frog habitat; (2) preserving major habitat connections linking existing public lands; (3) incorporating a range of habitat and population management and enhancement measures, including monitoring; (4) fully mitigating the impacts to covered species and subspecies; (5) maintaining ecosystem processes; and (6) contributing to the recovery of covered species and subspecies. When the conservation measures are implemented, they will benefit California red-legged frog conservation by preserving and restoring existing wetland and upland habitat and creating new wetland habitat for the subspecies. We expect that the draft ECCHCP, when finalized, will provide substantial protection for all four of the primary constituent elements for the California red-legged frog, and that protected lands will receive special management they require through funding mechanisms that will be implemented under the ECCHCP. In total, we are excluding approximately 15,160 ac (6,135 ha) of land from units CCS–1B and ALA–1A in Contra Costa County.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We expect the ECCHCP to provide substantial protection of the PCEs and special management of essential habitat for the California red-legged frog on ECCHCP conservation lands. We expect the ECCHCP to provide a greater level of management for the California red-legged frog on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the approved ECCHCP and its implementing agreement. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation would lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the ECCHCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the subspecies, are still accomplished from material provided on our Web site and through public notice-and-comment procedures required to establish the ECCHCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft ECCHCP.

We have reviewed and evaluated the benefits of inclusion and the benefits of exclusion of critical habitat for the California red-legged frog. Based on this evaluation, we find that the benefits of exclusion of the lands essential to the conservation of the California red-legged frog in the planning area for the draft ECCHCP outweigh the benefits of including those lands within eastern Contra Costa County.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that this exclusion would result in the extinction of the subspecies because the draft ECCHCP seeks to: (1) Preserve between 24,455 to 29,467 ac (9,897 to 11,925 ha) of upland foraging and dispersal habitat (not including additional lands identified in open space and parks); (2) preserve between 28 to 36 wetted ac (11 to 15 wetted ha) of non-stream breeding habitat and between 85 to 98 mi (137 to 158 km) of stream breeding habitat; (3) create approximately 33 wetted ac (13 wetted ha) of ponds; (4) restore approximately 85 ac (34 ha) of perennial wetland complex; (5) preserve major habitat connections linking existing public lands; (6) incorporate a range of habitat and population management and enhancement measures; (7) fully mitigate the impacts of covered species and subspecies, including the California red-legged frog; (8) maintain ecosystem processes; and (9) contribute to the recovery of covered species and subspecies.

Western Riverside Multiple Species Habitat Conservation Plan

In the revised proposed designation published in the **Federal Register** on November 3, 2005 (70 FR 66906), we proposed the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) as a potential exclusion under section 4(b)(2) of the Act. The Economic Analysis for the revised proposed designation identified Unit RIV–1 within a census tract with disproportionately high economic costs. As a result of these costs, Unit RIV–1 has been excluded from the designation (see *Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act* below).

Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act

East Bay Regional Park

The EBRPD manages 65 regional parks, recreation areas, wilderness, shorelines, preserves, and land bank areas covering over 95,000 ac (34,446 ha) in Alameda and Contra Costa counties. The EBRPD Board of Directors adopted the EBRPD Plan on December 17, 1996, under Resolution Number 1996–12–349. The EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered taxa, including the California red-legged frog. Conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered taxa (EBRPD 1997).

Benefits of Exclusion Outweigh the Benefits of Inclusion

We expect the EBRPD to provide substantial protection of the PCEs and special management of essential habitat

for the California red-legged frog on EBRPD lands within units CCS–1B and ALA–1A. We expect the EBRPD to provide a greater level of management for the California red-legged frog on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities already in place by the EBRPD. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation will lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the EBRPD. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the subspecies, are still accomplished from material provided on our website and through public notice-and-comment procedures. The public also has been informed through the public participation that occurred during the development of the revised proposed designation and previous listing and critical habitat actions for the subspecies. For these reasons, we believe that designating critical habitat within units CCS–1B and ALA–1A has little benefit in areas managed by the EBRPD.

We have evaluated the conservation measures for the California red-legged frog identified by the EBRPD. Based on this evaluation, we currently find that the benefits of excluding those portions of Unit CCS–1B and ALA–1A considered essential to the conservation of the California red-legged frog within the boundaries of the EBRPD land outweigh the benefits of including those portions of land as critical habitat.

Exclusion Will Not Result in Extinction of the Subspecies

We have determined that exclusion of these lands within Unit CCS–1B and ALA–1A, which are considered occupied habitat, would not result in the extinction of the California red-legged frog. Actions which might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from the take prohibitions under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

The subspecies occurs on lands protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values; this factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded the subspecies by the remaining critical habitat designation for the subspecies, which leads us to find that exclusion of these lands will not result in extinction of the California red-legged frog. We do not believe that this exclusion would result in the extinction of the subspecies because the subspecies is found in other areas and the EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered taxa, including the California red-legged frog. EBRPD has been actively conducting California red-legged frog surveys and research over the last 15 years under U.S. Fish and Wildlife Service recovery permit number 817400. During the years of 1996, 2000, and 2004, EBRPD conducted California red-legged frog surveys across all park lands for the purpose of population trend monitoring and habitat assessment. Research has also focused on California red-legged frog habitat requirements, tolerances related to water quality, adult and juvenile movements, and the effect of livestock grazing on habitat and frog reproduction. EBRPD provides educational outreach through park interpretive programs and presentation of California red-legged frog research findings at scientific conferences and in peer reviewed journals. Habitat restoration and nonnative predator control are special management actions the EBRPD has used and continues to use for the conservation of the California red-legged frog. Nearly 90 percent of the EBRPD land holdings are protected and managed as natural parklands, thereby providing protection for the PCEs (Bobzien, pers com. 2005). Conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered taxa (EBRPD 1997).

Spivey Pond Management Area (SPMA) (Unit ELD–1)

The SPMA encompasses 54 ac (22 ha) of BLM-owned lands surrounding Spivey Pond in El Dorado County, California. Spivey Pond is one of five known extant California red-legged frog breeding populations in the Sierra Nevada foothills. In July 2004, a management plan for the California red-legged frog was approved and signed by the Service, BLM, Bureau of Reclamation (USBR), CDFG, El Dorado County, El Dorado Irrigation District, the American River Conservancy, and the El Dorado National Forest. The Spivey Pond Management Plan (SPMP) consists of six management objectives specifically for the conservation of the California red-legged frog: Control of bullfrogs and predatory fish; monitoring of water quality; maintenance of the pond's integrity and habitat/water quality; creation and management of additional California red-legged frog breeding habitat; promotion of research and maintenance of a GIS database; and providing input for watershed level planning and activities that may benefit Spivey Pond.

In 1997, a population of a reproducing California red-legged frogs was discovered in Spivey Pond on the north fork of Webber Creek. The previous confirmed sightings of a California red-legged frog in the Webber Creek watershed were in 1972 and 1975 for the entire Sierra Nevada foothill region. At the time of discovery, the Spivey Pond parcel was privately owned and slated for timber harvest and subdivision development. The Service urged the American River Conservancy (ARC) to initiate negotiations with the owners of the Spivey Pond for purchase of the property. With financial assistance from the Service and the USBR, ARC succeeded in purchasing the 54-acre Spivey Pond parcel on April 28, 1998. Additional grant funding from the National Fish and Wildlife foundation was received on September 15, 1998, which allowed for initial pond stabilization and restoration work. On May 3, 1999, all preliminary acquisition and restoration activities were completed, and the parcel was transferred to the BLM to be managed as a wildlife reserve specifically for the benefit of the California red-legged frog. In March 2004, we issued a non-jeopardy biological opinion for development of a new breeding pond for the subspecies (1–1–03–F–0289).

Benefits of Exclusion Outweigh Benefits of Inclusion

We believe that the benefits of excluding the entire 54 ac (22 ha) SPMA from the designation of critical habitat for the California red-legged frog outweigh the benefits of including the SPMA in critical habitat. We find that including the SPMA would result in very minimal, if any additional, benefits to the California red-legged frog, as explained above. The critical habitat designation would remain on lands surrounding the SPMA, thereby providing a measure of protection for the PCEs outside the area, while the management plan would protect the PCEs and provide additional benefits of nonnative predator control, habitat management and creation, and pollution monitoring within the area.

Exclusion Will Not Result in Extinction of the Subspecies

We also find that the exclusion of these lands will not lead to the extinction of the subspecies, nor hinder its recovery because the management emphasis of the SPMA is to protect and enhance habitat for the California red-legged frog.

National Forest Lands Within the Sierra Nevada

We are excluding those portions of critical habitat units BUT–1, YUB–1, NEV–1, and ELD–1 that are managed by the Plumas, Tahoe and El Dorado National Forests from this final designation of critical habitat for the California red-legged frog pursuant to section 4(b)(2) of the Act because those lands are managed under the Sierra Nevada Forest Plan Amendment (SNFPA) (NEV–1, ELD–1, and BUT–1) and Herger-Feinstein Quincy Library Group (HFQLG) (YUB–1, BUT–1, and NEV–1).

Of the five known Sierra Nevada foothill California red-legged frog populations, only the Hughes Place (BUT–1) and Little Oregon Creek (YUB–1) breeding populations are located exclusively on land managed by the U.S. Forest Service (Plumas National Forest). The other three known Sierra Nevada population breeding ponds are located on private (CAL–1 and NEV–1) or other Federally (BLM) owned land (ELD–1). However, portions of two of the three (NEV–1 and ELD–1) critical habitat units are on U.S. Forest Service lands. The Plumas National Forest is taking an active role in the conservation and management of California red-legged frog populations through direct land acquisition and research concerning frog movement in the Sierra Nevada. We are excluding a total of 7,644 ac (3,094 ha) of U.S. Forest Service land from critical habitat units BUT–1, YUB–1, NEV–1 and ELD–1 from this final designation of critical habitat for the California red-legged frog.

The El Dorado and Tahoe National Forests are managed through the implementation of the SNFPA Record of Decision (ROD) by application of the Aquatic Management Strategy (AMS). This strategy includes landscape and project-level analysis, achieving Riparian Conservation Objectives (RCO) and implementation of best management practices (BMPs). Standards and guidelines will be implemented in order to achieve RCOs. These standards and guidelines will include assessing and documenting aquatic conditions prior to implementing ground disturbance activities, and developing mitigation measures to avoid impacting the frog when ground-disturbing activities are within Riparian Conservation Areas (RCA) or critical aquatic refuges (CARs). Application of pesticides will be avoided in areas within 500 ft (150 m) of known occupied sites unless environmental analysis documents demonstrate that pesticides are needed to restore or enhance habitat for the California red-legged frog.

The Plumas National Forest is managed through the implementation of the SNFPA and HFQLG RODs. The HFQLG ROD applies Scientific Analysis Team (SAT) guidelines for riparian area management. These guidelines include implementation of 300 ft (90 m) buffers along all waterways and ephemeral wetlands, and 500 ft (150 m) buffers along known occupied California red-legged frog sites. However, these buffers may be varied if the riparian management objectives of the SAT guidelines can be met. Six critical aquatic refuges will be placed on the Plumas National Forest after completion of the HFQLG pilot project. CARs are used to protect known locations of threatened, endangered, or sensitive species dependent on aquatic or riparian habitats. For non-HFQLG projects, the Plumas National Forest implements the 2004 SNFPA AMS.

Benefits of Exclusion Outweigh Benefits of Inclusion

The SNFPA, through the implementation of its Aquatic Management Strategy, provides more benefits for the conservation of the California red-legged frog than critical habitat would. The SNFPA provides for protection of the PCEs and implementation of actions that could address special management needs such as habitat restoration, nonnative predator control and land acquisitions. Activities conducted under HFQLG provide buffer zone guidelines around known occupied California red-legged frog sites and all other aquatic areas. Furthermore, all actions that occur on USFS lands require consultation under section 7 of the Act. In 2003, we issued a biological opinion on the SNFPA Supplemental Environmental Impact Statement and concluded that the proposed alternative action was not likely to jeopardize the continued existence of the California red-legged frog (Service number 1–1–03–F–2638).

We believe that the benefits of excluding U.S. Forest Service lands managed under the SNFPA and HFQLG from the designation of critical habitat for the California red-legged frog outweigh the benefits of including those lands in critical habitat. We find that including the U.S. Forest Service lands that are managed under the SNFPA and HFQLG would result in very minimal, if any additional, benefits to the California red-legged frog, as explained above. The critical habitat designation would remain on private lands containing essential features adjacent to U.S. Forest Service lands, thereby providing a measure of protection for the PCEs outside of the area.

Exclusion Will Not Result in Extinction of the Subspecies

We also find that the exclusion of these lands will not lead to the extinction of the subspecies, nor hinder its recovery because the SNFPA and HFQLG RODs have provisions for the conservation of the California red-legged frog as part of their aquatic management strategies. These strategies apply standards and guidelines, such as default riparian conservation area buffers, critical aquatic refuges, and scientific analysis team guidelines, to prevent, minimize, maintain, or enhance riparian areas necessary to conservation of the California red-legged frog. In addition, all actions that occur on USFS lands require consultation under section 7 of the Act.

Relationship of Critical Habitat to Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act

Unit CAL–1, Young's Creek

The Young's Creek unit is located in Calaveras County north of State Route 26 and south of Paloma Road. The unit consists of approximately 4,449 ac (1,801 ha) of land, the majority of which is private land. The unit contains one known population of California red-legged frogs discovered in a single pond

in 2003. Since the discovery, we have been working with the private landowner to enhance the existing pond and develop additional ponds on the property. We have entered into a long-term management agreement with the landowner to conserve these habitats on their lands. The long-term management agreement identifies measures designed to protect, preserve, and enhance habitat for the California red-legged frog. These measures include: control livestock access to riparian and ponded areas, provide technical assistance and oversight, provide biannual monitoring reports, and conduct nonnative fish and bullfrog removal.

Additional Benefits of Exclusion

We have been working with an adjacent landowner in the unit to develop a similar long-term management agreement for areas that could potentially assist in the conservation of the California red-legged frog. However, recently, the second landowner has decided not to pursue an agreement with the Service. We believe that utilizing the Secretary's discretion in excluding this unit will encourage other willing landowners in the unit to continue their conservation activities and will allow the Service to expand enrollment of other private landowners in the unit into conservation partnerships for conserving additional frog habitat. The benefits of exclusion include providing incentive for continued conservation and restoration on private lands where landowners have shown a willingness to participate in such activities.

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 and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding unit CAL–1 as critical habitat outweigh the benefits of including it as critical habitat for the California red-legged frog. The area where the California red-legged frog is known to occur is already managed to protect and enhance habitat specifically for the subspecies (e.g., control livestock access to riparian and ponded areas, provide biannual monitoring reports, and conduct nonnative fish and bullfrog removal). Exclusion of these lands will not decrease existing protection of the jeopardy standard under section 7 of the Act or the take prohibitions under section 9 of the Act. Conservation of the California red-legged frog in this area will require proactive restoration efforts and the cooperation of private landowners, and such efforts are currently underway. We believe that designating the remaining lands in the unit as critical habitat will impair our efforts to work with private landowners to conserve and help recover the subspecies in the county. We further believe that utilizing the Secretary's discretion to exclude these lands from designation as critical habitat will encourage willing landowners to continue their conservation activities and will allow us to expand enrollment of private landowners into conservation partnerships for conserving frog habitat. We conclude that the benefits of the public-private partnerships established in this area to conserve the California red-legged frog are superior to the prohibitive protections conferred by a critical habitat designation and the potential for unintended anti-conservation incentives that such designation could bring. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition for special habitat values on lands that are expressly managed to protect and enhance those values and would deter other local conservation efforts for the California red-legged frog in the County.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that this exclusion would result in the extinction of the subspecies because the long-term management agreement with the landowner and enhancement and development of additional California red-legged frog habitat on the property will assist in conservation of the subspecies within the area. Also additional areas in the Sierras (e.g., Spivey Pond) are protected and being managed for the benefit of the California red-legged frog.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act allows the Secretary to take into consideration potential economic impacts of a critical habitat designation and to exclude areas from critical habitat for economic reasons if [s]he determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economics may not be considered when listing a species, Congress has expressly required this consideration when designating critical habitat.

In conducting economic analyses, we are guided by the Tenth Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs. However, we have taken into consideration that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the following areas from this final designation, due to the fact that all of the areas in question are currently occupied by the listed subspecies and there will still be requirements for consultation under section 7 of the Act or for permits under section 10 (henceforth ''consultation''), for any authorized take of these subspecies, as well as other protections for the subspecies elsewhere in the Act and under State and local laws and regulations.

Conversely, the Ninth Circuit has recently ruled (*Gifford Pinchot*, 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

Application of Section 4(b)(2)—Economic Exclusion to 19 Census Tracts

We are excluding approximately 250,329 ac (101,305 ha) (approximately 34 percent of the revised proposed critical habitat) of the California red-

legged frog's essential habitat in the 19 census tracts listed in Table 3 based on disproportionately high economic costs.

TABLE 3.—EXCLUDED CENSUS TRACTS AND COSTS

Census tract	County	Adjusted welfare impact in final economic analysis
6001451101	Alameda	$45,017,296
6013355104	Contra Costa	39,737,940
6079011502	San Luis Obispo	37,144,976
6079010901	San Luis Obispo	36,953,856
6079011000	San Luis Obispo	36,245,748
6001450721	Alameda	26,886,492
6079010400	San Luis Obispo	21,288,106
6079010500	San Luis Obispo	20,313,812
6083001701	Santa Barbara	17,040,264
6001450701	Alameda	16,035,912
6083002910	Santa Barbara	15,088,389
6111007404	Ventura	14,813,216
6065043224	Riverside	13,885,294
6013303200	Contra Costa	13,203,474
6013355106	Contra Costa	10,361,391
6079010800	San Luis Obispo	9,565,995
6081613700	San Mateo	8,501,778
6095252202	Solano	6,903,767
6081613800	San Mateo	6,820,789
Total		395,808,495

The revised proposed designation and notice of availability of the draft economic analysis (70 FR 66906; November 3, 2005) solicited public comment on the potential exclusion of high cost areas. As we finalized the economic analysis, we identified high costs associated with the revised proposed critical habitat designation to public projects in Kern, Merced, Riverside, and San Luis Obispo counties. These public projects were the widening of State Routes 46, 152, 79, and 46. The final economic analysis indicates additional costs in census tracts in which these projects were located were approximately $687,000 for the four projects. On the basis of the significance of these costs, we determined that the project areas be excluded from the designation. The critical habitat unit associated with the project area in Riverside County is identified in Table 3 above for exclusion, and no additional exclusion of this area was necessary.

Benefits of Inclusion of the 19 Excluded Census Tracts

The areas excluded (Table 3) are currently occupied by the California red-legged frog. If these areas were designated as critical habitat, any actions with a Federal nexus that may adversely affect the critical habitat would require a consultation with us, as explained above in the section of this notice entitled ''Effects of Critical Habitat Designation.'' Primary constituent elements in these areas would be protected from destruction or adverse modification by Federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot.* This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the subspecies' continued existence. However, inasmuch as all these units are currently occupied by the subspecies, consultation for activities that may adversely affect the subspecies, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), would be required even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act. For the occupied areas, there is still a requirement for a jeopardy analysis to ensure Federal actions are not likely to jeopardize the continued existence of the subspecies.

In the economic analysis, we determined, however, that designation of critical habitat could result in approximately $395,808,495 in costs in these 19 census tracts, the majority of which are directly related to residential development impacts. We believe that the potential decrease in residential housing development that could be caused by this designation of critical habitat for the California red-legged frog would minimize impacts to and potentially provide some protection to the subspecies, aquatic habitats where they reside, and the physical and biological features essential to the subspecies' conservation (i.e., the primary constituent elements). Thus, this decrease in residential housing development would directly translate into a potential benefit to the subspecies that would result from this designation.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, we believe that this education benefit has largely been achieved, or is being achieved in equal measure by other means (e.g., Recovery Plan planning efforts). The critical habitat designation and recovery plan would provide information geared to the general public, landowners, and agencies about areas that are important for the conservation of the subspecies and what actions they can implement to further the conservation of the California red-legged frog within their own jurisdiction and capabilities. The recovery plan also contains provisions for ongoing public outreach and education as part of the recovery process.

In summary, we believe that inclusion of the 19 census tracts as critical habitat would provide some additional Federal

regulatory benefits for the subspecies. However, that benefit is limited to some degree by the fact that the areas proposed as critical habitat are occupied by the subspecies, and therefore there must, in any case, be consultation with the Service for any Federal action that may affect the subspecies in those 19 census tracts. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple opportunities for public notice-and-comment, which accompanied the development of this regulation; publicity associated with prior litigation; and public outreach associated with the development of the draft, and the implementation of the final, Recovery Plan for the California red-legged frog.

Benefits of Exclusion of the 19 Excluded Census Tracts

The economic analysis conducted for this proposal estimates that the costs associated with designating these 19 census tracts would be approximately $395,808,495. Costs would be associated with the designation of critical habitat for the California red-legged frog in amounts shown in Table 3 above. By excluding these census tracts, some or all of these costs will be avoided. Three important public-sector projects, the widening of State Routes 46, 79, and 152, will avoid additional costs associated with critical habitat designation.

Benefits of Exclusion Outweigh the Benefits of Inclusion of the 19 Census Tracts

We believe that the benefits of excluding these lands from the designation of critical habitat—avoiding the potential economic and human costs, both in dollars and jobs, predicted in the economic analysis—exceed the educational and regulatory benefits that could result from including those lands in this designation of critical habitat.

We have evaluated and considered the potential economic costs on the residential development industry relative to the potential benefit for the California red-legged frog and its primary constituent elements derived from the designation of critical habitat. We believe that the potential economic impact of more than approximately $395 million on the development industry significantly outweighs the potential conservation and protective benefits for the subspecies and their primary constituent elements derived from avoiding residential development as a result of this designation.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will contribute to a more positive climate for HCPs and other active conservation measures that provide greater conservation benefits than would result from designation of critical habitat—even in the post-*Gifford Pinchot* environment—which requires only that there be no adverse modification resulting from actions with a Federal nexus. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

We believe that the recovery planning process has already provided information about habitat that contains those features considered essential to the conservation of the California red-legged frog and has facilitated conservation efforts through heightened public awareness of the plight of the listed subspecies to the public, State and local governments, scientific organizations, and Federal agencies. The final Recovery Plan contains explicit objectives for ongoing public education, outreach, and collaboration at local, State, and Federal levels, and between the private and public sectors, in recovering the California red-legged frog.

Exclusion Will Not Result in Extinction of the Subspecies

We believe that exclusion of these lands will not result in the extinction of the California red-legged frog as these areas are considered occupied habitat, and actions that might adversely affect the subspecies are expected to have a Federal nexus, which would trigger a section 7 consultation with the Service. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, as discussed in the economic analysis, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for the subspecies in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot.* Additionally, the subspecies occurs on lands protected and managed either explicitly for the subspecies, or indirectly through more general objectives to protect natural values. This provides protection from extinction while conservation measures are being implemented. For example, the California red-legged frog is protected on lands such as conservation banks and other natural areas protected by perpetual conservation easements and managed specifically for the subspecies and its habitat (e.g., Ohlone Conservation Bank), and also on a variety of natural areas managed to maintain and enhance natural values (e.g., Sierra Nevada U.S. Forest Service Lands, Point Reyes National Park). The subspecies also occurs on lands managed to protect and enhance wetland values under the Wetlands Reserve Program of the Natural Resource Conservation Service. These factors acting in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acting in concert with protections afforded each species by the remaining lands that have been designated critical habitat for the subspecies, lead us to find that exclusion of these 19 census tracts will not result in extinction of the California red-legged frog.

Economic Analysis

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 subspecies concerned.

Concurrent with the publication of the revised proposed critical habitat designation, we announced the availability of an economic analysis that estimated the potential economic effect of the designation. The draft analysis was made available for public review on November 3, 2005 (70 FR 66906). We accepted comments on the draft analysis until February 1, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the California red-legged frog. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic

efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the subspecies. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

We received comments on the draft economic analysis of the revised proposed designation. Following the close of the comment period, we reviewed and considered the public comments and information we received and prepared responses to those comments (see Responses to Comments section above) or incorporated the information or changes directly into this final rule or our final economic analysis.

The November 3, 2005, notice (70 FR 66906) provides a detailed economics section that estimates an economic impact of the designation on land development of $497,647,833. The revised impact on transportation projects is $687,000. The total revised cost of designation is thus $498,334,833, or $24,916,741 annualized over 20 years. By excluding the top 19 census tracts (80 percent of the costs) (refer to the *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section above for further explanation*), the total cost of this final designation of critical habitat for the California red-legged frog is reduced to $102,526,338 (or $5,126,317 annualized over 20 years).

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) or by downloading from the Internet at *http://www.fws.gov/sacramento/.*

Special Rule Under Section 4(d) of the Act Associated With Final Listing

Section 4(d) of the Act imparts the authority to issue regulations necessary and advisable to provide for the conservation of threatened species. Under section 4(d), the Secretary may publish a special rule that modifies the standard protections for threatened species under the Service's regulations implementing section 9 of the Act at 50 CFR 17.31 with special measures tailored to the conservation of the species. We believe that, in certain instances, easing the general take prohibitions on non-Federal lands may encourage continued responsible land uses that provide an overall benefit to the subspecies. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for subspecies recovery (Wilcove et al. 1996; Knight 1999; Main et al. 1999; Norton 2000; Bean 2002; Conner and Matthews 2002; Crouse et al. 2002; James 2002; Koch 2002). However, in easing the take prohibitions under section 9 of the Act, the measures developed in the special rule must also contain prohibitions necessary and appropriate to conserve the subspecies.

As discussed elsewhere in this final rule, the California red-legged frog faces many threats. Foremost among these is the continuing loss of aquatic breeding and associated uplands. Historically, permanent and ephemeral streams and ponds served as the predominant breeding habitat for the California red-legged frog and were essential components for the subspecies' stability throughout its range (Storer 1925; Jennings and Hayes 1994). With the loss of these natural habitats during the last century, alternative breeding sites have become more critical for the continued survival of the California red-legged frog.

Stock ponds created for livestock ranching are important alternative breeding sites for the California red-legged frog, as evidenced by the substantial number of California red-legged frog locality records from these artificial habitats (CNDDB 2005). While various activities associated with livestock operations may result in inadvertent take of California red-legged frog adults, juveniles, or eggs, livestock ranching stock ponds with suitable adjacent upland habitat provide valuable upland habitat for forage, feeding, predator avoidance, and dispersal for the remaining California red-legged frogs. Maintaining California red-legged frog's use of stock ponds on livestock ranches for breeding appears to be an important link in the conservation and recovery of this subspecies. For this reason, we are, in this rule, finalizing a special rule under section 4(d) of the Act that exempts routine livestock ranching activities on private or Tribal lands where there is no Federal nexus from the take prohibitions under section 9 of the Act. The special rule applies to those situations, whether currently existing or that may develop in the future, where livestock ranching is the primary land use or livelihood and where the routine activities are essential for the continued operation of the livestock ranch.

Special rules developed under section 4(d) of the Act are published in the **Federal Register** concurrent with or subsequent to the listing of a species. With the finalization of this special rule, the general regulations at 50 CFR 17.31 will not apply to the California red-legged frog. Our rationale behind the development of the special rule is discussed below.

Livestock ranching is a dynamic process, which requires the ability to adapt to changing environmental and economic conditions. However, many of the activities essential to successful ranching are considered routine, and are undertaken at various times and places throughout the year as need dictates. Although this special rule is not intended to provide a comprehensive list of those ranching activities considered routine, some examples include: maintenance of stock ponds; fence construction for grazing management; planting, harvest, and rotation of unirrigated forage crops; maintenance and construction of corrals, ranch buildings, and roads; discing of field sections for fire prevention management; control of noxious weeds by prescribed fire or by herbicides; placement of mineral supplements; and rodent control.

Routine activities associated with livestock ranching have the potential to affect California red-legged frogs. Some routine activities have the potential to positively affect California red-legged frogs (e.g., creation of suitable stock pond breeding habitats), while other activities may be neutral with respect to California red-legged frog effects (e.g., construction of ranch buildings in areas unsuitable for California red-legged frog foraging or dispersal). However, other routine ranching activities have the potential to negatively affect California red-legged frogs, depending on when and where the activities are conducted (e.g., direct take from discing fencelines or perimeter areas for fire prevention during a rainy period when California

red-legged frogs may be moving from one area to another).

While section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species, the Service recognizes that routine ranching activities, even those with the potential to inadvertently take California red-legged frogs, may be necessary components of livestock operations. The Service also recognizes that it is, in the long term, a benefit to the California red-legged frog to maintain, as much as possible, those aspects of the ranching landscape that can aid in the recovery of the subspecies. We believe this special rule will further conservation of the subspecies by discouraging further conversions of the ranching landscape into habitats unsuitable for the California red-legged frog and encouraging landowners and ranchers to continue managing the remaining landscape in ways that meet the needs of their operation and provide suitable habitat for the California red-legged frog. Development of this special rule for the California red-legged frog follows that of the final special rule for the California tiger salamander (*Ambystoma californiense*) published in the **Federal Register** on August 4, 2004 (69 FR 47212). One difference between the special rules is that burrow fumigant use is not exempted in the California tiger salamander rule; areas in which the species and subspecies coexist would not be exempted for this use.

Routine Livestock Ranching Activities Exempted by the Special Rule

The activities mentioned above and discussed below are merely examples of routine ranching activities that would be exempted by the special rule. Routine activities may vary from one ranching operation to another, and vary with changing environmental and economic conditions. Routine ranching activities include the activities described below, and any others that a rancher may undertake to maintain a sustainable ranching operation. Our premise for not attempting to regulate routine activities is that, ultimately, we believe that a rancher acting in the best interest of maintaining a sustainable ranching operation also is providing incidental but significant conservation benefits for the California red-legged frog.

In this special rule, we describe and recommend best management practices for carrying out routine ranching activities in ways that would minimize take of California red-legged frogs, but we do not require these practices. Overall, we believe that minimizing the regulatory restrictions on routine ranching activities will increase the likelihood that more landowners will voluntarily allow California red-legged frogs to persist or increase on their private lands, and that the impacts to California red-legged frogs from such activities are far outweighed by the benefits of maintaining a rangeland landscape where California red-legged frogs can coexist with a ranching operation, as opposed to alternative land uses in which California red-legged frogs would be eliminated entirely.

Sustainable Livestock Grazing. The act of grazing livestock on rangelands in a sustainable manner (i.e., not overgrazed to the point where rangeland is denuded and compacted) has the potential for take of the California red-legged frog. Grazing livestock in California red-legged frog-occupied areas may trample individual California red-legged frogs as they move to and from their upland habitats, or as adults and newly metamorphosed juveniles leave breeding ponds (Fellers and Kleeman 2005). California red-legged frog egg masses could be trampled or dislodged from egg braces by livestock milling in the pond. Additionally, numerous studies, summarized by Kauffman and Krueger (1984) and Belsky et al. (1999), have shown that unmanaged livestock grazing (overgrazing) can negatively affect riparian and instream aquatic habitat. Some of the effects of unmanaged grazing include: higher instream water temperatures resulting from reduction or removal of vegetation, channel down-cutting, lowered water tables, and loss of plunge pools, which results in direct loss of pool habitats for the California red-legged frog (Patla and Keinath 2005), as well as diminished water quality through increased sediment loads and nutrient levels (Belsky et al. 1999).

By contrast, sustainable grazing may benefit the California red-legged frog in several ways. For example, at the Point Reyes National Seashore in Marin County, an area where there are more than 120 breeding sites with an estimated total adult population of several thousand California red-legged frogs, the majority of the breeding sites are artificial stockponds constructed on lands that have been grazed by cattle for over 150 years (Fellers and Guscio 2004). On the EBRPD lands in Contra Costa and Alameda counties, 43 of 179 ponds surveyed that were exposed to grazing, and were characterized with and without emergent vegetation, supported successful breeding frog populations, often exhibiting high rates of annual breeding (Bobzien et al. 2000). Sustainable levels of grazing may keep ponds from becoming completely vegetated by emergent aquatic vegetation. During the past 10 years of monitoring, EBRPD has noted 47 of 207 California red-legged frog ponds silted in after being fenced off from livestock grazing (Bobzien, in litt. 2005). California red-legged frogs are typically found in ponds with both open water and emergent aquatic vegetation. The potential benefits of sustainable livestock grazing, according to normally acceptable and established levels of intensity to prevent overgrazing, provide justification for including this routine activity in this special rule.

Stock Pond Management and Maintenance. Stock ponds are necessary components of livestock ranching in many parts of the California red-legged frog range, due to California's dry summer climate and the limited availability of naturally occurring water. As discussed previously, created stock ponds may serve as alternative breeding sites for the California red-legged frog in the absence of seasonal or permanent pond or stream habitats. Once a stock pond is occupied as a California red-legged frog breeding site, however, California red-legged frogs may be vulnerable to take from the routine activities necessary to manage and maintain the stock pond for continued livestock use.

Hydroperiod management (i.e., the amount of time the stock pond contains water) of California red-legged frog-occupied stock ponds may be so short that California red-legged frog larvae cannot complete metamorphosis. Stock ponds with suitable hydroperiods for California red-legged frog breeding cycles may require ongoing maintenance to protect water supplies and the integrity of the storage system. Routine maintenance activities can include periodic dredging, dam or berm repair, and mechanical or chemical control of aquatic vegetation. If any of these activities are conducted during the California red-legged frog breeding season, take of California red-legged frogs may occur. In addition, stock ponds may become infested by mosquitoes, requiring controls in order to protect human or livestock health. Mosquito infestations may be controlled by pesticide applications or by the introduction of nonnative fish species that prey on mosquitoes. Take of California red-legged frogs may occur if pesticide applications are made during the California red-legged frog breeding season. Regardless of the time of year nonnative fish are introduced for mosquito control, they may become established in the stock pond and prey

on California red-legged frogs during the breeding season. For the purposes of this special rule, we considered these various activities with regard to whether they could be readily adapted to avoid take of the California red-legged frog.

Hydroperiod management is likely dependent on many factors, including the annual water needs of the livestock operation and the local hydrological conditions (e.g., annual water availability). In any given year, these variables may cause a ranching operation to adjust a stock pond's hydroperiod in ways that could potentially disrupt the California red-legged frog breeding cycle, resulting in take of California red-legged frog adults, juveniles, or eggs. The Service recommends maintaining consistent water levels through the California red-legged frog breeding and juvenile rearing season (through August) to minimize potential take. Drawdown of stock ponds after juvenile metamorphosis would be desirable in some instances for control of bullfrogs and nonnative predatory fish that prey on California red-legged frogs and can significantly reduce juvenile and adult survival. Although stock pond hydroperiods can theoretically be readily adapted to avoid take by maintaining an optimal breeding period for the California red-legged frog, we recognize that the continued viability of a livestock ranching operation may depend on the flexibility to make these hydroperiod adjustments on short notice. We also acknowledge the Service would not be able to provide timely technical assistance to most land managers. For these reasons, routine hydroperiod management of ranching operation stock ponds is included in this special rule.

Periodic dredging to counter the long-term effects of siltation, and the maintenance or repair of containment structures (e.g., dams, berms, levees), are activities necessary to maintain stock pond utility and integrity (N. Cremers, in litt. 2003). Although these actions may result in take of California red-legged frogs if they coincide with the California red-legged frog breeding season, the need to conduct these maintenance activities is episodic and should not be necessary on a regular basis. In addition, we believe it is unlikely that these activities would be necessary during the California red-legged frog breeding season, except in the case of emergency repairs on a catastrophic breach, as a stock pond's integrity for the spring and summer grazing season should be ensured prior to the previous year's rainy winter season. We believe the infrequent nature of these routine activities, coupled with the likelihood that they will be conducted outside of the California red-legged frog breeding season, will have minimal impacts on California red-legged frogs in occupied stock ponds. For these reasons, the routine activities of periodic dredging and containment structure maintenance for ranching operation stock ponds are included in this special rule.

Aquatic vegetation, whether rooted or free-floating, may impede stock pond functionality. Control of this vegetation may be mechanical, (e.g., harvesters, rakes, skimmers), chemical (e.g., aquatic herbicides), or biological (e.g., introduced herbivorous fish). Both mechanical and chemical control methods may result in inadvertent take of California red-legged frogs if conducted during the California red-legged frog breeding and juvenile metamorphosis seasons. It is unlikely that vegetation control would be needed during the breeding period, as the primary time for explosive vegetative growth is during the warm summer months. However, vegetation control may be necessary prior to juvenile California red-legged frog metamorphosis, which could result in take of pre-adult California red-legged frogs.

Mechanical controls may perturb the breeding habitat or cause death or injury to resident California red-legged frogs; however, these impacts would be restricted in time to singular control events. In contrast, chemical control using aquatic herbicides may have little immediate physical impact on California red-legged frogs or breeding habitat, but may negatively impact California red-legged frog health or reproductive fitness for an indefinite time beyond the control event. Hayes et al. (2006) has shown adverse growth and developmental effects can result from low (0.1 parts per billion) concentrations of a combination of pesticides. In addition, because aquatic herbicides disperse throughout a water body, all California red-legged frogs within the water body may potentially be exposed.

We recognize that routine aquatic vegetation control may be essential for the continued operation of stock ponds, and that this activity may not be readily adapted (e.g., postpone control until after California red-legged frog use of stock pond is discontinued) to avoid take of the California red-legged frog. Although both mechanical and chemical controls have the potential to negatively impact California red-legged frogs, we believe mechanical controls pose less long-term risk to breeding populations of California red-legged frogs. The Service discourages the addition of fish to stock ponds (for recreational use and vegetation control) that are, or could be, used by California red-legged frogs. Nonnative, warm water fish can significantly decrease the survivorship of juvenile California red-legged frogs (Alvarez et al. 2003). For the reasons outlined above, the routine activity of aquatic vegetation control in ranching operation stock ponds is included in this special rule. While chemical control of aquatic vegetation in stock ponds is included under the special rule exemption, the Service recommends that this activity be conducted only outside of the general breeding season (November through April) and juvenile stage (April through September) of the California red-legged frog.

Mosquito abatement in aquatic systems is similar to vegetation management, in that several control methods exist. The aquatic mosquito larvae can be controlled by chemical larvicides (e.g., temephos and methoprene), bacterial larvicides, or biological organisms (e.g., predaceous mosquitofish). In addition, mosquito larvae can be controlled through breeding source reduction and proper water management. Bacterial larvicides are especially target-specific, and likely pose little risk to California red-legged frogs using a stock pond; however, these products must be applied in specific timeframes during larval mosquito development to be efficacious. A broader range of non-target effects may be seen from chemical larvicides, with the potential for direct impacts on higher order taxonomic groups such as frogs (Ankley et al. 1998; Sparling and Lowe 1998). Biological organisms such as mosquitofish may become established in the affected water body and compete for resources with juvenile California red-legged frogs. Lawler et al. (1999) found mosquitofish did not affect the survival of California red-legged frog tadpoles; however, tadpoles weighed 34 percent less at metamorphosis than did tadpoles that developed in the absence of mosquitofish competition.

While mosquito control in stock ponds may be a routine activity on ranching operations, we believe it unlikely that control would be necessary during much of the California red-legged frog breeding season, as this period coincides with the rainy winter and spring months. However, when control cannot be avoided during the latter part of the California red-legged frog breeding season, we believe mosquito control activities can be readily adapted to prevent or minimize potential take of California red-legged

frogs by appropriate water level management and/or the proper application of bacterial larvicides. For this reason, these routine activities are included in this special rule. Also included in the special rule is the routine activity of properly applying (i.e., following label directions and product precautions) either chemical or bacterial larvicides into ranching operation stock ponds outside of the California red-legged frog general breeding season. This exemption for routine mosquito control activities from the take prohibitions under section 9 of the Act does not include the purposeful introduction at any time of nonnative biological organisms (e.g., western mosquitofish (*Gambusia affinis*), other predatory warm water fish such as bluegill or bass, or bullfrogs) that may prey on California red-legged frog adults, larvae, or eggs.

Rodent Control. California red-legged frogs may use small mammal rodent burrows during summer months during upland foraging excursions (Tatarian 2004; Fellers and Kleeman 2005); however, it is unknown the extent to which small mammal burrows are essential for the conservation of the California red-legged frog.

Burrowing rodents, particularly the California ground squirrel, may pose problems for livestock ranching operations to such an extent that control measures are necessary. Ground squirrels in sufficient numbers may deplete livestock forage, while their burrows may be a physical hazard for humans, livestock, and ranching machinery (N. Cremers, in litt. 2003). Common control measures for these rodents include shooting, poisoning with approved pesticides, and mechanical modification of burrow complexes (Salmon and Gorenzel 2002). While shooting of ground squirrels poses little risk to California red-legged frogs, the application of pesticides may result in take of the California red-legged frog. Because the location of burrow complexes cannot be predicted or controlled, rodent control measures must be site-specific and cannot be redirected. Thus, the activity of controlling ground squirrels may not be readily adapted to avoid implementation in California red-legged frog habitats. However, because various control options are available that may minimize or prevent the potential for take of California red-legged frog, routine rodent control activities are included in this special rule.

Burrowing Rodent Control by Pesticide Application. Controlling burrowing rodents with pesticides is generally accomplished through the application of toxicant-treated grains, which are ingested by the target animals, or by the introduction of fumigants (e.g., toxic or suffocating gasses) into burrow complexes. Fumigants are not target-specific, and all organisms inhabiting a treated burrow complex will likely be subject to the effects of the pesticide (i.e., toxicant exposure or oxygen depletion). Although specific data are not available on the effects of fumigants on the California red-legged frog, the permeable skin of amphibians is likely to increase susceptibility to adverse effects from exposure to toxicants (Henry 2000). We believe it is necessary to reduce the impact of fumigants on sheltering California red-legged frogs. Based on the habitat requirement estimates presented above, we recommend not using burrow fumigants within 0.7 mi (1.2 km) in any direction from a water body, natural or human-made, suitable for California red-legged frog breeding. The application of fumigants outside of this area restriction is not prohibited. However, in areas where California red-legged frogs and California tiger salamanders coexist, the use of burrow fumigants is prohibited, and the prohibition of take under section 9 of the Act still applies.

Toxicant-treated grains, primarily using anticoagulant compounds, may be applied by several methods to control burrowing rodents (Silberhorn et al. 2003). Grains may be broadcast over the ground surface at defined rates, placed in confined bait stations, or placed into burrow openings. Ground squirrels and other rodents ingest these baits, and mortality of the exposed animal results from internal hemorrhaging. No data were found on the toxicity of these anticoagulant compounds to California red-legged frogs, although it is possible that exposure to these baits may cause similar adverse effects in California red-legged frogs. It is highly unlikely that California red-legged frogs would directly ingest any grains encountered; however, indirect exposure to the pesticides through dermal contact may occur if the treated grains are placed into California red-legged frog-occupied burrows. In addition, there may be potential for secondary exposure from this application method if sheltering California red-legged frogs consume burrow-dwelling invertebrates that have ingested the treated grains. While no definitive risk assessment can be made for these possible exposures, we believe this application method would result in an increased risk for take of the California red-legged frog and should therefore be avoided whenever possible.

California red-legged frogs may also face these potential indirect and secondary exposures from the broadcast and bait station application methods. However, by widely dispersing the treated grains over the ground surface, the broadcast application method likely reduces the probability of migrating California red-legged frogs being exposed through dermal contact or through ingestion of exposed invertebrates. Similarly, it is unlikely that California red-legged frogs would enter a confined bait station, further reducing the probability of exposure. While we do not endorse the use of rodenticides for ground squirrel or other rodent control, we believe the use of rodenticides present a low risk to California red-legged frog conservation. For the reasons outlined above, broadcast and confined bait station application as part of routine livestock ranch operation are included in the special rule.

Burrowing Rodent Control by Habitat Modification. Colonies of ground squirrels and other burrowing rodents are sometimes controlled by using cultivation equipment to destroy or modify burrow complexes. The technique of deep-ripping is likely to result in complete destruction of the burrow complex and eradication of the rodent colony. Any California red-legged frogs using these burrows as sheltering sites would also likely be killed by this activity. Discing of these burrow systems, followed by surface grading, removes the physical hazard of open holes and may successfully suppress the rodent colony. This process may not destroy the entire burrow complex; some burrows may remain intact. However, sheltering California red-legged frogs may also suffer substantial mortality from this control method.

While modification of a burrow complex may aid in controlling a rodent colony, the primary benefit of such modification for ranching operations is the elimination of the physical hazards associated with burrows and burrow openings (N. Cremers, in litt. 2003). This may be particularly important for areas where livestock congregate in large numbers, such as corrals and stock pond watering sites. Because stock ponds have become important alternative breeding sites for the California red-legged frog, the extent of potential take may be directly related to the intensity of burrow complex modification around such sites. Large-scale modification of these habitats around a stock pond known to support California red-legged frogs would have the potential to eliminate or drastically

reduce a localized breeding population of the California red-legged frog. As discussed previously, the majority of a localized breeding California red-legged frog population may be found in an area of adjacent upland habitat extending up to 0.7 mi (1.2 km) in any direction from the breeding pond.

The Service recognizes that physical modification of rodent burrow complexes may be an essential activity to ranching operations. However, while habitat modification may not be a widespread practice for livestock ranches, we believe that an unmoderated approach to this activity could have the potential for large-scale take of the California red-legged frog in certain locales. Adverse effects upon California red-legged frog that could result from large-scale modifications could include both direct injury or mortality and significant loss of suitable sheltering habitats. We believe that a focused approach to burrow habitat modification would serve to achieve the dual goals of minimizing take of the California red-legged frog and reducing livestock ranching losses. To this end, rodent control through burrow modification is included in this special rule; however, the Service recommends that discing and/or grading of burrows should be limited to those areas where livestock congregate or move in large numbers. The Service also recommends that modification by deep-ripping be avoided within 0.7 mi (1.2 km) of known or potential California red-legged frog breeding ponds. We recognize that discing and/or grading around stock ponds or other suitable breeding pools may increase the risk to California red-legged frogs, and we encourage ranch operators to minimize the modification footprint around these sites as much as possible. We will continue to work with the livestock ranching community in developing and refining ways to attain these dual objectives.

Fire Prevention Management. In order to prevent or minimize the spread of wildfires in rangelands, livestock ranches may need to construct fire breaks in various places throughout the property. These fire breaks may be constructed by using cultivation equipment to create swaths of unvegetated land along property boundaries or between fields. If these fire breaks are constructed over rodent burrow complexes that may be used for sheltering by the California red-legged frog, there is the potential for take of the California red-legged frog. However, the Service recognizes the critical importance of fire prevention management in rangelands, and is thereby including this routine ranching activity in this special rule.

Monitor Impacts on the California Red-legged Frog. While it appears that the California red-legged frog may benefit from the creation of stock ponds and the prevention of rangeland conversion to unsuitable habitat throughout its range, much remains to be learned about the effects of livestock ranching activities on the California red-legged frog. We have concluded that developing a conservation partnership with the livestock ranching community will allow us to answer important questions about the impact of various ranching activities, and will provide valuable information to assist in the recovery of the subspecies. We further believe that, where consistent with the discretion provided by the Act, implementing policies that promote such partnerships is an essential component for the recovery of listed species, particularly where the subspecies occur on private lands. Conservation partnerships can provide positive incentives to private landowners to voluntarily conserve natural resources, and can remove or reduce disincentives to conservation (Wilcove et al. 1996; Knight 1999; Main et al. 1999; Norton 2000; Bean 2002; Conner and Matthews 2002; Crouse et al. 2002; James 2002; Koch 2002). The Service will work closely with the ranching community and others in developing ways to monitor impacts on the California red-legged frog from the routine activities described above. We conclude this commitment is necessary and appropriate, and will provide further insights into land stewardship practices that foster the continued use of California's rangelands in ways beneficial to both the California red-legged frog and the livestock ranching community.

We recognize many of the threats as described in the previous final listing rule (61 FR 25813) still affect the survival of the California red-legged frog. However, as mentioned and outlined in the proposed rule (70 FR 66906) our understanding of the threats of livestock grazing and stock pond development described in the previous final listing of the subspecies has changed. Below we present a threats analysis of the special rule as it relates to the threats outlined in the final listing rule for the California red-legged frog (61 FR 25813) and our current understanding of the role of livestock grazing and stock pond development and maintenance.

Factor A. The present or threatened destruction, modification, or curtailment of the subspecies' habitat or range. The final listing rule for the California red-legged frog (61 FR 5813) cites habitat loss and alteration as primary factors that have negatively affected the California red-legged frog. Grazing and ranching operations throughout the range of the California red-legged frog maintain large undeveloped areas which can provide suitable upland and aquatic habitat for the California red-legged frog. We recognize that most ranching operations operate on a thin financial margin, and additional regulatory requirements could push some operations to bankruptcy. We believe that sensible ranching operations are compatible with California red-legged frog conservation and recovery, while alternate land uses such as high density urban development, which could replace failed ranching operations, are not compatible. To the extent ranching activities are compatible with the California red-legged frog, we wish to encourage such activities to continue. We believe that relaxing the general take prohibitions on specific types of non-Federal lands through the special rule is likely to encourage continued responsible ranching, a land use that can provide an overall benefit to the conservation of the California red-legged frog. The promulgation of this special rule has the potential to reduce the threat of habitat loss due to conversion to other land uses which are incompatible with California red-legged frog conservation.

Livestock grazing was also cited in the final listing rule as a contributing factor to the decline of the California red-legged frog. While we still recognize unmanaged overgrazing as a threat, our understanding of some grazing practices have changed as we outline in the November 3, 2005 revised proposed rule (70 FR 66906). We now recognize that managed livestock grazing at low to moderate levels has a neutral or beneficial effect on California red-legged frog habitat (Bobzien et al. 2000) by keeping a mix of open water habitat and emergent vegetation which is beneficial to the subspecies. In some cases, without managed grazing, stock ponds would quickly fill with emergent vegetation resulting in habitat loss (Bobzien pers. comm. 2005). We provide an exemption of take of the California red-legged frog for livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland. Our basis for not attempting to regulate routine ranching activities is that, ultimately, we believe that a rancher acting in the best interest

of maintaining a sustainable ranching operation is also providing incidental but significant conservation benefits for the California red-legged frog.

Overall we believe that promulgation of this rule may reduce the threat of habitat loss by reducing any real or perceived regulatory controls over rangelands. This would promote sustainable ranches which would help perpetuate maintenance of habitat for California red-legged frog populations.

Factor B. Overutilization for commercial, recreational, scientific, or educational purposes. We know of no information to document or suggest routine ranching activities as outlined above contribute to the commercial, recreational, scientific or educational overutilization use of the California red-legged frog. Overall, we believe the threats of overutilization for commercial, recreational, scientific or educational purposes do not exist within the context of the exemptions provided in the special rule, and do not change as a result of this promulgated rule.

Factor C. Disease or predation. Stock ponds created and maintained as part of a ranching operation can provide suitable breeding and non-breeding aquatic habitat for the California red-legged frog. The intentional introduction of nonnative predators, including warm water fish and bullfrogs, is not exempt from the take prohibition. We realize that natural colonization of stock ponds by bullfrogs could occur, and in some instances of California red-legged frog occupied ponds, could result in the local extirpation of the subspecies. As we mention above, drawdown of stock ponds after juvenile metamorphosis would be desirable in some instances for control of bullfrogs and nonnative predatory fish that prey on California red-legged frogs and can significantly reduce juvenile and adult survival. Although stock pond hydroperiods can theoretically be readily adapted to avoid take by maintaining an optimal breeding period for the California red-legged frog, we recognize that the continued viability of a livestock ranching operation may depend on the flexibility to make these hydroperiod adjustments on short notice. We do exempt routine management and maintenance of stock ponds and berms to maintain livestock water supplies. However, we are not exempting the intentional introduction of species into a stock pond, including non-native fish and bullfrogs, which may prey on California red-legged frog adults, larvae, or eggs. The promulgation of this rule, we believe will not significantly change the nature of threat from disease or predation.

Factor D. The inadequacy of existing regulatory mechanisms. The promulgation of this rule will not modify any existing regulatory mechanisms, except for rangelands covered by the rule itself. Regulatory control over rangelands is modified by this rule, but overall, we believe that this rule will provide some overall benefit to species conservation within these areas.

Factor E. Other natural or manmade factors affecting the subspecies' continued existence. The May 23, 1996, final listing rule for the California red-legged frog (61 FR 25813) cites drought, the overall effect of contaminants, wildfire, extensive flooding, and habitat fragmentation as other factors that threaten the subspecies. As described above under Factor A, we believe the exemption of routine ranching activities would promote the preservation of large open tracts of ranching/grazing lands. Preserving ranching and grazing lands is expected to assist in preventing further habitat fragmentation in that portion of the subspecies' range. Many of these threats are ongoing and probably will occur in areas covered by this special rule under 4(d) of the Act.

Conclusion. We believe that threats discussed in the original listing rule are still present, and the threatened status of the species is still appropriate. However, we believe that the outcome of the special rule under 4(d) of the Act will be to promote the conservation of rangelands and reduce the rate of conversion to other land uses which are incompatible with frog conservation. Thus, we anticipate that the effect of Factor A on the California red-legged frog may be reduced with promulgation of this special rule under 4(d) of the Act.

In our re-evaluation of our April 13, 2004 (69 FR 19620), proposed critical habitat, we identified that a technical error was present in 50 CFR § 17.11 concerning the extent of the geographic range for which the California red-legged frog is listed. The extent of the geographic range has been corrected to reflect the entire range of the subspecies.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our economic analysis, it is not anticipated that this designation of critical habitat for the California red-legged frog will result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register,** the Office of Management and Budget (OMB) has not formally reviewed the rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the subspecies. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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 an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA

also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the subspecies is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the California red-legged frog. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The designation of critical habitat is not expected to result in significant small business impacts since revenue losses would be less than one percent of total small business revenues in affected areas. The impacts on small business, small governments, and small nonprofits are expected to be negligible. The annual number of affected small firms is fewer than two for all counties examined. Counties not examined have even smaller small business losses. Consequently, fewer than three small firms are projected to have annual revenue losses equal to their expected annual revenues as a consequence of critical habitat designation.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding a project's impact on the California red-legged frog and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—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. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the subspecies and the threats it faces, as described in the final listing rule (61 FR 25813) and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities authorized or funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect California red-legged frogs. The kinds of actions that may be included if future

reasonable and prudent alternatives become necessary include conservation set-asides, management of competing non-native species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the subspecies and the threats it faces, as described in the final listing rule (61 FR 25813) and revised proposed critical habitat designation (70 FR 66906). These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include U.S. Army Corps of Engineers permits, permits we may issue under section 10(a)(1)(B) of the Act, FHA funding for road improvements, hydropower licenses issued by FERC, and regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual 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 effects of this determination. (See **ADDRESSES** section for information on obtaining a copy of the final economic analysis.)

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. This final rule to designate critical habitat for the California red-legged frog is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the California red-legged frog may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the subspecies are specifically identified. While making this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

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. We are

designating critical habitat in accordance with the provisions of the Endangered Species Act. This final 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 California red-legged frog.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).)

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, and the Department of 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 determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of the subspecies, nor are there any unoccupied Tribal lands that are essential for the conservation of the California red-legged frog. Therefore, critical habitat for the California red-legged frog has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are staff from the Sacramento, Ventura, and Carlsbad Fish and Wildlife Offices (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. In § 17.11(h) revise the entry for ''Frog, California red-legged,'' under ''AMPHIBIANS,'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, California red-legged.	*Rana aurora draytonii* ..	U.S.A. (CA), Mexico.	Entire	T	583	17.95(d)	17.43
*	*	*	*	*	*		*

■ 3. Amend § 17.43 by adding a new paragraph (d) to read as follows:

§ 17.43 Special rules-amphibians.

* * * * *

(d) California red-legged frog (*Rana aurora draytonii*).

(1) *Which populations of the California red-legged frog are covered by this special rule?* This rule covers the California red-legged frog (*Rana aurora draytonii*) rangewide.

(2) *What activities are prohibited?* Except as noted in paragraph (d)(3) of this section, all prohibitions of § 17.31 will apply to the California red-legged frog.

(3) *What activities are allowed on private or Tribal land?* Incidental take of the California red-legged frog will not be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

(i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;

(ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (In areas where California red-legged frogs and California tiger salamanders coexist, the use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);

(iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings (This exemption does not apply to areas within 0.7 mi (1.2 km) of known or potential California red-legged frog breeding ponds.);

(iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the intentional introduction of species into

a stock pond (including non-native fish and bullfrogs) that may prey on California red-legged frog adults, larvae, or eggs.);

(v) Routine maintenance or construction of fences for grazing management;

(vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;

(vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(ix) Discing of fencelines or perimeter areas for fire prevention control;

(x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

■ 4. Amend § 17.95(d) by revising critical habitat for the California red-legged frog (*Rana aurora draytonii*) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians*.

* * * * *

California red-legged frog (*Rana aurora draytonii*)

(1) Critical habitat units are depicted for Alameda, Butte, Contra Costa, El Dorado, Kern, Los Angeles, Marin, Merced, Monterey, Napa, Nevada, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Ventura and Yuba Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements for the California red-legged frog consist of four components:

(i) *Aquatic Breeding Habitat*. Standing bodies of fresh water (with salinities less than 7.0 parts per thousand (ppt)), including: Natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest of years.

(ii) *Non-Breeding Aquatic Habitat*. Fresh water habitats as described above, that may or may not hold water long enough for the subspecies to hatch and complete its aquatic life cycle but that do provide for shelter, foraging, predator avoidance, and aquatic dispersal for juvenile and adult California red-legged frogs. Other wetland habitats that would be considered to meet these elements include, but are not limited to: Plunge pools within intermittent creeks; seeps; quiet water refugia during high water flows; and springs of sufficient flow to withstand the summer dry period.

(iii) *Upland Habitat*. Upland areas within 200 ft (60 m) of the edge of the riparian vegetation or dripline surrounding aquatic and riparian habitat and comprised of various vegetational series such as grasslands, woodlands, and/or wetland/riparian plant species that provides the frog shelter, forage, and predator avoidance. Upland features are also essential in that they are needed to maintain the hydrologic, geographic, topographic, ecological, and edaphic features that support and surround the wetland or riparian habitat. These upland features contribute to the filling and drying of the wetland or riparian habitat and are responsible for maintaining suitable periods of pool inundation for larval frogs and their food sources, and provide breeding, non-breeding, feeding, and sheltering habitat for juvenile and adult frogs (e.g., shelter, shade, moisture, cooler temperatures, a prey base, foraging opportunities, and areas for predator avoidance). Upland habitat can include structural features such as boulders, rocks and organic debris (e.g., downed trees, logs), as well as small mammal burrows and moist leaf litter.

(iv) *Dispersal Habitat*. Accessible upland or riparian dispersal habitat within designated units and between occupied locations within 0.7 mi (1.2 km) of each other that allow for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats such as agricultural fields, which also do not contain barriers to dispersal. (An example of a barrier to dispersal is a heavily traveled road constructed without bridges or culverts.) Dispersal habitat does not include moderate to high density urban or industrial developments with large expanses of asphalt or concrete, nor does it include large reservoirs over 50 ac (20 ha) in size, or other areas that do not contain those features identified in paragraphs 2(i), (ii), or (iii) as essential to the conservation of the subspecies.

(3) Critical habitat does not include man-made structures existing on May 15, 2006, and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Index map of the critical habitat units in northern California for California red-legged frog, follows:

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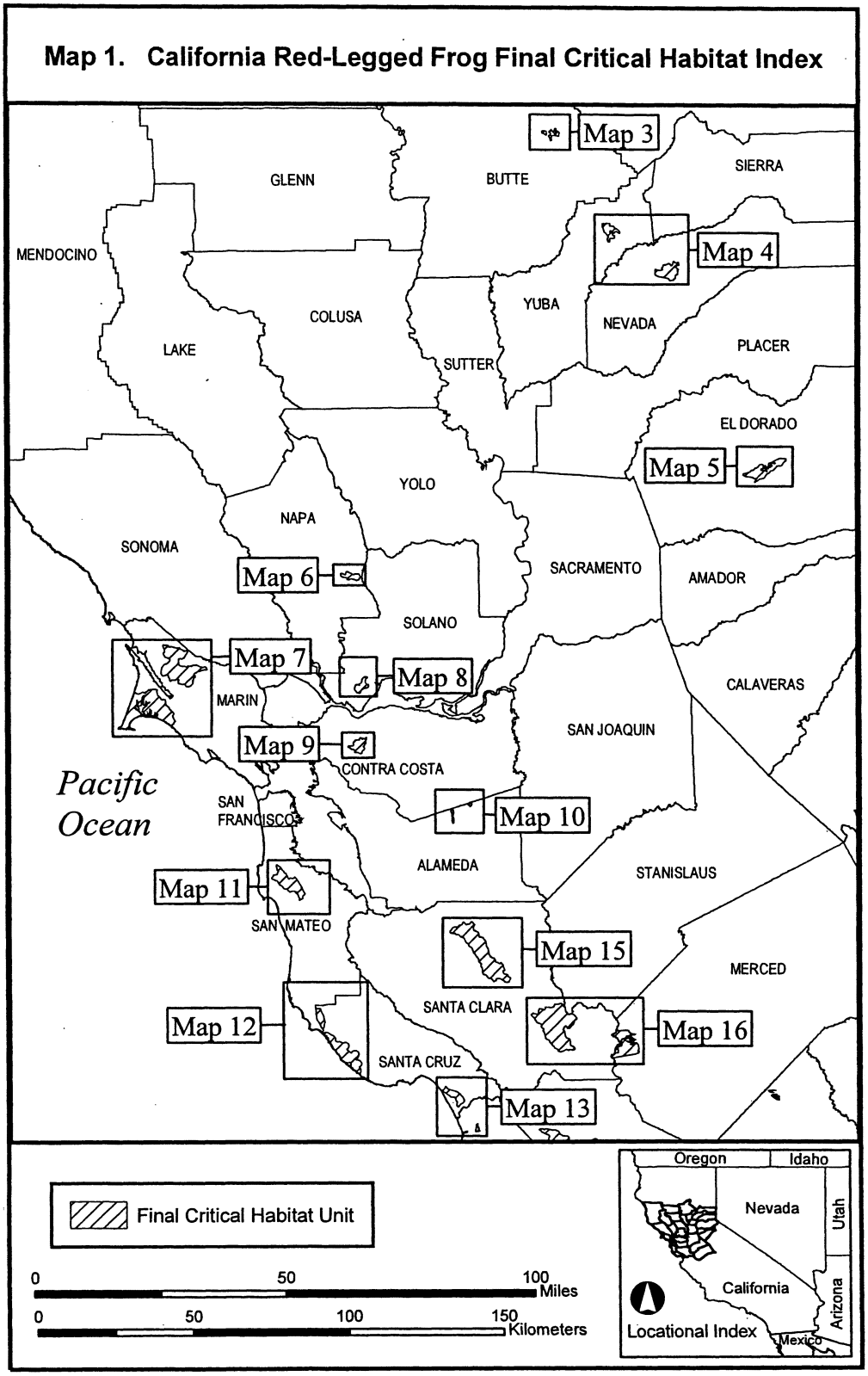
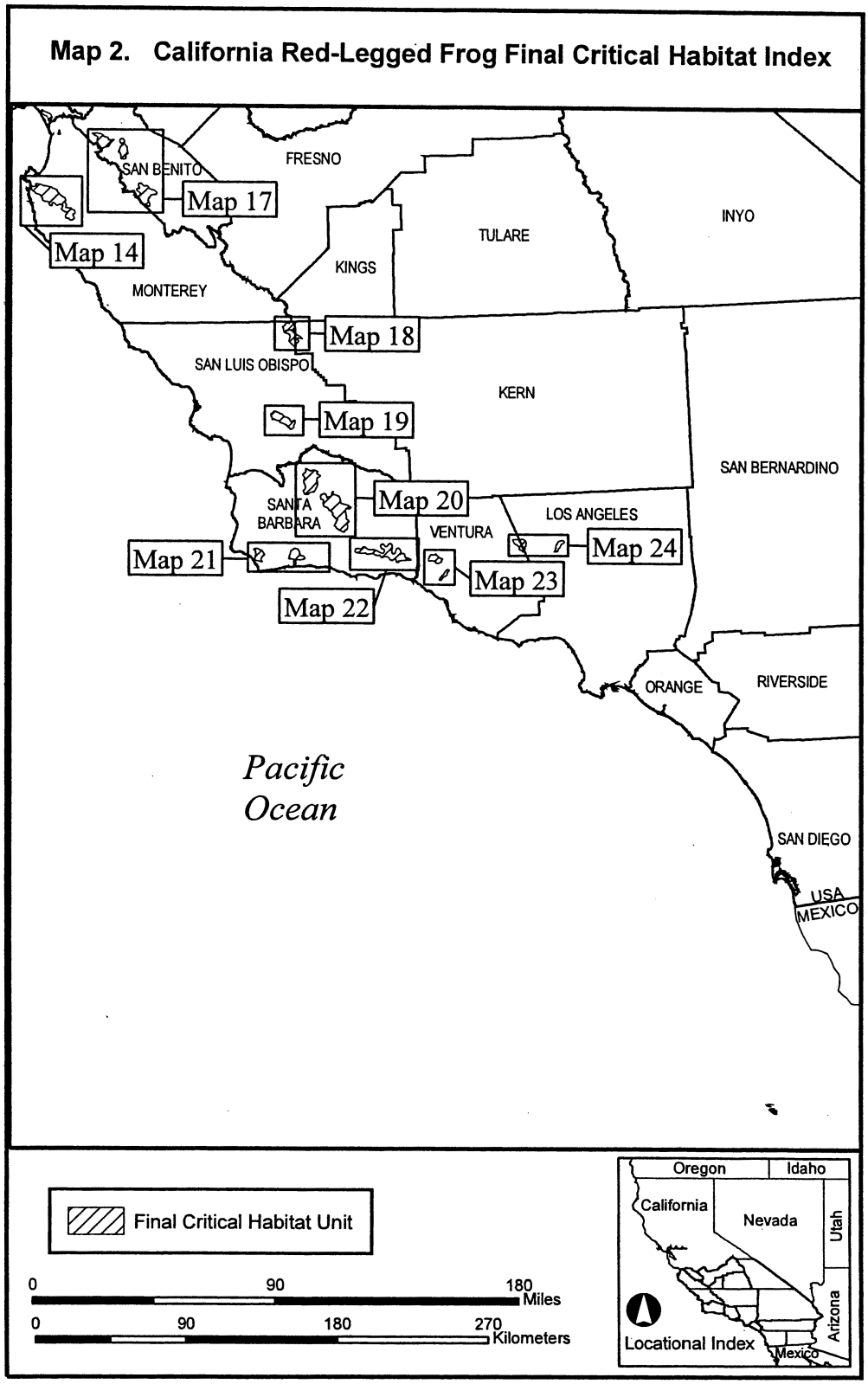


(5) Index map of the critical habitat units in southern California for the California red-legged frog, follows:



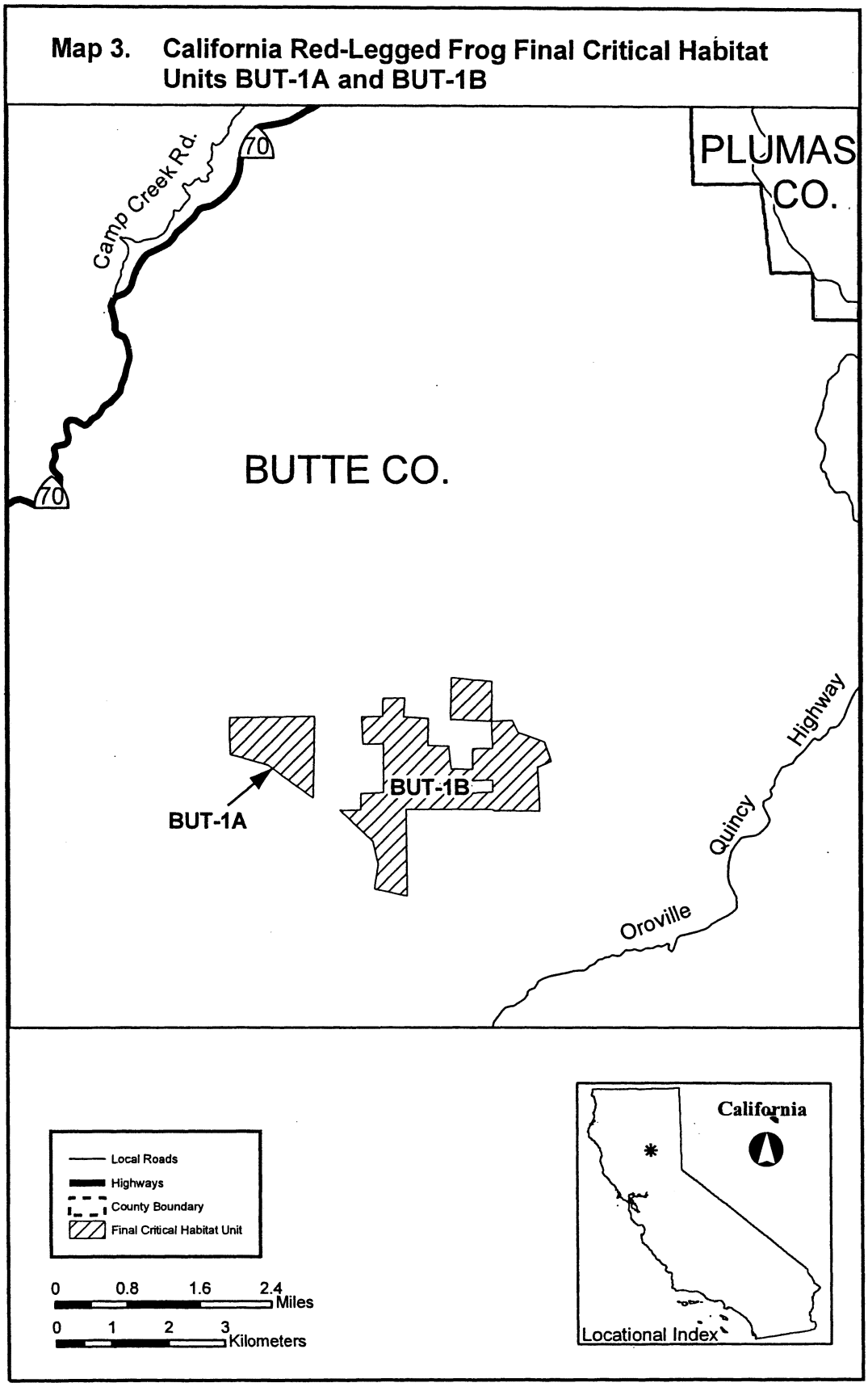
(6) Unit BUT–1: Butte County, California.

(i) Unit BUT–1A: Butte County, California. From USGS 1:24,000 scale quadrangle Berry Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 636014, 4398157; 635988, 4397179; 635183, 4397763; 634514, 4397948; 634511, 4398157; 634504, 4398602; 636026, 4398626; returning to 636014, 4398157.

(ii) Unit BUT–1B: Butte County, California. From USGS 1:24,000 scale quadrangle Berry Creek and Brush Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 639158, 4398542; 639158,

4398541; 639162, 4398541; 639356, 4398550; 639519, 4398557; 639628, 4398345; 640086, 4398179; 640211, 4397826; 640211, 4397826; 639961, 4397731; 640006, 4396948; 639187, 4396960; 639186, 4396974; 637634, 4396983; 637652, 4395435; 637065, 4395560; 637131, 4395999; 637040, 4396417; 636462, 4396956; 636835, 4396964; 636840, 4397249; 637236, 4397279; 637232, 4398141; 636881, 4398134; 636851, 4398620; 637230, 4398623; 637230, 4398948; 637614, 4398951; 637599, 4398614; 638035, 4398594; 638033, 4398108; 638391, 4398097; 638437, 4397694; 638816, 4397686; 638814, 4398059; 639169, 4398061; 639152, 4398538; 638426, 4398576; 638441, 4399315; 639162, 4399250; 639158, returning to 4398542; and excluding land bound by 638797, 4397490; 638801, 4397274; 639181, 4397286; 639178, 4397495; returning to 638797, 4397490.

(iii) **Note:** Unit BUT–1 (Map 3) follows:



(7) Unit YUB–1, Yuba County, California.

(i) From USGS 1:24,000 scale quadrangle Challenge. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):656980, 4365996;

656963, 4366384; 656120, 4366359; 656148, 4365966; 656980, 4365996; 657043, 4364816; 657742, 4364812; 657772, 4364057; 657015, 4363927; 656165, 4364014; 656168, 4362832; 655836, 4362878; 655558, 4363109; 655202, 4363849; 655669, 4364315; 655690, 4364586; 655027, 4365526; 654779, 4365758; 654445, 4365837; 654319, 4366013; 654149, 4366639; 653990, 4366874; 653883, 4367381; 653710, 4367531; 653751, 4368687; 656133, 4368825; 656096, 4367969; 657473, 4368012; 657481, 4367769; 657690, 4367431; 657689, 4367226; 657934, 4367235; 658905, 4366554; 659222, 4366053; 659360, 4365977; 659370, 4365689; 658988, 4365675; 658726, 4365936; 658571, 4365925; 658565, 4366039; 658336, 4366076; 657704, 4366025; 657709, 4365629; 657364, 4365618; 657333, 4365997; returning to 656980, 4365996.

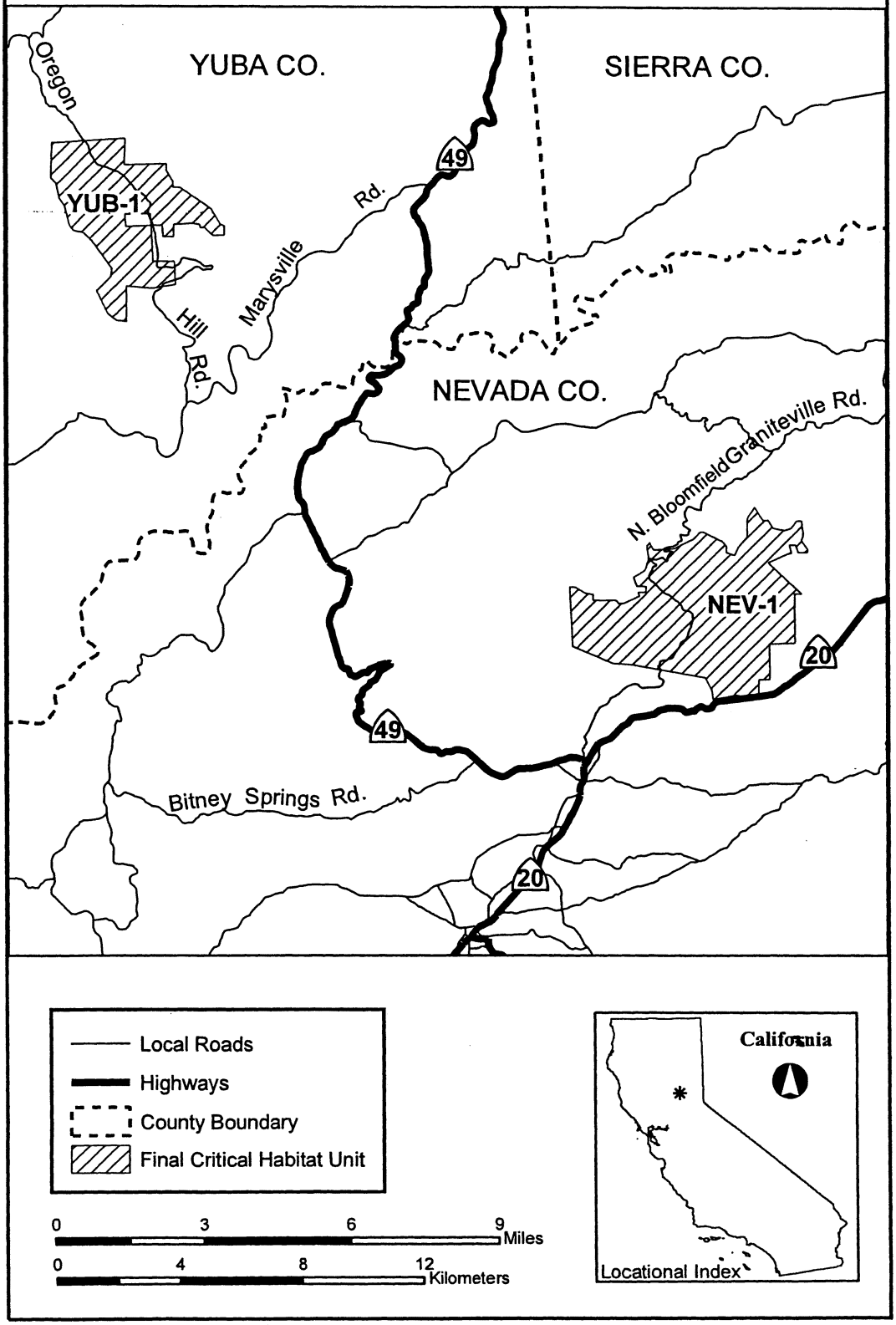
(ii) **Note:** Unit YUB–1 is depicted on Map 4—Unit YUB–1 and NEV–1; see paragraph (8)(ii):

(8) Unit NEV–1, Nevada County, California.

(i) From USGS 1:24,000 scale quadrangle Nevada City and North Bloomfield. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):676693, 4356744; 676962, 4356305; 677130, 4356317; 677130, 4356317; 677306, 4356068; 677670, 4355985; 677882, 4356056; 678051, 4356296; 678231, 4356310; 678277, 4355825; 678217, 4355664; 678320, 4355521; 678448, 4355341; 678417, 4355258; 678120, 4355258; 678022, 4355505; 677872, 4355497; 677839, 4355496; 677890, 4355253; 677791, 4355212; 677142, 4354929; 678242, 4353900; 678000, 4353891; 678010, 4352268; 677172, 4352234; 677188, 4351077; 676817, 4351057; 676812, 4350531; 676440, 4350485; 676117, 4350571; 675325, 4350412; 675293, 4350711; 675063, 4351133; 672710, 4351546; 672074, 4351586; 670738, 4352158; 670705, 4352783; 670633, 4354099; 670847, 4354102; 671174, 4353907; 671425, 4353854; 671435, 4353852; 671437, 4353664; 672180, 4353672; 672195, 4353656; 672287, 4353562; 672450, 4353566; 672938, 4353818; 672900, 4353937; 672900, 4353937; 673158, 4353946; 673148, 4354137; 672855, 4354130; 672757, 4354434; 673117, 4354665; 673122, 4354681; 673144, 4354750; 673253, 4355088; 673222, 4355269; 673188, 4355465; 673229, 4355515; 673283, 4355581; 673316, 4355516; 673402, 4355344; 673475, 4355349; 674072, 4355387; 674698, 4355703; 674907, 4355945; 675027, 4355928; 675578, 4355648; 675622, 4355625; 675647, 4355612; 675763, 4355477; 675770, 4355334; 675773, 4355263; 675947, 4355197; 676036, 4355164; 676143, 4355418; 676445, 4355779; 676456, 4356381; returning to 676693, 4356744.

(ii) **Note:** Unit NEV–11 is depicted on Map 4—Unit YUB–1 and NEV–1; which follows:

Map 4. California Red-Legged Frog Final Critical Habitat Units YUB-1 and NEV-1

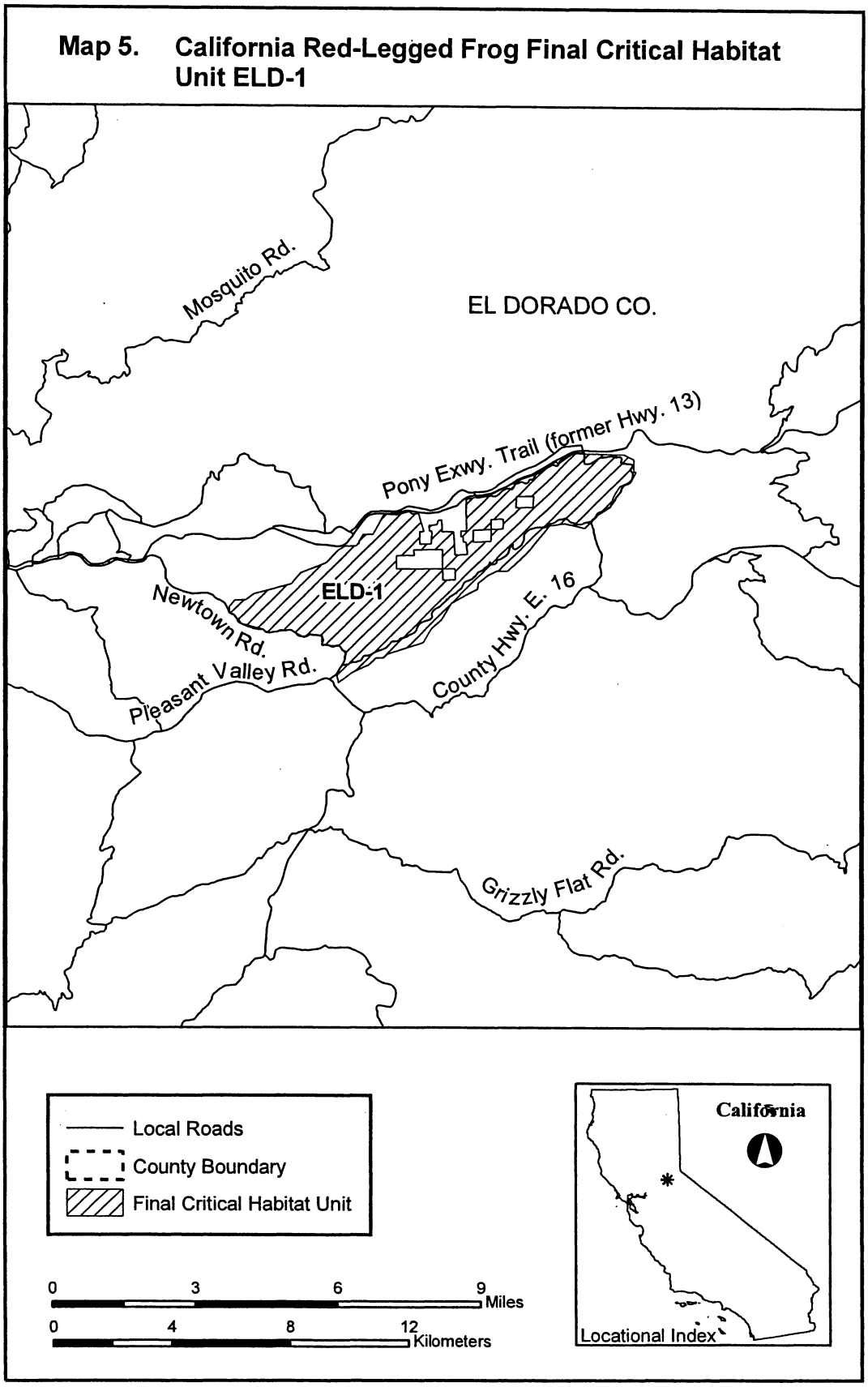


(9) Unit ELD–1: El Dorado County, California.

(i) From USGS 1:24,000 scale quadrangle Camino, Pollock Pines and Sly Park. Land bounded by the following UTM Zone 10, NAD83

coordinates (E,N):712379, 4292813; 712379, 4292406; 712447, 4292408; 712357, 4292219; 712201, 4292042; 711866, 4291905; 711680, 4291585; 711576, 4291195; 711182, 4290958; 710718, 4290490; 710054, 4290648; 709523, 4290568; 708873, 4289705; 708143, 4289015; 707771, 4289015; 707493, 4288896; 707161, 4288617; 707148, 4288404; 706245, 4287927; 705913, 4287369; 705568, 4287037; 705289, 4286586; 704068, 4286188; 703935, 4286055; 703696, 4286055; 703444, 4285816; 702900, 4285564; 702422, 4285219; 702369, 4285524; 702618, 4285934; 702683, 4286195; 702470, 4286461; 701885, 4286497; 701891, 4286789; 701757, 4286837; 701495, 4286860; 701263, 4286770; 700823, 4287009; 700042, 4286915; 699847, 4287036; 699171, 4287213; 698928, 4287502; 698765, 4287582; 698754, 4287797; 698937, 4288006; 699302, 4288030; 699587, 4288228; 700848, 4288565; 701165, 4288948; 702025, 4289287; 702406, 4289714; 702679, 4289855; 702774, 4289856; 702774, 4289849; 702848, 4289851; 703038, 4289857; 703074, 4289922; 703126, 4289926; 703129, 4290021; 703254, 4290250; 703584, 4290256; 703585, 4290257; 703590, 4290257; 703590, 4290266; 703950, 4290938; 704423, 4290921; 704803, 4291038; 704899, 4290959; 705129, 4290959; 705303, 4290355; 705172, 4290348; 705178, 4289926; 705574, 4289921; 705596, 4290371; 705522, 4290367; 705493, 4290545; 705761, 4290578; 705811, 4290733; 705924, 4290751; 705932, 4290340; 706320, 4290350; 706369, 4289576; 706803, 4289579; 706764, 4289998; 706666, 4289998; 706655, 4290187; 706578, 4290186; 706574, 4290369; 706777, 4290369; 706756, 4291450; 707659, 4291644; 708554, 4292134; 708989, 4292267; 709674, 4292706; 709766, 4292736; 709816, 4292639; 710327, 4293012; 712042, 4292979; returning to 712379, 4292813; and excluding land bound by 708426, 4291544; 708412, 4291176; 709003, 4291194; 709025, 4291561; returning to 708426, 4291544; and excluding land bound by 707590, 4290430; 707003, 4290400; 706995, 4290008; 707594, 4290027; 707590, 4290430; 707995, 4290448; 708014, 4290791; 707587, 4290776; returning to 707590, 4290430; and excluding land bound by 705960, 4289093; 705974, 4288722; 706388, 4288730; 706372, 4289105; 705960, 4289093; 705946, 4289741; 704959, 4289733; 704985, 4289548; 704386, 4289529; 704391, 4289082; returning to 705960, 4289093.

(ii) **Note:** Unit ELD–1 (Map 5) follows:

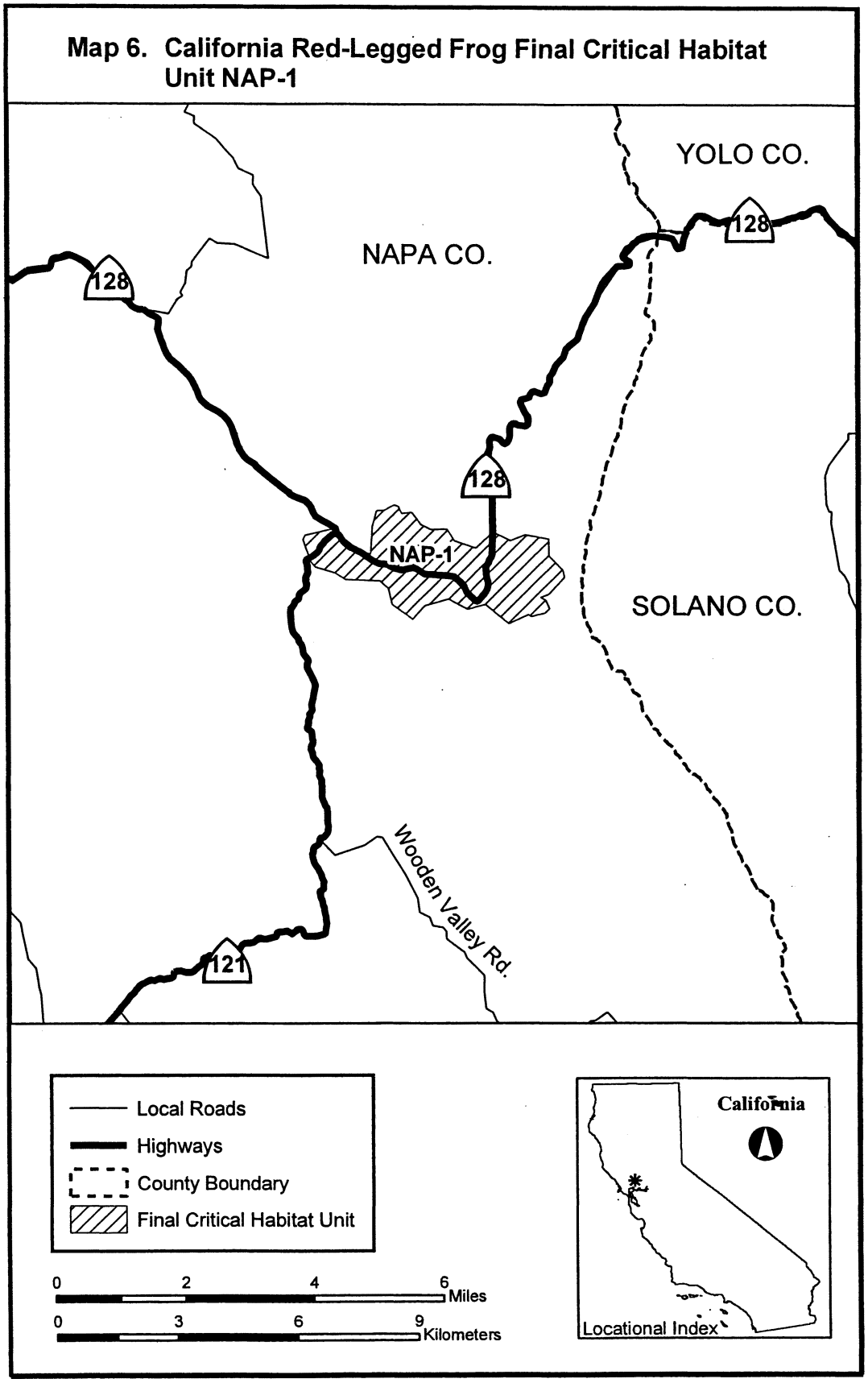


(10) Unit NAP–1: Napa County, California.

(i) From USGS 1:24,000 scale quadrangle Capell Valley. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):571668,

4256238; 571744, 4256065; 572003, 4256097; 572230, 4255795; 572479, 4255665; 572879, 4255676; 573063, 4255384; 573603, 4255200; 573949, 4255535; 574100, 4255568; 574468, 4255395; 574835, 4255535; 575408, 4255427; 575408, 4255017; 575765, 4254649; 575808, 4254465; 575408, 4254033; 575214, 4253957; 575333, 4253892; 575419, 4253676; 575321, 4253562; 574972, 4253480; 574899, 4253535; 574411, 4253302; 573831, 4253776; 573386, 4253663; 572909, 4253921; 572328, 4253749; 572020, 4253414; 571495, 4253784; 571420, 4254184; 571204, 4254368; 570339, 4254400; 570079, 4254573; 569593, 4254725; 569474, 4254865; 569290, 4255416; 569344, 4255525; 570015, 4255676; 570207, 4255556; 570458, 4255211; 570966, 4255049; 571009, 4255752; 571117, 4256141; 571301, 4256141; 571560, 4256281; returning to 571668, 4256238.

(ii) **Note:** Unit NAP–1 (Map 6) follows:



(11) Unit MRN–1, Marin County, California.

(i) From USGS 1:24,000 scale quadrangle Inverness, Petaluma and Point Reyes NE. Land bounded by the following UTM Zone 10, NAD83

coordinates (E,N): 512634, 4232438; 512942, 4232244; 513362, 4232450; 513734, 4232386; 513953, 4232187; 513849, 4231832; 513876, 4231594; 513952, 4231792; 514067, 4231818; 514431, 4231744; 514514, 4231516; 514879, 4231915; 515164, 4231822; 515265, 4231703; 515682, 4231600; 515889, 4231847; 516087, 4231574; 516369, 4231437; 517058, 4231285; 517463, 4231696; 517667, 4231496; 517811, 4231094; 518083, 4230966; 518308, 4231014; 518538, 4230841; 518822, 4230448; 518810, 4230285; 519137, 4230506; 519320, 4230466; 519594, 4230608; 519999, 4230511; 520239, 4230269; 519882, 4229855; 519849, 4229396; 519476, 4228998; 519042, 4228213; 518370, 4227840; 517943, 4228049; 517694, 4228069; 517400, 4227982; 517186, 4227771; 517250, 4227548; 517183, 4226684; 517345, 4226172; 517664, 4225822; 517996, 4225774; 518119, 4225599; 518363, 4225531; 518498, 4225403; 518968, 4225411; 519190, 4225560; 519810, 4225258; 520064, 4225362; 520277, 4225592; 520630, 4225713; 520910, 4225546; 521150, 4225647; 521560, 4225362; 521576, 4225682; 521667, 4225821; 521971, 4225822; 522179, 4225963; 522417, 4225897; 522749, 4226030; 523034, 4226041; 523698, 4225705; 524366, 4225189; 524595, 4225339; 524810, 4225202; 525135, 4225139; 525269, 4225297; 525742, 4225446; 525981, 4225301; 526083, 4225122; 526307, 4225022; 526330, 4224726; 526452, 4224537; 525811, 4224326; 525534, 4224449; 525206, 4224371; 525087, 4224261; 524671, 4224229; 524230, 4223937; 523743, 4223997; 523498, 4223688; 523161, 4223685; 522965, 4223495; 522613, 4223424; 522258, 4223101; 522271, 4222843; 522555, 4222444; 522613, 4222102; 522055, 4221641; 521969, 4221349; 521990, 4221082; 521763, 4220864; 521855, 4220541; 521774, 4220127; 521924, 4219896; 521494, 4219662; 521368, 4219377; 520678, 4218787; 520378, 4218869; 519872, 4218838; 519845, 4218996; 519642, 4219152; 519519, 4219421; 519233, 4219697; 518902, 4219651; 518147, 4219746; 517653, 4219916; 517225, 4219917; 516987, 4220313; 517367, 4221065; 517036, 4221398; 516444, 4221115; 515956, 4221049; 515114, 4221102; 514867, 4220920; 514755, 4220678; 514594, 4220665; 514360, 4221329; 514397, 4221492; 513978, 4221885; 513976, 4222125; 513628, 4222855; 513416, 4222692; 513134, 4222645; 512740, 4222361; 512112, 4222334; 511866, 4222643; 511826, 4222861; 511527, 4223048; 511437, 4223216; 511547, 4223360; 511501, 4223757; 511629, 4224296; 511844, 4224569; 511904, 4225113; 512157, 4225513; 512337, 4225573; 512356, 4225792; 512529, 4226054; 512756, 4226159; 513037, 4226157; 513607, 4226528; 513769, 4226828; 514078, 4226893; 514392, 4227258; 514388, 4227874; 512822, 4228591; 512598, 4229082; 512261, 4229363; 512328, 4229507; 512245, 4229751; 512645, 4230037; 512816, 4230363; 512685, 4231053; 512208, 4231918; 512365, 4232457; 512525, 4232501; returning to 512634, 4232438.

(ii) **Note:** Unit MRN–1 is depicted on Map 7—Unit MRN–1 and MRN–2; see paragraph (12)(ii):

(12) Unit MRN–2, Marin County, California.

(i) From USGS 1:24,000 scale quadrangle Drakes Bay and Inverness. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 510133, 4216765; 510281, 4216124; 510849, 4215727; 510877, 4215571; 511057, 4215680; 511122, 4215630; 511518, 4214941; 511580, 4214681; 512054, 4214589; 512415, 4214708; 512679, 4214614; 512889, 4214540; 513012, 4214356; 513012, 4214356; 512976, 4214203; 513029, 4214231; 513021, 4213650; 513020, 4213570; 513018, 4213444; 513270, 4212875; 513483, 4212773; 513567, 4212632; 513638, 4212511; 513653, 4212486; 514053, 4212327; 514053, 4212327; 514172, 4212008; 514216, 4212003; 514243, 4212000; 514261, 4211733; 514446, 4211580; 514704, 4211012; 515314, 4210595; 515637, 4210194; 515507, 4210013; 515537, 4209798; 515379, 4209620; 515206, 4209561; 515138, 4209264; 515492, 4208446; 515871, 4208068; 516070, 4207700; 516021, 4207494; 515640, 4207206; 515590, 4206816; 515322, 4206667; 515113, 4206403; 515065, 4205839; 514924, 4205969; 514912, 4205983; 514847, 4206047; 514807, 4206091; 514807, 4206091; 514795, 4206108; 514766, 4206132; 514688, 4206208; 514619, 4206251; 514578, 4206289; 514276, 4206502; 514261, 4206517; 514212, 4206547; 514204, 4206556; 514164, 4206598; 514110, 4206623; 514098, 4206627; 513943, 4206736; 513922, 4206754; 513922, 4206760; 513907, 4206767; 513881, 4206789; 513803, 4206859; 513726, 4206889; 513726, 4206889; 513648, 4206944; 513645, 4206948; 513636, 4206953; 513082, 4207343; 513081, 4207347; 513080, 4207355; 513009, 4207394; 512782, 4207555; 512777, 4207559; 512747, 4207581; 512740, 4207585; 512595, 4207687; 512517, 4207721; 512462, 4207753; 512427, 4207773; 512239, 4207849; 512122, 4207903; 512106, 4207914; 511957, 4207983; 511835, 4208055; 511693, 4208105; 511658, 4208126; 511576, 4208150; 511438, 4208217; 511339, 4208243; 511298, 4208263; 511279, 4208268; 511111, 4208342; 510313, 4208639; 510305, 4208640; 510252, 4208659; 510049, 4208709; 509880, 4208738; 509877, 4208739; 509866, 4208740; 509787, 4208753; 509560, 4208803; 509246, 4208876; 509168, 4208889; 509159, 4208891; 509144, 4208894; 509141, 4208894; 509109, 4208900; 508815, 4208922; 508629, 4208949; 508612, 4208947; 508535, 4208957; 508381, 4208967; 507880, 4209000; 507679, 4209002; 507313, 4209005; 507122, 4208993; 507061, 4209007; 507008, 4209025; 506981, 4209029; 506928, 4209037; 506775, 4209072; 506522, 4209015; 506495, 4209017; 506487, 4209019; 506159, 4209247; 506147, 4209260; 506026, 4209510; 506065, 4209601; 506079, 4209594; 506083, 4209592; 506189, 4209495; 506192, 4209490; 506404, 4209297; 506476, 4209213; 506566, 4209137; 506592, 4209128; 506599, 4209122; 507025, 4209067; 507025, 4209070; 507029, 4209069; 507050, 4209081; 507034, 4209108; 507022, 4209113; 507021, 4209143; 507031, 4209142; 507076, 4209099; 507122, 4209102; 507162, 4209124; 507171, 4209124; 507259, 4209115; 507270, 4209117; 507283, 4209116; 507296, 4209122; 507302, 4209123; 507340, 4209138; 507346, 4209143; 507438, 4209184; 507483, 4209182; 507491, 4209180; 507616, 4209126; 507642, 4209138; 507646, 4209137; 507656, 4209127; 507659, 4209128; 507674, 4209113; 507699, 4209112; 507708, 4209118; 507788, 4209094; 507804, 4209107; 507856, 4209125; 507879, 4209126; 507898, 4209139; 507911, 4209157; 507905, 4209191; 507906, 4209195; 507937, 4209221; 507989, 4209219; 508011, 4209212; 508016, 4209208; 508021, 4209209; 508183, 4209159; 508204, 4209140; 508218, 4209125; 508225, 4209109; 508247, 4209094; 508283, 4209098; 508303, 4209088; 508333, 4209088; 508350, 4209081; 508383, 4209084; 508416, 4209079; 508418, 4209079; 508475, 4209068; 508475, 4209068; 508475, 4209068; 508475, 4209068; 508541, 4209085; 508580, 4209081; 508605, 4209086; 508633, 4209102; 508662, 4209135; 508694, 4209156; 508742, 4209175; 508751, 4209175; 509049, 4209111; 509066, 4209117; 509068, 4209117; 509069, 4209119; 509190, 4209162; 509287, 4209156; 509395, 4209114; 509405, 4209110; 509423, 4209097; 509499, 4209071; 509499, 4209071; 509499, 4209071; 509499, 4209071;

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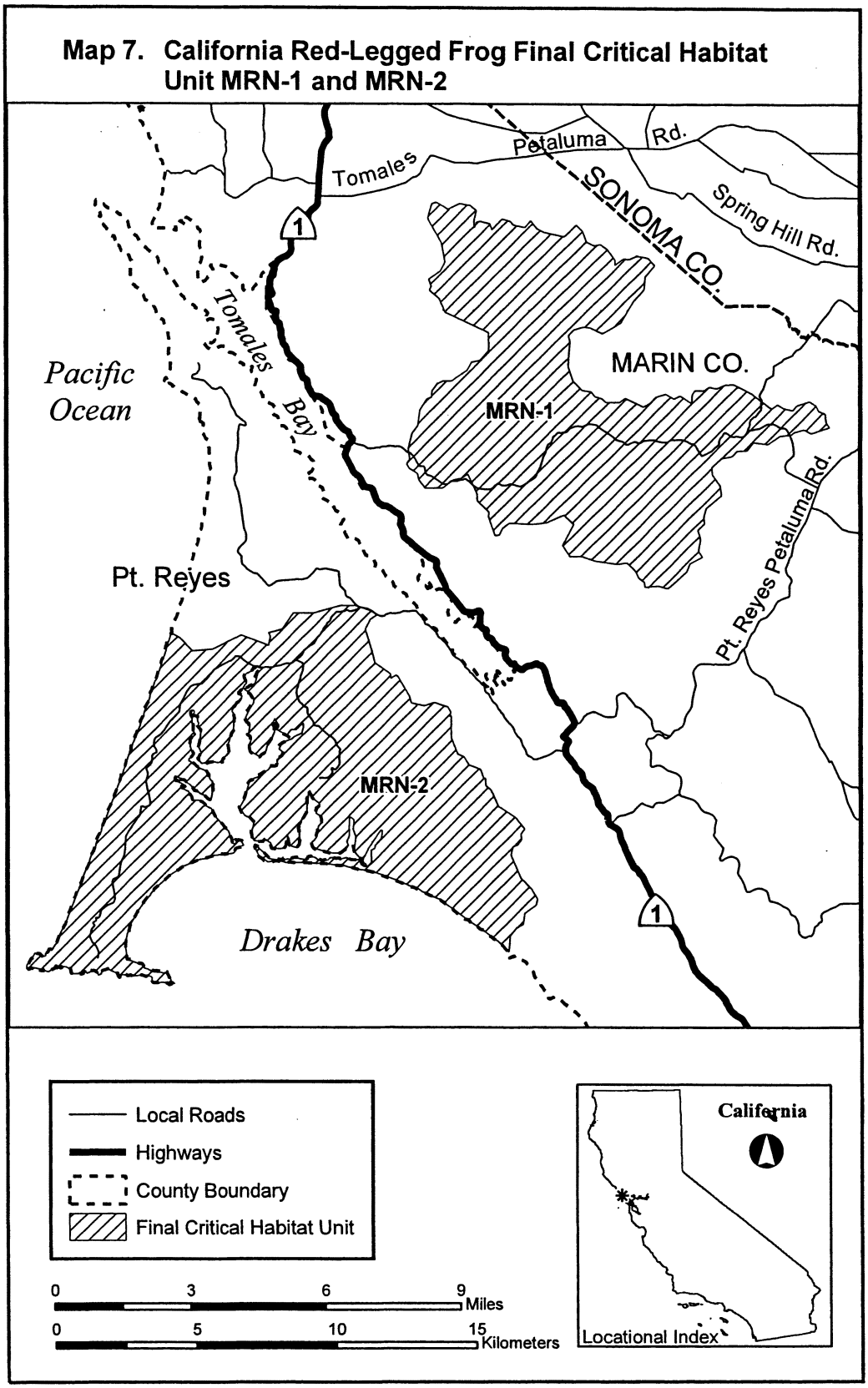
(ii) **Note:** Unit MRN–2 is depicted on Map 7—Unit MRN–1 and MRN–2; which follows:

BILLING CODE 4310–55–P

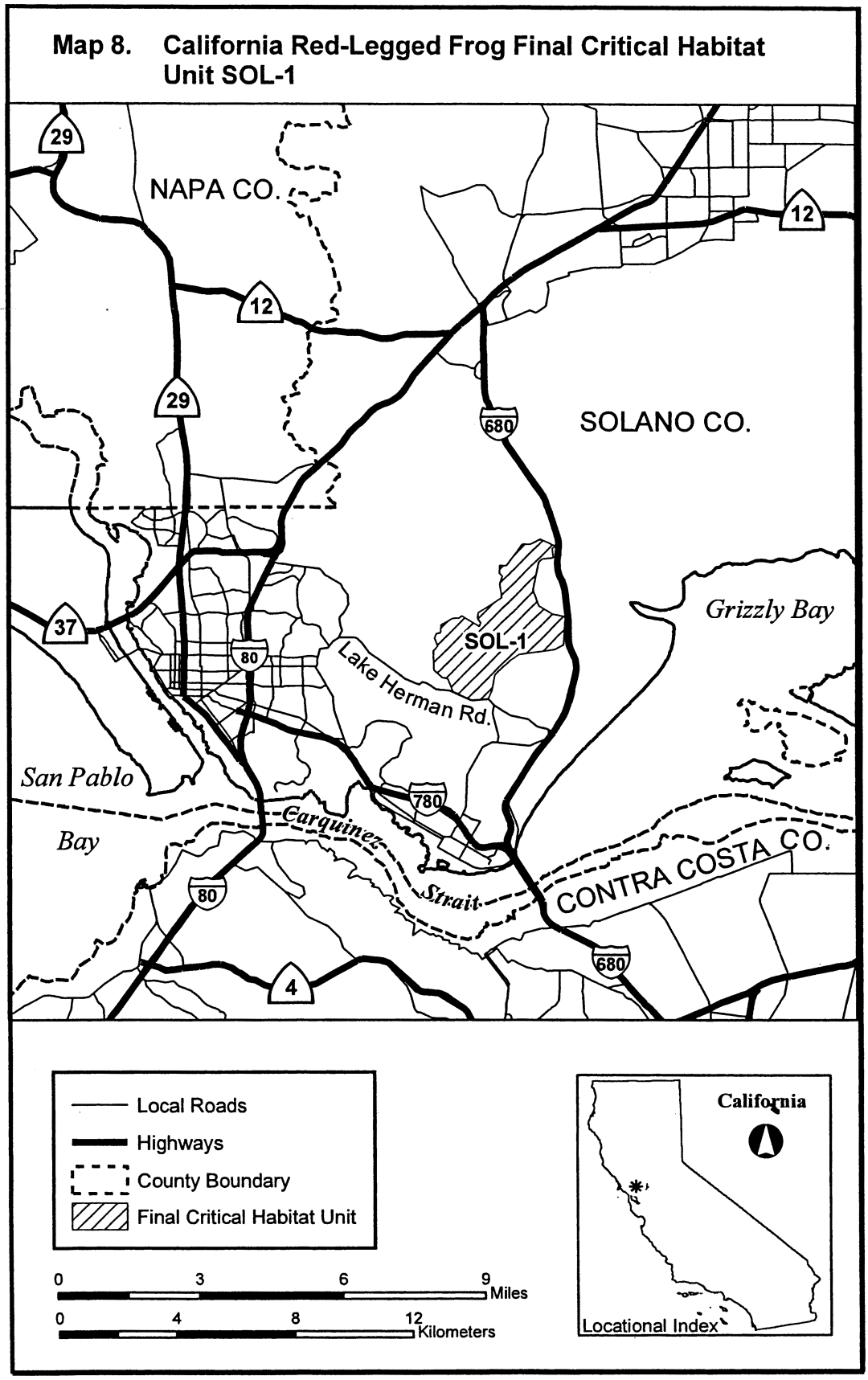


(13) Unit SOL–1: Solano County, California.

(i) From USGS 1:24,000 scale quadrangle Benecia, Cordella, Fairfield South and Vine hill. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):577701, 4222110; 577941, 4222006; 577819, 4221920;

577847, 4221604; 577479, 4221571; 577347, 4221465; 577148, 4220519; 577340, 4219959; 577833, 4219667; 578242, 4219600; 578200, 4218615; 577917, 4218473; 576672, 4218298; 576363, 4218080; 575846, 4217579; 575754, 4217070; 575612, 4216753; 575044, 4216728; 574412, 4217019; 574245, 4217461; 574066, 4217508; 573773, 4217765; 573768, 4218399; 573898, 4218583; 573806, 4218855; 573858, 4218995; 573996, 4219035; 574013, 4219312; 574399, 4219535; 574626, 4219534; 574729, 4219611; 575326, 4219251; 575368, 4219375; 575260, 4219532; 575295, 4219728; 576090, 4220236; 576036, 4220726; 576129, 4220971; 576020, 4221093; 576034, 4221345; 576242, 4221326; 576789, 4222071; 577054, 4222051; 577390, 4222239; returning to 577701, 4222110;

(ii) **Note:** Unit SOL–1 (Map 8) follows:

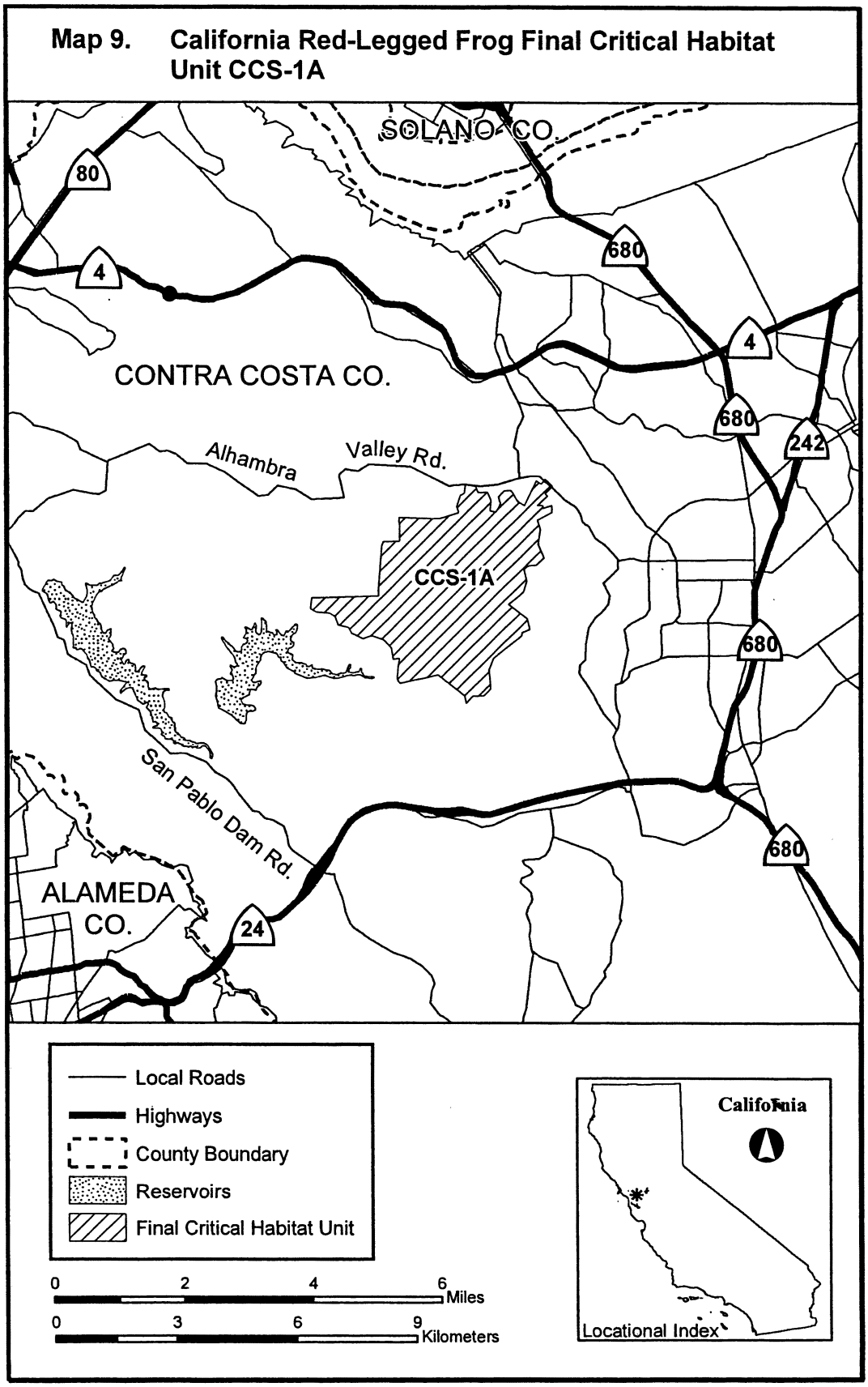


(14) Unit CCS–1: Contra Costa County, California.

(i) From USGS 1:24,000 scale quadrangle Briones Valley and Walnut Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates

(E,N):577415, 4202403; 577553, 4202269; 577370, 4202080; 577433, 4202019; 577181, 4201778; 577260, 4201778; 577331, 4201778; 577332, 4201711; 577529, 4201776; 577538, 4201779; 577538, 4201608; 577528, 4201603; 577180, 4201413; 577253, 4201191; 577204, 4200806; 577344, 4200493; 577350, 4200480; 577162, 4200287; 577000, 4200273; 576947, 4200268; 576858, 4200184; 576858, 4200181; 576929, 4199888; 576847, 4199627; 576755, 4199545; 576480, 4199299; 576758, 4199082; 576934, 4198944; 576998, 4198671; 576798, 4198592; 576812, 4198531; 576761, 4198489; 576106, 4197955; 575987, 4197664; 576041, 4197179; 575860, 4197013; 575587, 4196999; 575433, 4196825; 575386, 4197011; 574718, 4197534; 574372, 4197457; 574234, 4197426; 573757, 4197318; 573683, 4197437; 573707, 4197621; 573715, 4197685; 573747, 4197924; 573750, 4197950; 573599, 4197933; 573543, 4198199; 573353, 4198414; 573063, 4198504; 572836, 4198432; 572549, 4198584; 572485, 4198723; 572221, 4198785; 572141, 4198998; 572010, 4199081; 571670, 4199102; 571533, 4199186; 571566, 4199461; 573237, 4199507; 573236, 4199597; 573230, 4199612; 573309, 4200760; 573350, 4200872; 573764, 4200880; 573764, 4201156; 573763, 4201334; 573759, 4201334; 573748, 4201343; 573742, 4201477; 574752, 4201447; 575224, 4201592; 575241, 4201597; 575198, 4201759; 575276, 4202021; 575292, 4202031; 575335, 4202058; 575390, 4202092; 575413, 4202254; 575420, 4202307; 575672, 4202256; 575729, 4202104; 575955, 4202109; 576042, 4201903; 576028, 4201691; 576025, 4201654; 576171, 4201610; 576257, 4201780; 576262, 4201789; 576282, 4201829; 576264, 4201889; 576236, 4201982; 576236, 4201985; 576235, 4201988; 576289, 4202050; 576381, 4202154; 576537, 4202156; 576591, 4202063; 576682, 4201909; 576696, 4201885; 576745, 4201856; 576871, 4201782; 577165, 4202394; 577286, 4202312; 577377, 4202449; returning to 577415, 4202403.

(ii) **Note:** Unit CCS–1 (Map 9) follows:



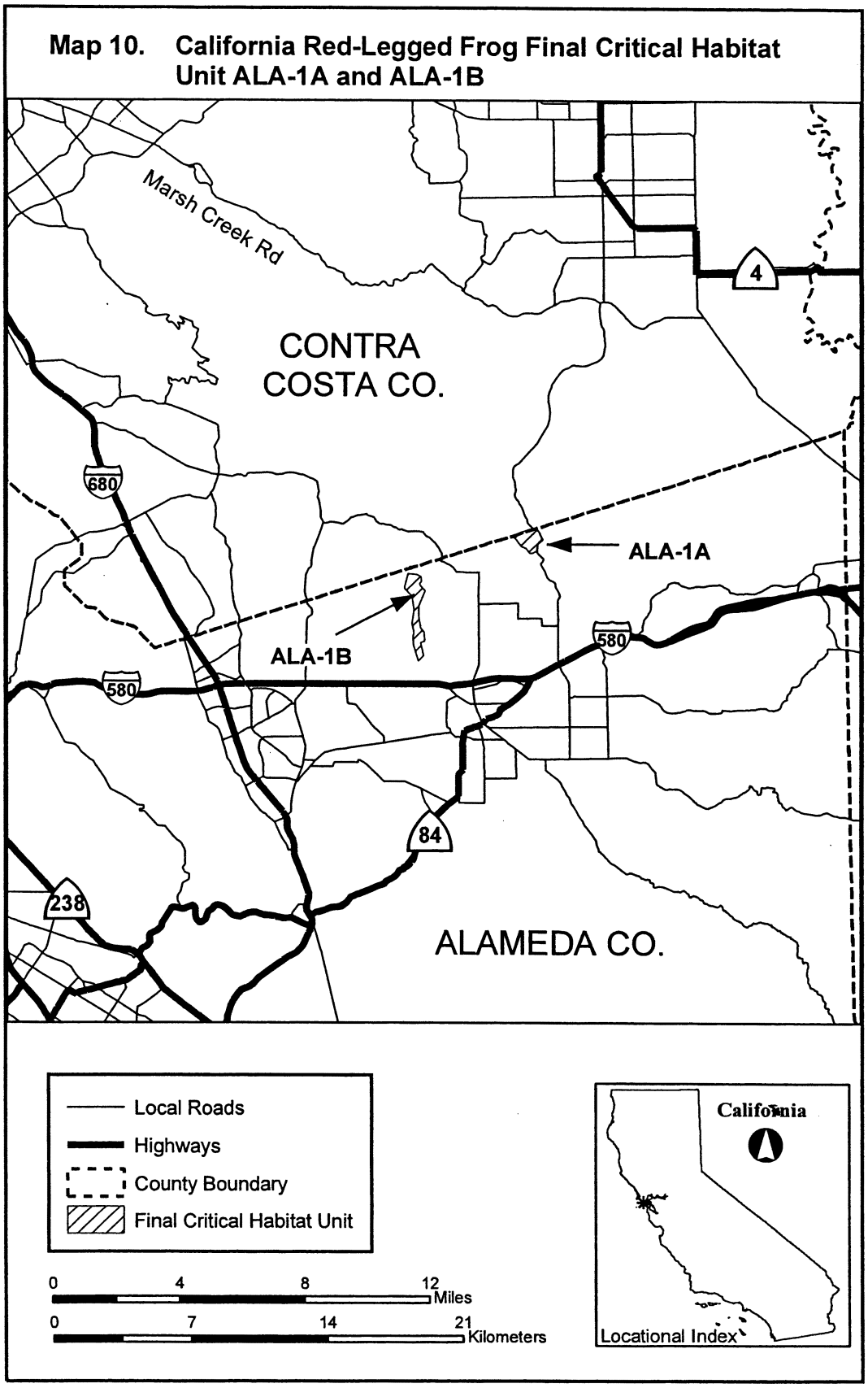
(15) Unit ALA–1: Alameda County, California.

(i) Unit ALA–1A: Alameda County, California. From USGS 1:24,000 scale quadrangle Byron Hot Springs. Land bounded by the following UTM Zone

10, NAD83 coordinates (E,N):611343, 4180152; 611148, 4180026; 610992, 4180035; 610813, 4180272; 610550, 4180400; 610267, 4180791; 610074, 4180901; 610005, 4180941; 611138, 4181316; 611241, 4181282; 611321, 4181255; 611418, 4181200; 611661, 4180732; 611386, 4180481; returning to 611343, 4180152.

(ii) Unit ALA–1B: Alameda County, California. From USGS 1:24,000 scale quadrangle Tassajara and Livermore. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 605516, 4174746; 605237, 4174452; 604995, 4175282; 604955, 4175708; 605011, 4175914; 604929, 4176374; 605014, 4177114; 604922, 4177797; 604522, 4178217; 604715, 4178963; 605183, 4178930; 605395, 4178792; 605397, 4178557; 605278, 4178437; 605371, 4178338; 605610, 4178091; 605266, 4177312; 605266, 4176726; 605364, 4176151; 605528, 4175946; 605569, 4175466; 605350, 4175393; returning to 605516, 4174746.

(iii) **Note:** Unit ALA–1 (Map 10) follows:

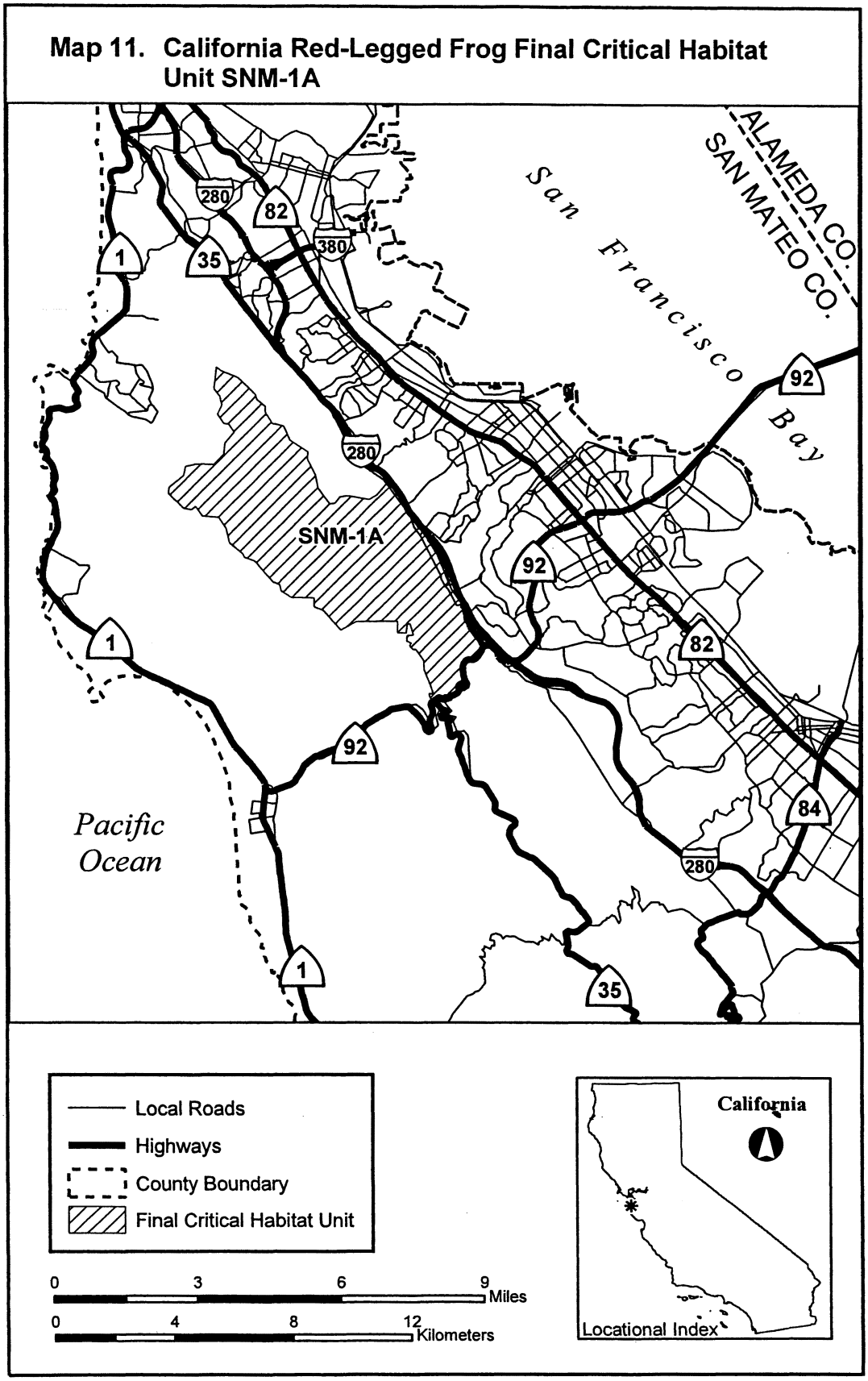


(16) Unit SNM–1: San Mateo County, California.

(i) From USGS 1:24,000 scale quadrangle Montara Mountain, San Mateo and Woodside. Land bounded by the following UTM Zone 10, NAD83

coordinates (E,N):551533, 4158189; 551784, 4157671; 551868, 4157218; 552272, 4156690; 552452, 4156693; 552617, 4156913; 552824, 4156958; 553599, 4156836; 553844, 4156973; 554208, 4157441; 554604, 4156948; 555975, 4154930; 556342, 4154266; 556618, 4153473; 557037, 4152693; 557619, 4151860; 557376, 4151775; 557087, 4151351; 556770, 4151283; 556693, 4150916; 556801, 4150517; 556747, 4150326; 556496, 4150243; 556451, 4150130; 556101, 4150168; 555956, 4150068; 555921, 4149873; 555759, 4149818; 555598, 4150134; 555585, 4150212; 555747, 4150212; 555426, 4151032; 555409, 4151357; 555135, 4151742; 555070, 4151722; 554936, 4151865; 554987, 4151957; 554843, 4152027; 554859, 4152219; 555062, 4152225; 554948, 4152608; 554865, 4152594; 554830, 4152290; 554541, 4152285; 554537, 4152688; 553155, 4152682; 552636, 4152392; 552037, 4153063; 551741, 4153172; 551730, 4153476; 550980, 4153502; 550622, 4153722; 550576, 4153934; 550351, 4154028; 549746, 4154736; 549381, 4154860; 549325, 4154994; 548878, 4155367; 548769, 4155840; 548526, 4156215; 547966, 4156268; 547737, 4156592; 547598, 4156478; 547334, 4156525; 546807, 4157023; 546841, 4157226; 547331, 4157630; 547400, 4157932; 547709, 4158010; 547720, 4158010; 547720, 4158013; 547763, 4158024; 548363, 4158007; 548694, 4158371; 548720, 4158743; 549043, 4159119; 548850, 4159394; 548699, 4159399; 548470, 4159723; 548619, 4160034; 548554, 4160344; 548424, 4160496; 548353, 4160580; 548433, 4161321; 548601, 4161211; 549116, 4160998; 549218, 4160956; 549754, 4160406; 549811, 4160220; 550088, 4160005; 550095, 4159783; 550342, 4159427; 550724, 4159325; 550929, 4158841; 551543, 4158433; returning to 551533, 4158189.

(ii) **Note:** Unit SNM–1 (Map 11) follows:



BILLING CODE 4310–55–C

(17) Unit SNM–2, Santa Cruz County, California.

(i) From USGS 1:24,000 scale quadrangle Ano Nuevo and Franklin

Point. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):562883, 4108193; 562877, 4108189; 561117, 4111462; 560718, 4114535; 560736, 4114551; 560996, 4114768; 561669, 4114768; 562091, 4114947; 562386, 4114281; 562414, 4114216; 562761, 4113432; 562770, 4113416; 563257, 4112585; 563504, 4111460; 563520, 4111387; 563875, 4110389; 563695, 4110111; 563524, 4109846; 563566, 4109375; 563338, 4108933; 563338, 4108576; 563224, 4108504; 562883, 4108193; returning to 562883, 4108193.

(ii) **Note:** Unit SNM–2 is depicted on Map 12—Unit SNM–2 and SCZ–1; see paragraph (18)(ii):

(18) Unit SCZ–1, Santa Cruz County, California.

(i) From USGS 1:24,000 scale quadrangle Ano Nuevo, Davenport and Santa Cruz. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):564479, 4107160; 566634, 4105910; 567103, 4105347; 567118, 4104849; 567025, 4104348; 567712, 4104017; 568417, 4104162; 568799, 4104049; 569040, 4103968; 569287, 4103649; 570005, 4103995; 570626, 4103898; 571224, 4103498; 571428, 4102995; 571405, 4102392; 571014, 4101827; 570727, 4101666; 572239, 4100487; 572580, 4101093; 573541, 4101360; 574404, 4100932; 574656, 4099895; 574323, 4099265; 573943, 4098177; 574618, 4098204; 575136, 4097850; 575519, 4097115; 575464, 4096542; 574982, 4095962; 574626, 4095860; 575097, 4095407; 575329, 4094831; 575269, 4094227; 575005, 4093879; 574661, 4093673; 574649, 4093711; 574654, 4093718; 574647, 4093726; 574644, 4093728; 574634, 4093761; 574634, 4093761; 574634, 4093773; 574618, 4093770; 574606, 4093770; 574606, 4093770; 574606, 4093780; 574606, 4093788; 574598, 4093799; 574585, 4093828; 574581, 4093843; 574570, 4093861; 574569, 4093861; 574569, 4093861; 574548, 4093872; 574538, 4093876; 574511, 4093888; 574447, 4093911; 574447, 4093912; 574400, 4093921; 574400, 4093921; 574400, 4093921; 574388, 4093913; 574376, 4093903; 574361, 4093891; 574213, 4093862; 574186, 4093876; 574186, 4093876; 574186, 4093876; 574165, 4093867; 574148, 4093858; 574148, 4093859; 574148, 4093871; 574146, 4093882; 574145, 4093887; 574149, 4093904; 574143, 4093917; 574143, 4093918; 574143, 4093918; 574143, 4093918; 574136, 4093914; 574133, 4093912; 574088, 4093913; 574084, 4093917; 574081, 4093934; 574064, 4093936; 574064, 4093936; 574064, 4093936; 574064, 4093936; 574016, 4093928; 574016, 4093928; 574015, 4093927; 574001, 4093913; 573987, 4093913; 573984, 4093916; 573962, 4093916; 573953, 4093926; 573956, 4093958; 573986, 4093990; 573996, 4094026; 573984, 4094063; 573984, 4094063; 573973, 4094074; 573965, 4094080; 573968, 4094122; 573982, 4094131; 573982, 4094131; 573983, 4094142; 573927, 4094255; 573927, 4094255; 573875, 4094343; 573874, 4094343; 573865, 4094349; 573859, 4094352; 573848, 4094351; 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573322, 4094685; 573312, 4094702; 573308, 4094696; 573256, 4094803; 573254, 4094835; 573254, 4094835; 573254, 4094846; 573252, 4094860; 573237, 4094865; 573237, 4094865; 573236, 4094865; 573222, 4094869; 573199, 4094872; 573199, 4094872; 573199, 4094872; 573174, 4094868; 573163, 4094862; 573135, 4094855; 573135, 4094855; 573135, 4094855; 573115, 4094862; 573085, 4094860; 573085, 4094860; 573085, 4094860; 573063, 4094842; 573063, 4094842; 573063, 4094842; 573058, 4094847; 573056, 4094849; 573049, 4094854; 573043, 4094859; 573043, 4094860; 573009, 4094872; 573008, 4094872; 572995, 4094885; 572971, 4094886; 572966, 4094887; 572934, 4094898; 572934, 4094898; 572934, 4094898; 572934, 4094898; 572903, 4094881; 572890, 4094886; 572868, 4094911; 572868, 4094911; 572872, 4094927; 572868, 4094940; 572868, 4094940; 572867, 4094940; 572867, 4094942; 572866, 4094942; 572852, 4094966; 572852, 4094966; 572852, 4094966; 572839, 4094965; 572833, 4094945; 572833, 4094945; 572798, 4094943; 572798, 4094943; 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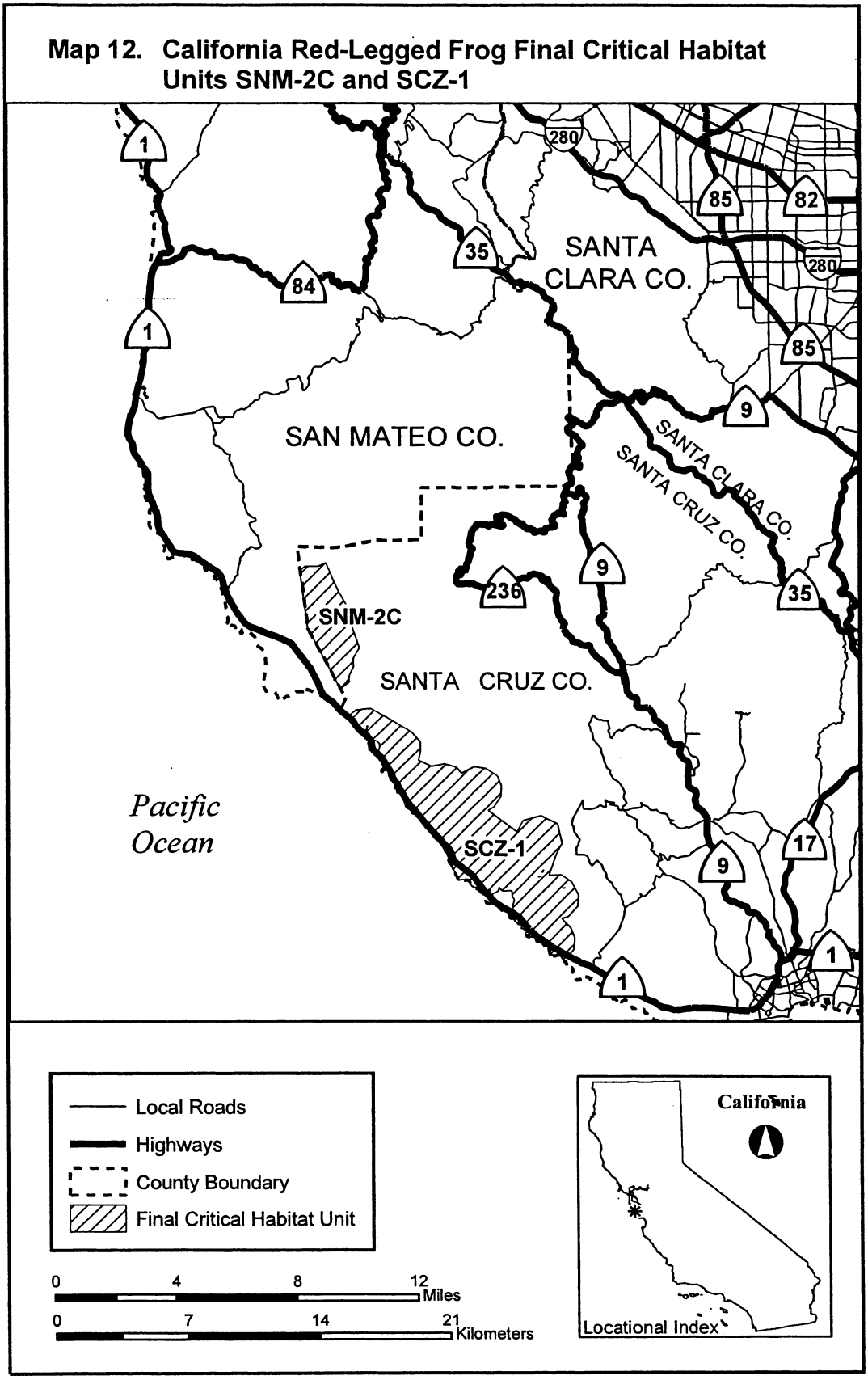
572409, 4095626; 572367, 4095582; 572344, 4095586; 572257, 4095667; 572257, 4095667; 572257, 4095667; 572214, 4095651; 572160, 4095709; 572160, 4095709; 572160, 4095709; 572132, 4095701; 572132, 4095698; 572110, 4095690; 572101, 4095731; 572106, 4095747; 572086, 4095799; 572079, 4095831; 572073, 4095833; 572073, 4095835; 572050, 4095860; 571953, 4095880; 571935, 4095898; 571872, 4095899; 571869, 4095900; 571864, 4095959; 571868, 4096010; 572017, 4096086; 571990, 4096534; 572088, 4096879; 571997, 4097039; 571971, 4097358; 571479, 4097342; 571313, 4097557; 571286, 4097339; 570876, 4097134; 570768, 4097225; 570866, 4097358; 570755, 4097417; 570654, 4097326; 570439, 4097557; 570413, 4097433; 570508, 4097358; 570448, 4097118; 570448, 4097118; 570441, 4097140; 570430, 4097154; 570394, 4097231; 570313, 4097299; 570243, 4097400; 570199, 4097438; 570191, 4097450; 569854, 4097588; 569851, 4097590; 569810, 4097673; 569808, 4097683; 569801, 4097729; 569790, 4097763; 569790, 4097764; 569734, 4097852; 569707, 4097879; 569700, 4097892; 569693, 4097892; 569690, 4097895; 569660, 4097903; 569660, 4097903; 569660, 4097903; 569607, 4097898;

569529, 4097904; 569408, 4097944; 569334, 4097956; 569334, 4097956; 569334, 4097956; 569319, 4097953; 569293, 4097948; 569281, 4097935; 569280, 4097921; 569128, 4097932; 569123, 4097936; 569066, 4098078; 569064, 4098088; 569058, 4098098; 568951, 4098366; 568803, 4098527; 568790, 4098562; 568784, 4098672; 568740, 4098758; 568733, 4098789; 568700, 4098807; 568552, 4099214; 568548, 4099237; 568540, 4099245; 568514, 4099316; 568512, 4099351; 568494, 4099407; 568461, 4099461; 568411, 4099600; 568413, 4099607; 568413, 4099607; 568413, 4099629; 568395, 4099644; 568363, 4099730; 568185, 4099909; 568185, 4099917; 568102, 4100018; 568015, 4100096; 567955, 4100139; 567845, 4100249; 567817, 4100284; 567718, 4100446; 567639, 4100512; 567558, 4100615; 567554, 4100623; 567543, 4100635; 566920, 4101431; 566558, 4101664; 566549, 4101683; 566549, 4101683; 566544, 4101694; 566509, 4101721; 566509, 4101721; 566437, 4101741; 566379, 4101789; 566355, 4101800; 566391, 4101991; 566306, 4102128; 566302, 4102144; 566272, 4102202; 566239, 4102236; 566136, 4102401; 566118, 4102589; 566067, 4102633; 566055, 4102666; 565997, 4102692; 565991, 4102697; 565980, 4102686; 565933, 4102662; 565928, 4102634; 565918, 4102623; 565915, 4102704; 565938, 4102736; 565918, 4102813; 565918, 4102813; 565917, 4102819; 565894, 4102839; 565894, 4102840; 565894, 4102840; 565894, 4102840; 565871, 4102832; 565871, 4102809; 565889, 4102766; 565882, 4102722; 565801, 4102878; 565806, 4102897; 565835, 4102913; 565835, 4102913; 565834, 4102928; 565819, 4102948; 565819, 4102948; 565847, 4103002; 565838, 4103028; 565842, 4103042; 565738, 4103204; 565731, 4103202; 565731, 4103202; 565693, 4103201; 565693, 4103201; 565665, 4103183; 565661, 4103175; 565657, 4103172; 565637, 4103164; 565606, 4103244; 565555, 4103276; 565543, 4103296; 565578, 4103439; 565422, 4103696; 565390, 4103715; 565384, 4103722; 565218, 4103819; 565199, 4103831; 565193, 4103825; 565127, 4103809; 565110, 4103779; 565097, 4103733; 565087, 4103724; 565077, 4103722; 565155, 4103874; 565064, 4104181; 564991, 4104337; 564988, 4104370; 564920, 4104488; 564892, 4104548; 564706, 4104697; 564896, 4104779; 564952, 4105241; 564816, 4105396; 564664, 4105432; 564514, 4105388; 564385, 4105227; 564337, 4105546; 564258, 4105659; 564172, 4105782; 564241, 4105967; 564276, 4106061; 564330, 4106206; 564256, 4106176; 564277, 4106066; 564166, 4105981; 564125, 4105784; 564261, 4105601; 564288, 4105564; 564273, 4105405; 564272, 4105403; 564272, 4105402; 564272, 4105402; 564270, 4105402; 564198, 4105597; 563569, 4106326; 563523, 4106412; 563477, 4106460; 563477, 4106460; 563431, 4106492; 563420, 4106499; 563245, 4106701; 563500, 4106909; 563695, 4107069; 563721, 4107072; 564224, 4107131; returning to 564479, 4107160; and excluding land bound by 573580, 4098341; 573624, 4098338; 573660, 4098454; returning to 573580, 4098341; and excluding land bound by 573381, 4098107; 573397, 4098073; 573480, 4098118; returning to 573381, 4098107; and excluding land bound by 574744, 4097505; 574777, 4097483; 574803, 4097522; returning to 574744, 4097505.

(ii) **Note:** Unit SCZ–1 is depicted on Map 12—Unit SNM–2 and SCZ–1, which follows:



BILLING CODE 4310–55–C

(19) Unit SCZ–2, Santa Cruz County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land

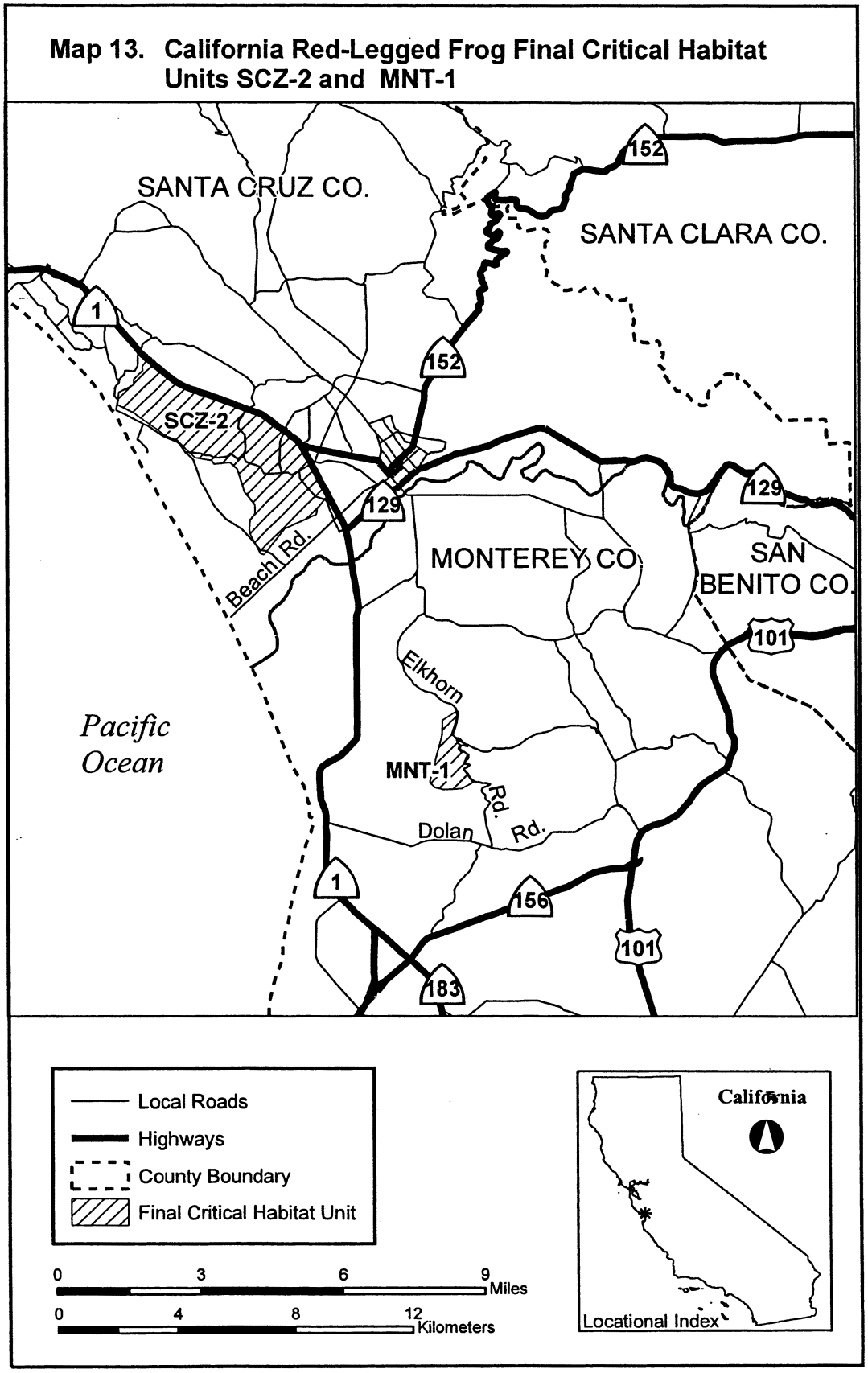
bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 607874, 4086411; 608701, 4084860; 608605, 4084937; 608520, 4084844; 608271, 4084560; 608221, 4084334; 607164, 4083847; 606471, 4082967; 606324, 4083005; 605956, 4083724; 605973, 4084135; 606148, 4084358; 606145, 4084654; 605804, 4085090; 605562, 4085868; 605307, 4086095; 604763, 4086054; 604698, 4086167; 604132, 4086258; 603690, 4086684; 603615, 4086756; 603520, 4086848; 603133, 4087000; 602103, 4087771; 601519, 4088060; 601570, 4088484; 602074, 4088759; 602064, 4088910; 602395, 4089247; 602360, 4089344; 602512, 4089607; 603336, 4088906; 604761, 4088286; 606286, 4087760; 607611, 4086748; returning to 607874, 4086411.

(ii) **Note:** Unit SCZ–2 is depicted on Map 13—Unit SCZ–2 and MNT–1; see paragraph (20)(ii):

(20) Unit MNT–1, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 612824, 4076812; 613380, 4076378; 613142, 4076444; 613147, 4076371; 613064, 4076368; 613366, 4076130; 613249, 4075818; 613416, 4075763; 613219, 4075623; 613496, 4075230; 613600, 4075201; 613180, 4074959; 612571, 4074924; 612260, 4075009; 612080, 4075185; 612505, 4076777; 612513, 4077290; 612970, 4077581; 613035, 4077429; returning to 612824, 4076812.

(ii) **Note:** Unit MNT–1 is depicted on Map 13—Unit SCZ–2 and MNT–1, which follows:

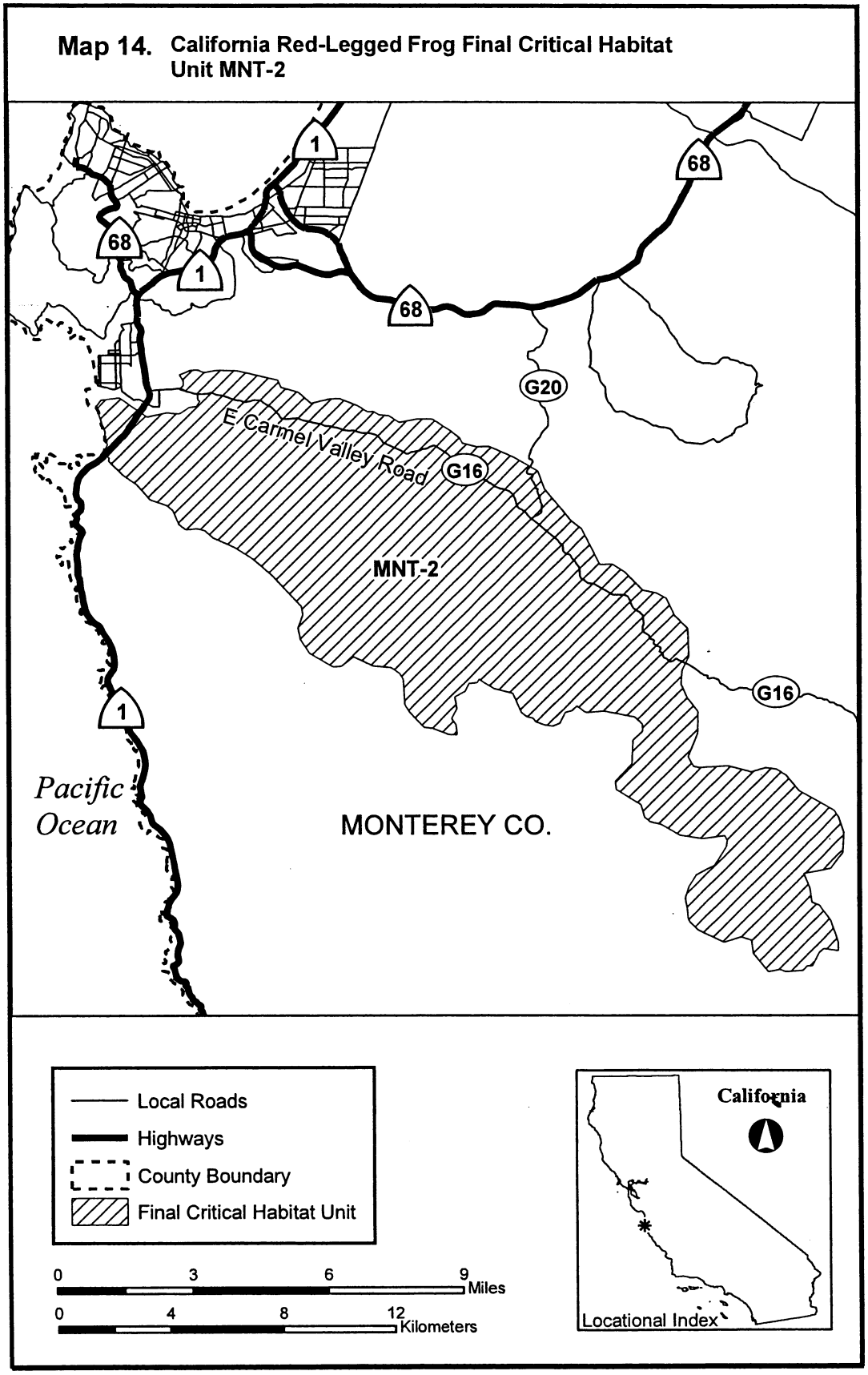


(21) Unit MNT–2: Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Carmel Valley, Monterey, Mt. Carmel, Seaside, Soberanes Point, Spreckles and Ventana Cones. Land

bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 599419, 4045578; 599642, 4045473; 600088, 4045563; 600834, 4045542; 602271, 4045215; 602387, 4044955; 602995, 4044764; 603443, 4044360; 604112, 4044534; 604453, 4044544; 605099, 4044296; 605466, 4044057; 605685, 4044068; 605887, 4043958; 606225, 4043919; 606596, 4043689; 607244, 4043808; 607797, 4043794; 608466, 4043373; 608793, 4043110; 608866, 4042937; 609413, 4042802; 609830, 4042815; 610740, 4042432; 611573, 4041944; 611814, 4041289; 612726, 4040175; 613137, 4039874; 613762, 4038586; 614228, 4038610; 614670, 4038326; 615292, 4037674; 615771, 4037572; 616123, 4037392; 616407, 4036778; 616880, 4036290; 616920, 4035275; 616678, 4034771; 616638, 4034268; 616839, 4033784; 617237, 4033276; 617217, 4032493; 616886, 4031650; 617061, 4031299; 617286, 4031246; 618297, 4031323; 619110, 4031095; 619626, 4031260; 620016, 4031198; 620351, 4030986; 620815, 4030435; 622090, 4029729; 622246, 4029496; 622413, 4028936; 622376, 4028207; 621962, 4027644; 620983, 4027465; 621194, 4026936; 621269, 4026418; 621514, 4026327; 621676, 4026123; 621725, 4026061; 621941, 4025789; 622122, 4025275; 622237, 4024946; 622230, 4024686; 621666, 4024752; 621500, 4024594; 621292, 4024148; 621076, 4024116; 620947, 4023973; 620321, 4023915; 620122, 4024004; 619689, 4023918; 619165, 4024583; 619106, 4025057; 618744, 4025179; 618124, 4024982; 617215, 4025429; 616920, 4025731; 616877, 4025775; 616865, 4025862; 616821, 4026177; 616765, 4026584; 616901, 4027004; 617157, 4027413; 617802, 4027746; 618213, 4028428; 618251, 4028652; 618171, 4028813; 617414, 4028715; 616590, 4028838; 616584, 4028841; 615937, 4029218; 615531, 4029325; 615477, 4029371; 615347, 4029482; 615199, 4029924; 614332, 4030476; 614306, 4030755; 614893, 4031381; 614938, 4032234; 615264, 4032552; 615263, 4032820; 614984, 4033076; 613899, 4033293; 613272, 4033235; 612943, 4033471; 612757, 4033306; 612519, 4033230; 612322, 4032837; 612081, 4032745; 611814, 4032778; 611483, 4032893; 611376, 4033035; 611161, 4033081; 610979, 4033234; 610671, 4033935; 609995, 4034101; 609467, 4034431; 609391, 4034316; 609094, 4034287; 608941, 4033993; 608584, 4033799; 608648, 4033376; 608456, 4033012; 608619, 4032790; 608670, 4032435; 608390, 4032418; 607772, 4032658; 607467, 4032689; 606920, 4033267; 606778, 4033515; 606720, 4034435; 606579, 4034653; 606274, 4034867; 605616, 4034921; 604950, 4035256; 604498, 4034915; 604201, 4034891; 603365, 4035385; 603037, 4035880; 602964, 4036294; 603128, 4036775; 603074, 4037070; 602039, 4038212; 601367, 4038793; 600744, 4039190; 599942, 4039551; 599666, 4039810; 599380, 4039875; 598979, 4039833; 598735, 4040019; 598525, 4040532; 598311, 4040704; 597701, 4040900; 597253, 4041444; 596744, 4041800; 596256, 4042297; 596287, 4042405; 596132, 4042505; 596122, 4042511; 596028, 4042421; 595930, 4042473; 595940, 4042476; 595977, 4042497; 595977, 4042497; 595985, 4042502; 596065, 4042584; 596066, 4042584; 596143, 4042699; 596193, 4042814; 596206, 4042818; 596213, 4042819; 596210, 4042853; 596216, 4042865; 596214, 4042869; 596225, 4042892; 596185, 4042950; 596175, 4043007; 596157, 4043037; 596119, 4043047; 596143, 4043164; 596136, 4043239; 596145, 4043305; 595921, 4043926; 595920, 4043937; 595918, 4043952; 595912, 4044008; 595910, 4044024; 595908, 4044039; 595907, 4044043; 595853, 4044154; 595824, 4044195; 595804, 4044252; 595824, 4044277; 595980, 4044472; 596641, 4044556; 597625, 4043868; 598316, 4044030; 598771, 4043986; 599109, 4044228; 599364, 4044256; 599492, 4044450; 599412, 4044472; 599400, 4044703; 598784, 4044876; 598904, 4045023; 598904, 4045172; 598777, 4045395; 599154, 4045565; returning to 599419, 4045578.

(ii) **Note:** Unit MNT–2 (Map 14) follows:

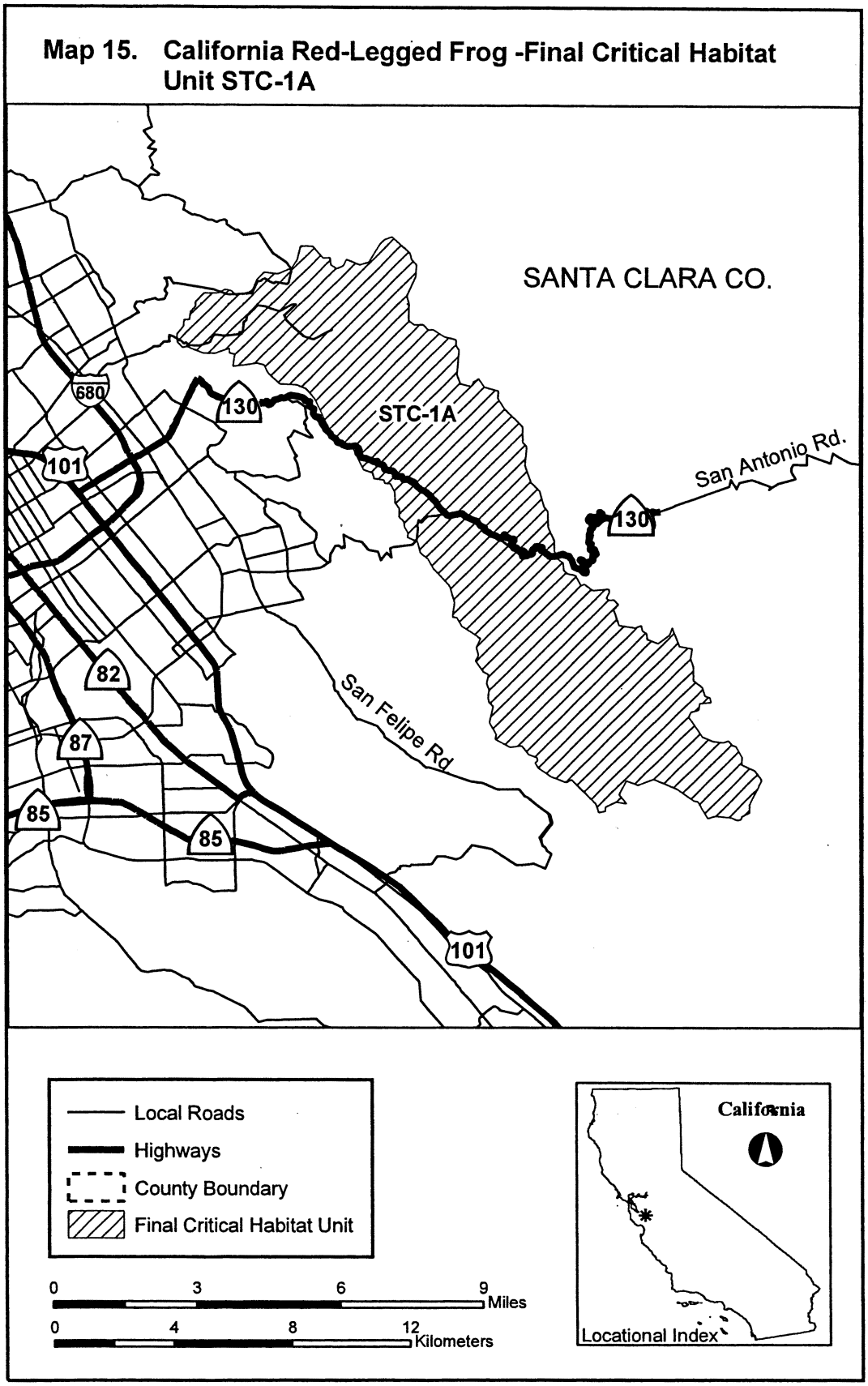


(22) Unit STC–1: Santa Clara County, California.

(i) Unit STC–1A: From USGS 1:24,000 scale quadrangle Calaveras, Isabel Valley, Lick Observatory, Mt. Day, Mt. Sizer and San Jose East. Land bounded

by the following UTM Zone 10, NAD83 coordinates (E,N): 612237, 4141991; 612203, 4141589; 611893, 4140940; 611969, 4140675; 611962, 4140096; 612152, 4139946; 612459, 4139974; 612630, 4139772; 612795, 4139794; 613168, 4139551; 613570, 4139450; 613566, 4139244; 613666, 4139098; 613605, 4138264; 613708, 4137981; 614063, 4137873; 614140, 4138041; 614245, 4138095; 614254, 4138099; 614319, 4138132; 614482, 4137897; 614504, 4137865; 614981, 4137741; 614963, 4137477; 615187, 4137120; 615811, 4136523; 615810, 4136000; 615928, 4135865; 615873, 4135230; 616080, 4134655; 616360, 4134378; 616515, 4133842; 616638, 4133676; 616652, 4133124; 616852, 4132690; 616866, 4132313; 616973, 4132054; 617158, 4131944; 617178, 4131687; 617302, 4131573; 617591, 4131501; 617760, 4131146; 617872, 4131197; 618145, 4130995; 618693, 4131033; 618729, 4130940; 618624, 4130736; 618718, 4130655; 618878, 4130668; 619015, 4130511; 618867, 4130338; 618893, 4130253; 619031, 4129801; 619591, 4129713; 619800, 4129796; 619824, 4129621; 619976, 4129526; 619994, 4129332; 620342, 4129194; 620734, 4129474; 620830, 4129720; 621072, 4129096; 621462, 4129008; 621419, 4128672; 621515, 4128408; 621521, 4127932; 621824, 4127708; 621904, 4127423; 622072, 4127349; 622112, 4127201; 621723, 4127166; 621697, 4126941; 621435, 4126877; 621352, 4126717; 621817, 4126034; 622192, 4125876; 622527, 4125851; 622683, 4125916; 622816, 4125749; 622945, 4125721; 623173, 4125332; 623145, 4125105; 623593, 4124887; 623820, 4124576; 623432, 4123749; 623411, 4123461; 623160, 4123340; 623127, 4123235; 622990, 4123202; 622789, 4123298; 622251, 4123347; 621997, 4123271; 621663, 4123853; 621531, 4123870; 620991, 4124263; 620200, 4124592; 619688, 4124402; 619283, 4124541; 619042, 4124072; 619272, 4123773; 618944, 4123821; 618586, 4123638; 618594, 4123516; 618368, 4123456; 618252, 4123774; 617445, 4124567; 617250, 4124480; 616751, 4124670; 616302, 4124977; 616210, 4125133; 616289, 4125209; 616263, 4125318; 615978, 4125432; 615751, 4125708; 615362, 4125663; 614866, 4125945; 614911, 4126099; 614684, 4126506; 614809, 4127047; 614657, 4127186; 614631, 4127335; 614662, 4127620; 614585, 4127828; 614642, 4128130; 614464, 4128227; 614191, 4128589; 614313, 4128775; 614225, 4129047; 614367, 4129352; 614308, 4129391; 614236, 4129438; 613739, 4129766; 613576, 4130060; 613441, 4130080; 613506, 4130560; 613508, 4130573; 613344, 4131136; 612798, 4131727; 612621, 4132064; 612436, 4132202; 612358, 4132261; 612330, 4132365; 612259, 4132633; 612113, 4132698; 611912, 4132787; 611946, 4132924; 611824, 4133110; 611820, 4133148; 611802, 4133324; 611635, 4133479; 611647, 4133759; 611509, 4133949; 611493, 4134315; 611423, 4134445; 611342, 4134597; 611161, 4134610; 611121, 4134719; 610777, 4134766; 610731, 4134969; 610426, 4135080; 610042, 4135853; 609508, 4136147; 609270, 4136458; 608787, 4137441; 608491, 4137793; 608182, 4137930; 607593, 4137951; 607210, 4138322; 607091, 4138579; 606846, 4138652; 606040, 4138540; 606098, 4138947; 605923, 4138995; 605932, 4139155; 605426, 4138980; 605059, 4138971; 604471, 4139194; 604343, 4139170; 604159, 4139363; 604133, 4139623; 604367, 4139882; 604382, 4140096; 604574, 4140118; 604608, 4140376; 604783, 4140578; 604789, 4140721; 605055, 4141023; 605536, 4141023; 605764, 4141137; 605993, 4141092; 606145, 4140955; 606545, 4141045; 606686, 4141124; 606832, 4141464; 607076, 4141722; 607541, 4141680; 608014, 4141870; 608199, 4142141; 608300, 4142611; 608715, 4142602; 609083, 4142211; 609302, 4142219; 609329, 4141976; 609532, 4141860; 609743, 4141951; 609851, 4142170; 610315, 4141978; 610614, 4142075; 610999, 4142707; 611151, 4142845; 611408, 4142925; 612012, 4142381; 612059, 4142174; returning to 612237, 4141991;

(ii) **Note:** Unit STC–1A (Map 15) follows:



BILLING CODE 4310–55–C

(iii) Unit STC–1B: From USGS 1:24,000 scale quadrangle Gilroy Hot Springs, Mississippi Creek, Mt. Sizer and Mustang Creek. Land bounded by

the following UTM Zone 10, NAD83 coordinates (E,N): 640255, 4116331; 640334, 4116041; 640468, 4115985; 640873, 4116030; 640963, 4115792; 640948, 4115782; 640963, 4115758; 640888, 4115617; 640880, 4115611; 640838, 4115593; 640763, 4115570; 640708, 4115566; 640704, 4115552; 640691, 4115548; 640687, 4115423; 640742, 4115381; 640753, 4115369; 640787, 4115329; 640864, 4115290; 640864, 4115290; 640899, 4115264; 640991, 4115276; 641202, 4115056; 641208, 4114957; 641185, 4114861; 641176, 4114797; 641180, 4114723; 641197, 4114607; 641212, 4114587; 641230, 4114563; 641234, 4114559; 641237, 4114523; 641271, 4114030; 641270, 4114028; 641271, 4114026; 641272, 4114014; 641447, 4113651; 641786, 4113527; 641895, 4113090; 641917, 4113067; 641943, 4112993; 641992, 4112986; 642017, 4112959; 642221, 4113013; 642397, 4112815; 642598, 4112752; 642677, 4112913; 642699, 4112942; 642713, 4112980; 642726, 4113000; 642739, 4113013; 642756, 4113029; 642776, 4113030; 642824, 4113036; 642852, 4113043; 642877, 4113062; 642927, 4113086; 642966, 4113106; 642967, 4113107; 642971, 4113110; 643008, 4113133; 643030, 4113147; 643141, 4113191; 643762, 4112948; 644625, 4112180; 644755, 4111924; 644707, 4111793; 644868, 4111373; 644618, 4111095; 644303, 4111137; 644020, 4110840; 644093, 4110256; 643844, 4109750; 643838, 4109578; 643597, 4109387; 643309, 4109542; 643282, 4109149; 643268, 4108958; 643047, 4108898; 642726, 4108655; 642526, 4108288; 642405, 4108275; 642229, 4108418; 641866, 4108352; 641568, 4109095; 641544, 4109156; 641218, 4109330; 641131, 4109077; 641125, 4109057; 640693, 4108616; 640602, 4108030; 640381, 4107983; 640587, 4107620; 640919, 4107366; 640928, 4106886; 641039, 4106730; 640961, 4106402; 641107, 4106265; 641191, 4105822; 641360, 4105532; 641609, 4105444; 641740, 4105241; 641966, 4105105; 642566, 4104955; 642742, 4104186; 642907, 4103962; 642670, 4103545; 642834, 4103214; 642887, 4102821; 643785, 4102560; 643825, 4102358; 644111, 4102187; 644320, 4101481; 643798, 4101517; 643607, 4101399; 643458, 4101543; 642537, 4101612; 642343, 4101478; 642184, 4101196; 641700, 4101679; 641611, 4101688; 640727, 4101236; 640421, 4100955; 639538, 4100683; 639044, 4101048; 638772, 4101063; 638595, 4101575; 637798, 4102121; 637393, 4102637; 637080, 4102782; 636982, 4103052; 636500, 4103641; 636390, 4103954; 636189, 4104067; 636169, 4104413; 635958, 4104641; 634954, 4105208; 634610, 4106791; 634422, 4107257; 634104, 4107651; 634218, 4107977; 634332, 4108042; 634253, 4108384; 633835, 4108507; 633573, 4108820; 633465, 4108838; 633640, 4109358; 633411, 4109899; 633222, 4109873; 632855, 4109976; 632770, 4110090; 632413, 4110161; 632084, 4110384; 631923, 4110836; 631442, 4111239; 631408, 4111617; 631101, 4111955; 630676, 4112129; 630646, 4112268; 630266, 4112721; 630329, 4112914; 630725, 4113088; 630961, 4113401; 631280, 4113114; 631547, 4113040; 631870, 4113005; 632029, 4113074; 632229, 4112962; 632687, 4113061; 632784, 4113361; 632658, 4113499; 632786, 4113929; 632728, 4114292; 632799, 4114417; 632931, 4114650; 633144, 4114773; 633510, 4114766; 633754, 4114652; 634132, 4114806; 634263, 4114658; 634255, 4114449; 634576, 4114361; 634917, 4114667; 634940, 4114871; 634745, 4115132; 634807, 4115267; 635230, 4115138; 635818, 4115255; 636049, 4115136; 636255, 4115165; 636657, 4115026; 637037, 4115230; 637370, 4115130; 637574, 4115310; 637646, 4115732; 637753, 4115890; 637729, 4116086; 638838, 4116075; 639575, 4116443; 640064, 4116480; returning to 640255, 4116331;

(iv) **Note:** Unit STC–1B is depicted on Map 16—Unit STC–1B and MER–1; see paragraph (23)(iii):

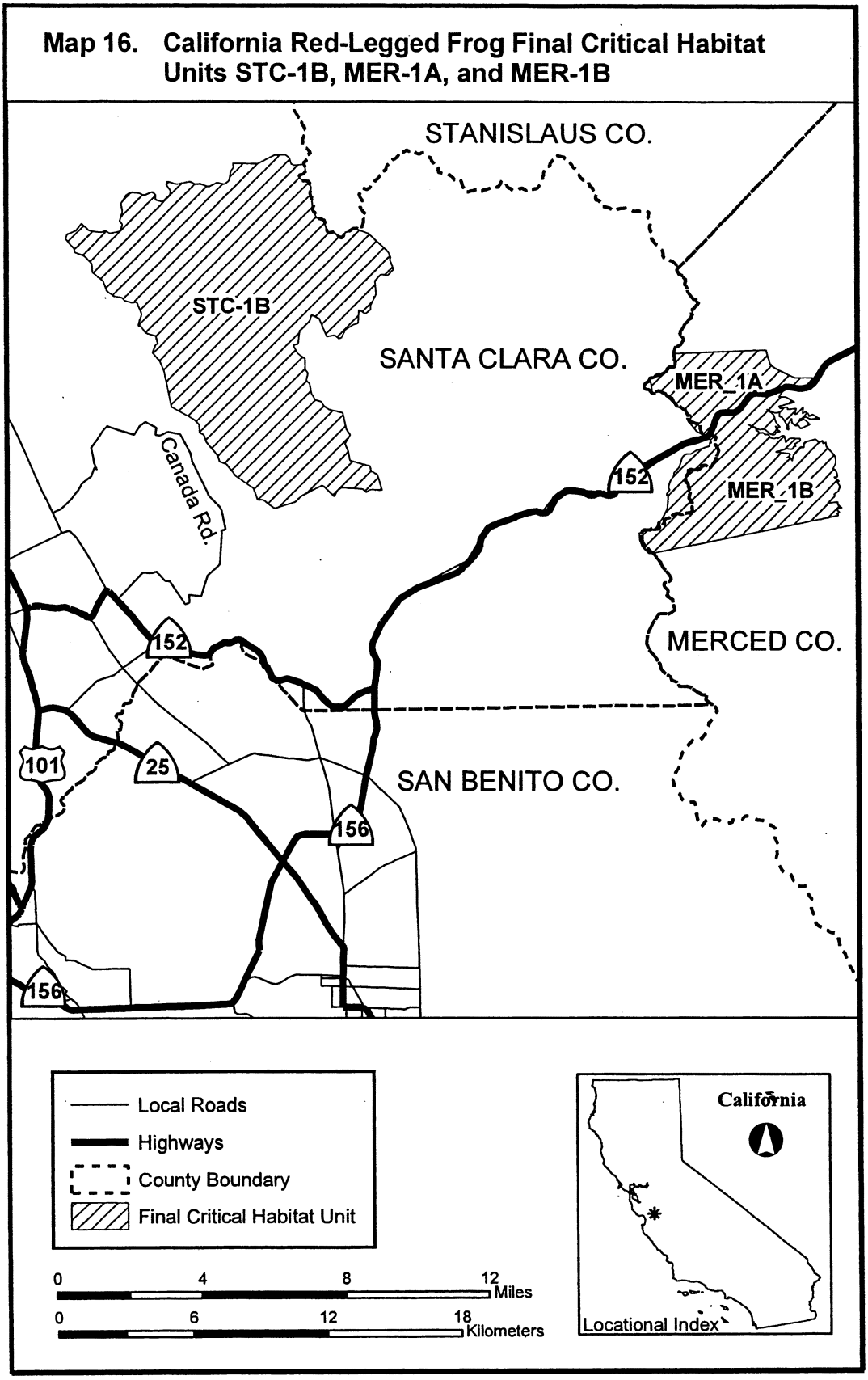
(23) Unit MER–1, Merced County, California.

(i) Unit MER–1A: Merced and Santa Clara counties, California. From USGS 1:24,000 scale quadrangle Pacheco Pass. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 663627, 4106508; 663570, 4106426; 663516, 4106355; 663436, 4106277; 663378, 4106239; 663328, 4106213; 663267, 4106189; 663227, 4106173; 663018, 4106143; 662423, 4106202; 662421, 4106202; 662416, 4106202; 662414, 4106202; 662346, 4106201; 662342, 4106200; 662337, 4106200; 662332, 4106199; 662253, 4106183; 662253, 4106183; 662248, 4106182; 662243, 4106181; 662242, 4106180; 662242, 4106180; 662118, 4106135; 662116, 4106135; 661836, 4106028; 661687, 4105970; 661685, 4105970; 661680, 4105968; 661677, 4105966; 661610, 4105928; 661528, 4105915; 661067, 4105920; 661066, 4105920; 661065, 4105920; 660974, 4105919; 660970, 4105918; 660966, 4105918; 660961, 4105917; 660959, 4105917; 660892, 4105901; 660813, 4105886; 660813, 4105886; 660808, 4105885; 660804, 4105883; 660799, 4105882; 660794, 4105880; 660793, 4105879; 660736, 4105849; 660734, 4105848; 660730, 4105846; 660640, 4105787; 660639, 4105787; 660635, 4105784; 660632, 4105780; 660629, 4105778; 660584, 4105734; 660583, 4105734; 660580, 4105730; 660577, 4105726; 660575, 4105724; 660232, 4105235; 660191, 4105182; 660138, 4105125; 660002, 4105074; 659947, 4105061; 659613, 4105055; 659610, 4105054; 659605, 4105054; 659605, 4105054; 659480, 4105037; 659475, 4105037; 659470, 4105035; 659465, 4105034; 659464, 4105034; 659339, 4104989; 659336, 4104987; 659332, 4104985; 659327, 4104983; 659323, 4104980; 659319, 4104977; 659315, 4104975; 659181, 4104858; 659181, 4104858; 659177, 4104855; 659174, 4104851; 659170, 4104847; 659168, 4104843; 659165, 4104839; 659163, 4104835; 659097, 4104706; 659097, 4104705; 659095, 4104701; 659093, 4104697; 658921, 4104214; 658850, 4104053; 658819, 4104012; 658780, 4103987; 658718, 4103984; 658717, 4103984; 658712, 4103984; 658707, 4103983; 658702, 4103982; 658697, 4103980; 658693, 4103978; 658688, 4103976; 658684, 4103974; 658680, 4103971; 658675, 4103969; 658672, 4103965; 658669, 4103963; 658668, 4103962; 658665, 4103958; 658661, 4103954; 658658, 4103950; 658656, 4103946; 658654, 4103943; 658336, 4104136; 658086, 4104436; 658011, 4104558; 658029, 4104560; 658098, 4104568; 658089, 4104860; 657953, 4104883; 657946, 4104894; 657821, 4105076; 657472, 4105243; 656855, 4105861; 656596, 4105904; 656565, 4105909; 656523, 4105837; 656491, 4105783; 656410, 4105781; 656402, 4105836; 656306, 4106493; 656436, 4106466; 656576, 4106581; 656814, 4106624; 656905, 4106742; 657051, 4106932; 657058, 4106934; 657340, 4106992; 657342, 4106998; 657397, 4107158; 657319, 4107627; 657355, 4107628; 661420, 4107769; 661596, 4107147; 661847, 4106966; 662730, 4106534; 663507, 4106525; 663573, 4106524; returning to 663627, 4106508.

(ii) Unit MER–1B: Merced and Santa Clara counties, California. From USGS 1:24,000 scale quadrangle Pacheco Pass. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 662307, 4106033; 662279, 4105978; 662270, 4105981; 662013, 4105663; 662342, 4105664; 662711, 4105446; 662009, 4105242; 662066, 4105166; 662389, 4105237; 662414, 4105130; 662796, 4105173; 662709, 4104890; 662790, 4104882; 663101, 4105220; 663074, 4104935; 663211, 4105025; 663367, 4104913; 663391, 4104802;

663558, 4104878; 663873, 4104702; 663441, 4104682; 663226, 4104792; 662938, 4104683; 662986, 4104610; 663124, 4104670; 663237, 4104619; 663418, 4104442; 662986, 4104259; 662873, 4104417; 662768, 4104372; 662606, 4104504; 662589, 4104714; 662436, 4104459; 662444, 4104221; 662366, 4104260; 662399, 4104372; 662156, 4104778; 662035, 4104796; 662040, 4105003; 661877, 4104950; 661429, 4105112; 661778, 4104857; 661865, 4104574; 662068, 4104321; 661980, 4104275; 661844, 4104383; 661873, 4104274; 662069, 4104123; 661884, 4104089; 661812, 4103968; 661678, 4103977; 661331, 4104251; 661154, 4104203; 660631, 4104454; 661016, 4104224; 660980, 4104159; 661085, 4104158; 661091, 4104071; 661287, 4104095; 661371, 4103973; 661518, 4104002; 661627, 4103844; 661792, 4103805; 661945, 4103871; 661967, 4103802; 662129, 4103938; 662259, 4103942; 662315, 4103643; 662496, 4103834; 662991, 4103814; 662950, 4103707; 662705, 4103575; 662766, 4103454; 662653, 4103456; 662613, 4103344; 662377, 4103354; 661862, 4103206; 662489, 4103154; 662519, 4103091; 662374, 4102970; 662520, 4102981; 662598, 4102816; 662660, 4103104; 662972, 4103441; 663143, 4103405; 663117, 4103569; 663196, 4103666; 663676, 4103790; 663833, 4103642; 663969, 4103734; 663996, 4103597; 664140, 4103636; 664151, 4103487; 664566, 4103031; 664581, 4102731; 664454, 4102481; 664601, 4102415; 664665, 4102120; 664499, 4102089; 664745, 4101925; 664659, 4101858; 664780, 4101690; 664698, 4101455; 664516, 4101335; 664550, 4101254; 664216, 4100934; 664672, 4100988; 664679, 4100858; 664848, 4100714; 664613, 4100658; 664753, 4100531; 664640, 4100466; 664690, 4100382; 664265, 4100296; 656384, 4098693; 656229, 4098662; 655918, 4098986; 655795, 4099251; 655791, 4099567; 655921, 4099641; 656002, 4099688; 656464, 4099730; 656477, 4099748; 656864, 4100316; 657021, 4100680; 657071, 4101195; 656999, 4101300; 657131, 4101522; 657082, 4101623; 657168, 4101900; 657327, 4102147; 657329, 4102278; 657574, 4102542; 657709, 4102978; 657871, 4103125; 658079, 4103104; 658325, 4103295; 658922, 4103499; 658904, 4103616; 659001, 4103617; 658995, 4103627; 658869, 4103858; 658913, 4103887; 658913, 4103887; 658918, 4103890; 658921, 4103893; 658925, 4103896; 658928, 4103900; 658932, 4103904; 658973, 4103957; 658976, 4103961; 658976, 4103962; 658979, 4103966; 658982, 4103970; 658984, 4103974; 658985, 4103977; 658999, 4104008; 659062, 4104149; 659062, 4104151; 659064, 4104154; 659235, 4104636; 659292, 4104747; 659404, 4104845; 659500, 4104879; 659508, 4104882; 659620, 4104897; 659957, 4104903; 659961, 4104903; 659966, 4104904; 659971, 4104905; 659973, 4104905; 660041, 4104921; 660044, 4104921; 660048, 4104923; 660051, 4104924; 660209, 4104983; 660211, 4104984; 660216, 4104986; 660220, 4104989; 660225, 4104991; 660229, 4104994; 660232, 4104997; 660236, 4105001; 660238, 4105003; 660292, 4105061; 660305, 4105075; 660306, 4105077; 660309, 4105081; 660354, 4105138; 660354, 4105138; 660356, 4105141; 660695, 4105625; 660730, 4105658; 660775, 4105687; 660810, 4105710; 660854, 4105733; 660922, 4105747; 660922, 4105747; 660924, 4105747; 660985, 4105761; 661067, 4105763; 661532, 4105757; 661533, 4105757; 661538, 4105757; 661543, 4105758; 661545, 4105758; 661647, 4105774; 661650, 4105775; 661655, 4105776; 661660, 4105777; 661665, 4105779; 661669, 4105781; 661673, 4105783; 661747, 4105825; 662170, 4105987; 662288, 4106030; returning to 662307, 4106033.

(iii) **Note:** Unit MER–1 is depicted on Map 16—Unit STC–1B and MER–1, which follows:



BILLING CODE 4310–55–C

(24) Unit SNB–1, San Benito County, California.

(i) From USGS 1:24,000 scale quadrangle Hollister, Mt. Harlan, Tres

Pinos and San Juan Bautista. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 636333, 4075764; 636809, 4075566; 637368, 4075520; 637770, 4075623; 638436, 4075288; 639151, 4074594; 639270, 4074217; 639547, 4073979; 640024, 4073740; 640877, 4073582; 641790, 4073621; 642345, 4072947; 642290, 4072223; 642286, 4072173; 642327, 4072128; 642484, 4071954; 642762, 4071855; 643099, 4071915; 643635, 4071756; 644786, 4072133; 645168, 4072165; 645297, 4072025; 645689, 4072165; 645934, 4072108; 645583, 4071554; 644771, 4071306; 644570, 4071098; 644078, 4070211; 643423, 4069300; 643207, 4069137; 642999, 4068980; 642764, 4068214; 642401, 4068048; 642285, 4067815; 641550, 4067654; 641481, 4067639; 640877, 4067786; 640417, 4067543; 640247, 4067603; 640033, 4067428; 639935, 4067174; 639778, 4067110; 639405, 4067226; 639029, 4066971; 638921, 4066756; 638947, 4066568; 638850, 4066215; 638012, 4066018; 637996, 4066098; 637982, 4066167; 637979, 4066180; 637573, 4066480; 637560, 4066490; 637527, 4066631; 637722, 4066757; 637723, 4066757; 637471, 4066841; 637471, 4066844; 637470, 4067231; 637470, 4067249; 637302, 4067389; 637261, 4067559; 637203, 4067554; 637006, 4067537; 636973, 4067534; 636959, 4067533; 636928, 4067607; 636870, 4067747; 636763, 4067690; 636753, 4067684; 636532, 4067718; 636425, 4067735; 636317, 4067811; 636317, 4067811; 636200, 4068132; 636197, 4068139; 636163, 4068138; 636073, 4068136; 635961, 4068564; 635983, 4068610; 636004, 4068655; 636092, 4068839; 636145, 4068950; 636128, 4069061; 635991, 4069270; 635918, 4069380; 635904, 4069401; 635741, 4069459; 635690, 4069477; 635637, 4069611; 635605, 4069693; 635531, 4069880; 635535, 4069893; 635762, 4070572; 635979, 4070786; 635638, 4070940; 635518, 4071208; 635534, 4071479; 635648, 4071712; 635705, 4073010; 636117, 4073620; 636042, 4073785; 635602, 4074066; 635336, 4074121; 633538, 4074975; 633270, 4075185; 633189, 4075401; 632764, 4075650; 632735, 4075795; 633860, 4075970; 634467, 4075645; 634857, 4075991; 635579, 4075824; returning to 636333, 4075764.

(ii) **Note:** Unit SNB–1 is depicted on Map 17—Unit SNB–1, SNB–2, and SNB–3; see paragraph (26)(ii):

(25) Unit SNB–2, San Benito County, California.

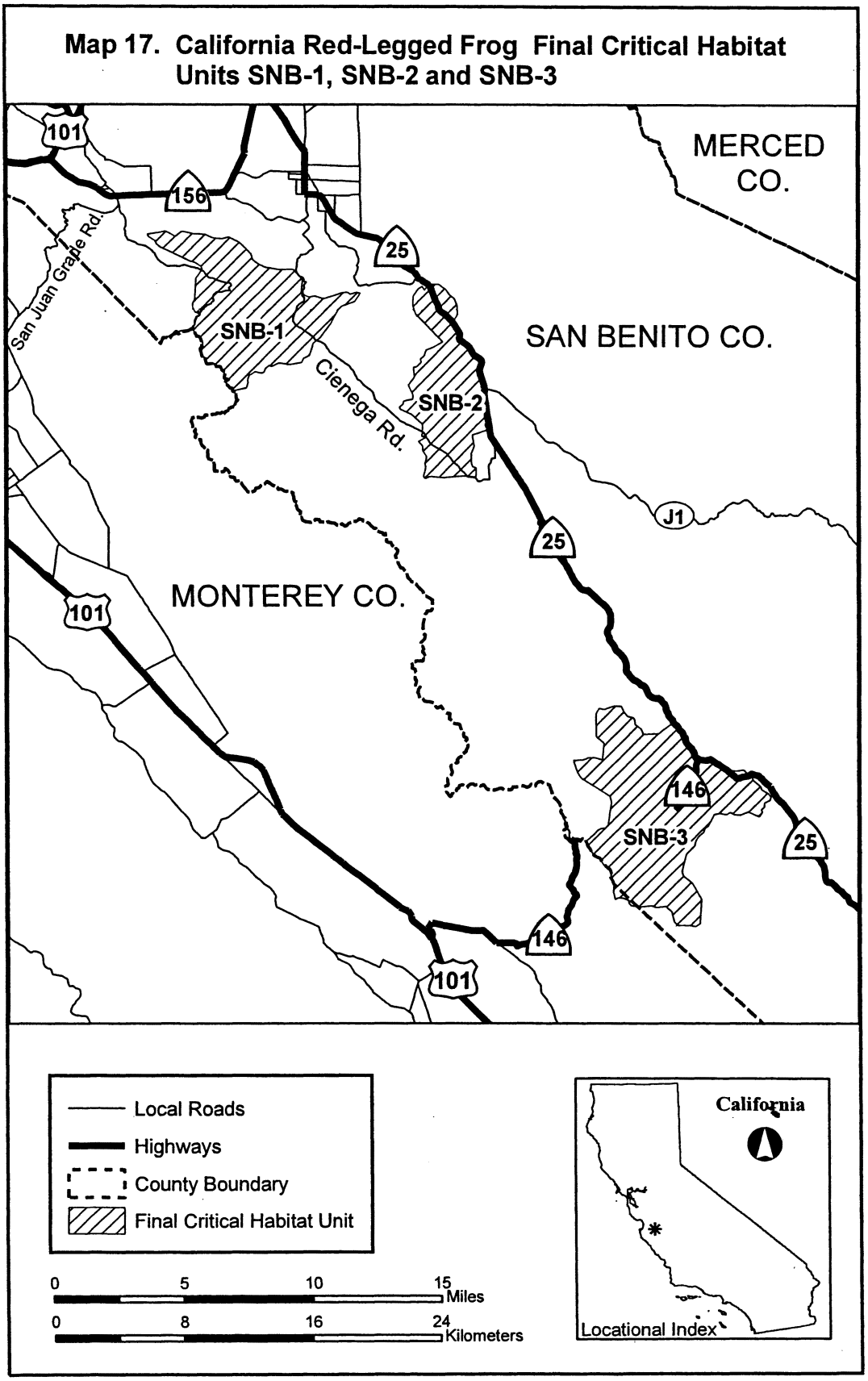
(i) From USGS 1:24,000 scale quadrangle Paicines and Tres Pinos. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 651305, 4072378; 651525, 4072011; 651845, 4071771; 652028, 4071278; 652022, 4070800; 651786, 4070356; 651865, 4070144; 651782, 4070129; 652109, 4069671; 652194, 4069177; 652713, 4068803; 653034, 4068282; 653559, 4067949; 653399, 4067163; 653668, 4066229; 653679, 4065476; 653994, 4063632; 652942, 4063283; 653061, 4062588; 652882, 4062132; 652882, 4061536; 652942, 4061338; 653180, 4061239; 653200, 4060683; 652505, 4060743; 651216, 4060624; 650263, 4060723; 649985, 4060584; 649871, 4060727; 650024, 4061281; 649952, 4061533; 650089, 4061931; 649831, 4062318; 649811, 4062612; 649587, 4062888; 649992, 4063123; 649750, 4063250; 649827, 4063402; 649827, 4063977; 649132, 4064573; 648418, 4064893; 648368, 4065024; 648595, 4065182; 648637, 4065377; 648952, 4065483; 649176, 4065456; 649211, 4065793; 648912, 4066371; 649309, 4066881; 649241, 4067470; 649486, 4067527; 649752, 4067816; 649699, 4067996; 649941, 4068182; 650059, 4068581; 650495, 4068725; 651109, 4069081; 649393, 4070835; 649209, 4071370; 649241, 4071918; 649574, 4072372; 649804, 4072538; 649950, 4072309; 650247, 4072695; 650886, 4072656; 651305, 4072378.

(ii) **Note:** Unit SNB–2 is depicted on Map 17—Unit SNB–1, SNB–2, and SNB–3; see paragraph (26)(ii):

(26) Unit SNB–3, San Benito County, California.

(i) From USGS 1:24,000 scale quadrangle Bickmore Canyon, North Chalone Peak, Topo Valley and San Benito. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 662185, 4046287; 662287, 4045981; 662560, 4045656; 662682, 4045636; 662867, 4045605; 663004, 4045486; 663021, 4045145; 663396, 4044906; 663532, 4044548; 664504, 4044599; 664848, 4044852; 665423, 4045274; 665730, 4044906; 666332, 4043701; 666667, 4043367; 666712, 4043144; 667158, 4042965; 667850, 4042965; 668162, 4042697; 668921, 4042296; 669278, 4042229; 669771, 4042313; 669964, 4042067; 670188, 4041997; 670325, 4041669; 670826, 4041221; 670822, 4041091; 671218, 4040873; 671427, 4040628; 671347, 4040394; 671047, 4040233; 671021, 4040013; 670823, 4039814; 670892, 4039645; 670684, 4039389; 670027, 4039673; 669533, 4039468; 669472, 4039474; 669158, 4039502; 668868, 4039656; 668663, 4039502; 668237, 4039588; 667896, 4039485; 667521, 4038752; 667317, 4038633; 667282, 4038411; 666942, 4038121; 666788, 4037900; 666746, 4037721; 666720, 4037610; 666297, 4037134; 666174, 4036996; 666152, 4036911; 665902, 4035939; 666004, 4035684; 666549, 4035206; 667129, 4034184; 667043, 4032692; 666753, 4032494; 666436, 4032574; 665616, 4032553; 665419, 4032791; 665323, 4033277; 665298, 4033401; 664899, 4033738; 664759, 4033726; 664319, 4033689; 664050, 4033809; 663280, 4033713; 663165, 4033734; 662763, 4033807; 662623, 4033932; 662588, 4034146; 662267, 4034294; 662008, 4034306; 661746, 4034200; 661635, 4034658; 661689, 4035154; 661690, 4035158; 661637, 4035258; 661489, 4035541; 661490, 4035552; 661492, 4035570; 661521, 4035846; 661526, 4035890; 661498, 4035935; 661410, 4036077; 661129, 4036266; 661106, 4036282; 661046, 4036370; 660789, 4036744; 660733, 4036783; 660641, 4036845; 660433, 4036988; 660395, 4037013; 660333, 4037119; 660281, 4037207; 660113, 4037493; 660033, 4037628; 659995, 4037693; 659949, 4037852; 659953, 4037855; 660089, 4037963; 660464, 4038258; 660685, 4038531; 660907, 4038650; 661145, 4038650; 661316, 4038837; 661555, 4040304; 661452, 4040644; 659679, 4041787; 659458, 4042145; 659187, 4042901; 659773, 4042943; 660108, 4043054; 660531, 4043054; 660978, 4042943; 661067, 4044014; 660601, 4044391; 660598, 4044393; 660576, 4045821; 660769, 4046171; 661080, 4046064; 661674, 4046284; 661687, 4046285; returning to 662185, 4046287.

(ii) **Note:** Unit SNB–3 is depicted on Map 17—Unit SNB–1, SNB–2, and SNB–3, which follows:



(27) Unit SLO–1, San Luis Obispo County, California.

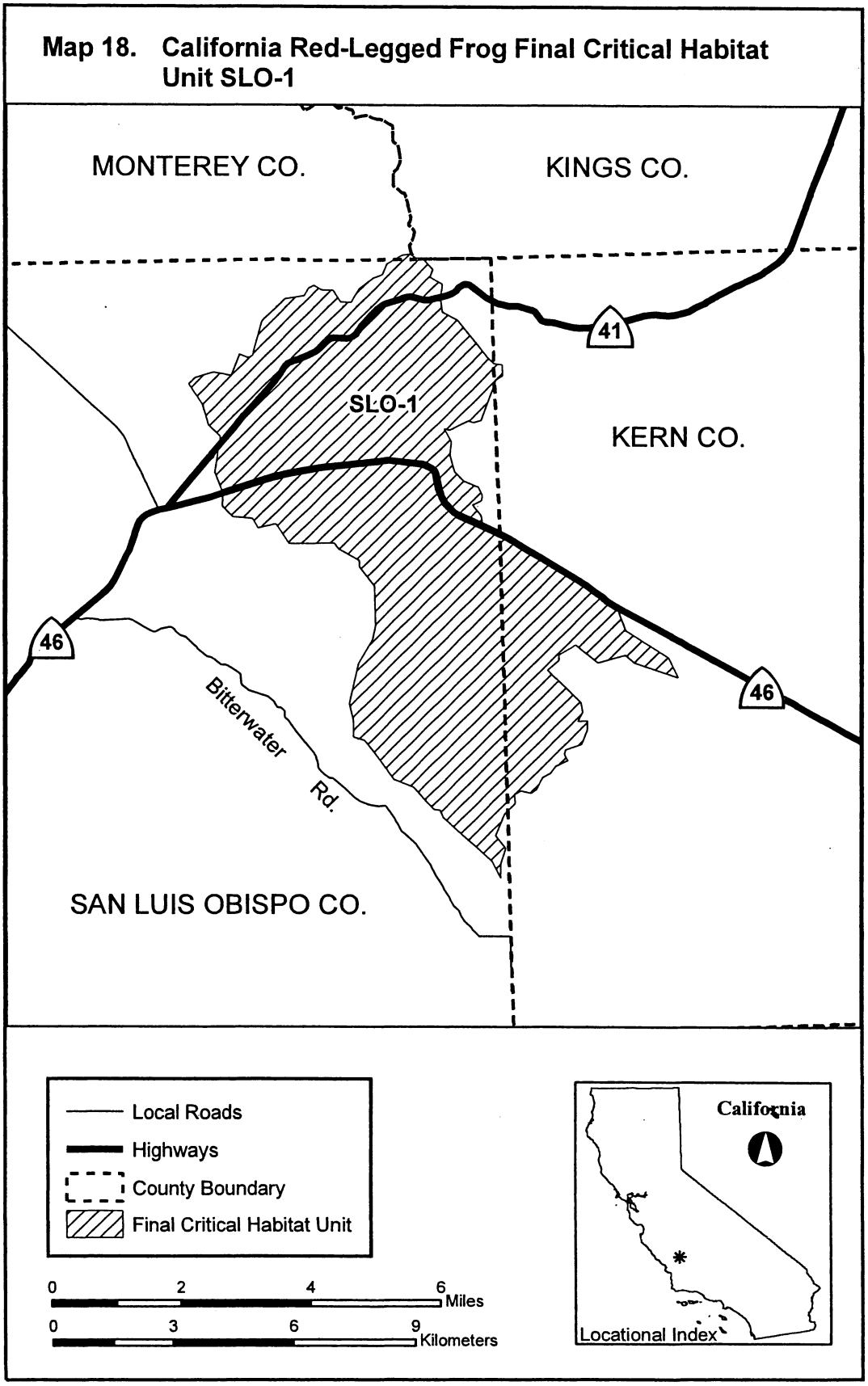
(i) Unit SLO–1A, Monterey, Kern, and San Luis Obispo counties, California.

From USGS 1:24,000 scale quadrangle Cholame, Cholame Valle, Orchard Peak

and Tent Hills. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 751686, 3964133; 751712, 3964088; 751741, 3964089; 751944, 3964093; 752170, 3963839; 752089, 3963653; 752394, 3963470; 752337, 3963122; 752393, 3962782; 752775, 3962577; 753511, 3961661; 753674, 3961522; 753685, 3961512; 753876, 3961497; 753879, 3961211; 753726, 3961118; 753706, 3961064; 753688, 3961015; 753346, 3960103; 753157, 3960041; 753037, 3960096; 752584, 3959853; 752439, 3959886; 752616, 3959569; 752581, 3959240; 752698, 3958821; 752928, 3958591; 753277, 3958434; 753384, 3958236; 753360, 3958091; 753139, 3957977; 753347, 3957726; 753391, 3957540; 752811, 3957804; 752717, 3957865; 752515, 3958072; 752455, 3958187; 752455, 3958191; 752454, 3958196; 752453, 3958201; 752451, 3958205; 752451, 3958206; 752390, 3958384; 752310, 3958775; 752309, 3958779; 752307, 3958784; 752306, 3958789; 752305, 3958790; 752268, 3958874; 752266, 3958877; 752264, 3958882; 752261, 3958886; 752259, 3958890; 752255, 3958894; 752252, 3958898; 752248, 3958901; 752247, 3958902; 752164, 3958971; 752161, 3958973; 752157, 3958976; 752153, 3958978; 752153, 3958978; 752035, 3959046; 752031, 3959048; 752026, 3959050; 752022, 3959052; 752017, 3959054; 752015, 3959054; 751910, 3959080; 751907, 3959080; 751902, 3959081; 751901, 3959081; 751122, 3959173; 751118, 3959173; 751113, 3959173; 751111, 3959173; 750972, 3959169; 750969, 3959169; 750966, 3959169; 749326, 3958980; 749324, 3958980; 749319, 3958979; 749319, 3958979; 748582, 3958831; 748580, 3958831; 748212, 3958749; 748209, 3958748; 748205, 3958747; 746940, 3958338; 746939, 3958337; 746937, 3958337; 746756, 3958787; 746903, 3959687; 746602, 3959975; 746447, 3960491; 746115, 3960992; 746275, 3961146; 746729, 3961287; 747168, 3961212; 747374, 3961734; 747595, 3961650; 747697, 3961709; 747939, 3962560; 748518, 3963103; 748980, 3963178; 749087, 3963366; 749220, 3963434; 749423, 3963311; 749691, 3963318; 749862, 3963037; 750137, 3963026; 750339, 3963349; 750677, 3963620; 750913, 3963709; 751032, 3963973; 751204, 3964077; 751407, 3964200; 751633, 3964226; 751637, 3964218; returning to 751686, 3964133.

(ii) Unit SLO–1B, San Luis Obispo and Kern counties, California. From USGS 1:24,000 scale quadrangle Cholame and Orchard Peak. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 752244, 3958339; 752303, 3958167; 752303, 3958164; 752304, 3958162; 752304, 3958157; 752305, 3958152; 752306, 3958147; 752307, 3958142; 752309, 3958137; 752311, 3958133; 752312, 3958131; 752386, 3957991; 752387, 3957988; 752390, 3957984; 752393, 3957980; 752396, 3957976; 752398, 3957973; 752613, 3957752; 752614, 3957751; 752618, 3957748; 752622, 3957745; 752626, 3957742; 752627, 3957741; 752733, 3957673; 752736, 3957671; 752741, 3957669; 752743, 3957668; 753679, 3957241; 753770, 3957189; 753770, 3957189; 753774, 3957187; 753776, 3957186; 753824, 3957164; 753949, 3957107; 755936, 3955917; 756110, 3955797; 756322, 3955634; 756322, 3955634; 756324, 3955632; 756326, 3955628; 756329, 3955624; 756332, 3955620; 756335, 3955616; 756338, 3955612; 756342, 3955609; 756346, 3955606; 756350, 3955603; 756350, 3955603; 756406, 3955566; 756407, 3955564; 756409, 3955560; 756412, 3955555; 756415, 3955551; 756418, 3955547; 756421, 3955544; 756425, 3955540; 756429, 3955537; 756433, 3955534; 756434, 3955534; 756658, 3955389; 756661, 3955387; 756666, 3955385; 756670, 3955383; 756675, 3955381; 756680, 3955379; 756685, 3955378; 756690, 3955378; 756695, 3955377; 756700, 3955377; 756704, 3955377; 756709, 3955378; 756714, 3955378; 756719, 3955379; 756724, 3955381; 756729, 3955383; 756733, 3955385; 756737, 3955387; 756937, 3954849; 757985, 3954183; 758226, 3953688; 757146, 3954055; 756930, 3954253; 756254, 3954059; 755715, 3954502; 755295, 3954246; 755299, 3954110; 755014, 3953871; 755837, 3953057; 755884, 3952815; 755772, 3952588; 756007, 3952600; 756006, 3952390; 755863, 3952018; 755458, 3951873; 755424, 3951773; 755507, 3951608; 755206, 3951465; 755086, 3951288; 754878, 3951181; 754722, 3950867; 754612, 3950785; 754358, 3950847; 754180, 3950747; 754207, 3950531; 754017, 3950341; 753934, 3950258; 753718, 3949714; 753969, 3949413; 753850, 3949020; 753846, 3948668; 753637, 3949080; 752412, 3950170; 752330, 3950365; 752195, 3950371; 751675, 3950945; 751199, 3951131; 750465, 3952104; 750202, 3952182; 750202, 3952580; 750094, 3953028; 750327, 3954015; 750668, 3954626; 750740, 3954967; 750704, 3955954; 750345, 3956420; 750345, 3956582; 749825, 3956869; 749717, 3957012; 749387, 3957007; 749153, 3957003; 748622, 3956995; 748281, 3957497; 747851, 3957389; 747707, 3957623; 747223, 3957676; 746949, 3957940; 746960, 3958189; 746964, 3958189; 746969, 3958189; 746974, 3958190; 746979, 3958190; 746984, 3958192; 746987, 3958193; 748248, 3958601; 748613, 3958682; 749346, 3958829; 750980, 3959017; 751110, 3959021; 751879, 3958930; 751969, 3958909; 752071, 3958850; 752136, 3958796; 752162, 3958736; 752241, 3958349; 752242, 3958344; 752244, 3958339; returning to 752244, 3958339.

(iii) **Note:** Unit SLO–1 is depicted on Map 18—Unit SLO–1A and SLO–1B, which follows:

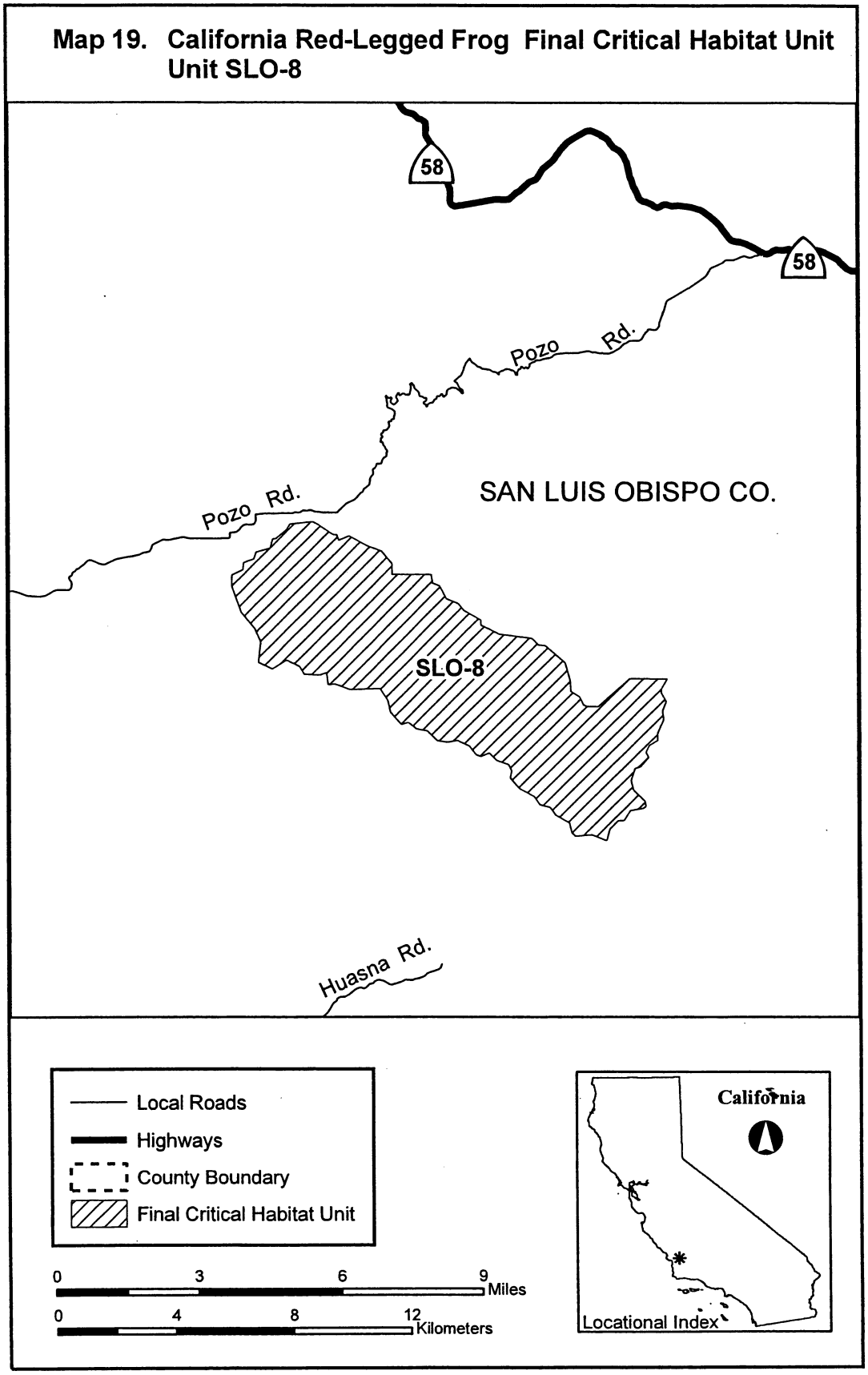


(28) Unit SLO–8, San Luis Obispo County, California.

(i) From USGS 1:24,000 scale quadrangle Caldwell Mesa, La Panza, Los Machos Hills and Poza Summit. Land bounded by the following UTM

Zone 10, NAD83 coordinates (E,N): 742342, 3910355; 742896, 3909995; 742987, 3910011; 743049, 3909814; 743416, 3909965; 744021, 3909620; 744518, 3909447; 744885, 3909015; 744885, 3908647; 746225, 3908647; 746268, 3908345; 746506, 3908258; 746743, 3907826; 746821, 3907792; 747132, 3907653; 747345, 3907423; 747690, 3907221; 747910, 3907092; 747910, 3906919; 748119, 3906818; 748537, 3906616; 749639, 3906465; 749834, 3906249; 750071, 3906227; 750719, 3905644; 750869, 3905120; 750904, 3904999; 750913, 3904672; 751216, 3904477; 751288, 3904321; 751346, 3904196; 751475, 3904131; 751843, 3904131; 752901, 3905104; 754148, 3905082; 753954, 3904740; 753956, 3904595; 754119, 3904319; 753994, 3903997; 754040, 3903708; 753829, 3903239; 753826, 3902991; 753536, 3902799; 753435, 3902578; 753528, 3902392; 753250, 3902082; 753057, 3902009; 752924, 3901603; 753012, 3901277; 753401, 3900906; 753421, 3900721; 753352, 3900652; 752897, 3900587; 752686, 3900236; 752480, 3900225; 752269, 3900006; 752208, 3899942; 752105, 3899557; 751890, 3899641; 751610, 3899752; 751065, 3899718; 750934, 3899819; 750857, 3900160; 750382, 3900434; 750209, 3900688; 749877, 3900774; 749682, 3901061; 749177, 3901338; 748884, 3901682; 748920, 3901927; 748835, 3902149; 748448, 3902277; 748180, 3902541; 747898, 3902431; 747717, 3902498; 747516, 3902788; 747099, 3902976; 746746, 3902918; 746410, 3902963; 746081, 3903296; 745712, 3903361; 745413, 3903584; 745169, 3903525; 744798, 3903936; 744720, 3904350; 744449, 3904751; 743419, 3904715; 742926, 3904904; 742676, 3904893; 742626, 3905286; 742409, 3905213; 741878, 3905244; 741711, 3905511; 741283, 3905727; 740794, 3905414; 740339, 3905647; 740412, 3906357; 740218, 3906811; 739743, 3907372; 739722, 3907430; 739440, 3908215; 739455, 3908624; 739820, 3908802; 739831, 3909034; 740192, 3909165; 740264, 3909401; 740740, 3909546; 740811, 3909852; 740928, 3909862; 741281, 3910151; 741407, 3910358; 742175, 3910446; returning to 742342, 3910355.

(ii) **Note:** Unit SLO–8 (Map 19) follows:



(29) Unit STB–1, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Foxen Canyon, Manzanita Mtn., Tepusquet Canyon and Zaca Lake. Land bounded by the following UTM

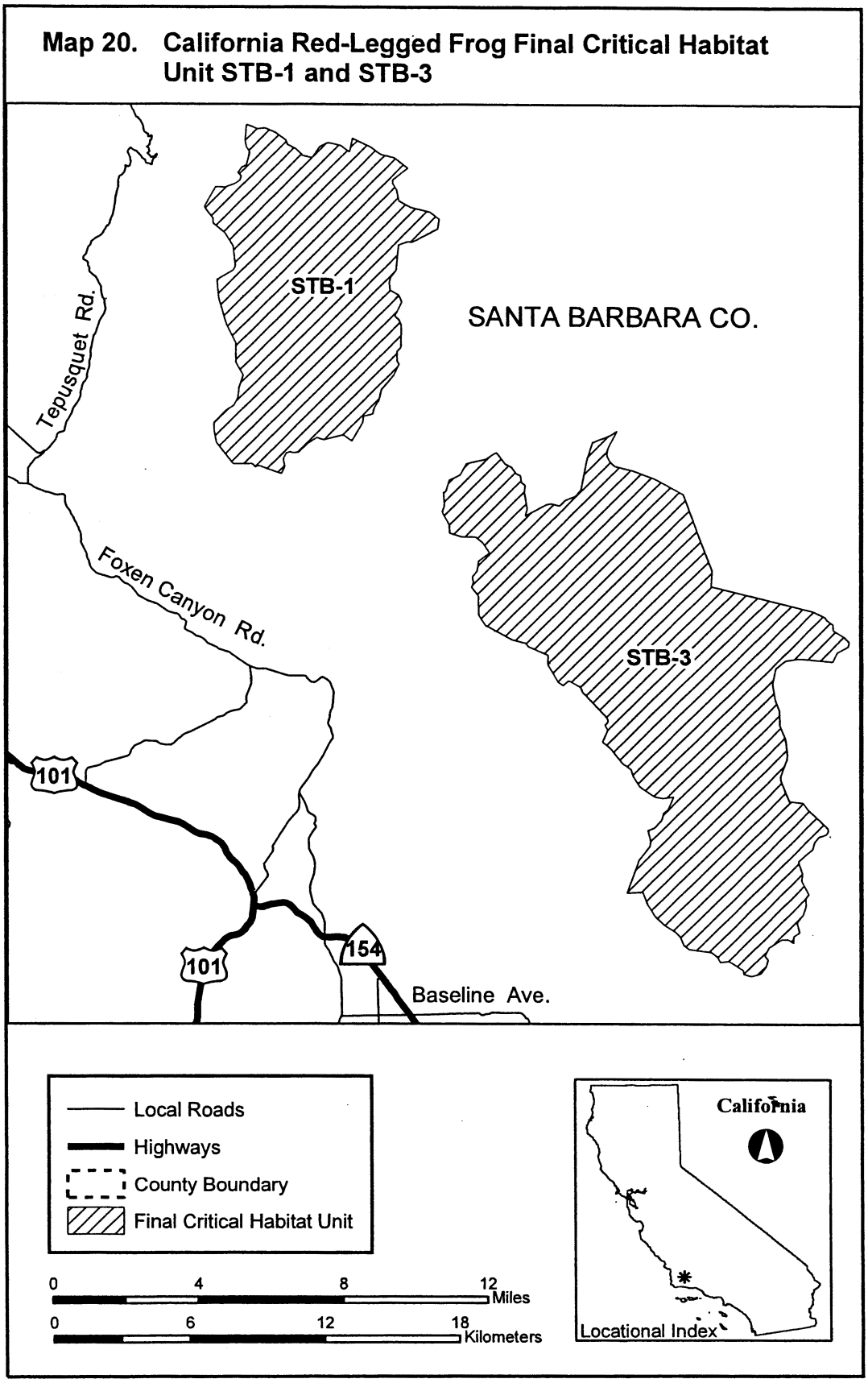
Zone 10, NAD83 coordinates (E,N): 760562, 3876097; 760672, 3876042; 761005, 3876093; 761484, 3875882; 761915, 3875540; 762011, 3875342; 762395, 3875163; 762670, 3874870; 763079, 3874758; 763422, 3875236; 763812, 3875437; 764363, 3875306; 764762, 3875023; 764895, 3875633; 765728, 3875247; 766130, 3874926; 766773, 3874765; 767375, 3874303; 766692, 3873794; 766680, 3873615; 766866, 3873352; 766958, 3872847; 767518, 3872546; 768333, 3872362; 768758, 3872044; 768701, 3871632; 767557, 3871024; 767339, 3871050; 766934, 3870909; 766834, 3869773; 766590, 3869471; 766520, 3869233; 766558, 3868884; 766939, 3868674; 767084, 3868355; 766763, 3867725; 766960, 3867566; 767061, 3867318; 767053, 3866343; 766871, 3866166; 766875, 3865716; 766960, 3865587; 766724, 3865095; 766178, 3864457; 766084, 3864002; 766071, 3863939; 766041, 3863893; 765862, 3863616; 765794, 3863346; 765381, 3863233; 765364, 3863228; 765331, 3862966; 765311, 3862929; 764940, 3862265; 764868, 3862136; 764482, 3862406; 763590, 3862178; 763295, 3862281; 762879, 3862024; 762469, 3861631; 762204, 3861602; 762105, 3861666; 761931, 3861582; 761788, 3861358; 761850, 3860994; 761705, 3860676; 760807, 3861013; 760636, 3861044; 760566, 3860969; 760433, 3861135; 759600, 3861135; 758845, 3862084; 758767, 3862569; 758748, 3862937; 759290, 3863518; 759639, 3863731; 759813, 3864060; 759841, 3864364; 759852, 3864486; 760046, 3865087; 759717, 3865648; 759717, 3866501; 759310, 3867372; 758961, 3868554; 758897, 3869361; 759610, 3869788; 759707, 3869963; 759591, 3870865; 759205, 3871457; 758719, 3871858; 758710, 3872086; 758624, 3872197; 758330, 3872577; 758585, 3873031; 758824, 3873459; 759241, 3873456; 759706, 3873605; 759924, 3873760; 759967, 3873943; 759819, 3874091; 760002, 3874342; 760181, 3874444; 760333, 3875007; 760185, 3875250; 760134, 3875544; 760198, 3876182; 760214, 3876232; returning to 760562, 3876097;

(ii) **Note:** Unit STB–1 is depicted on Map 20—Unit STB–1 and STB–3; see paragraph (30)(ii):

(30) Unit STB–3, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Bald Mountain, Figueroa Mtn., Hurricane Deck and Zaca Lake. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 774262, 3851242; 774038, 3851378; 773599, 3852194; 773610, 3852585; 772721, 3852969; 772605, 3853117; 772049, 3853270; 770806, 3853935; 770526, 3854367; 770502, 3855237; 770473, 3855275; 770208, 3855631; 770277, 3855831; 770248, 3856093; 770455, 3856359; 770525, 3856800; 771005, 3857165; 770696, 3857635; 770372, 3857882; 769786, 3857861; 769225, 3858043; 769214, 3858418; 768882, 3858990; 768993, 3859243; 768942, 3859847; 769055, 3859907; 769200, 3860391; 769683, 3860633; 769973, 3861140; 770820, 3861334; 771313, 3861655; 771327, 3861637; 771705, 3861144; 771971, 3860990; 772182, 3860704; 772385, 3860618; 772427, 3860315; 772595, 3860173; 772560, 3859857; 772675, 3859142; 772587, 3858807; 773540, 3859330; 773731, 3859358; 774108, 3859260; thence east to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 225709, 3859505; 226191, 3859671; 226446, 3859945; 226779, 3861260; 227069, 3862025; 227901, 3862297; 228180, 3862460; 227736, 3861694; 227674, 3861404; 227811, 3861121; 228015, 3860908; 228771, 3860676; 229717, 3860243; 230921, 3859474; 231976, 3855997; 231890, 3855313; 236301, 3853942; 236842, 3853657; 236927, 3853500; 237181, 3853315; 237180, 3853032; 237675, 3852714; 237864, 3852491; 237820, 3852284; 237295, 3852044; 237085, 3851654; 235563, 3851863; 234961, 3851815; 234496, 3851477; 234322, 3850773; 234404, 3850093; 234556, 3849573; 234532, 3848910; 234739, 3848334; 234781, 3847688; 234766, 3847430; 234422, 3846606; 234430, 3846444; 234732, 3845518; 235368, 3845399; 235556, 3845096; 236410, 3844198; 236413, 3844054; 236297, 3843925; 235968, 3843843; 235779, 3843622; 235662, 3843307; 234986, 3842797; 235154, 3842214; 235086, 3841955; 235333, 3841405; 235375, 3841313; 235220, 3841130; 235232, 3840799; 235079, 3840429; 234758, 3840083; 234863, 3839626; 234569, 3839466; 234551, 3839186; 234319, 3839348; 234045, 3839362; 233445, 3839043; 233229, 3838675; 233359, 3838487; 233241, 3838166; 233011, 3837900; 232617, 3837779; 232272, 3837921; 232254, 3838087; 231644, 3838529; 231264, 3838496; 231181, 3838751; 230923, 3838980; 229978, 3839158; 229754, 3839349; 229620, 3839728; 229455, 3839945; 228963, 3840302; 228573, 3840711; 228264, 3841264; 228105, 3841830; 227767, 3841828; 227388, 3841827; 227527, 3842150; 227858, 3842917; 228003, 3843254; 228529, 3843869; 228576, 3844116; 228496, 3844558; 228766, 3844658; 229104, 3845002; 229223, 3845301; 229404, 3845439; 229698, 3845994; 229240, 3845960; 228868, 3846057; 228239, 3846540; 227986, 3846998; 227904, 3847345; 227540, 3847621; 227052, 3848344; 226719, 3848644; 226976, 3849159; 226861, 3849365; 227014, 3849486; 227022, 3849580; 226902, 3849798; 225971, 3850915; 225899, 3851125; 225373, 3851455; thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 83 coordinates 774262, 3851242.

(ii) **Note:** Unit STB–3 is depicted on Map 20—Unit STB–1 and STB–3, which follows:



(31) Unit STB–4, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Lompoc Hills and Tranquillon Mtn. Land bounded by the following UTM Zone 10, NAD83

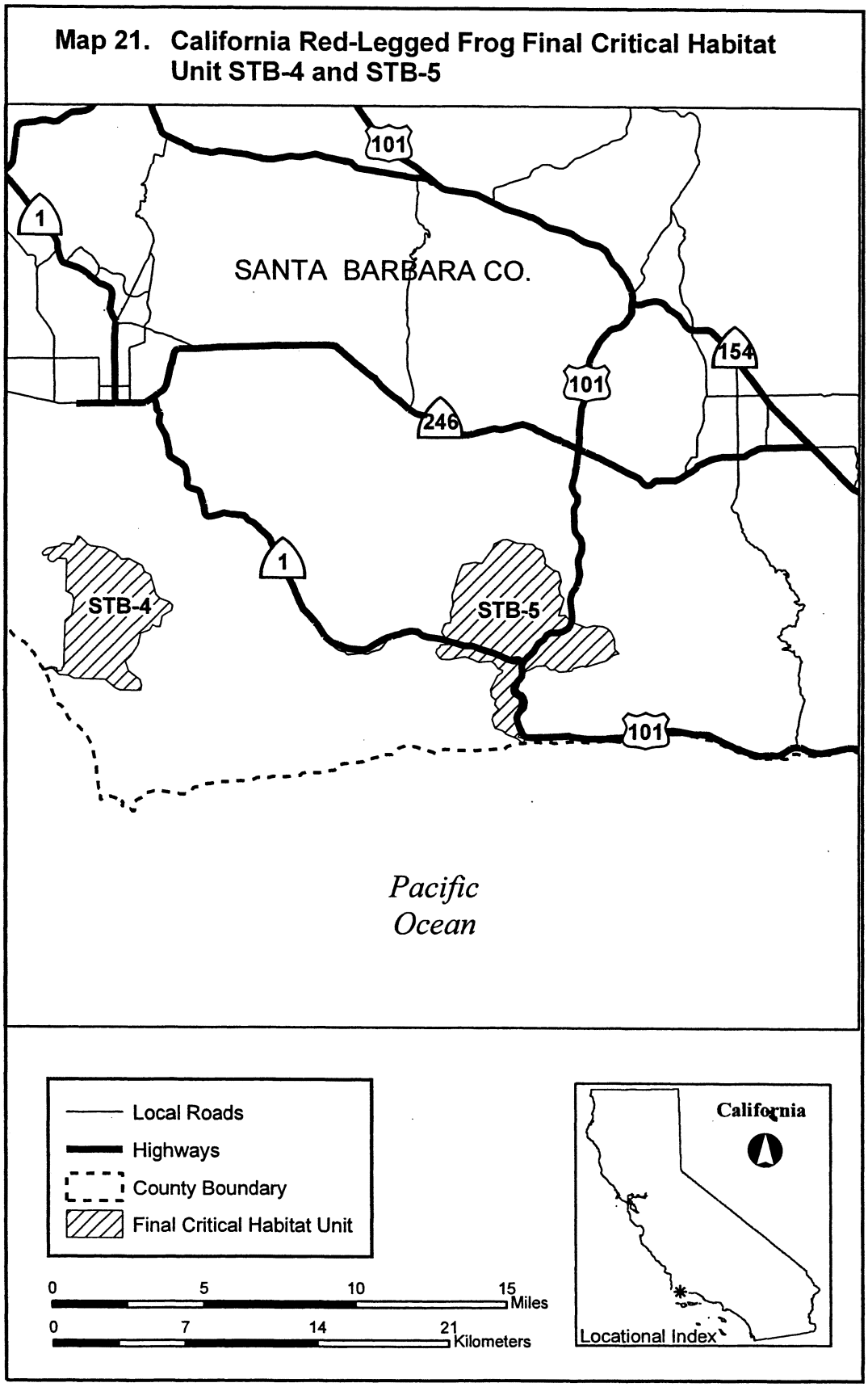
coordinates (E,N): 731548, 3828414; 731725, 3828302; 732482, 3828211; 733060, 3827929; 733373, 3827572; 733774, 3827615; 734461, 3827273; 734567, 3826941; 734874, 3826750; 735166, 3825748; 735374, 3825521; 735892, 3825308; 736056, 3825108; 736007, 3824849; 735520, 3824562; 735383, 3823999; 735198, 3823985; 735011, 3824092; 734837, 3823821; 734370, 3823633; 734241, 3823031; 733859, 3822409; 733592, 3822135; 733760, 3821640; 734349, 3821148; 734434, 3820848; 734395, 3820592; 733328, 3820601; 733075, 3820689; 732500, 3821165; 730834, 3821228; 730572, 3821371; 730039, 3821421; 729724, 3821725; 729488, 3821739; 729276, 3821643; 729286, 3821733; 729502, 3821795; 729515, 3821793; 729523, 3821801; 729615, 3821828; 729923, 3821747; 729935, 3821706; 729936, 3821704; 729938, 3821604; 730174, 3821644; 730245, 3821754; 730246, 3821785; 730311, 3821835; 730316, 3822045; 730366, 3822066; 730318, 3822100; 730375, 3824296; 730715, 3824569; 730844, 3825381; 730736, 3825725; 730416, 3825881; 730459, 3827556; 730445, 3827556; 730447, 3827602; 729977, 3827620; 729742, 3827441; 729579, 3827448; 729425, 3827598; 729508, 3827830; 729452, 3827821; 729430, 3827848; 729395, 3827811; 729190, 3827777; 729126, 3827916; 729111, 3827926; 729386, 3828164; 730093, 3828281; 730232, 3828426; 730845, 3828360; 731042, 3828827; 731183, 3828800; returning to 731548, 3828414;

(ii) **Note:** Unit STB–4 is depicted on Map 21—Unit STB–4 and STB–5; see paragraph (32)(ii):

(32) Unit STB–5, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangle Gaviota, Santa Rosa Hills and Solvang. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 755821, 3827482; 756293, 3827116; 756595, 3827008; 756734, 3826502; 756591, 3826150; 756701, 3825778; 756876, 3825582; 756583, 3824656; 756924, 3824697; 757173, 3824401; 758062, 3824046; 758483, 3824146; 758956, 3824097; 759185, 3823989; 759343, 3823839; 759356, 3823826; 759563, 3823388; 759577, 3822909; 759783, 3822682; 759485, 3822582; 759129, 3822293; 758049, 3821948; 757890, 3821985; 757386, 3821856; 757275, 3821711; 756624, 3821644; 756443, 3821777; 756184, 3821764; 756165, 3821780; 756139, 3821803; 755941, 3821976; 755398, 3821963; 755263, 3821895; 754711, 3821614; 754655, 3821585; 754606, 3821560; 754109, 3820817; 754319, 3820487; 754595, 3820335; 754715, 3820089; 754707, 3819800; 754623, 3819640; 754238, 3819306; 754414, 3818708; 754405, 3818492; 754507, 3818393; 754442, 3818163; 754781, 3818045; 754712, 3817826; 754353, 3818081; 753795, 3818299; 753620, 3818490; 753200, 3818625; 753151, 3818752; 753015, 3819109; 753052, 3819219; 753096, 3819346; 753385, 3819620; 753176, 3819898; 753236, 3820136; 752987, 3820348; 752961, 3820749; 753329, 3821454; 753567, 3821609; 753589, 3821730; 753341, 3821827; 753202, 3822071; 753191, 3822091; 753174, 3822100; 752961, 3822212; 752599, 3822188; 752336, 3822171; 751571, 3822432; 750711, 3822281; 750371, 3822319; 750231, 3822360; 750007, 3822667; 750066, 3822856; 750213, 3822944; 750268, 3823084; 750652, 3823110; 750716, 3823220; 750335, 3823770; 750488, 3824163; 750596, 3824256; 750780, 3824259; 750839, 3824376; 750807, 3824796; 750948, 3825215; 750875, 3825695; 751257, 3826992; 751444, 3827363; 752145, 3827504; 752493, 3827446; 753043, 3828218; 753153, 3828494; 753588, 3828705; 753846, 3828746; 754353, 3828538; 755206, 3828493; 755414, 3828288; 755742, 3828169; 755879, 3827637; returning to 755821, 3827482;

(ii) **Note:** Unit STB–5 is depicted on Map 21—Unit STB–4 and STB–5, which follows:

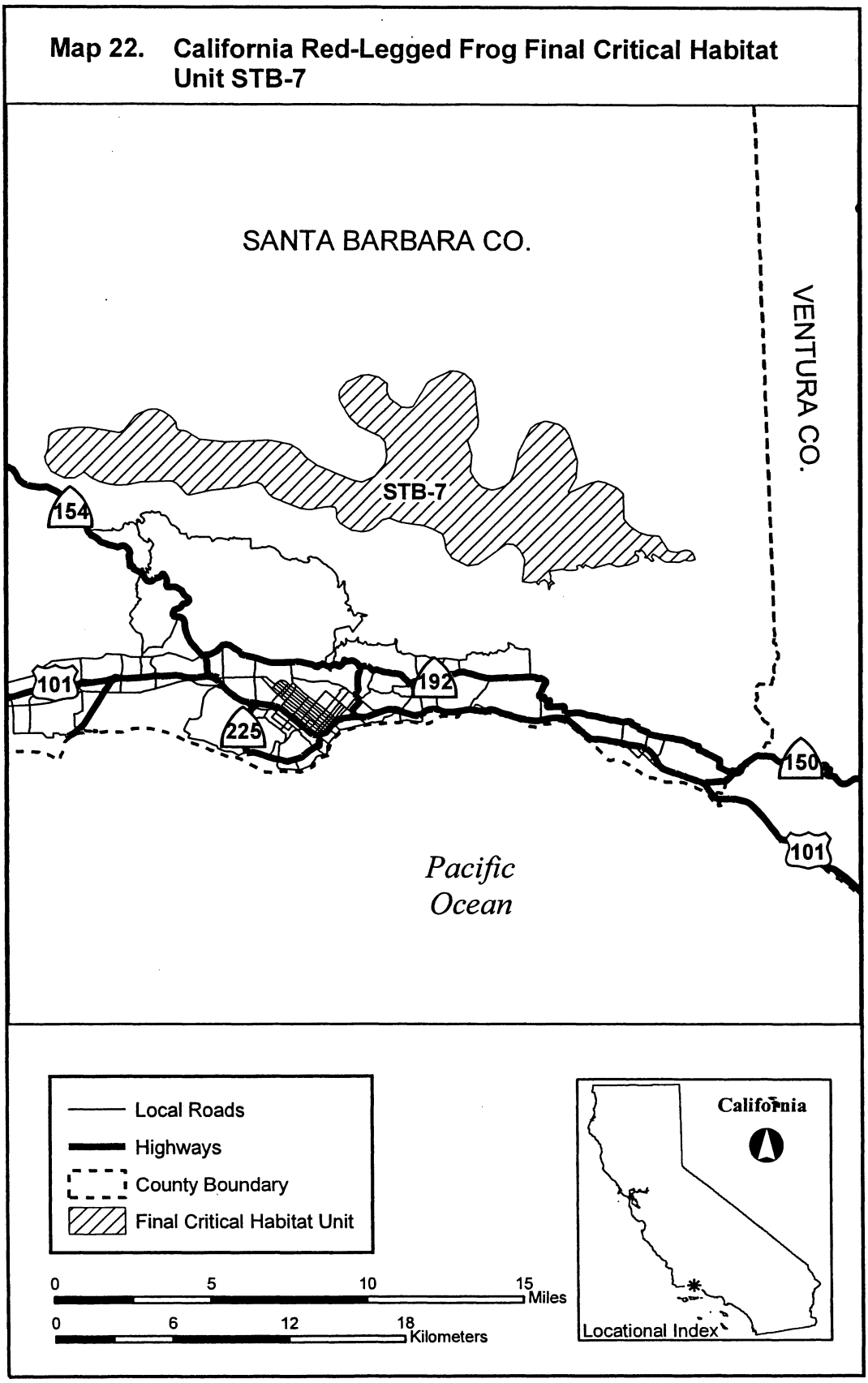


(33) Unit STB–7, Santa Barbara County, California.

(i) From USGS 1:24,000 scale quadrangles San Marcos Pass, Little Pine Mtn., Hildreth Peak, and Carpinteria. Land bounded by the

following UTM Zone 11 NAD 83 coordinates (E,N): 261103, 3828674; 261164, 3826939; 261110, 3826616; 260560, 3825969; 260729, 3825227; 260615, 3824375; 260851, 3823866; 261151, 3823533; 261618, 3823357; 261958, 3823391; 262376, 3823540; 262618, 3823725; 262855, 3824249; 263136, 3825243; 263835, 3826416; 264136, 3826614; 264597, 3826733; 265253, 3826531; 265552, 3826327; 265768, 3825951; 266098, 3824601; 265982, 3823698; 265535, 3823047; 265592, 3822987; 266727, 3823425; 267083, 3823488; 267479, 3823387; 268046, 3823105; 268361, 3822771; 268293, 3821490; 268561, 3821099; 269029, 3820759; 269482, 3820583; 270054, 3820492; 270468, 3819779; 270489, 3819741; 270492, 3819739; 270620, 3819649; 270928, 3819610; 271418, 3819699; 271608, 3819634; 271752, 3819512; 271827, 3819173; 271608, 3819132; 271317, 3819192; 271284, 3819199; 271037, 3819072; 270265, 3819161; 269702, 3819603; 269601, 3819463; 269722, 3819264; 269625, 3819207; 269402, 3819428; 269250, 3819421; 269324, 3819558; 269217, 3819704; 269122, 3819834; 269002, 3819743; 268811, 3819808; 268745, 3819691; 268916, 3819504; 268888, 3819285; 268432, 3819124; 267834, 3819023; 267398, 3819234; 266530, 3819032; 266290, 3819197; 266215, 3819172; 266192, 3819268; 266078, 3819084; 265890, 3819272; 265721, 3819174; 265774, 3819042; 265701, 3818991; 265316, 3818973; 264966, 3819081; 264360, 3818999; 264304, 3818944; 264406, 3818688; 264333, 3818599; 264541, 3818360; 264384, 3818318; 264224, 3818038; 264202, 3818428; 264051, 3818575; 263826, 3818481; 263743, 3818335; 263566, 3818517; 263373, 3818454; 262902, 3818541; 263099, 3819682; 262878, 3820190; 262577, 3820494; 262253, 3820533; 260704, 3819562; 260200, 3819503; 259373, 3819970; 259106, 3820421; 259050, 3821027; 258954, 3821266; 258476, 3821560; 258009, 3821736; 256835, 3821963; 256267, 3822216; 255895, 3822139; 255591, 3821838; 255399, 3821743; 255172, 3821630; 254846, 3821595; 254318, 3821700; 254205, 3821777; 253739, 3822100; 253585, 3822370; 253569, 3822828; 253499, 3822948; 253028, 3822992; 252203, 3822869; 251749, 3822986; 250409, 3823601; 250151, 3823845; 249884, 3824310; 249725, 3824418; 249491, 3824469; 248569, 3824246; 247209, 3824198; 246082, 3824010; 245920, 3824045; 245659, 3824394; 245480, 3824633; 245204, 3824774; 243685, 3824819; 243619, 3824809; 242973, 3824708; 242368, 3824711; 242090, 3824789; 241548, 3824942; 241098, 3825191; 241040, 3825243; 240753, 3825497; 240212, 3825225; 240198, 3825218; 240102, 3825224; 239733, 3825248; 239125, 3825602; 239065, 3825637; 238784, 3826117; 238754, 3826387; 238971, 3826791; 239043, 3827473; 239174, 3827597; 239562, 3827733; 240553, 3827806; 241172, 3827758; 242696, 3827403; 242936, 3827529; 243487, 3828176; 243727, 3828316; 243966, 3828405; 244280, 3828521; 244619, 3828511; 244969, 3828382; 245345, 3828120; 245601, 3827774; 245609, 3827537; 245707, 3827372; 246089, 3827302; 246754, 3826840; 248135, 3826621; 250336, 3826570; 251450, 3826301; 251869, 3825993; 252196, 3825585; 252728, 3825127; 254548, 3824276; 254972, 3824146; 255659, 3824405; 256208, 3824993; 256339, 3825402; 256316, 3826140; 256089, 3826442; 254999, 3827020; 254542, 3827506; 254110, 3828389; 254090, 3828685; 254141, 3828919; 254538, 3829364; 255288, 3829666; 255686, 3829650; 256182, 3829502; 256599, 3829170; 256571, 3828713; 256693, 3828356; 257269, 3827896; 257621, 3827812; 257859, 3827878; 258681, 3829051; 258881, 3829197; 259702, 3829550; 259871, 3829623; 260251, 3829590; 260485, 3829475; 260582, 3829428; 260952, 3829069; 261103, 3828674; returning to 261103, 3828674.

(ii) **Note:** Unit STB–7 (Map 22) follows:



(34) Unit VEN–1, Ventura County, California.

(i) From USGS 1:24,000 scale quadrangles Matilija and Wheeler Springs. Land bounded by the following UTM Zone 11 NAD 83 coordinates

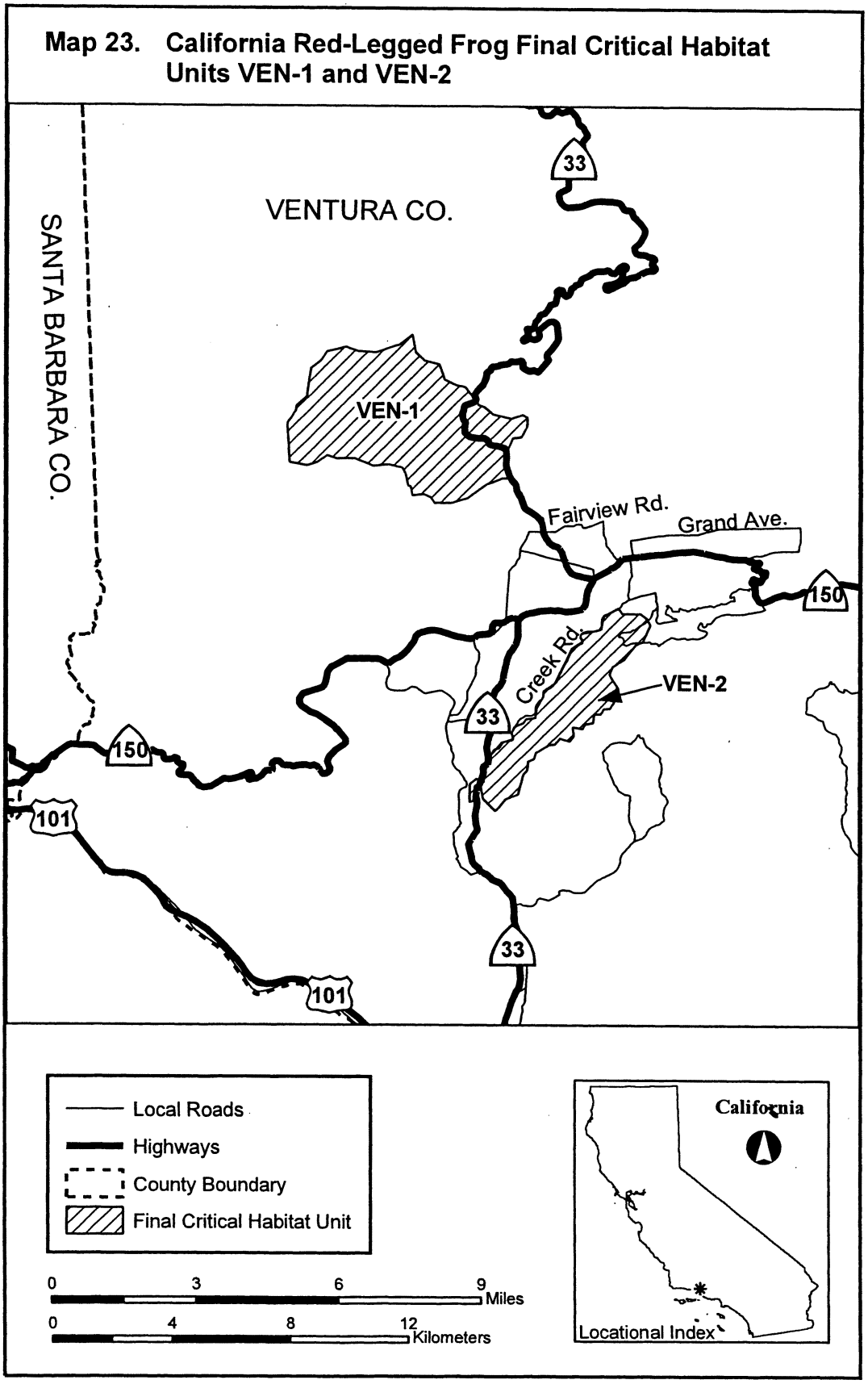
(E,N): 286767, 3821446; 287051, 3821146; 287541, 3820987; 287716, 3820448; 288081, 3820234; 288388, 3820156; 288676, 3819720; 288797, 3819538; 289000, 3819452; 289049, 3819400; 289251, 3819184; 289865, 3819014; 290257, 3819110; 290385, 3819028; 290382, 3818716; 290168, 3818372; 289870, 3818346; 289698, 3818038; 289637, 3817929; 289617, 3817336; 289730, 3817002; 289419, 3817006; 288934, 3816842; 288898, 3816819; 288224, 3816394; 287682, 3816263; 287327, 3816284; 287120, 3816311; 287012, 3816496; 286768, 3816629; 286380, 3816607; 286341, 3816936; 286253, 3816956; 286201, 3817346; 286083, 3817565; 285618, 3817694; 285106, 3817671; 284491, 3817968; 283910, 3817995; 283570, 3818117; 283229, 3817896; 282887, 3817826; 282295, 3817957; 282286, 3819293; 282458, 3819499; 282596, 3819663; 282602, 3819671; 282643, 3819859; 282998, 3820160; 283025, 3820294; 283114, 3820738; 283185, 3821088; 283536, 3821316; 283765, 3821626; 284412, 3821742; 284830, 3821570; 285434, 3821504; 286232, 3821724; 286706, 3822022; 286767, 3821446; returning to 286767, 3821446.

(ii) **Note:** Unit VEN–1 is depicted on Map 23—Unit VEN–1 and VEN–2; see paragraph (35)(ii):

(35) Unit VEN–2, Ventura County, California.

(i) From USGS 1:24,000 scale quadrangles Matilija, Ventura, and Ojai. Land bounded by the following UTM Zone 11 NAD 83 coordinates (E,N): 292389, 3808989; 292269, 3808813; 292067, 3808838; 292001, 3808540; 291744, 3808513; 291660, 3808360; 291309, 3808445; 291346, 3808110; 291188, 3807970; 290857, 3808078; 290683, 3807876; 290516, 3807881; 290022, 3807626; 289938, 3807423; 289743, 3807351; 289693, 3807054; 289556, 3806919; 289357, 3806257; 288924, 3806106; 288596, 3805768; 288535, 3805756; 288169, 3806170; 288139, 3806566; 288022, 3806679; 287922, 3806605; 287842, 3806111; 287702, 3806086; 287770, 3806708; 287997, 3806862; 288226, 3806724; 288210, 3807181; 288352, 3807324; 288495, 3807334; 288507, 3807633; 288897, 3808046; 289299, 3808143; 289254, 3808351; 289400, 3808575; 289665, 3808668; 289771, 3808791; 290075, 3808823; 290121, 3809125; 290398, 3809519; 290426, 3809709; 290786, 3809928; 291436, 3811102; 291817, 3811326; 291749, 3811476; 291788, 3811585; 292474, 3811706; 292581, 3812127; 293112, 3812393; 293210, 3812196; 293840, 3812153; 294048, 3811973; 294135, 3811749; 293856, 3811194; 293598, 3811103; 293155, 3810614; 292790, 3810406; 292674, 3810144; 292894, 3809713; 292746, 3809412; 292765, 3809204; 292611, 3808985; 292389, 3808989; returning to 292389, 3808989.

(ii) **Note:** Unit VEN–2 is depicted on Map 23—Unit VEN–1 and VEN–2, which follows:



(36) Unit VEN–3, Ventura and Los Angeles counties, California.

(i) From USGS 1:24,000 scale quadrangles Cobblestone Mtn. and Whitaker Peak. Land bounded by the following UTM Zone 11 NAD 83

coordinates (E,N): 339291, 3827835; 339299, 3827739; 339766, 3827357; 340374, 3827063; 340544, 3826712; 341072, 3826348; 340944, 3826090; 340929, 3825836; 341091, 3825360; 340852, 3824908; 340799, 3824021; 340501, 3823636; 340142, 3823657; 339877, 3823482; 339839, 3822849; 339931, 3822610; 340226, 3822571; 340007, 3822097; 339952, 3821528; 339632, 3821505; 339452, 3821217; 339211, 3820830; 339197, 3820598; 338908, 3820272; 338832, 3820187; 338664, 3820291; 338469, 3820694; 338411, 3820813; 338123, 3821148; 338027, 3821260; 337720, 3821344; 337668, 3821358; 336304, 3822097; 336529, 3822597; 336713, 3822708; 336854, 3823475; 335722, 3824114; 335636, 3824514; 335416, 3824690; 334902, 3824748; 334557, 3824905; 334507, 3825194; 334331, 3825218; 334164, 3825391; 334109, 3825598; 333690, 3825882; 333242, 3826358; 333195, 3826701; 333300, 3826871; 333037, 3827486; 332830, 3827662; 333176, 3827981; 333533, 3828042; 335562, 3827839; 336504, 3827892; 336890, 3827733; 336922, 3827704; 337083, 3827558; 337097, 3827574; 337171, 3827662; 337429, 3827646; 337638, 3827729; 337852, 3827893; 338100, 3827946; 338394, 3827861; 339081, 3828201; 339230, 3828192; 339304, 3828065; 339291, 3827835; returning to 339291, 3827835.

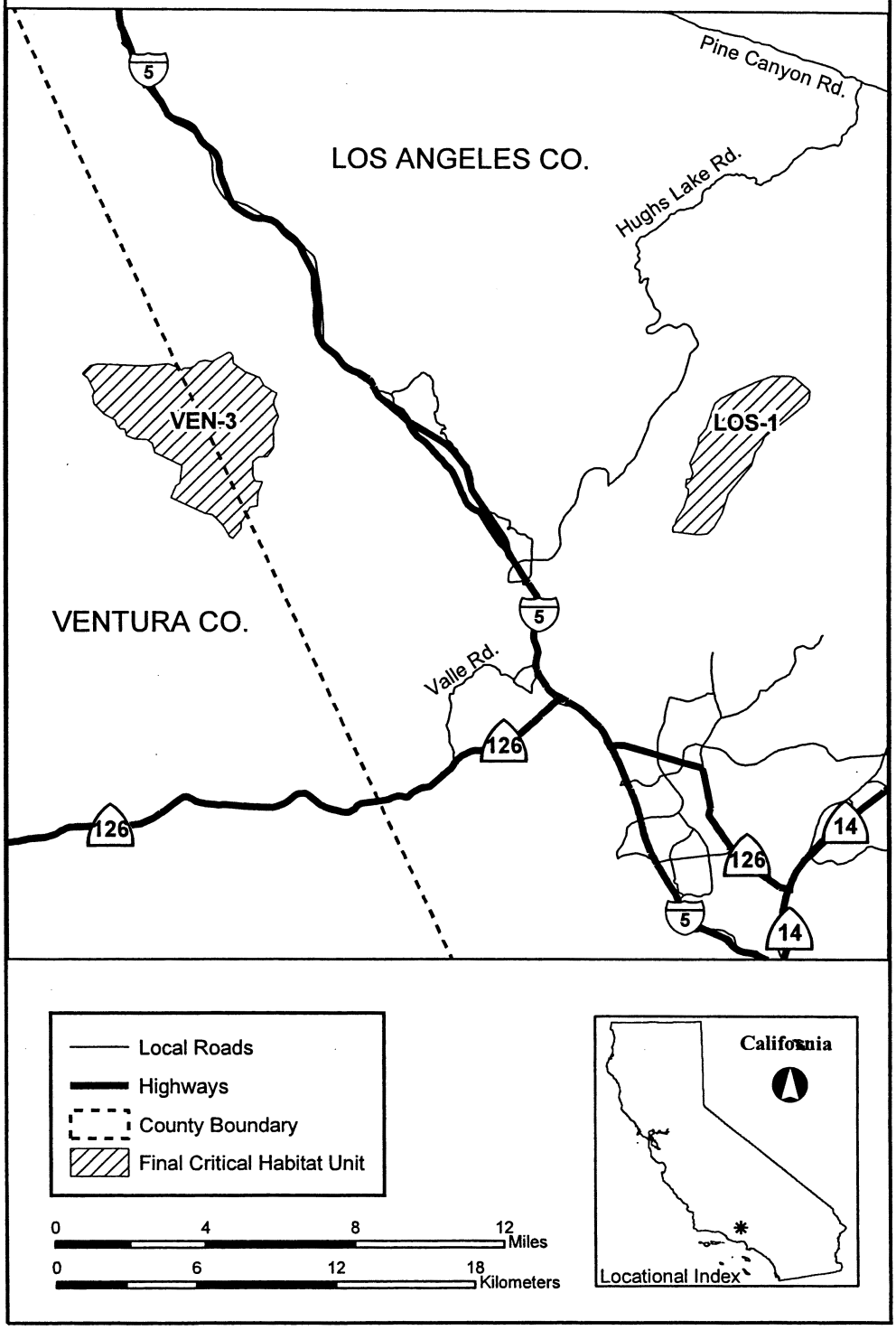
(ii) **Note:** Unit VEN–3 is depicted on Map 24—Unit VEN–3 and LOS–1; see paragraph (37)(ii):

(37) Unit LOS–1, Los Angeles County, California.

(i) From USGS 1:24,000 scale quadrangles Warm Springs Mountain and Green Valley. Land bounded by the following UTM Zone 11, NAD 83 coordinates (E,N): 359031, 3819227; 358730, 3819226; 358022, 3819358; 357682, 3819421; 357694, 3819619; 357819, 3819717; 357871, 3819926; 358218, 3820421; 358455, 3821056; 358466, 3821241; 358352, 3821327; 358424, 3821653; 358610, 3821669; 358704, 3821902; 358598, 3822345; 358987, 3823103; 359060, 3823442; 359387, 3823820; 359806, 3824854; 360096, 3825062; 361616, 3825686; 362356, 3825881; 363057, 3825879; 363330, 3825796; 363561, 3825563; 363803, 3825319; 363930, 3825191; 363867, 3824811; 363846, 3824782; 363757, 3824665; 363724, 3824621; 361885, 3823314; 361706, 3822967; 361437, 3822679; 361231, 3822109; 360167, 3820914; 359852, 3820073; 359475, 3819513; 359153, 3819227; 359031, 3819227; returning to 359031, 3819227.

(ii) **Note:** Unit LOS–1 is depicted on Map 24—Unit VEN–3 and LOS–1, which follows:

Map 24. California Red-Legged Frog Final Critical Habitat Units VEN-3 and LOS-1



* * * * *

Dated: March 31, 2006.

Matt Hogan,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–3344 Filed 4–12–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
April 13, 2006

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action; Emergency Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060209031–6092–02; I.D. 020606C]

RIN 0648–AU09

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action

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

ACTION: Temporary rule; emergency interim final rule and request for comments.

SUMMARY: NMFS implements this interim final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements measures intended to reduce immediately the fishing mortality rate (F) on certain groundfish species to prevent overfishing and maintain the rebuilding programs of the Northeast (NE) Multispecies Fishery Management Plan (FMP). Specifically, this emergency action implements differential days-at-sea (DAS) counting for all groundfish vessels not participating in the U.S./Canada Management Area on Georges Bank (GB), reduced trip limits for certain species, and recreational possession restrictions, among other provisions. In addition, this action continues two programs that would otherwise expire by the end of the 2005 fishing year (FY) on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on GB. Due to the impact of these proposed measures on the monkfish fishery, this emergency action also limits participation of monkfish Category C, D, or F permits in the Regular B DAS Program and revises the method of calculating available monkfish-only DAS for Category C, D, F, G, or H monkfish vessels. Further, this action eliminates the daily and maximum trip limits for haddock for FY 2006. Also, because of the substantive nature of this emergency rule and the necessary shortened comment period on the proposed rule for this action, this rule is being implemented as an emergency interim action and seeks additional public comment. This action is intended to prevent overfishing while maintaining specific programs designed to help mitigate the economic and social impacts of effort reductions under the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

DATES: Effective May 1, 2006, through October 10, 2006, or until superceded by another final rule, whichever occurs first. Additional comments on this emergency interim action must be received by May 15, 2006.

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

- E-mail: *MultsEmergency@NOAA.gov*. Include in the subject line the following: ''Comments on the Proposed Rule for Groundfish Emergency Action.''
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for Groundfish Emergency Action.''
- Fax: (978) 281–9135.

Copies of this rule, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this emergency interim final rule. Copies of the small entity compliance guide are available from the Regional Administrator at the above address. The EA/RIR/IRFA prepared for this action are also accessible via the Internet at *http://www.nero.nmfs.gov*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this emergency interim final rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rotsker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, intended to immediately reduce F on specific groundfish stocks beginning May 1, 2006, in order to maintain the rebuilding program established under Amendment 13 to the FMP. A proposed rule requesting public comment on this emergency action filed with the **Federal Register** on February 24, 2006, and published on March 3, 2006 (71 FR 11060). Public comments were accepted through March 9, 2006, as clarified through a correction to the proposed rule (71 FR 12669; March 13, 2006). A full discussion of the background of this emergency action was presented in the preamble to the proposed rule for this emergency action and is not repeated here. In summary, Amendment 13 established a biennial adjustment process to review the fishery and implement any changes necessary to ensure that the fishery continues to meet the Amendment 13 rebuilding objectives, including meeting the F targets for each year of the rebuilding program. The Groundfish Plan Development Team (PDT) of the New England Fishery Management Council (Council) utilized the results of the latest stock assessment, the August 2005 Groundfish Assessment Review Meeting (GARM II), to calculate estimates of the 2005 calendar year F for all groundfish stocks. This analysis indicated that F_{2005} for particular groundfish stocks, (*i.e.*, Gulf of Maine (GOM) cod, Cape Cod (CC)/GOM yellowtail flounder, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, GB winter flounder, white hake, and GB yellowtail flounder) is, in some cases, substantially less than that observed for 2004, but still higher than the 2006 target F specified in the Amendment 13 rebuilding program. As a result, F for these stocks must be reduced at the start of FY 2006 on May 1, 2006. The Council began the development of measures in FW 42 to the FMP that would achieve the necessary F reductions for FY 2006. However, at its November 15–17, 2005, meeting, the Council announced that it was not able to complete FW 42 in time for NMFS to implement these measures by May 1, 2006. Although at its January 31–February 2, 2006, meeting the Council voted to adopt a suite of management measures under FW 42, it is not possible to implement these measures by May 1, 2006.

Therefore, pursuant to section 305(c) of the Magnuson-Stevens Act, this interim final rule implements measures

to immediately reduce F for specific groundfish stocks and prevent overfishing in the groundfish fishery for the start of FY 2006 on May 1, 2006, until long-term management measures adopted by the Council in FW 42, if approved by NMFS, can be implemented. Justification of this emergency action for ecological, economic, and social reasons is contained in the preamble of the proposed rule for this action and is not repeated here.

Although the management measures implemented by this emergency action do not, by themselves, achieve the full Amendment 13 F reductions for all groundfish stocks that require F reductions for FY 2006, this action, in combination with measures adopted by the Council in FW 42, are intended to achieve the necessary Amendment 13 F objectives. To ensure that the groundfish fishery meets the Amendment 13 rebuilding objectives, additional management measures through Secretarial action may be necessary during FY 2006, especially if FW 42 is implemented later than anticipated.

The primary objective of this emergency action is to put into place a suite of simple, interim management measures by the start of FY 2006 that would immediately and substantially reduce F on several groundfish stocks most in need of F reductions to maintain the Amendment 13 rebuilding program. Other objectives include: (1) Implementing management measures that are as fair and equitable to all vessels as possible, as well as easy to understand, implement, administer and enforce; (2) implementing measures that are similar to those adopted by the Council in FW 42, to the extent practicable, in order to minimize confusion and adjustment to those measures, if FW 42 is approved and implemented; and (3) minimizing the social and economic impacts of the emergency measures as much as practicable while still meeting the F reduction objectives.

Because of the intense interest in this action and because the comment period for the proposed action was necessarily short, NMFS is implementing this as an emergency interim final rule and will accept public comment on the measures implemented by this action through May 15, 2006.

Management Measures Implemented by This Emergency Interim Final Rule

All measures in effect prior to May 1, 2006, and not amended by this emergency action, remain in effect. The current management measures include two default measures in Amendment 13 that were designed to go into place on May 1, 2006, unless certain conditions were met. One default measure for the revision of the allocation ratio of Category A:B DAS from 60:40 to 55:45, is not revised by this emergency action and will go into place on May 1, 2006. This measure, therefore, is not discussed specifically in the description of the measures implemented by this emergency action. However, the second default measure implemented by Amendment 13 (*i.e.*, differential DAS counting at a rate of 1.5:1 throughout the SNE/MA Regulated Mesh Area (RMA)) is revised by this emergency action, as described further below, and the revised measures, not the Amendment 13 default measure, will go into place on May 1, 2006.

A description of the management measures implemented by this emergency action follows.

1. Differential DAS Counting

Measures adopted by the Council in FW 42 rely upon reduced trip limits for GB winter flounder, GB yellowtail flounder, and white hake, rather than differential DAS counting, to achieve the necessary F reductions for these species during FY 2006. In response to public comment/concerns and further analysis, in order to more closely mirror the measures adopted by the Council in FW 42 and to more effectively achieve OY in the fishery, the differential DAS counting measure specified in the proposed rule for this action is revised to remove differential DAS counting for vessels participating in the U.S./Canada Management Area on GB and replace that proposed measure with trip limits for GB winter flounder and white hake adopted by the Council in FW 42 (see measures 5 and 6 below). This revision will allow vessels to more readily target healthy groundfish stocks on GB without compromising the rebuilding efforts of overfished stocks, particularly CC/GOM and SNE/MA yellowtail flounder stocks just outside the U.S./Canada Management Area along the South Channel. In addition to replacing the differential DAS counting measure on GB with trip limits for specific stocks needing F reductions for FY 2006, the Regional Administrator is able to exert additional controls that limit the F effects from potential redirected effort onto GB through the authority provided in the current regulations at § 648.85(a)(3)(iv) to modify access to the U.S./Canada Management Area, as well as trip limits for GB cod, GB haddock, and GB yellowtail flounder. This management strategy is consistent with the approach taken to restrict participation in the Regular B DAS Program to the U.S./Canada Management Area, as described in the proposed rule for this action.

Therefore, under this emergency action, all NE multispecies Category A DAS used by a vessel issued a limited access NE multispecies DAS permit, with the exception noted below, will be charged at a rate of 1.4:1, unless the vessel is participating in the U.S./Canada Management Area. Any Category A DAS used by a groundfish vessel that declares its intent to fish, and fishes, exclusively within in the U.S./Canada Management Area will be charged at a rate of 1:1. A vessel fishing both inside and outside of the U.S./Canada Management Area on the same trip must abide by the more restrictive regulations in either area. With respect to DAS, this means that any vessel that declares its intent to fish some or all of its trip, or fishes some or all of its trip other than for transiting purposes, inside and outside of either the Eastern or the Western U.S./Canada Area on the same trip will be charged Category A DAS at the rate of 1.4:1 for the entire trip, whether or not the vessel actually harvests fish from outside of the U.S./Canada Management Area. A vessel intending to fish, or fishing, within the Eastern U.S./Canada Area that also elects to fish within the Western U.S./Canada Area on the same trip must declare its intent to do so via VMS and will be charged Category A DAS at a rate of 1:1 for the entire trip (see measure 11 for further details). A vessel intending to fish, or fishing both inside and outside of the Western or Eastern U.S./Canada Areas must declare its intent to do so via VMS prior to leaving the dock and/or prior to leaving the Eastern U.S./Canada Area, respectively, and will be charged NE multispecies Category A DAS at a rate of 1.4:1 for the entire trip. For example, a groundfish trawl vessel fishing exclusively in the GOM on a 5-day (120-hr) trip would be charged for 7 DAS (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing exclusively in the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 5 days (120 hr) of DAS use. A groundfish trawl vessel that steams to and fishes both inside and outside of the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 7 days (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing in the Eastern U.S./Canada Area that elects to fish in the Western U.S./Canada Area on the same trip of 5 days (120 hr) would be charged for 5 days (120 hr) of DAS use. For further examples of the impact of fishing inside and outside of the

Eastern U.S./Canada Area, refer to the description of measure 11, Eastern U.S./Canada Area Flexibility.

Day gillnet vessels not participating in the U.S./Canada Management Area will be charged at a rate of 1.4:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 11 hours. For Day gillnet trips outside of the U.S./Canada Management Area of between 3 and 11 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing inside of the U.S./Canada Management Area will be charged DAS at a rate of 1:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 15 hours. For Day gillnet trips inside the U.S./Canada Management Area of between 3 and 15 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing in the GOM or the Western U.S./Canada Area for 10 hours would be charged for 15 hours of DAS use; a Day gillnet vessel fishing in the GOM for 10 hours would be charged for 14 hours of DAS use (10 hours × 1.4). A Day gillnet vessel fishing exclusively within the Western U.S./Canada Area for 20 hours would be charged for 20 hours of DAS use.

A vessel issued a limited access monkfish Category C, D, F, G, or H permit and fishing under a monkfish DAS will have its NE multispecies DAS charged at a rate of 1.4:1 when fishing outside of the U.S./Canada Management Area on any trip or portion of a trip, but its monkfish DAS will continue to be charged at a rate of 1:1, regardless of area fished. Because differential DAS counting of NE multispecies DAS could result in a net allocation of NE multispecies Category A DAS that is less than the number of monkfish DAS allocated, a Category C, D, F, G, or H monkfish vessel may fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. The number of monkfish-only DAS that may be used by a vessel is equal to the difference between the number of its net monkfish DAS allocation and the number of its net NE multispecies Category A DAS allocation. See § 648.92(b)(2)(iv) for definitions of net monkfish DAS and net NE multispecies Category A DAS. For any vessel that fishes any of its allocated NE multispecies Category A DAS outside of the U.S./Canada Management Area and is, therefore, subject to differential counting of NE multispecies DAS at a rate of 1.4:1, the number of monkfish-only DAS that may be used by that vessel is increased by 0.286 DAS for every NE multispecies DAS charged when fishing in the differential DAS area to adjust for differential DAS counting of NE multispecies DAS. This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS charged when fishing outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation − (Net Groundfish DAS Allocation ÷ 1.4). This adjustment is necessary to ensure that a monkfish Category C and D vessel is able to use its full allocation of monkfish DAS despite differential DAS counting of NE multispecies DAS. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies DAS outside of the U.S./Canada Management Area, the vessel is actually charged 2.8 NE multispecies DAS (2 DAS × 1.4), and its monkfish-only DAS are adjusted upwards by 0.57 DAS (2 DAS × 0.286). If this same vessel fishes exclusively within the U.S./Canada Management Area, the vessel would not be allocated any additional monkfish-only DAS and would be allowed to use only 10 monkfish-only DAS. All groundfish DAS must be used before a vessel can use any available monkfish-only DAS.

The proposed rule for this emergency action inadvertently failed to specify how differential DAS counting would affect the current cod running-clock requirement. The current cod running-clock requirements at § 648.86(b)(1)(ii) and (b)(2)(ii) mandate that any vessel that has been called into only part of an additional 24-hour DAS block, and possesses an additional day's worth of cod on board must keep its DAS clock running until the appropriate amount of time has elapsed. This measure was intended to ensure that the proper number of DAS were charged for the amount of cod landed. For example, a vessel that fishes in the GOM for 25 hours and lands 1,200 lb (544 kg) of cod (2 DAS of cod), would have been required to keep its DAS clock running until 48 hours had elapsed to cover the amount of cod landed. Under this emergency action, the cod running-clock provision is revised to account for differential DAS counting. Vessels fishing any part of a NE multispecies DAS trip in an area requiring differential DAS counting and that are using a vessel monitoring system (VMS) must declare that they have caught an additional day's worth of cod via VMS. Vessels fishing any part of a NE multispecies DAS trip in an area requiring differential DAS counting and that are not required to use VMS must call out of the DAS program upon landing and declare that they have caught an additional day's worth of cod via the Interactive Voice Response (IVR), or call-in system. Any trip of between 24–34 hours in duration will be charged 48 hours of DAS use because any trip of between 24–34 actual hours in duration, when charged at a rate of 1.4:1, calculates to less than the minimum of 48 hours of DAS use required to fully account for the amount of cod caught. For example, a trip that fished for 25 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod (2 day's worth), but would be charged 48 hours. This same trip, if charged at a rate of 1.4:1, would only be charged for 35 hours. Any trip greater than 34 hours would be charged at a rate of 1.4:1 for the entire trip. For example, a vessel that fished for 35 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod, but would be charged 49 hours (35 hours × 1.4 = 49 hours). Similarly, vessels fishing exclusively in the U.S./Canada Management Area under a Category A DAS for the entire trip will be required to declare that they have caught an additional day's worth of cod via VMS and will be charged additional DAS, rounded to the next whole DAS, at a rate of 1:1. For example, a vessel that fishes for 25 hours in the Western U.S./Canada Area could land up to 2,000 lb (907 kg) of GB cod (2 days' worth), but would be charged 48 hours. This strategy ensures that the original intent of the cod running-clock provision (*i.e.*, that vessels could land an additional day's worth of cod, provided they are charged up to an additional 24 hours of DAS use) is maintained, without compromising the conservation objectives of the differential DAS counting measure.

2. GOM Cod Trip Limit

For vessels operating under a NE multispecies DAS, the possession limit of GOM cod is reduced to 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip. For vessels operating under the limited access NE multispecies Handgear A permit regulations, the GOM cod possession limit is reduced to 250 lb (113 kg) per trip. The GOM cod trip limit for vessels operating under the open access Handgear B provisions is maintained at 75 lb (34 kg) per trip.

3. GB Yellowtail Flounder Trip Limit

The GB yellowtail flounder trip limit is reduced to 10,000 lb (4,536 kg) per trip. The Regional Administrator may increase or decrease the GB yellowtail

flounder trip limit to ensure that the GB yellowtail flounder total allowable catch (TAC) in the U.S./Canada Management Area is not under- or overharvested during FY 2006, pursuant to the authority provided in the existing regulations.

4. CC/GOM and SNE/MA Yellowtail Flounder Trip Limit

The CC/GOM and SNE/MA yellowtail flounder trip limits are revised as follows: 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip during July, August, September, December, January, February, March, and April; 250 lb (113 kg) per trip during May, June, October, and November.

5. GB Winter Flounder Trip Limit

Partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for GB winter flounder of 5,000 lb (2,268 kg) per trip. This trip limit will serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

6. White Hake Trip Limit

Similar to the trip limit for GB winter flounder, partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for white hake of 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip. This trip limit would serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

7. Modified Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by the FW 40A final rule (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a special access program (SAP) (and outside of closed areas) to target stocks that can withstand additional fishing effort. This emergency action continues a modified Regular B DAS Program that allows eligible vessels to target healthy groundfish stocks (primarily GB haddock) under a NE multispecies Regular B DAS without compromising the objectives of this emergency action. Because stocks in the GOM and SNE RMAs require substantial F reductions for FY 2006, participation in the Regular B DAS Program is restricted to the U.S./Canada Management Area on GB. A vessel participating in the Regular B DAS Program trip may fish under a NE multispecies Regular B DAS in the Eastern U.S./Canada Area and/or the Western U.S./Canada Area on the same trip, but may not fish in an approved SAP, in a closed area, or outside of the U.S./Canada Management Areas on the same trip.

All vessels issued a limited access NE multispecies permit and allocated Regular B DAS are eligible to participate in this program. To reduce F on monkfish resulting from the use of Regular B DAS, Category C, D, or F monkfish vessels may not use a NE multispecies Regular B DAS and a monkfish DAS under the Regular B DAS Program on the same trip. These vessels may still participate in the Regular B DAS Program, but they are required to fish under a NE multispecies DAS only and are subject to the incidental catch limits for monkfish when fishing under a NE multispecies Regular B DAS.

In order to limit the potential biological impacts of the program, only 500 Regular B DAS may be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). Only trips that were completed under a NE multispecies Regular B DAS (*i.e.*, trips that were not flipped to a Category A DAS) are counted towards the quarterly Regular B DAS limit. NMFS will administer the quarterly Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS does not serve to reserve a vessel's right to fish under a Regular B DAS. Once the maximum number of Regular B DAS are used in a quarter, the Regular B DAS Program will end for that quarter. These DAS are not allocated to individual vessels, but are used by participating vessels on a first-come, first-served basis. Regular B DAS used under this program accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS.

Vessels participating in this program must be equipped with an approved and operational VMS. The vessel owner or operator must notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice must provide the following information: Vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Prior to departing on the trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program are required to report their catches of groundfish stocks of concern (*i.e.*, cod, yellowtail flounder, winter flounder, American plaice, white hake, witch flounder) daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish, are not subject to this reporting requirement.

Vessels fishing in this program are prohibited from discarding legal-sized regulated groundfish, and will be limited to landing no more than 100 lb (45.4 kg) of each groundfish species of concern (cod, American plaice, white hake, winter flounder, witch flounder, and yellowtail flounder) per DAS, unless further restricted (see below). Vessels fishing with trawl gear must use a haddock separator trawl when participating in this program. For vessels fishing with trawl gear, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species. To further reduce the targeting of monkfish under this program, Category C, D, G and H monkfish vessels participating in this program are restricted by the monkfish incidental catch limits. In the Northern Fishery Management Area specified under the monkfish FMP, the limit is 400 lb (181 kg) tail weight per NE multispecies DAS, or 50 percent of the total weight of fish on board, whichever is less. In the Southern Fishery Management Area specified under the monkfish FMP, the incidental catch limit is 50 lb (23 kg) tail weight per NE multispecies DAS. Discarding of legal-sized monkfish is prohibited when fishing under this program. If a vessel harvests and brings on board legal-sized groundfish species of concern or monkfish in excess of these landing limits, the vessel operator must retain the excess catch, and notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS (''DAS flip'') prior to crossing the VMS demarcation line on its return trip to port. If a vessel flips from a Regular B DAS to a Category A

DAS, it will be charged Category A DAS at a rate of 1.4:1 for the entire trip if fishing any part of its trip outside of the U.S./Canada Management Area, or 1:1 if fishing exclusively within the U.S./Canada Management Area for the entire trip; will be subject to the possession and landing restrictions that apply to the fishery as a whole (*i.e.*, not the Regular B DAS Program limits); and may discard species to maintain compliance with possession and landing restrictions outside of the Regular B DAS Program.

In order to ensure that a vessel always has the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), in the case of a vessel that fishes all of its DAS outside of the U.S./Canada Management Area, the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip divided by 1.4. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5 divided by 1.4, or 3.6 days. However, to ensure that there is an adequate amount of Category A DAS available should the vessel be required to ''flip'' its DAS, it is advisable that a vessel owner, when planning a Regular B DAS Program trip, fish a lower number of Regular B DAS than the required maximum number.

In order to limit the potential impact on F that the use of Category B DAS (Regular or Reserve) may have on groundfish stocks of concern, a quarterly incidental catch TAC is set for groundfish stocks of concern for each program allowing the use of Category B DAS (Regular or Reserve). This action adds GB winter flounder and GB yellowtail flounder to the list of groundfish stocks of concern, based on the results of GARM II, and allocates a portion of the incidental TAC to the Regular B DAS Program, as specified in further detail below. The Regular B DAS Program quarterly incidental catch TACs are divided to correspond to the allocation of Regular B DAS among quarters, such that the 1st quarter (May–July) receives 13 percent of the incidental TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the incidental TACs. The specific TACs specified for this program has been proposed by a concurrent agency action, which published in the **Federal Register** on March 13, 2006 (71 FR 12665). If the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the U.S./Canada Management Area are prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter.

The Regional Administrator has the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program, or if the level of observer coverage were insufficient to make such a projection.

8. Redefinition of Incidental Catch TACs and Allocation to Special Programs

Incidental catch TACs were first adopted in FW 40A in order to limit the catch of stocks of concern while vessels were using Category B DAS. As a result of groundfish assessments completed under GARM II, FW 42 proposes to modify the number of incidental catch TACs, as well as the size and allocation of such incidental catch TACs. FW 42 proposes the creation of two new stocks of concern (GB yellowtail flounder and GB winter flounder) and the specification of incidental catch TACs for these two species, as well as the modification of the size of the incidental catch TACs with respect to the target TACs from which they are calculated (see Table 1). These incidental catch TACs limit the impact of the use of Category B DAS on stocks of concern.

Because FW 42 has been delayed, the definition of the two new stocks of concern, the creation of two new incidental catch TACs, and the reallocation of incidental catch TACs among special programs is implemented through this action (see Table 2) on an interim basis. Although this action does not impact many stocks of concern, in order to simplify the process of TAC specification for FY 2006, as well as reduce confusion in the industry, this action defines the incidental catch TACs for all stocks of concern, and allocates TAC among programs consistent with FW 42 proposals. This action does not specify values for TACs for FY 2006. A separate action will specify all TACs for the FMP for FY 2006 (Incidental Catch TACs, Target TACs, and U.S./Canada Management Area TACs for GB), as proposed in the **Federal Register** on March 13, 2006 (71 FR 12665).

TABLE 1.—DEFINITION OF INCIDENTAL CATCH TACS

Stock	Percentage of total target TAC
GB cod	2
GOM cod	1
GB yellowtail flounder	2
CC/GOM yellowtail flounder	1
SNE/MA yellowtail flounder	1
American plaice	5
Witch flounder	5
SNE/MA winter flounder	1
GB winter flounder	2
White hake	2

These incidental catch TACs will be distributed to the various programs that utilize Category B DAS and catch these stocks of concern. The incidental catch TACs are proposed to be distributed among the Category B DAS programs as indicated in Table 2:

TABLE 2.—DISTRIBUTION OF INCIDENTAL CATCH TACS FOR CATEGORY B DAS PROGRAMS

Stocks of concern	Regular B DAS program (percent)	Closed area I hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod	50	16	34
GB yellowtail flounder	100	NA	NA
GB winter flounder	100	NA	NA
Witch flounder	100	NA	NA
American plaice	50	NA	50
White hake	50	NA	50

9. DAS Leasing Program

The DAS Leasing Program was implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery, and will expire on April 30, 2006. This action continues the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

10. Eastern U.S./Canada Haddock SAP Pilot Program

This emergency action delays the opening of the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 until August 1 and allocates a portion of the GB yellowtail flounder and GB winter flounder incidental catch TAC to the Eastern U.S./Canada Haddock SAP Pilot Program (see Table 2). Once any of these incidental catch TACs is caught, the use of Category B (Regular or Reserve) DAS in this SAP are prohibited. As explained above, the value of these new incidental catch TACs are being proposed through a concurrent agency action for implementation by May 1, 2006. Finally, possession of flounders (all species, combined); monkfish (whole weight); and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl in this SAP.

11. Eastern U.S./Canada Area Flexibility

This emergency action allows a vessel that begins a fishing trip in the Eastern U.S./Canada Area to choose to fish in other areas on the same trip. If a vessel chooses to fish outside of the Eastern U.S./Canada Area after fishing inside that area, the operator must notify NMFS via VMS either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area on its return to port, and must comply with the most restrictive possession limits and DAS charge for the areas fished. A vessel electing to fish inside and outside of the Eastern U.S./Canada Area is charged Category A DAS at a rate of 1:1 for the entire trip, if fishing only within the Eastern and Western U.S./Canada Area; or at a rate of 1.4:1 for the entire trip, if the vessel fishes outside of the U.S./Canada Management Area at any time during the trip; and the vessel will not receive any steaming time credit. In addition, all cod and haddock caught on the entire trip is applied against the Eastern U.S./Canada Area TACs for these species; all yellowtail flounder caught is applied to the overall U.S./Canada Management Area TAC for this species. For example, if a vessel elects to fish inside of the Eastern U.S./Canada Area and in the GOM on the same trip, the vessel would be charged Category A DAS at a rate of 1.4:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for CC/GOM yellowtail flounder (*i.e.*, 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip) and GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). Conversely, if a vessel elects to fish inside of the Eastern and Western U.S./Canada Area for the entire trip, the vessel would be charged Category A DAS at a rate of 1:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). The vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip. A vessel is prohibited from fishing outside of the Eastern U.S./Canada Area on the same trip if it has already exceeded the restrictive possession limits for a particular species outside of the Eastern U.S./Canada Area. For example, if a vessel fishing in the Eastern U.S./Canada Area in June has already caught 500 lb (226.8 kg) of GB yellowtail flounder, the vessel operator would be prohibited from fishing in the GOM RMA or SNE/MA RMA on the same trip because the vessel has already exceeded the June SNE/MA and GOM yellowtail flounder possession limit of 250 lb per trip (113.4 kg per trip) proposed by this action. However, the vessel could continue to fish within the Western U.S./Canada Area for the remainder of the trip.

12. Recreational Restrictions

Private recreational vessels and vessels fishing under the charter/party regulations of the FMP are prohibited from possessing or retaining any cod from the GOM RMA from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM is increased from 22 inches (56 cm) to 24 inches (61 cm) for the duration of this emergency action. Private recreational and charter/party vessels are allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

13. Removal of the Haddock Trip Limits

FW 33 to the FMP, which became effective May 1, 2000 (65 FR 21658), implemented the current haddock trip limit regulations at § 648.86(a). To ensure that haddock landings do not exceed the target TAC, FW 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies DAS and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. To prevent the underharvest of the haddock TACs, the regulations at § 648.86(a)(1)(iii)(B) specify that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted or eliminated through publication of a notice in the **Federal Register**.

For FY 2006, the proposed U.S. portion of the target TAC for haddock (GB and GOM combined) is 36,588 metric tons (mt) (March 13, 2006; 71 FR 12665). Based on recent historical fishing practices and preliminary landings data, it is projected that less than 75 percent of the haddock target TAC for FY 2006 (27,441 mt) will be harvested by April 30, 2007, under the restrictive daily possession and trip limits. Furthermore, this projection indicates that eliminating the daily and maximum trip limits for haddock would not likely precipitate haddock landings reaching the U.S. portion of the Eastern U.S./Canada Area haddock TAC of 7,480 mt. Therefore, the Regional Administrator has determined that eliminating the 3,000-lb (1,360.8-kg) and 5,000-lb (2,268-kg) daily haddock possession limits, as well as the maximum trip limits of 30,000-lb (13,608-kg) and 50,000-lb (22,680-kg) for May 1 through September 30, 2005, and October 1, 2005, through April 30, 2006, respectively, will increase the likelihood that at least 75 percent of the target TAC will be harvested for FY 2006. The removal of the daily and maximum trip limits for haddock for FY 2006 through this emergency interim rule would provide additional sources of fishing revenue and regulatory relief to help mitigate some of the adverse economic impacts of continued effort reductions necessary in this emergency action. In order to prevent the TAC from being exceeded, the Regional Administrator will continue to monitor haddock landings and adjust the trip limit through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii), if necessary.

Comments and Responses

Forty-five comments were received during the comment period for the proposed rule for this action, including three from groups representing the fishing industry, two from groups representing conservation interests, five from elected officials, and one from the State of Maine Division of Marine Fisheries (State of Maine). Three comments were received after the comment period had closed (i.e., after March 3, 2006) and were not considered. In addition, several commenters expressed concerns that were not relevant to the proposed action. Since these concerns were not directed at the proposed measures or other aspects of this emergency action, NMFS is not responding to these particular concerns in this preamble.

Differential DAS Counting

Comment 1: Twenty commenters indicated that the proposed action's broad approach to reducing F on all groundfish stocks through the use of differential DAS counting in all areas is inappropriate, especially considering that the catches of healthy stocks would also be reduced. These commenters stated that a targeted regional approach to reduce F would better address excessive F on some stocks without unnecessarily reducing F on healthy stocks.

Response: NMFS agrees that differential DAS counting on GB may unnecessarily reduce the ability to achieve OY from healthy groundfish stocks on GB. After further consideration, NMFS concludes that a more targeted approach is likely to reduce F on specific GB stocks without reducing the catch of healthy groundfish stocks. As discussed in further detail in the response to Comment 7, NMFS has decided to implement the proposed FW 42 trip limits for GB winter flounder and white hake (*i.e.*, 5,000 lb (2,268 kg) per trip and 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip, respectively) and eliminate the differential DAS counting measure for vessels fishing under a NE multispecies DAS in the U.S./Canada Management Area under this emergency action. The management measures currently specified for the U.S./Canada Management Areas provide additional assurance that any potential redirected effort onto GB would not increase F on other overfished stocks such as GB cod and GB yellowtail flounder. Specifically, the current regulations require all vessels participating in the U.S./Canada Management Area to use VMS and submit daily catch reports for GB cod, GB haddock, and GB yellowtail flounder. These stocks are managed by hard TACs (*i.e.*, the fishery is closed if the TAC is reached) on all or portions of these stocks within the U.S./Canada Management Area. Through VMS and daily catch reports, vessel activity and groundfish catch within the U.S./Canada Management Area can be effectively monitored. In addition, the U.S./Canada Management Area regulations provide the Regional Administrator with the authority to modify trip limits and access to the U.S./Canada Management Area to control effort in this area and to ensure that the TACs for cod, haddock, and yellowtail are not exceeded during the fishing year. Thus, this revision would allow vessels to achieve OY from healthy groundfish stocks from this area, while providing assurances that redirected effort onto GB would not result in excessive F for other groundfish stocks. In combination with the subsequent management measures proposed in FW 42, this emergency action will likely achieve all of the necessary F reductions for FY 2006, resulting in F rates that are consistent with the requirements of the Amendment 13 rebuilding schedule, without unnecessarily sacrificing yield from healthy groundfish stocks.

However, differential DAS counting is appropriate in the GOM and SNE/MA RMAs. As specified above, results of the most recent biennial adjustment process indicated that F on two groundfish stocks in both the GOM (cod and yellowtail flounder) and SNE/MA (yellowtail flounder and winter flounder) RMAs exceed the 2006 F targets specified in Amendment 13 and require substantial F reductions. Because the groundfish fishery is characterized as a commingled fishery, with many species concentrated in mixed assemblages, it is difficult to target management measures that affect one stock without also affecting other stocks. Therefore, the proposed emergency measures were developed over a broad geographic scale in order to ensure that stocks that need F reduction are adequately protected. Although these stocks are found in higher concentrations in somewhat localized areas, due to concerns over bycatch and discards, it is important that management measures protect these stocks throughout their entire range. In addition, the stocks in the GOM and SNE/MA RMAs, particularly the yellowtail flounder stocks, are severely overfished and require the greatest F reductions to maintain consistency with the Amendment 13 rebuilding programs. Spawning stock biomass for both stocks continue to decline and F for SNE/MA yellowtail flounder continues to increase. Protecting these stocks throughout their entire range would be consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would decrease the likelihood that these stocks would meet the Amendment 13 F objectives. Therefore, differential DAS counting for vessels fishing outside of the U.S./Canada Management Area, including throughout the entire GOM and SNE/MA RMAs, is implemented by this emergency interim rule.

Comment 2: Several commenters suggested that NMFS should implement management measures that specifically target those vessels that contributed the most to the high F's observed by the most recent stock assessment, and contend it would be unfair for all vessels, even those who did not target the overfished stocks, to bear the burden of additional restrictions. Ten commenters, including three industry groups and the State of Maine, asserted that the proposed differential DAS counting does not address the underlying problems causing the excessive F on some stocks, as an inshore fishery directing on GOM cod is maintained.

Response: All vessels that caught groundfish species, particularly GOM cod or CC/GOM and SNE/MA yellowtail flounder, contributed to the excessive F's observed in the recent stock assessment. The measures implemented by this emergency action treat the fishery as a whole and apply the necessary effort reductions in a fair and equitable manner to all fishery participants, consistent with National Standard 4 guidelines. This is consistent with the approach taken by NMFS in previous groundfish actions. The proposed measures are intended as a temporary stop-gap measure necessary only to immediately reduce F until long-term measures proposed in FW 42 can be implemented. During the development of FW 42, the Council considered several mechanisms to more specifically target the causes of excessive F in the groundfish fishery, including a 24-hour minimum DAS charge (Alternative 4) and an individual quota system (*i.e.*, ''the industry proposal''). The Council ultimately chose not to pursue such targeted management strategies, electing to adopt a broader strategy through differential DAS counting instead. FW 42 relies upon a mandatory VMS requirement for all vessels fishing on a NE multispecies DAS and other measures to more directly address F on specific

groundfish stocks by implementing area-specific differential DAS counting measures. Given the limited time available to develop, review, and implement the management measures under this emergency action, it was not possible to implement area-specific differential DAS counting measures identical to those in FW 42 in time for the required May 1, 2006, implementation date. The FW 42 measures were not adopted by the Council until after the analysis for this emergency action was completed and because other regulatory requirements necessary to implement the area-specific measures in FW 42 would delay implementation of this action beyond May 1, 2006. Both the differential DAS counting strategies in this emergency action and those adopted by the Council in FW 42 maintain an inshore fishery for GOM cod to some degree. However, both actions attempt to minimize incentives to specifically target GOM cod. This emergency action utilizes differential DAS counting at a rate of 1.4:1 in the GOM, in combination with low trip limits for GOM cod, to minimize incentives to target GOM cod, while FW 42 relies upon a higher trip limit and differential DAS counting rate of 2:1 in a more confined area of the GOM. This emergency action takes the same basic approach toward achieving the necessary F reductions as FW 42, but applies the measures in a slightly different manner throughout the entire range of the GOM and SNE/MA groundfish stocks. Differential DAS counting for all Category A DAS used outside of the U.S./Canada Management Area, along with the trip limits implemented by this action, are designed to achieve the necessary F reductions for GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake, and will substantially reduce F on CC/GOM yellowtail flounder in FY 2006. This action, as implemented through this emergency interim rule, more closely resembles measures adopted under FW 42 than did the proposed measures, in that differential DAS counting will not apply to any Category A DAS used in the U.S./Canada Management Area on GB. This will provide the fishery more opportunity to achieve OY from healthy groundfish stocks while providing assurances that any redirected effort onto GB will not jeopardize the rebuilding of overfished stocks such as GB cod and GB yellowtail flounder, consistent with the requirements of National Standard 1.

Comment 3: One industry group suggested that the differential DAS counting measure, as proposed (*i.e.*, differential DAS counting in all areas) would encourage effort to shift to other areas. One environmental group disagreed, stating that the proposed management measures would prevent the redirection of effort.

Response: NMFS asserts that the management measures contained in the proposed rule for this action (*i.e.*, differential DAS counting in all areas) would have prevented the redirection of effort into other areas. While the measures originally proposed would have prevented overfishing and eliminated incentives to redirect effort into other areas, based on more recent analyses, NMFS has concluded that those measures would have unnecessarily reduced the catch of healthy groundfish stocks which may have hampered achieving OY from the fishery. Consistent with National Standard 1, NMFS has revised the proposed differential DAS counting measures to more effectively prevent overfishing and achieve OY in the fishery, while limiting the impacts of potential redirected effort. As described in further detail in the response to Comment 7, NMFS has eliminated differential DAS counting for vessels fishing in the U.S./Canada Management Areas on GB. Analysis of the impacts of this revision indicate that this action would achieve the necessary F reductions for several groundfish stocks. While more GB cod would be caught under this interim action than under the original proposed measures, F on GB cod is still reduced. GB cod mortality is consistent with the Amendment 13 F targets for FY 2006; thus, the Amendment 13 rebuilding trajectory is maintained. In addition, the potential of redirected effort onto GB due to this revision of the proposed action is mitigated by the current management restrictions of the U.S./Canada Management Area. These restrictions facilitate the effective monitoring of any additional effort by requiring vessels to use a VMS and submit daily catch reports. In addition, the Regional Administrator is authorized to modify trip limits and access to the U.S./Canada Management Area in order to ensure that the U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder are not exceeded during the fishing year. These provisions help ensure that the impacts of any redirected effort onto GB are accounted for and are limited. Any impacts resulting from the redirection of effort into other programs such as the approved SAPs or the Regular B DAS Program is also limited by the regulations governing those individual programs and does not compromise the rebuilding objectives of this action or the fishery.

Comment 4: Nineteen commenters were concerned that counting DAS used at a rate of 1.4:1 in the entire GOM rather than for just a portion of the GOM will increase incentives to fish inshore on GOM cod, suggesting that the proposed action increases F on GOM cod, rather than reducing it. These commenters assert that vessels will fish closer to shore because of the high DAS cost to fish offshore. Further, they contend that vessels will take advantage of the reduced differential DAS counting rate in the inshore GOM during the emergency action, compared to the higher rate proposed under FW 42 (*i.e.*, 2:1), to maximize earnings during the summer months when fish are available and prices are high. Finally, one commenter claimed that the proposed differential DAS counting throughout the GOM violates National Standard 1 of the Magnuson-Stevens Act.

Response: The proposed differential DAS counting measure, in conjunction with the reduced trip limit for GOM cod (*i.e.*, 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip), is intended to minimize incentives to target GOM cod without subsequently increasing discards or discard F. As explained further in Comment 16 below, some commenters, including the State of Maine, supported reducing the GOM cod trip limit to 400 lb/DAS if it would further reduce incentives to target GOM cod. While NMFS agrees that a reduced trip limit, in conjunction with differential DAS counting, will reduce incentives to target GOM cod, a lower trip limit than that proposed would likely result in excessive discards and discard F. As described in the Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement), it is projected that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, would attempt to maximize their return on every trip and would attempt to convert any discards into landings. Effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should decrease incentives to target GOM cod, as decreasing the available Category A DAS and reducing the GOM cod trip limit under this action will make trips less profitable and will decrease incentives for targeting cod.

NMFS acknowledges that the reduced differential DAS counting rate applied throughout the entire GOM as proposed may seem to provide incentives for offshore vessels to target inshore GOM cod. However, for the reasons stated above, NMFS contends that such incentives are minimized due to the reduced GOM cod trip limit. In addition, over the past 5 years, prices for cod in Boston during the months this action is likely to be in effect (*i.e.*, May through July) are the lowest of the year. Further, it is likely that inshore vessels will fish more of their allocated DAS under this emergency action due to the reduced differential DAS counting rate. In doing so, prices for GOM cod could possibly decrease further during the summer months than previously observed, further decreasing the profitability of targeting inshore GOM cod. Also, fishing a majority of allocated DAS at the beginning of the fishing year would minimize the potential to earn a steady income from groundfish throughout the year, as a vessel would have fewer DAS to fish for the remainder of the year. This would also limit a vessel's ability to capitalize on the historically higher prices offered for cod during the late fall through early spring months. As a result, there are fewer incentives for vessels to fish inshore on GOM cod under this emergency action. Furthermore, based on historical fishing practices, few trips were taken in the offshore GOM between May and July. During FY 2005, trips taken outside of the inshore GOM area proposed in FW 42 between May and July accounted for less than 5 percent of the trips taken in the GOM during FY 2005 to date. Because vessels that historically fish in the offshore portion of the GOM do not take many trips in this area between May and July, and because they would be charged DAS at a higher rate during this time, there are few incentives to increase fishing trips in the GOM during these months. Waiting to fish under the measures proposed in FW 42 (*i.e.*, no differential DAS counting in the offshore portion of the GOM) would allow these vessels to maximize the value of their DAS allocation. Finally, because this emergency action charges vessels participating in the U.S./Canada Management Area at a rate of 1:1 instead of the differential DAS counting rate of 1.4:1, there are actually incentives to fish outside of the GOM and within the U.S./Canada Management Area. Therefore, based on past fishing practices, historical market conditions, 1:1 DAS counting within the U.S./Canada Management Area, and the potential incentives to wait until FW 42 is implemented, it is unlikely that offshore vessels would have sufficient incentive to change their previous fishing behavior to target inshore GOM cod under this emergency action.

Some commenters have suggested that vessels will wait to fish under the proposed FW 42 measures, while others contend that vessels will increase effort under the proposed emergency action. Because incentives to fish on GOM cod during this emergency action will vary among individual fishermen based on their DAS allocations, previous fishing practices, gear fished, target species, and market conditions, it is difficult to predict the behavior of individual fishermen operating under these emergency measures.

The Closed Area Model (CAM) attempts to incorporate profit maximization behavior into its assessment of F impacts of proposed measures. This model assumes that every vessel will attempt to fish in a manner that maximizes the profit of fishing operations, thereby modeling potential changes in fishing behavior to adapt to changing regulations. In doing so, the CAM attempts to estimate F effects base on anticipated behavior in response to the proposed measures. Although competing incentives may exist under this emergency action, the results of the CAM analysis indicate that the emergency measures are successful at achieving the necessary F reductions for GOM cod. Because the CAM already incorporated profit maximization behavior, the results of the CAM indicate that, should offshore effort shift to targeting inshore GOM cod under this emergency action in order to maximize returns from allocated DAS, the emergency measures would likely still be able to achieve the F reductions necessary to maintain the Amendment 13 rebuilding programs. Combined with the measures proposed in FW 42, this emergency action will continue to rebuild GOM cod, despite potential changes in vessel behavior.

Finally, the commenter who suggested that applying differential DAS counting throughout the GOM is not consistent with National Standard 1 did not offer a reason. Presumably, this commenter was concerned that the proposed measure would not allow for the achievement of OY. This emergency action is a emergency action intended to immediately reduce F on the necessary stocks for the start of FY 2006. This action is not required, by itself, to completely end overfishing and rebuild overfished stocks. However, this action does immediately and substantially reduce F on GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake enough to achieve the rebuilding objectives of the FMP, which complies with National Standard 1 and other applicable law in that it ends overfishing and rebuilds overfished groundfish stocks within the required timeframe. The rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, and is consistent with the national standard guidelines at § 600.310. Because these emergency measures ensure that several grounfish stocks remain on the Amendment 13 rebuilding trajectory, they are consistent with National Standard 1.

Comment 5: Eight commenters, including two elected officials, suggested that the proposed differential DAS counting approach will reduce haddock landings by forcing offshore vessels to stop fishing until differential DAS counting in the offshore portion of the GOM is eliminated upon the implementation of FW 42. These commenters indicated that this would impact shoreside infrastructure and compromise domestic fish markets by reducing the domestic supply of fish.

Response: As described in the response to Comment 4, it is nearly impossible to accurately predict expected vessel behavior in relation to the measures in either this emergency action or FW 42. Further, there are conflicting incentives that make fishing during the emergency action more beneficial than waiting for the implementation of the proposed FW 42 measures for some vessels, but less beneficial for other vessels. It is unclear how fishermen will react to these measures, increasing the difficulty of projecting the impact to shoreside infrastructure. There is the possibility that some vessels would elect not to fish during the emergency action. This could reduce the supply of haddock and other groundfish species to domestic markets, encouraging fish processors to seek fish supply from other markets, both foreign and domestic.

While the differential DAS counting measure in this emergency action could reduce the amount of fish landed from the offshore GOM, the action is intended to maintain additional opportunities to fish in a manner that would result in a smaller DAS charge than if the vessel fished an equivalent length trip in the GOM under differential DAS counting. For instance, this action continues a modified Regular B DAS Program that would have otherwise expired. This allows vessels to target GB haddock and other healthy GB groundfish stocks while fishing

under a Regular B DAS. Category B DAS are not charged at the differential rate of 1.4:1, but are charged on a calendar day basis. Charging Category B DAS in this manner results in less of a DAS charge than differential DAS counting, particularly for longer trips. In addition, this action, as revised, does not implement differential DAS counting for vessels fishing in the U.S./Canada Management Area. Therefore, a vessel could fish in the U.S./Canada Management Area during this emergency action and avoid differential DAS counting. In addition, a vessel fishing in the Eastern U.S./Canada Area is not be charged for steaming time to and from this area. As a result, this action maintains several opportunities for vessels to continue to land groundfish species with less of a DAS charge than if the vessel fished exclusively in the offshore GOM. By providing these additional opportunities, it is intended that any disruption to the supply of fish would be minimized. Moreover, this emergency action is temporary in nature. Measures under FW 42 will likely become effective a few months after the start of the fishing year, if approved. Any disruptions to shoreside infrastructure thus would be temporary.

Comment 6: Four commenters recommended that NMFS allow VMS vessels, or vessels issued a letter of authorization (LOA), to fish under the proposed FW 42 measures. These commenters suggested that VMS and/or the LOA would facilitate the enforcement of area-specific differential DAS counting measures proposed in FW 42.

Response: NMFS has revised this emergency action to remove the differential DAS counting requirement for vessels participating in the U.S./Canada Management Area and implements the proposed FW 42 trip limits for GB winter flounder and white hake instead. This revision partially addresses the concerns expressed by these commenters in that it allows vessels already using VMS to fish under the proposed FW 42 measures when fishing in the U.S./Canada Management Area. Because the existing regulations for the U.S./Canada Management Area require vessels to use a VMS, vessels that do not already have a VMS unit must purchase and install one to take advantage of 1:1 DAS counting within the U.S./Canada Management Area.

It would not be appropriate to allow vessels using a VMS in the GOM or SNE/MA RMAs, or allow vessels that have been issued a LOA to fish under the proposed FW 42 measures. First, the measures adopted by the Council in FW 42 have not been formally determined to be consistent with the national standards of the Magnuson-Stevens Act or other applicable law. These measures are currently under review. Further, to date, NMFS has not solicited public input regarding the FW 42 measures through a proposed rule. Although several individuals have expressed support for the proposed FW 42 measures through comments on this emergency action (see Comment 9 below), there are others who do not agree with this management strategy. Because of the substantive and controversial nature of the proposed FW 42 measures, it is important to consider additional public comment on the proposed FW 42 measures prior to implementing such measures through this emergency action. While the use of VMS or a LOA may facilitate the enforcement and administration of the FW 42 area-specific measures, it is still very difficult to effectively enforce area-specific DAS requirements via an LOA. Enforcement of such a measure requires increased at-sea enforcement beyond that used to enforce the LOA for possession limits, because DAS are used as the primary effort control for the groundfish fishery. If DAS are not properly charged, the F objectives of the FMP may be exceeded. There are significant incentives to violate the conditions of the LOA due to difficulty enforcing such a provision, especially after Category A DAS are further reduced by the Amendment 13 default DAS reduction on May 1, 2006. Because of limited at-sea enforcement capability and incentives to avoid differential DAS counting, enforcement of the differential DAS counting areas proposed by FW 42 is problematic under a LOA.

Comment 7: One commenter indicated that the Amendment 13 default DAS reduction scheduled for implementation on May 1, 2006, should be able to sufficiently reduce F for GB winter flounder, while another individual claimed a trip limit would suffice. One commenter recommended that NMFS implement the trip limits for GB winter flounder and white hake adopted by the Council in FW 42. Four commenters contested that differential DAS counting on GB is unnecessary and compromises the ability of the fishery to maximize benefits of resources on GB, as required by National Standards 1 and 8. These individuals assert that there is no need for emergency action on many of the stocks on GB, especially GB winter flounder, as this stock is only marginally overfished. Eight individuals contend that differential DAS counting will significantly reduce catches of healthy stocks, sacrificing yield from these stocks and failing to achieve OY for these stocks in violation of National Standard 1. Finally, one commenter supported the proposed differential DAS counting on GB, indicating that it will achieve F reductions for the stocks in need of F reductions and offers further protection and benefits for GB cod.

Response: The Amendment 13 default DAS reduction will reduce F on GB winter flounder by approximately 7 percent, GB yellowtail flounder by 5 percent, and white hake by just over 2 percent. Based on the results of GARM II, F on these stocks must be reduced by 46 percent, 40 percent, and 13 percent, respectively. As a result, the default measures are insufficient to achieve the necessary F reductions for these stocks. Therefore, additional measures need to be implemented in order to maintain the Amendment 13 rebuilding programs for specific stocks.

In a mixed-stock fishery, it is virtually impossible to reduce F, and therefore yield, from one stock without affecting the yield from another stock. Therefore, necessary F reductions on one stock will also result in F reductions on other stocks. NMFS first proposed differential DAS counting on GB because, at the time that the proposed emergency measures were developed and analyzed, the Council had not considered measures to achieve the necessary F reductions for GB winter flounder or white hake. The trip limits ultimately adopted by the Council in FW 42 were first proposed by the PDT in late January 2006 and were only considered by the Council at its February 1–2, 2006, meeting. Differential DAS counting on GB achieved the necessary F reductions for white hake and substantially reduced F on GB winter flounder, but at the expense of reduced yield from other healthy groundfish stocks. Final analysis on the proposed FW 42 measures was not completed until early March 2006. This analysis indicates that the proposed FW 42 measures, including the trip limits for GB winter flounder and white hake, achieve the necessary F reductions for GB winter flounder and white hake, while minimizing reductions in yield of healthy groundfish stocks on GB such as haddock, pollock, American plaice, and witch flounder.

NMFS acknowledges that applying differential DAS counting on GB may reduce the yield of some healthy groundfish stocks, reducing the likelihood of achieving OY for those stocks. However, NMFS remains concerned about the potential for redirected effort onto GB. Although

many of the groundfish stocks on GB do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, there are several stocks on GB that are seriously overfished with overfishing occurring, especially GB cod and GB yellowtail flounder. These stocks require careful management to ensure that they remain on the rebuilding schedules adopted in Amendment 13. If effort were to shift onto GB, there is the potential that this effort would increase F on GB cod, especially considering that only part of the GB cod stock within the Eastern U.S./Canada Area is managed by a hard TAC. In addition, considering that the proposed TAC for GB yellowtail flounder is 51 percent less than the 2005 TAC, increasing F on this stock would only cause additional future reductions in available catch. As a result, increasing F on either GB cod or GB yellowtail flounder could potentially undermine rebuilding efforts for these stocks. Therefore, it is important to ensure that redirected effort onto GB does not jeopardize efforts to protect these other overfished stocks on GB.

NMFS explored the feasibility of removing differential DAS counting on GB and implementing the proposed FW 42 trip limits for GB winter flounder and white hake instead. Without differential DAS counting in all areas, NMFS was concerned that redirected effort may substantially increase F on other overfished groundfish stocks, particularly on GB. Therefore, any option to remove differential DAS counting on GB would need to achieve the necessary F reductions for groundfish stocks on GB without leading to increased F on other overfished stocks. Because the GB RMA includes portions of the CC/GOM and SNE/MA yellowtail flounder stock areas, stocks that are severely overfished and require substantial F reductions in FY 2006, NMFS did not consider any options that could potentially increase effort and, therefore, F on these stocks. Because the U.S./Canada Management Area encompass the vast majority of the waters within the GB RMA, but does not include any portion of the CC/GOM and SNE/MA yellowtail flounder stock areas, NMFS focused on analyzing options that would remove the differential DAS counting requirement for vessels fishing in the U.S./Canada Management Area. In addition, the current regulations governing the U.S./Canada Management Area provide greater assurance that any redirected effort would not increase the F on other overfished groundfish stocks, because a portion of the GB cod stock and the entire GB yellowtail flounder stock is managed by a hard TAC within the U.S./Canada Management Area. Further, any vessel fishing in the U.S./Canada Management Area is required to use a VMS and submit daily catch reports. NMFS can more easily monitor groundfish catch from the U.S./Canada Management Area in an effort to more accurately project catch rates and more effectively assess the scale of potential redirected effort onto GB. In addition, pursuant to the regulations at § 648.85(a)(3)(iv)(D), the Regional Administrator has the authority to modify trip limits and access to the U.S./Canada Management Areas to ensure that TACs specified for these areas is not exceeded. This provides sufficient authority for the Regional Administrator to ensure that redirected effort does not compromise the rebuilding objectives of the FMP. As a result, NMFS analyzed two options to eliminate differential DAS counting on GB: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area; and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. The results of preliminary analysis for these options indicated that either option would result in comparable ecological impacts to those from the original proposal to implement differential DAS counting throughout the entire GB RMA. Under each option, F, and, therefore, yield, would increase for some stocks, but decrease for others. For example, under the original proposal (*i.e.*, differential DAS counting in all areas), F of GB haddock would decrease by 17 percent. Under revised Option 1, F on GB haddock would decrease by only 5.6 percent, while F on GB haddock would decrease by nearly 24 percent under Option 2. Overall, revised Option 1 achieves greater ecological benefits than the original proposal. Option 1 would achieve the necessary F reductions for five stocks (GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), while the original proposal would only achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake). Option 2 would not meet the necessary F reductions for GOM cod, CC/GOM yellowtail flounder, or GB winter flounder and would result in additional reductions in F for healthy stocks beyond the original proposal. In addition, revised Option 1 would not excessively reduce the potential yield from healthy groundfish stocks compared to the other two options. Economic analysis of these options indicates that revised Option 1 would offer substantially fewer adverse economic impacts than the original proposal. For example, Option 1 would result in an estimated $16.8 million in reduced groundfish sales, while the original proposal and Option 2 would result in an estimated $22.6 million and $21.6 million reduction in groundfish sales, respectively. Adverse economic impacts to most ports would be less under Option 1, as well. Because Option 1 would achieve the necessary F reductions for nearly all of the stocks requiring F reductions for FY 2006 and attempts to minimize reductions in the potential yield from heathy groundfish stocks, Option 1 more closely achieves OY, as required by National Standard 1, than either the original proposal or Option 2. Because Option 2 would not achieve the necessary F reductions, would further reduce yield from healthy groundfish stocks compared to the original proposal, and would result in greater economic impacts than Option 1 or the original proposal, full analysis of Option 2 was not developed. Option 1 has been fully analyzed and is summarized in an addendum to the EA prepared for this action. The original EA and the addendum to the EA are available from the Regional Administrator (see **ADDRESSES**).

The National Standard 8 guidelines indicate that, if two alternatives offer comparable conservation benefits, the one with the less adverse economic impacts would be the preferred alternative. As one industry group correctly points out, the measures adopted in FW 42 offer comparable conservation benefits and would result in less severe economic impacts than the proposed emergency measures. However, the measures in FW 42 were not adopted by the Council under FW 42 until its February 1, 2006, meeting, after the analysis for the proposed emergency action had been completed. Therefore, the FW 42 measures were not considered as an alternative for the proposed emergency action. As explained above, the ecological impacts of revised Option 1 are comparable to the impacts of the original emergency proposal while the adverse economic impacts of revised Option 1 are substantially less. As a result, NMFS is implementing revised Option 1 under this emergency action.

National Standard 8 requires that management actions, consistent with the conservation requirements, consider the importance of fishery resources to fishing communities to provide for their sustained participation in the fishery and, to the extent practicable, minimize the adverse economic impacts on these

communities. The EA prepared for this action, including the addendum prepared to describe the impacts to the fishery resulting from the options to remove differential DAS counting for vessels fishing in the U.S./Canada Management Area, contains a consideration of the importance of fishery resources to fishing communities, along with an estimate of the economic impacts to these communities. This emergency action minimizes the adverse economic impacts to such communities by eliminating differential DAS counting in the U.S./Canada Management Area and through the continuation of the DAS Leasing Program and a modified Regular B DAS Program on GB. The revised emergency action being implemented by this interim rule is consistent with National Standards 1 and 8 because it implements differential DAS counting in a manner that achieves the ecological objectives of this action and the FMP, while attempting to achieve OY on a continuing basis and minimizing the adverse economic impacts to fishing communities.

Comment 8: One individual claimed that the proposed differential DAS counting measure in the GOM that would charge DAS used at a rate of 1.4:1 is better than the proposed FW 42 differential DAS counting measure that would charge DAS used at a rate of 2:1. The commenter states that this measure would save the inshore fleet and would avoid safety concerns associated with the FW 42 measure because inshore vessels would not be forced to fish offshore under 1.4:1 DAS counting. He contends that, under FW 42, smaller inshore vessels would fish farther offshore to avoid differential DAS counting at a rate of 2:1. Two other commenters disagreed, indicating that the proposed emergency action would decrease safety relative to the proposed FW 42 measures because vessels would take undue risks, such as fishing in rougher weather to capitalize on higher fish prices.

Response: The emergency action does not present incentives for smaller vessels to take undue risks because the differential DAS counting rate is applied throughout the GOM RMA. A vessel would be charged exactly the same DAS rate, regardless of where it fishes. The expected duration of this emergency action, May through July or August, represents some of the best weather conditions of the year, including the months in which the lowest wind speeds are recorded on a yearly basis in the GOM, according to the analysis prepared for FW 40B to the FMP. Therefore, it is unlikely that vessels would take undue risks by fishing in rougher weather under this emergency action because, with the exception of the potential for a tropical storm or hurricane, weather conditions over the expected duration of this action are typically the best conditions of the year. In addition, prices for GOM cod during May through July are, on average, the lowest prices of the year. Therefore, it is also unlikely that vessels would be more inclined to fish under adverse weather conditions during this emergency action due to expected higher prices. Therefore, NMFS concludes there are minimal safety concerns associated with the differential DAS counting measure in this interim rule.

Comment 9: Fifteen commenters suggested that NMFS should implement the preferred alternative adopted by the Council in FW 42. One commenter explicitly requested that NMFS implement the FW 42 measures instead of the proposed emergency measures to ensure a seamless transition to the FW 42 measures once FW 42 is implemented.

Response: One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. Some commenters indicated that the proposed measures closely resembled the measures adopted in FW 42, while others claimed that the proposed measures are dramatically different than the FW 42 measures. NMFS began to develop the proposed emergency measures immediately after the Council announced that it would not be able to complete FW 42 in time for a May 1, 2006, implementation date, which occurred at the Council's November 15, 2005, meeting. At that time, the Council had not fully developed many of the measures that were finally adopted by the Council, and the Council was just starting to explore the potential that discrete differential DAS counting areas would achieve the necessary F reductions for FY 2006. At the time, there was uncertainty whether the Council would even adopt differential DAS counting as the primary means of reducing F under FW 42. In order to implement emergency management measures by the start of FY 2006, NMFS could not wait until the Council voted to adopt measures in FW 42 at its February 1, 2006, meeting. NMFS attempted to anticipate and mirror many of the provisions proposed in FW 42 at the time work began on the development of the emergency measures, including differential DAS counting, in order to minimize transition to the FW 42 measures, once implemented. However, given the uncertainty of which measures would be proposed by the Council in FW 42, and the limited time available to prepare and review the proposed emergency action in time for a May 1, 2006, implementation date, it was not possible to predict with certainty what measures the Council would ultimately adopt in FW 42.

Because of the potentially substantial effort reductions necessary under this emergency action, and the controversial nature of this action, NMFS attempted to provide for as much advanced notice and opportunity for public input as possible, without compromising the need to implement emergency measures by May 1, 2006. Although NMFS attempted every means possible to minimize the time it would take to develop the proposed emergency action, due to the time necessary to develop the proposed management measures, prepare the required analytical documents, and publish both a proposed and a final rule consistent with the Administrative Procedure Act, NMFS had to complete the development of the proposed action before the Council voted on FW 42.

Based on public comment, NMFS is removing the differential DAS counting requirement for vessels participating in the U.S./Canada Management Areas (see also Response to Comment 6). While not identical to the measures proposed under FW 42, this revision more closely mirrors them, without compromising the objectives of this action.

Comment 10: Ten commenters opposed the proposed differential DAS counting measures, advocating for counting DAS as a minimum of 24 hours instead. In addition, three commenters recommended extending the duration of the GOM Rolling Closures by two weeks.

Response: One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. One of the alternatives considered during the development of FW 42 (*i.e.*, Alternative 4) was a minimum 24-hour DAS charge. However, while some expressed support for this measure, claiming that it more accurately addressed the underlying problem in the fishery, the Council ultimately did not adopt this alternative because of concerns that this alternative would provide incentives for vessels to fish longer hours and with less crew to

maximize the benefits of each allocated DAS. In doing so, some felt that this alternative would cause safety problems. Because of these concerns and the fact that the Council did not adopt the minimum 24-hour DAS charge under FW 42, this emergency action did not consider that alternative. Regarding extending the GOM Rolling Closures by 2 weeks, there is no analysis to conclude that such a measure would help to achieve the conservation or management objectives of this emergency action. In addition, there may be safety concerns attached to this type of measure, as members of the fishing industry expressed safety concerns about the existing GOM Rolling Closures during the Council-sponsored safety meetings conducted in 2005. Moreover, the Council did not consider extending these closures under FW 42.

Comment 11: One commenter stated that the proposed measures would treat all fishermen equally.

Response: NMFS has determined that the emergency action is consistent with National Standard 4 guidelines to the extent practicable, taking into account conservation requirements and differences in impacts because of geographic location and stocks that need protection.

Comment 12: One industry group claimed that the proposed differential DAS counting strategy would reduce access to the monkfish resource in the monkfish Northern Fishery Management Area (NFMA), resulting in a linear loss of monkfish DAS.

Response: While the differential DAS counting measure implemented by this interim rule would result in some decreased opportunities to target monkfish in the NFMA over the No Action alternative, the emergency action attempts to mitigate such decreased opportunities by revising the manner in which monkfish-only DAS are counted to accommodate differential DAS counting. A linear loss of monkfish DAS would only occur if monkfish DAS were also charged at a rate of 1.4:1. The proposed action would only charge NE multispecies at a rate of 1.4:1, while monkfish DAS would still be charged at a rate of 1:1. Because NE multispecies DAS are charged at a higher rate when fishing outside of the U.S./Canada Management Area, there is the possibility that monkfish Category C, D, F, G, or H vessels (*i.e.*, those monkfish vessels that are also issued a limited access NE multispecies permit) would not have sufficient groundfish DAS to ensure that they could fish their full allocation of monkfish DAS. To accommodate this, this rule will allow a Category C, D, F, G, or H monkfish vessel to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Assuming that such vessels fish all of their NE multispecies DAS outside of the U.S./Canada Management Area, the maximum number of monkfish-only DAS that a vessel would be allowed to fish is equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS), divided by 1.4. If such vessels fish some or all of their NE multispecies DAS in the U.S./Canada Management Area, the number of monkfish-only DAS would be less than this amount. For example, a vessel allocated 40 monkfish DAS and 20 NE multispecies DAS would be able to fish 20 monkfish-only DAS (*i.e.*, $40 - 20$) under the current regulations, or 25.7 monkfish-only DAS ($(40 - (20 \div 1.4))$). Without such a provision, these vessels would have even less of an opportunity to fish for monkfish in the NFMA because they would only be allowed to fish under monkfish-only DAS equal to the difference between their monkfish and NE multispecies DAS allocations. Accordingly, this emergency action offers greater opportunity to target monkfish in the NFMA than if differential DAS counting were implemented without the corresponding revision to the monkfish-only DAS calculation. NMFS acknowledges that some vessels, particularly trawl vessels that operate exclusively in the NFMA, would have less of an opportunity to fish for monkfish in the NFMA under this emergency action, as monkfish-only DAS can only be used in an exempted fishery in the NFMA. Currently, the only exempted fisheries in the NFMA require the use of gillnets. Trawl vessels would be able to fish with trawl gear in the Southern Fishery Management Area, but would be subject to the more restrictive monkfish regulations in this area, including a reduced monkfish DAS allocation.

Comment 13: One industry group asserts that the proposed differential DAS counting measure exceeds the scope of the ecological, social, and economic analyses prepared for Amendment 13 because the fishery is meeting the Amendment 13 F targets for the GB cod stock.

Response: GB cod is currently rebuilding along the Amendment 13 rebuilding trajectory. However, GB cod is still severely overfished and overfishing is still occurring. Because of this, NMFS is concerned that any potential redirection of effort on GB cod could negatively affect the rebuilding progress of this stock. NMFS has revised this emergency action to remove the differential DAS counting requirement from vessels participating in the U.S./Canada Management Areas on GB. This revision allows greater access to the GB cod stock, but does so in a manner that minimizes the potential for redirected effort onto GB to adversely affect GB cod. Although the effects of this emergency action are beyond the scope of the ecological, economic, and social analyses prepared for Amendment 13, the additional impacts of this measure on GB cod have been evaluated in the EA prepared for this action. The impacts of the revision to eliminate differential DAS counting for vessels participating in the U.S./Canada Management Area are analyzed in an addendum to the EA that is also available from the Regional Administrator (see **ADDRESSES**).

Trip Limits

Comment 14: Four commenters supported the proposed trip limits for GOM cod, while two commenters opposed them. Supporters claim that the proposed trip limit of 600 lb (272 kg) per DAS will reduce incentives to target GOM cod under this action, especially when implemented with differential DAS counting in the GOM. Two proponents of this trip limit indicated support for a 400 lb (181 kg) per DAS trip limit on GOM cod, if it would further reduce incentives to target GOM cod. Those opposed to the proposed GOM cod trip limit did not offer specific rationale for their opposition, but expressed general support for the 800 lb (363 kg) per DAS GOM cod trip limit in conjunction with alternative management options considered during the development of FW 42, particularly the 24-hour minimum DAS alternative.

Response: Analysis prepared for this action indicates that a 600 lb (272 kg) per DAS GOM cod trip limit, along with differential DAS counting, will reduce incentives to target GOM cod and will provide the necessary F reductions for this stock during FY 2006. Although no explicit analysis was prepared regarding the 400 lb (181 kg) per DAS trip limit for GOM cod, analysis prepared for Amendment 13 indicates that such a trip limit would offer additional F reduction for this stock, but may also substantially increase the discard rate.

Comment 15: One commenter asserts that trip limits have resulted in increased bycatch F in the groundfish fishery. This commenter further states that the emergency action does not provide adequate rationale or justification for the use of trip limits,

measures the commenter claims have a history of failure, without sufficient back-up measures (see Comment 16 below) in violation of National Standards 1 and 9. However, this comment focused mainly on National Standard 9 issues, and did not explain why the commenter felt the proposed trip limits violated National Standard 1. Another commenter supported setting reasonable catch limits that take into consideration discards.

Response: There is sufficient rationale and justification provided in both the proposed/interim rule and the supporting EA that the proposed trip limit for GOM cod does not violate either National Standard 1 or 9. The rationale for the proposed GOM cod trip limit builds upon information in Amendment 13 to the FMP. The Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement) projects that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, will attempt to maximize their return on every trip, and will attempt to convert any potential discards into landings. In doing so, effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should contribute to reduced bycatch. Differential DAS counting and the reduced trip limit for GOM cod decrease the profitability of targeting GOM cod, thereby reducing discards. However, it is impossible to predict the behavior of fishermen given the varying and competing incentives that affect behavior under this emergency action and under FW 42. The national standard guidelines for National Standard 9 (§ 600.350) require an assessment of the amount and type of bycatch and bycatch F for proposed measures and that proposed measures should minimize bycatch and bycatch F to the extent practicable. The EA prepared for this action provides the required assessment of the amount and type of bycatch expected from the proposed trip limits. The proposed trip limits were incorporated into the CAM used to analyze changes in F for most of the proposed management measures. This analysis attempts to estimate F resulting from the expected behavior of vessels attempting to maximize profits in response to the proposed measures. This analysis indicated that the cumulative affect of the majority of proposed emergency measures would result in a 33.8-percent reduction in F for GOM cod, including discard F. In addition, the EA includes a discussion concerning the trip limit analysis prepared for Amendment 13. Based on extrapolations from the Amendment 13 trip limit analysis, a proposed GOM cod trip limit of 600 lb (272 kg) per DAS is likely to offer a reduction in F of about 5 percent compared to the current 800 lb (363 kg) per DAS trip limit for GOM cod. Compared to the current trip limit, the proposed GOM cod trip limit is likely to increase the discard rate by approximately 10 percent. The proposed trip limit represents a balance between the conservation benefits of reducing incentives to target GOM cod and minimizing discards and allowing vessels to harvest and land GOM cod without compromising rebuilding efforts for this stock. Therefore, NMFS has determined that the trip limit for GOM cod, which is implemented through this emergency action, is reasonable and takes into account bycatch and discard concerns.

Comment 16: Three commenters recommended that NMFS implement additional provisions that would ensure the efficacy of the proposed trip limits for GOM cod and CC/GOM and SNE/MA yellowtail flounder. Two of these commenters recommended implementing a discard prohibition for GOM cod and CC/GOM and SNE/MA yellowtail flounder, along with requiring a vessel to immediately end its trip once it has reached its trip limit of cod or yellowtail flounder. The third commenter suggested that NMFS should adopt hard-TAC backstops for GOM cod and CC/GOM and SNE/MA yellowtail flounder stocks and promote selective gears to target healthy stocks without substantial bycatch of stocks of concern.

Response: Specific provisions such as those offered by the commenters potentially may increase the efficacy of trip limits under specific circumstances, particularly for vessels participating in a special management program (*i.e.*, approved SAPs or the Regular B DAS Program). Such provisions have been adopted by the Council for implementation under FW 42 for all groundfish vessels participating in any special management program. These programs are designed to allow vessels to target healthy groundfish stocks without catching substantial amounts of stocks of concern. The objective of these programs is to avoid overfished stocks, not target them. These programs are highly regulated and include hard TAC backstops, gear requirements, VMS, and other provisions that enhance the effectiveness of these programs and increase the likelihood that effort under these programs would not compromise the rebuilding efforts of overfished stocks. In contrast, GOM cod, and CC/GOM and SNE/MA yellowtail flounder are managed under an overall target TAC for each species. While hard TACs might prove an effective means of ensuring that F targets for each stock are not exceeded during a fishing year, it would be impracticable to implement such hard TACs through an emergency action, because the hard TAC backstops would expire when the emergency action expires. In this case, the hard-TAC backstops would expire once FW 42 is implemented, sometime during the summer of 2006, which would provide very little benefit to these stocks if implemented under this emergency action. In addition, because conversion to a hard-TAC management regime would represent a substantial change from the effort-based (*i.e.*, DAS) strategies employed in the groundfish fishery to date, particularly for the GOM and SNE/MA stocks, hard TACs should be vetted through the Council process. Further, due to the discrete nature of special management programs, it is relatively easy to identify participants within these programs and enforce the discard prohibitions and trip termination requirements recommended by the commenters. However, it is much more difficult to identify vessels catching GOM cod or CC/GOM or SNE/MA yellowtail flounder, much less enforce such provisions, when applied to such vessels fishing outside of a special management program within broad geographic areas.

Modified Regular B DAS Program

Comment 17: One commenter indicated that the Regular B DAS Program requires near 100-percent observer coverage to work. This commenter stated that all DAS flips occurred on trips with observers, suggesting that this is an indicator of the failure of this program to encourage the selective harvesting of healthy groundfish stocks unless adequately monitored and controlled.

Response: Since the Regular B DAS Pilot Program was first implemented by FW 40A in November 2004, approximately 33 percent of groundfish trips into this program have been observed. The measures currently in place are sufficient to effectively monitor vessel operations in this fishery. The methodologies employed to monitor this program meet accepted standards of precision and accuracy. The assertion by the commenter that all DAS flips under the Regular B DAS Pilot Program occurred on trips with observers is incorrect. In fact, over the duration of the Regular B DAS Pilot Program, DAS flips during observed

trips accounted for only 41 percent of recorded DAS flips; over 59 percent of the DAS flips occurred during trips without an observer present. A better indicator of the success of this program is whether the incidental catch TACs for particular species were exceeded compared to the amount of healthy groundfish stocks landed. Substantial amounts of haddock (over 2 million lb, or 907,000 kg), pollock (over 730,000 lb, or 331,000 kg), and redfish (over 130,000 lb, or nearly 59,000 kg) were landed, and the incidental catch TAC for only one groundfish stock of concern (GB cod) was exceeded during only one quarter (May–July of 2005, Quarter 1 of FY 2005), by approximately 21,000 lb (9,532 kg), due to increased participation in this program during that quarter, unexpectedly high catch rates for GB cod, and trips with excessive discards. This suggests that the program is quite successful at facilitating the targeting of healthy groundfish stocks without compromising rebuilding efforts of overfished stocks. Because this program offers additional opportunities to target healthy stocks such as haddock, pollock, and redfish without substantially affecting groundfish stocks of concern, offering additional opportunities to use Regular B DAS in the fishery and necessary sources of fishing revenue, the proposed revised Regular B DAS Program is implemented through this emergency action.

Comment 18: Two commenters opposed the proposed modifications to the Regular B DAS Program, indicating that the regulations governing the Regular B DAS Pilot Program, as originally implemented under FW 40A, are sufficient to control F from this program. One of these individuals argued that restricting this program to the U.S./Canada Management Area and requiring all vessels to use a haddock separator trawl is in violation of National Standard 4 because such measures are not fair and equitable to all vessels, as some vessels would be required to purchase the haddock separator trawl and safety considerations prevent smaller vessels from traveling far offshore to use their Regular B DAS under this program. Two other individuals and the Maine Department of Marine Resources objected to the restriction of this program to the U.S./Canada Management Area on the grounds that vessels should be allowed to target healthy groundfish stocks in the GOM.

Response: The original intent of the Regular B DAS Pilot Program was to allow vessels to target healthy groundfish stocks in all areas. However, as highlighted above, stocks in particular areas require additional reductions in F during FY 2006. Stocks such as GOM cod and CC/GOM and SNE/MA yellowtail flounder require substantial F reductions for FY 2006. Therefore, the objective of this action is to reduce F on these stocks through effort reductions in the GOM and SNE/MA RMAs. Because the use of Category B DAS represents additional effort in the fishery, it would be inappropriate to increase effort in these areas, especially during the early summer months when particularly vulnerable stocks are spawning, by allowing vessels to participate in the Regular B DAS Program in the GOM or SNE/MA RMA. In addition, the very small incidental catch TACs proposed for CC/GOM and SNE/MA yellowtail flounder for the first quarter of the fishing year (May–July) are extremely difficult to monitor and are likely to be exceeded after only a few trips into the program. For example, the proposed incidental catch TACs for these species is only 441 lb (200 kg) for CC/GOM yellowtail flounder and 1,746 lb (792 kg) for SNE/MA yellowtail flounder during the first quarter of FY 2006. It is likely that the quarterly incidental catch TAC for CC/GOM and SNE/MA yellowtail flounder would be caught in only a few trips, especially if participating vessels catch up to the maximum possession limit on a daily basis. At this rate, it would be very difficult for NMFS to administer this program in these stock areas during the first quarter of the fishing year and would likely result in the program exceeding these quarterly TACs before NMFS could close these stock areas. Once these incidental catch TACs are harvested, NMFS is required to close the relevant stock areas under the Regular B DAS Program for the remainder of the quarter. Therefore, exceeding these TACs would not only result in increased and unaccounted F on these stocks, but it would also close this program outside of GB within days of the start of the first quarter on May 1. As a result, the existing measures are not sufficient to control F on these stocks under this program, especially during the first quarter, requiring the additional protection offered by these emergency measures. Prior to the expiration of the Regular B DAS Pilot Program on October 31, 2005, very few groundfish vessels fished under this program to target healthy groundfish stocks outside of the GB. Between November 2004 and October 2005, only 82 trips were completed under the Regular B DAS Pilot Program in the GOM RMA, and only 8 were completed under this program in the SNE/MA RMA, out of over 436 trips completed throughout all areas under this program. As a result, the vast majority of participants in this program have been fishing on GB.

Restricting the Regular B DAS Program to the U.S./Canada Management Area does not allocate fishing privileges among fishermen and, therefore, does not violate National Standard 4. All vessels have the ability to fish in this program, provided the vessel has installed an operational VMS and complies with the other requirements of the Regular B DAS Program. The fact that there may be differential impacts on fishers because of geographic or other practical matters is consistent with National Standard 4 guidelines, provided the measures in question are reasonably calculated to achieve conservation objectives. The U.S./Canada Management Area was adopted by the Council in Amendment 13, based on an informal agreement between the United States and Canada. The location of this area was based on the definition of stock areas under the Resource Sharing Agreement. As specified in further detail in the response to Comment 27, although the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, the regulatory text indicated that only trawl vessels would be required to use a haddock separator trawl when participating in the Regular B DAS Program. Despite this inadvertent error in the preamble to the proposed rule, the requirement that trawl vessels utilize a haddock separator trawl is still consistent with National Standard 4 because it is reasonably calculated to promote conservation and would not constitute an allocation of fishing privileges to particular fishermen.

Comment 19: Two commenters supported the haddock separator trawl requirement for trawl vessels participating in this program, indicating that it would offer sufficient protection to groundfish stocks of concern. However, one commenter suggested that NMFS remove the haddock separator trawl requirement for this program, asserting that the haddock separator trawl has not been shown to work, that the Pilot Program implemented under FW 40A did not exceed any of the incidental catch TACs for stocks of concern, and that such a requirement eliminates opportunities to experiment with more effective gear, such as the rope trawl, under this program.

Response: The required use of a haddock separator trawl by trawl vessels participating in the Regular B DAS

Program offers further protection to groundfish stocks of concern under this emergency action. While data from the Eastern U.S./Canada Haddock SAP Pilot Program (the only program in which participants were required to use a haddock separator trawl) indicated that the haddock separator trawl did not perform consistently as well as the original experimental fishery used to justify this gear, it was still effective at reducing the catch of cod compared to the catch of haddock in this SAP. The haddock separator trawl is the only trawl gear shown through experimental research to reduce the catch of cod when targeting haddock. Hook gear has been demonstrated to allow vessels to effectively target haddock without catching substantial amounts of cod or other stocks of concern. As a result, hook gear may be used to target haddock under the revised Regular B DAS Program in this emergency action. While other gears are currently being tested, the results of these gear experiments have not yet been provided to NMFS or the Council. As a result, there is incomplete information to suggest that other gear, including the rope trawl suggested by one commenter, is capable of reducing the catch of cod or other stocks of concern as effectively as the haddock separator trawl. Contrary to what was suggested by the commenter, under the Regular B DAS Pilot Program, the incidental catch TAC for GB cod was exceeded during the first quarter of FY 2005. The haddock separator trawl, should reduce catch of GB cod, reducing the possibility that the quarterly incidental catch TAC will be exceeded under this program. In addition, by reducing the catch of GB cod, the haddock separator trawl requirement should extend the availability of the hard TAC for GB cod in the Eastern U.S./Canada Area, thereby increasing the opportunity to achieve OY for haddock during FY 2006. Both NMFS and the Council have expressed interest in facilitating research into selective fishing gears in order to more fully integrate the use of these gears into the management program. However, before approving the use of such gear, the Council has suggested that it would like to review the performance of such selective gears to determine their effectiveness at reducing bycatch of stocks of concern. While the original intent of the Regular B DAS Pilot Program was to facilitate the use of more selective gears and ways of fishing, the requirement that trawl vessels use a haddock separator trawl in the revised Regular B DAS Pilot Program implemented in this emergency action should ensure that the Regular B DAS Program achieves the primary objective of this program, which is to facilitate the targeting of healthy groundfish stocks without catching substantial amounts of groundfish stocks of concern. Therefore, this emergency interim rule retains the haddock separator trawl requirement for trawl vessels participating in the Regular B DAS Program.

Comment 20: One commenter supported and one commenter opposed the trip limits on flatfish, skates, monkfish, and lobsters for vessels fishing with a haddock separator trawl in the proposed Regular B DAS Program because it would increase discards.

Response: The Regular B DAS Program is intended to allow vessels to target healthy groundfish stocks such as haddock without catching substantial amounts of groundfish stocks of concern, particularly cod and certain flatfish. The proposed restrictive trip limits on flatfish, skates, monkfish, and lobsters are the same as those proposed in FW 42, and are meant to encourage the proper use of the haddock separator trawl in the Regular B DAS Program. When properly used, the haddock separator trawl has proven effective at reducing the catch of cod, flounders, and other species while having little impact on the catch of haddock. However, when improperly configured, this net is capable of catching large amounts of bottom-dwelling species such as flatfish and skates. This measure increases the incentive for fishermen to configure the net properly, since only small amounts of flounders, monkfish, and skates can be landed when haddock separator trawls are required. In doing so, this requirement should reduce discards, as an improperly-configured net would require vessel operators to spend time sorting the catch and discard any fish in excess of the proposed trip limits.

DAS Leasing Program

Comment 21: Two commenters opposed continuing the DAS Leasing Program through this emergency action, indicating that leasing DAS undermines efforts to reduce F on overfished stocks. Four commenters expressed support for the DAS Leasing Program, offering that it provides necessary benefits to the fishing industry.

Response: The DAS Leasing Program provides benefits to fishermen that offset some of the economic and social impacts resulting from continued effort reductions in the groundfish fishery. Analysis prepared for this action indicates that the DAS Leasing Program may have resulted in a small increase in landings when compared to a regime without DAS leasing. However, this was anticipated by Amendment 13 analysis and was within the projected results. The stocks for which the DAS Leasing Program contributed to the highest increase in landings (GOM haddock, GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy groundfish stocks that do not need F reductions as part of this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses, resulting in economic benefits to the fishery. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources and provide for the sustained participation of fishing communities, respectively. Consistent with these national standards, this emergency action continues the DAS Leasing Program in order to increase the efficient utilization of fishery resources and help provide a means of mitigating some of the economic impacts of effort reductions in the fishery to promote continued participation, without jeopardizing conservation objectives of this action or the FMP.

Eastern U.S./Canada Haddock SAP Pilot Program

Comment 22: One commenter supported the proposed revisions to the Eastern U.S./Canada Haddock SAP, while another opposed the delayed opening of this SAP, suggesting that it would reduce the chances of catching haddock in this SAP and create additional gear conflicts with offshore lobster vessels due to an expected increase in participants.

Response: The delayed start date of August 1 for this SAP was proposed by the Council's Groundfish Advisory Panel, a group of industry representatives that provide input into Council decisions. The intention of this provision is to avoid concentrations of GB cod in the SAP area during the early summer, thereby lowering the catch rates of GB cod in this SAP. High catch rates of GB cod in this SAP contributed to the early closing of the Eastern U.S./Canada Area on in FY 2005, and, therefore, access to the Eastern U.S./Canada Haddock SAP. A delayed opening would reduce the catch rate of GB cod, allowing vessels greater access to the available haddock resource throughout the season specified for this SAP. An informal agreement between offshore lobster vessels and groundfish vessels fishing on GB was reached during 2005 to minimize potential gear

conflicts between these two groups during the season specified for this SAP. NMFS encourages such cooperation among fishing sectors and hopes that the agreement between the offshore lobster fleet and the groundfish fleet can continue during FY 2006 and that similar informal agreements can be worked out to mitigate any potential gear conflicts that may arise in the future.

Eastern U.S./Canada Area Flexibility

Comment 23: Two commenters supported allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip. However, one commenter opposed attributing any cod caught on such trips towards the Eastern U.S./Canada Area GB cod hard TAC, indicating that this would likely cause the premature closure of the Eastern U.S./Canada Area because of the attainment of the GB cod TAC.

Response: This measure was first developed to address a safety concern identified by the Council's safety meetings held in 2005 to allow vessels to fish closer to shore under worsening weather conditions. To prevent the misreporting of cod, haddock, and yellowtail flounder caught on trips inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder will count toward the Eastern U.S./Canada Area TACs for each species. This provision is necessary to reduce incentives to utilize this flexibility in situations other than adverse weather conditions. This is a conservative approach that will help ensure the TACs are not exceeded.

Recreational Restrictions

Comment 24: One commenter indicated that the recreational fishery is not responsible for the excessive F observed on GOM cod. This individual suggested that the commercial sector caused such F and should, therefore, bear the responsibility for reducing F on GOM cod. Two other commenters supported the recreational measures.

Response: Both the recreational and commercial fishing sectors catch GOM cod and contribute to the mortality on GOM cod stocks. During the development of FW 42, the Council decided that both the recreational and commercial fishing sectors should take an equivalent proportionate reduction in F. According to GARM II, F on GOM cod needs to be reduced by 32 percent to maintain the Amendment 13 rebuilding program during FY 2006. The recreational measures in this emergency action were proposed by the Recreational Advisory Panel during the development of FW 42, and are designed to achieve at least a 32-percent reduction in F on GOM cod from the recreational fishing sector.

Comment 25: One individual expressed concern over the potential administrative conflict between the existing regulations at § 648.82(f)(2) that require charter/party vessels intending to fish in any of the GOM closed areas (including the GOM rolling closure areas) to obtain a LOA and participate in the charter/party fishery for a minimum period of 3 months and the proposed seasonal GOM cod possession prohibition. This commenter indicated that the proposed seasonal GOM cod possession prohibition, in conjunction with the 3-month minimum participation period requirement of the LOA, would force vessels to obtain another LOA for the start of the next fishing year, as the beginning of the new charter boat season (presumably April 1) would only allow for 60 days of participation before the end of the fishing year. The commenter suggested that NMFS revise the minimum participation period under this emergency action.

Response: The proposed seasonal GOM cod possession prohibition for charter/party vessels would neither affect the minimum participation period for the charter/party LOA, nor affect the ability for charter/party vessels to obtain such a LOA at any time during the fishing year. The proposed measures allow charter/party vessels to obtain a LOA to fish within the GOM closed areas throughout the fishing year, provided such vessels do not possess GOM cod between November through March. The minimum participation period requirement was developed by the Council in FW 33 to the FMP to minimize the monitoring and enforcement difficulties associated with charter/party vessels fishing in the GOM closed areas on one trip and then fishing under the commercial fishing regulations on a subsequent trip. The concern at the time was that such vessels would retain any cod caught in the closed areas under the charter/party regulations to sell upon landing on a subsequent commercial fishing trip. The Council has not proposed any changes to this minimum participation period, as the original problem that such a minimum participation period addresses still exists. As a result, it would be inappropriate to revise the minimum participation period under this action. Further, current policy requires charter/party vessels to obtain a new LOA for the start of the next fishing year on May 1, to accurately document the number of LOAs that were issued in a particular fishing year. Allowing vessels to continue the participation period of a LOA between fishing years would undermine this effort. As a result, no changes to the minimum participation period or the current LOA issuance policy were made in this emergency action.

General Comments

Comment 26: Three commenters opposed this emergency action, stating that NMFS cannot use emergency authority to implement management measures that would affect stocks that are not overfished and that do not need additional F reductions. Further, one commenter indicated that NMFS does not have the authority to address monkfish through an emergency action under the NE Multispecies FMP. However, one commenter felt that the proposed emergency action is necessary and appropriate, as it is important to maintain progress in the Amendment 13 rebuilding programs.

Response: Section 305(c) of the Magnuson-Stevens Act specifies that, if the Secretary ''finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery.'' As a result, NMFS, acting on behalf of the Secretary, does have the authority to implement measures to address an emergency in the groundfish fishery, including implementing regulations that would affect participants in the monkfish fishery. The need for emergency action is well specified in the preamble to the proposed rule for this action and in the EA prepared for this action. Stocks in need of F reductions for FY 2006 are located in all areas. In addition, while there are some stocks that do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, several of these stocks, in particular, GB cod and GB yellowtail flounder, are severely overfished and overfishing is still occurring. Due to the commingled nature of the groundfish fishery, it is very difficult to design management measures that would reduce F on some groundfish stocks, but not others. As a result, regardless of the measures implemented, F on all stocks is likely to decline. Because of the identified need to reduce F on several groundfish stocks located in all areas managed by the NE Multispecies FMP, and because other stocks are still overfished with overfishing still occurring, it is entirely appropriate to promulgate emergency regulations

under the authority of section 305(c) of the Magnuson-Stevens Act. In addition, the preamble of the proposed rule indicated that overfishing continues in the monkfish fishery and that the pace of rebuilding has slowed. The EA prepared for this action demonstrates that the Regular B DAS Pilot Program implemented by FW 40A to the FMP was a substantial source of F for the monkfish fishery. Therefore, this emergency action eliminates the possibility that this program would be used to target monkfish, providing the necessary means to reduce overfishing for this fishery, as provided by the authority in section 305(c) of the Magnuson-Stevens Act.

Comment 27: One commenter offered that the haddock separator trawl should be required by all vessels fishing on GB.

Response: As noted in the response to Comment 18, the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, but should have stated that only trawl vessels must use a haddock separator trawl in this program.

Comment 28: Two commenters felt that the proposed action would reward larger offshore vessels at the expense of smaller, inshore vessels.

Response: The proposed action does not specifically favor any one group over another. The agency's policy guidelines for implementing emergency rules indicates that such rules demonstrate compliance with all of the national standards. National Standard 4 guidelines require that management measures shall be fair and equitable to all fishermen to the extent possible in meeting FMP objectives. The approach to this emergency action is consistent with these guidelines.

Comment 29: One commenter expressed concern that the proposed measures are inconsistent with the measures considered by the Council.

Response: A majority of the measures in this emergency action are intended to be consistent with those adopted by the Council in FW 42. While specific aspects of the measures proposed by this emergency action differ with what the Council ultimately adopted in FW 42, the emergency measures follow the same principles as the Council did in adopting FW 42. For instance, in FW 42, the Council chose to adopt differential DAS counting as the main measure to reduce F in the GOM and SNE/MA RMAs. This emergency action also relies upon differential DAS counting in these areas, although applied throughout the GOM, and SNE/MA RMAs, as opposed to discrete areas in the GOM and SNE/MA RMAs adopted in FW 42. In addition, this emergency action implements the GB winter flounder and white hake trip limits proposed in FW 42 in lieu of differential DAS counting for vessels operating in the U.S./Canada Management Area.

Comment 30: Four commenters did not support the approach taken by the proposed emergency action and instead proposed alternative management regimes, including the Northeast Seafood Coalition's recent ''Industry Proposal'' or the GOM Inshore Fisheries Conservation and Stewardship Plan that was previously considered during the development of Amendment 13.

Response: It would be inappropriate to implement either of these alternatives outside of the Council process. Such comprehensive alternative management regimes should be afforded careful consideration and extensive public debate concerning the possible implications of such shifts in management strategy that is provided by the Council process. The ''industry proposal'' was analyzed by the Groundfish PDT in late March 2006. This analysis concluded that this program would not meet the conservation objectives of the FMP. Although Amendment 13 contained a description of the GOM Inshore Fisheries Conservation and Stewardship Plan, no analysis regarding the impacts of this plan has been conducted to date.

Comment 31: One commenter contested that the EA prepared for this action did not consider a reasonable set of alternatives, asserting that the National Environmental Policy Act (NEPA) requires that at least one reasonable alternative in addition to the proposed action needs to be considered.

Response: NOAA Administrative Order 216–6 provides guidance on the environmental review procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality. This guidance requires that any EA prepared in the support of a management action must consider all reasonable alternatives, including the preferred action and the no action alternative. The EA prepared for this emergency action does consider a range of reasonable alternatives, including the preferred action and the no action alternative. The appropriate range of reasonable alternatives is generally those that meet the purpose and need for the action. The purpose of this action is to implement simple, short-term emergency management measures by the start of FY 2006 in order to immediately reduce F on several groundfish stocks to maintain the Amendment 13 rebuilding programs and compliance with the Magnuson-Stevens Act. Further, the current regulations require that any management measures necessary to maintain the Amendment 13 rebuilding programs must be implemented by May 1, 2006. Because the measures adopted by the Council were not developed in time to meet the May 1, 2006, implementation date, emergency measures needed to be developed and analyzed prior to the Council's final vote on FW 42. Because any emergency measures would likely have differed with those finally adopted under FW 42, there is also a need to ensure that any proposed emergency management measures are consistent with those adopted under FW 42 to minimize confusion by the industry and facilitate adaptation to the FW 42 measures, if approved and implemented. Because of the rather narrow set of objectives for this emergency action, the range of reasonable alternatives was limited to those alternatives that would meet the purpose and need of this action. Other alternatives were considered for this emergency action but were not fully analyzed in the EA because they did not adequately address the purpose and need for this action. These other alternatives included area closures and a hard-TAC management regime. Based upon public comment, NMFS considered two additional management options for the elimination of differential DAS counting on GB. As discussed above in the response for Comment 7, NMFS prepared a preliminary analysis for these options. Based on this preliminary analysis, it was clear that only one option should be more thoroughly considered. A full analysis of this option was developed and included as an addendum to the original EA prepared for this action. Based upon this analysis, NMFS has revised the proposed emergency action to remove the differential DAS counting measure for those vessels participating in the U.S./Canada Management Area and implement the proposed FW 42 trip limits for GB winter flounder and white hake, instead. As a result, a reasonable range of alternatives considered for this action includes the revised proposed action, the original proposed action, and the no action alternative.

Comment 32: One elected official contested that welfare and economic issues have not been thought out properly.

Response: The analysis and consideration of the economic impacts of the emergency action are consistent with current agency guidance and applicable statutes regarding the

economic analysis of fishery management actions. The economic impact analysis contained in the EA prepared for this action presents a comprehensive evaluation of the expected economic impacts of the proposed measures. Although this economic analysis does not specifically address welfare issues, the economic impacts to fishing communities are detailed in the EA. Therefore, the economic analysis prepared for this action sufficiently addresses the economic issues associated with the proposed emergency action, as required by current analytical guidance and the Magnuson-Stevens Act.

Comment 33: One environmental group specified that the EA prepared for this action needs to state the probability that measures will achieve projected results.

Response: The biological analysis prepared for this action does specify the probability that measures will achieve the estimated reductions in F. Section 8.1.1.1 of the EA prepared for this action specifies that the estimated F reductions represent the median outcome that can be expected from the proposed measures. This means that the proposed measures have at least a 50-percent probability of achieving the specified results.

Comment 34: One individual requested that NMFS eliminate the haddock trip limit for the 2006 fishing year.

Response: The regulations at § 648.86(a)(1)(iii)(B) allow the Regional Administrator to adjust or eliminate the haddock trip limit per DAS or the maximum trip limit if it is projected that such revisions to the haddock trip limit are sufficient to allow the harvest of at least 75 percent of the target TAC, but not allow the target TAC to be exceeded during the fishing year. For FY 2006, the U.S. portion of the proposed target TAC for haddock (GB and GOM combined) for is 36,588 mt. A projection of haddock landings for FY 2006 indicated that less than 75 percent of the proposed target TAC for the 2006 fishing year would be harvested by the end of the fishing year on April 30, 2007, under the restrictive daily and maximum trip limits. This projection also concluded that elimination of the daily and maximum trip limits for haddock would not result in the 2006 target TAC for haddock being exceeded. Because eliminating the daily and maximum trip limits for haddock would facilitate the achievement of OY for the groundfish fishery, the daily and maximum trip limits for haddock are eliminated for the duration of this emergency action.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment, to correct inadvertent errors, and to further clarify specific measures. These changes are listed below in the order that they appear in the regulations.

In 648.14, additional paragraphs are suspended and others added to correct reference errors. Paragraphs (a)(179) and (180) are inserted to specify that vessels must submit an additional catch report for yellowtail flounder via VMS within 2 hours of crossing the border into or out of the Western U.S./Canada Area and are prohibited from fishing both inside and outside of this area unless this additional catch report is submitted.

In § 648.82, paragraphs (n)(2) and (s)(1)(iii) are revised to account for revisions to the way DAS are charged under this emergency interim rule. These revisions include specifying that Category A DAS will be charged at a rate of 1.4:1 for all vessels fishing outside of the U.S./Canada Management Area and not under the U.S./Canada Resource Sharing Understanding. Vessels fishing within the U.S./Canada Management Area and under the U.S./Canada Resource Sharing Understanding will be charged Category A DAS used at a rate of 1:1. Finally, language clarifying how DAS will be charged for vessels fishing within the Western U.S./Canada Area is inserted.

In § 648.85, paragraph (a)(3)(viii) is modified to clarify that a vessel intending to fish outside of either the Western or Eastern U.S./Canada Area must declare its intent to do so via VMS prior to leaving the dock and/or leaving the Eastern U.S./Canada Area, respectively.

In § 648.86, paragraphs (b)(1)(ii) and (b)(2)(ii) are revised to account for revisions to the cod running clock provision due to differential DAS counting under this action. In addition, paragraph (e) is revised, and paragraph (j) is added to implement trip limits for white hake and GB winter flounder, respectively.

In § 648.92, paragraph (b)(2)(iv) is revised to correct an inaccurate reference to § 648.92(b)(2)(ii) that should read § 648.92(b)(2)(v). In addition, language referring to the requirement that monkfish Category C or D vessels utilize their monkfish DAS, in conjunction with a NE multispecies DAS, before it can use any monkfish-only DAS is reinserted after being inadvertently omitted from the proposed rule. Finally, language clarifying how the calculation of monkfish-only DAS is affected by differential DAS counting is inserted.

Classification

The Regional Administrator has determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim final rule has been determined not to be significant for the purposes of Executive Order (E.O.) 12866.

This emergency interim final rule does not contain policies with Federalism or ''takings'' implications as defined in E.O. 13132 and E.O. 12630, respectively.

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. An addendum to this EA was prepared which includes additional analysis describing the impacts of one other option considered by NMFS in order to implement the proposed FW 42 trip limits for GB winter flounder and white hake, and to eliminate differential DAS counting from the U.S./Canada Management Area on GB. The EA and the addendum to the EA considered the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public comments received during the comment period of the proposed rule. A copy of the Finding of No Significant Impact for the EA prepared for this action is available from the Regional Administrator (see **ADDRESSES**).

Pursuant to 5. U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for the measures implemented by this emergency interim final rule. As detailed above, due to the delayed development of FW 42, this emergency Secretarial action is necessary to implement measures that would immediately reduce F on certain stocks by the start of the fishing year on May 1. NMFS only became aware that FW 42 would be delayed at the November 2005 Council meeting. This delay limited the ability of NMFS to develop emergency management measures and prepare the relevant analyses to implement such measures, after consideration of public comment, in time to allow delayed effectiveness before the beginning of FY 2006. In addition, because the measures

included in FW 42 were not formally adopted by the Council until its meeting in late January 2006, it was not possible to develop management measures that exactly mirrored those adopted by the Council until the preparation of this interim final rule. This caused further delay in the preparation of this interim final rule. The current regulations require that any management measures necessary to reduce F for stocks that do not achieve the Amendment 13 F objectives for FY 2006 must be implemented by the start of FY 2006. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2006, allowing existing regulations to continue. According to the analysis prepared for this action, the existing regulations are not sufficient to reduce F on several groundfish stocks to meet the F objectives of the Amendment 13 rebuilding programs for FY 2006. The existing management measures would, therefore, allow for the continuation of overfishing on specific groundfish stocks such as GOM cod, CC/GOM and SNE/MA yellowtail flounder, GB winter flounder, and white hake, stocks in need of F reductions for the start of FY 2006.

Public Reporting Burden

This emergency action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Public reporting burden for these collections of information are estimated as follows:

1. GB cod research set-aside TAC request, OMB# 0648–0202 (30 min/response);
2. VMS purchase and installation, OMB# 0648–0202 (1 hr/response);
3. VMS proof of installation, OMB# 0648–0202 (5 min/response);
4. Automated VMS polling of vessel position, OMB# 0648–0202 (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB#0648–0202 (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and associated SAPs OMB# 0648–0202, (2 min/response);
7. Daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas and associated SAPs, respectively, OMB# 0648–0212 (15 min/response);
8. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB# 0648–0212 (15 min/response);
9. DAS ''flip'' notification via VMS for the Regular B DAS Program, OMB# 0648–0202 (5 min/response);
10. DAS Leasing Program application, OMB# 0648–0475 (10 min/response); and
11. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648–0202 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is a modification of the DAS ''flip'' notification. When a vessel ''flips'' its DAS declaration from Category B DAS to Category A DAS, it is informing NMFS that it is changing the type of DAS being used for that trip. In a similar manner, a vessel would ''flip'' its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure overestimated the number of DAS flips that would occur during a particular fishing year, this action reduces the burden associated with that measure and adds a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions more accurately reflect vessel practices. To document this revision, the information collection previously approved by OMB under OMB# 0648–0202 is being revised by means of a worksheet, as authorized by consultation with OMB.

Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the measures for implementation through this emergency action. The FRFA describes the economic impacts that this emergency action will have on small entities. The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, based upon the corresponding economic analysis of the EA and the addendum to the EA prepared for this action to reflect changes from the proposed rule to the final interim rule; the comment and response section of this interim rule; and the other analyses contained in the EA for this action. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR, the EA, and the addendum to the EA prepared for this action are available from NMFS, Northeast Regional Office and are available on the Northeast Regional Office Web site (see **ADDRESSES**). A description of why this action was considered, the objectives of, and the legal basis for this final rule are contained in the preamble to this rule, the preamble of the proposed rule for this action, and in the EA prepared for this action and are not repeated here. In summary, this rule implements measures to immediately reduce F on particular groundfish stocks for the start of FY 2006 on May 1, 2006. This action is necessary to maintain efforts to continue the rebuilding programs established under Amendment 13 and maintain compliance with the requirements of the Magnuson-Stevens Act. The DAS Leasing Program and a modified Regular B DAS Program are continued in this action to help offset some of the economic and social impacts of continued effort reductions in the groundfish fishery and to provide some means of regulating effort shifts caused by differential DAS counting in this action. The measures implemented by this action are necessarily limited in scope because they are intended only to provide sufficient temporary reduction in F for several groundfish stocks so as not to jeopardize the rebuilding programs of several groundfish stocks while NMFS and the Council implement more permanent management measures through FW 42.

A Summary of the Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received 45 comments on the proposed rule. Of these, only one related to the IRFA. A summary of the economic issues raised, and NMFS's responses, follow:

Comment A: One industry group claims that the EA prepared for this action ignores the biological and economic impacts of differential DAS counting on monkfish Category C and D vessels.

Response: NMFS acknowledges that the EA, including the IRFA, prepared for this action inadvertently failed to fully assess the biological and economic impacts of differential DAS counting on monkfish Category C, D, F, G, or H vessels. This was an oversight and has been addressed through updates to the EA included in an addendum to the original EA. However, the economic impacts analysis prepared for this action did include the affects of the proposed measures on total fishing revenue. Total fishing revenue includes impacts on revenue generated from the catch and subsequent sale of monkfish. As a result, the EA did include some assessment of the economic impacts of differential DAS counting on the monkfish fishery.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This interim final rule implements measures that have the potential to affect any vessel currently issued a limited access NE multispecies permit or an open access NE multispecies charter/party permit. However, for the purposes of determining impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. During FY 2004, a total of 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In FY 2004, 705 entities participated in the commercial groundfish fishery and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by this action. Based on FY 2004 data, measures implemented by this rule would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by this action. Of these, 858 commercial fishing vessels are estimated to be affected, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FYs 2004–2005.

The Small Business Association (SBA) size standard for small commercial fishing entities is $4 million in gross sales, and the size standard for small party/charter operators is $6.5 million. Available data for FY 2004 gross sales show that the maximum gross for any single commercial fishing vessel was $1.8 million, and the maximum gross sales for any affected party/charter vessel was $1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and party/charter fishing entities fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The measures implemented by this emergency action include collection-of-information requirements subject to the PRA that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Measures implemented by this emergency action include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position; (4) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (5) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area and associated SAPs; (6) daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area and associated SAPs, respectively; (7) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area; (8) DAS ''flip'' notification via VMS for the Regular B DAS Program; (9) DAS Leasing Program application; and (10) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

It is difficult to estimate accurately the total reporting and recordkeeping burden associated with this action since the frequency of participation in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, the DAS Leasing Program, and fishing both inside and outside of the Eastern U.S./Canada Area on the same trip will be determined entirely by each vessel owner.

All participants in the Regular B DAS Program or the U.S./Canada Management Area and its SAPs must use VMS. All vessels that do not currently possess VMS must obtain one in order to participate in the programs implemented in this interim final rule. The cost of purchasing and installing VMS, along with the associated basic operational costs, have already been considered in previous analyses submitted in accordance with the PRA. Accordingly, the costs associated with the purchase, installation, and operation of VMS units are not summarized here. The new information-collection provisions associated with this emergency action involve the declaration of the intent to participate in these programs and the daily electronic reporting of catch and discards of fish by vessels electing to fish in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, and vessels fishing both inside and outside of the Eastern U.S./Canada Area on the same trip. This information is required to be submitted via VMS. Participating vessels will pay the costs associated with such declarations. Since the costs for these submissions have previously been approved by the OMB, as specified above, there are no additional costs to the public associated with measures implemented by this emergency action. Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Because this action largely builds on and amends Amendment 13 and subsequent framework actions, measures for which numerous alternatives were considered, and because of the focused objectives of this action, NMFS only fully considered two main alternatives for analysis: The proposed emergency action and the No Action alternative. Two other main

alternatives (area closures and a hard TAC alternative) were considered, but were rejected because they did not meet the objectives of this action. The area closure alternative included closing portions of the GOM RMA to reduce F on GOM cod and was rejected because these alternatives could have forced fishing effort to move into other RMAs; would have prohibited a majority of the fishing industry from operating in the GOM, resulting in significant economic impacts to the fishing industry operating in the GOM; and could have caused unnecessary impacts on healthy groundfish stocks, thereby reducing opportunities for vessels to target and generate revenue from these stocks and achieve OY. The hard-TAC alternative included hard TACs for species requiring F reductions for FY 2006, but were rejected because current data collection mechanisms do not allow for the complete, real-time catch monitoring that would be necessary for a hard-TAC alternative and because such an alternative would be inconsistent with measures adopted in FW 42. In response to public comment and other concerns, two additional options to the preferred alternative were considered to remove the differential DAS counting measure on GB. These two options to revise the preferred alternative consist of all of the measures included within the original preferred alternative, with the exception that the differential DAS counting measure was eliminated from the U.S./Canada Management Area on GB and replaced with the proposed FW 42 trip limits for GB winter flounder and white hake. The two additional options to modify the differential DAS counting measure include: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area, and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. Preliminary analysis of these two options indicated that Option 1 would provide comparable and slightly better ecological benefits as the original preferred alternative or Option 2, with substantially fewer adverse economic impacts. For example, the original preferred alternative and Option 2 would achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake) while substantially reducing F, and, therefore, yield, from other healthy groundfish stocks. In contrast, the measures in Option 1 will achieve the necessary F reductions for four stocks (GOM cod, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), with fewer reductions in yield from healthy groundfish stocks. The original preferred alternative and Option 2 would have resulted in a total reduction in groundfish sales of approximately $22.6 million and $21.6 million, respectively. However, the measures in Option 1 will result in a total reduction in groundfish sales of only $16.8 million. As a result, NMFS is implementing measures in Option 1 as the revised preferred alternative, as they would achieve similar, if not better, ecological benefits than the original preferred alternative, but with far fewer adverse economic impacts, consistent with the objectives of this action, national standards, and other applicable law. The remainder of this discussion will focus on the ways in which this final rule, in implementing the revised preferred alternative, will minimize the adverse economic impacts on small entities. An addendum to the original EA prepared for this action was prepared that includes the full analysis of the impacts of Option 1 as the revised preferred alternative and is available from the Regional Administrator (see **ADDRESSES**).

Analysis prepared for this emergency action examined the impacts on the fishing industry that would result from the continuation of the current management measures (*i.e.,* the set of measures currently in place for the NE multispecies fishery through the October 14, 2005, implementation of measures contained in FW 41 (70 FR 54302; September 14, 2005)), along with the measures implemented by this emergency action and described in the **SUMMARY** section of the preamble. This analysis assumed that the measures implemented by this emergency action would remain in effect for the duration of FY 2006 (*i.e.,* through April 30, 2007). The No Action alternative is defined as the current management measures, including the two default measures implemented by Amendment 13 (a change in the ratio of Category A to Category B DAS from 60:40 to 55:45, and differential DAS counting at a rate of 1.5:1 in the SNE/MA RMA). The No Action alternative would retain the current trip limits for GOM cod and CC/GOM, GB, and SNE/MA yellowtail flounder. In addition, under the No Action alternative, the DAS Leasing Program and the Regular B DAS Pilot Program would expire on April 30, 2006, and the Eastern U.S./Canada Haddock SAP would expire on November 18, 2006.

The No Action alternative would result in fewer negative economic impacts than the measures implemented by this emergency action. However, the No Action alternative would not meet the ecological objectives of this emergency action. In addition, specific measures included in this emergency action provide additional benefits beyond the No Action alternative. This emergency action implements programs that will provide small entities with additional fishing opportunities that are intended to mitigate some of the negative economic impacts resulting from the effort reductions implemented under Amendment 13 and this emergency action. This emergency action provides these additional fishing opportunities, including delaying the start date of the Eastern U.S./Canada Haddock SAP Pilot Program and continuing the DAS Leasing Program and a modified Regular B DAS Program, without compromising the Amendment 13 rebuilding programs. In addition, this emergency action also increases opportunities for vessels to more efficiently conduct fishing operations by allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

The Eastern U.S./Canada Haddock SAP Pilot Program allows limited access NE multispecies vessels the opportunity to use Category A or Category B (Regular and Reserve) DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits will be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels will be subject to the existing requirements of the Eastern U.S./Canada Area, including use of a VMS, and a requirement to use a haddock separator trawl. Delaying the start date of this SAP beyond the spawning period for species caught under this SAP is intended to provide further protection for GB cod and GB yellowtail flounder by eliminating bycatch of these species under this SAP from May through July and to increase ex-vessel prices for fish landed, as lower prices are often observed during that period due to the poor condition of the fish as a result of recent spawning. The implementation of additional incidental catch TACs for GB winter flounder and GB yellowtail flounder may result in these TACs being caught early in the program, resulting in the prohibition on the use of Category B (Regular and Reserve) DAS in this SAP for the duration of the season. However, these TACs provide incentives to properly configure the haddock separator trawl and avoid catching such stocks, resulting in prolonging access to this program under a Category B DAS and increasing the probability that more of the available haddock TAC will be caught. Therefore,

these incidental catch TACs, in addition to delaying the start date for this SAP, may prolong access to this SAP, resulting in potentially higher ex-vessel prices, as landings of higher quality fish are spread out throughout the season, and a higher probability that the available haddock TAC can be harvested.

Total revenues from the use of Regular B DAS over the duration of the Pilot Program were conservatively estimated at $10.4 million. This emergency action reduces the number of allowable Regular B DAS during quarter 1 to 500 DAS, while leaving the allowable Regular B DAS for quarters 2–4 at 1,000 DAS. In addition, this action restricts the use of Regular B DAS to the U.S./Canada Management Area, requires the use of a separator trawl, and designates both GB winter flounder and GB yellowtail flounder as stocks of concern with 100 lb (45 kg) per DAS trip limits. Although it could limit participation in the program, neither restricting the area for Regular B DAS, nor the separator trawl requirement is expected to necessarily change the potential earnings from the Regular B DAS Program. However, both GB yellowtail and winter flounders were important contributors to total Regular B DAS trips. Analysis of catch data on trips taken in the Pilot Program indicate that catch rates of stocks of concern may be too high, resulting in a closure of the area for Regular B DAS before even half of the allotted B DAS are used. This analysis suggests that potential revenues from the Regular B DAS Program may be reduced by more than two-thirds, to about $3 million. Despite this reduction in potential revenues, the modified Regular B DAS Program implemented by this emergency action will result in some additional sources of fishing revenue for FY 2006. Since the Regular B DAS Pilot Program expired on October 31, 2005, the No Action alternative would yield no economic benefits from this program. Therefore, the modified Regular B DAS Program implemented by this emergency action is favorable when compared to the No Action alternative.

This emergency action allows vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, which increases flexibility of vessel operations and reduces the risk of an unprofitable trip into the Eastern U.S./Canada Area. Without such flexibility, if a vessel does not locate a profitable amount of fish in the Eastern U.S./Canada Area, it would not have the option of fishing outside the area on the same trip. The No Action alternative would prohibit vessels from fishing inside and outside of this area on the same trip, and would not reduce the risk of an unprofitable trip. Therefore, the measure implemented by this emergency action is favorable when compared to the No Action alternative, as it would increase the flexibility, and therefore profitability, of trips into the Eastern U.S./Canada Area.

Under this emergency interim rule, the DAS Leasing Program will be continued unchanged, although the differential DAS counting measure implemented by this rule will likely have an impact on the price of a leased DAS. Differential DAS counting means that a vessel that may want to lease DAS may need to lease a larger number of DAS to get in the desired actual fishing time. Despite this, the continuation of the DAS Leasing Program provides additional opportunities for vessels to fish compared to the No Action alternative, as the DAS Leasing Program would otherwise expire on April 30, 2006.

Finally, this action relieves a restriction by eliminating unnecessary daily and maximum trip limits for haddock for FY 2006. These limits were implemented to prevent the target TAC for haddock from being exceeded. The target TAC for haddock has not been exceeded since 1996. Eliminating these restrictions will allow the fishing industry to harvest at least 75 percent of the target TAC for haddock during FY 2006. Further, eliminating these restrictions will allow vessels to possess and land haddock in excess of the daily and maximum trip limits, thereby preventing biological waste and providing an opportunity to offset some of the adverse economic impacts resulting from the implementation of Amendment 13 and this emergency action.

Despite the fewer negative economic impacts likely to result from the No Action alternative, this alternative would not result in sufficient reductions in F for specific groundfish stocks necessary to maintain the rebuilding programs established under Amendment 13. As a result, the No Action alternative would not prevent overfishing, as required by the Magnuson-Stevens Act. While the measures implemented by this emergency action do not, by themselves, prevent overfishing, in conjunction with the measures adopted by the Council for implementation under FW 42, these measures will prevent overfishing and assist the fishery to meet the Amendment 13 rebuilding objectives during FY 2006, as required by the Magnuson-Stevens Act. The measures implemented by this emergency action were selected because they meet statutory requirements, as well as the objectives of this action, and attempt to minimize the expected economic impacts as much as possible.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. In conjunction with this rulemaking process, a small entity complaince guide was prepared. Copies of the guide will be sent to all holders of limited access NE multispecies permits permits. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**) and is available on the Internet at *http://www.nero.noaa.gov.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 7, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, paragraphs (a)(1)(i)(A), (B), (E), (G), and (J); (a)(2)(i)(B), (E), (G), and (J); (a)(3)(i)(B), (E), (G), and (J); (a)(4)(i)(B), (E), (G), and (J); (a)(5)(i)(B), (E), (G), and (J); (a)(6)(i)(B), (E), (G), and (J); (a)(7)(i)(B), (E), (G), and (J); (a)(9)(i)(E), (G), and (J); (a)(12)(i)(B)(2), (E), (G), and (J); (a)(13)(i)(B) and (G); and (c)(2)(iii)(A) are suspended and paragraphs (a)(1)(i)(N) through (R); (a)(2)(i)(N), (P), and (Q); (a)(3)(i)(M) through (P); (a)(4)(i)(N) through (Q); (a)(5)(i)(M) through (P); (a)(6)(i)(M) through (P); (a)(7)(i)(M) through (P); (a)(9)(i)(O) through (Q); (a)(12)(i)(N) through (Q); (a)(13)(i)(O) and (P); and (c)(2)(iii)(C) are added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(N) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(N). A vessel may apply for a limited access Handgear A permit described in § 648.82(u)(6), if it meets the criteria described under paragraphs (a)(1)(i)(N)(*1*), (*2*), and (*3*) of this section.

(*1*) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(*2*) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(O) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(R) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(P) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(u)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable; and

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(Q) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(t), and the NE Multispecies DAS Transfer Program, as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(R) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(P) of this section.

* * * * *

(2) * * *

(i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(3) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(4) * * *

(i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(5) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(6) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(7) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(9) * * *

(i) * * *

(O) *Replacement vessels.* (*1*) See paragraph (a)(1)(i)(P) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(*4*) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(*6*) and (*7*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of permit history.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(12) * * *

(i) * * *

(N) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) *Replacement vessels.* The provisions of paragraph (a)(1)(i)(P) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

(Q) *Confirmation of permit history.* The provisions of paragraph (a)(1)(i)(R) of this section apply.

* * * * *

(13) * * *

(i) * * *

(O) *Fishing years 2003 and beyond.* For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(C) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation, as described in § 648.82(s). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

■ 3. In § 648.10, paragraphs (b)(1)(vii); (b)(2)(i), (iii), and (iv); (b)(3)(i)(A) and (C); (b)(3)(ii) and (iii); (c)(1) and (3); and (f)(2) are suspended and paragraphs (b)(1)(x); (b)(2)(v) through (vii); (b)(3)(i)(E) and (F); (b)(3)(iv) and (v); (c)(6) and (7); and (f)(3) are added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(x) A vessel electing to fish under the Regular B DAS Program, as specified in § 648.85(b)(10);

* * * * *

(2) * * *

(v) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(viii) under the provisions of that program.

(vi) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, pursuant to § 648.85(a), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

(vii) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(ii), (v), and (vi) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

* * * * *

(3) * * *

(i) * * *

(E) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(v) of this section; or

(F) Fish under the Regular B DAS Program specified at § 648.85(b)(10);

* * * * *

(iv) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS

unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section.

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) * * *

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(6), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iv) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(iv), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(7) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(vi) of this section.

* * * * *

(f) * * *

(3) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(s)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

■ 4. In § 648.14, paragraphs (a)(172), (c)(19), (c)(21) through (23), (c)(33) through (35), (c)(37), (c)(39), (c)(43), (c)(49) through (52), (c)(54) through (66), (c)(70), (c)(78), (c)(80), (y)(15), and (bb)(22) are suspended; and paragraphs (a)(173) through (178), (c)(81) through (116), (g)(4), (y)(22), and (bb)(23) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(173) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(vi) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

(174) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(175) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(viii)(A)(*1*).

(176) When fishing inside and outside of the Eastern U.S./Canada Area, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(viii)(A).

(177) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish within the CC/GOM or SNE/MA Yellowtail Flounder Areas on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(178) Discard legal-sized yellowtail flounder prior to declaring the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

* * * * *

(c) * * *

(81) Fail to comply with the exemption specifications as described in § 648.86(i)(4).

(82) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(s)(1)(ii), using the procedure specified in § 648.82(q).

(83) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(i)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(i)(4).

(84) Fail to remain in port for the appropriate time specified in § 648.86(i)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(85) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(i)(2)(ii) or (iii).

(86) Fail to remain in port for the appropriate time specified in § 648.86(i)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(87) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(t).

(88) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(t)(3).

(89) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(t)(4)(ix).

(90) Lease more than the maximum number of DAS allowable under § 648.82(t)(4)(iv).

(91) Lease NE multispecies DAS in excess of the duration specified in § 648.82(t)(4)(viii).

(92) If fishing under the cod trip limit specified in § 648.86(i)(2)(ii), fail to

obtain an annual declaration, or fish north of the exemption line specified in § 648.86(i)(4).

(93) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(10).

(94) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(10)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(10)(iv)(D).

(95) If fishing in the Regular B DAS Pilot Program, fail to comply with the restriction on DAS use as specified in § 648.82(v)(2)(i)(A).

(96) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod, GB winter flounder, or GB yellowtail flounder while fishing under a Category B DAS, as described in § 648.85(b)(8)(vii)(F).

(97) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(viii)(I), if the vessel possesses more than the landing limit for cod, GB winter flounder, or GB yellowtail flounder specified in § 648.85(b)(8)(vii)(F).

(98) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(viii)(J).

(99) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the requirements and restrictions specified in § 648.85(b)(10)(iv)(A) through (F), and (I).

(100) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

(101) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the observer notification requirement specified in § 648.85(b)(10)(iv)(B).

(102) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

(103) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the landing limits specified in § 648.85(b)(10)(iv)(D).

(104) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(10)(iv)(E).

(105) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(10)(iv)(F).

(106) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(10), if the program has been closed as specified in § 648.85(b)(10)(iv)(H) or (b)(10)(vi).

(107) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(10)(iv)(G).

(108) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the reporting requirements specified in § 648.85(b)(10)(iv)(I).

(109) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS outside the U.S./Canada Management Area specified under § 648.85(a)(1), or after the program has closed, as required under § 648.85(10)(iv)(G) or (H).

(110) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as required by § 648.85(b)(10)(iv)(J) and described under § 648.85(a)(3)(iii)(A).

(111) Use a Regular B DAS and a monkfish DAS on the same trip, if issued a limited access Category C, D, or F monkfish permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10).

(112) If issued a limited access monkfish Category C, D, or F permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10), possess more than the incidental catch amounts of monkfish, as specified at § 648.94(b)(7).

(113) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), discard legal-sized monkfish.

(114) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(J), and (b)(7)(v)(F) or (b)(7)(vi)(G), whichever is applicable.

(115) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(viii)(K) or (L).

(116) Provide false information on the application to downgrade the DAS Leasing Program baseline, as required under § 648.82(t)(4)(xi).

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal cod closure described in § 648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing described under § 648.89(c)(2)(vi).

* * * * *

(y) * * *

(22) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(O) and (F).

* * * * *

(bb) * * *

(23) Possess, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip from the GB haddock stock area defined in § 648.86(i)(6)(v)(B) following the effective date of any closure enacted pursuant to § 648.86(a)(3).

* * * * *

■ 5. In § 648.53, paragraph (e) is suspended, and paragraph (i) is added to read as follows:

§ 648.53 DAS allocations.

* * * * *

(i) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

■ 6. In § 648.80, paragraphs (a)(3)(vi), (a)(4)(i) through (iv), (b)(2)(i) through (iii) and (vi), and (c)(2)(ii) and (iii) are suspended, and paragraphs (a)(3)(viii), (a)(4)(vi) through (ix), (b)(2)(vii) through (x), and (c)(2)(vi) and (vii) are added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(viii) *Other restrictions and exemptions.* Vessels are prohibited from

fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(4) * * *

(vi) *Vessels using trawls.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vi), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Gillnet vessels.* Except as provided in paragraph (a)(3)(viii) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(b) * * *

(2) * * *

(vii) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (x) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (x) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)

× 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(x) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(u)(5) and (u)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(c) * * *

(2) * * *

(vi) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(vii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

■ 7. In § 648.82, paragraphs (a)(1), (b), (c)(1) and (2), (d) through (k), (l)(1)(iv) and (v), and (m) are suspended and paragraphs (a)(3), (c)(3) and (4), (d)(5) through (7), (l)(2)(viii) and (ix), and (n) through (w) are added to read as follows:

§ 648.82 Effort control program for NE multispecies limited access vessels.

* * * * *

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(Q), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

* * * * *

(c) * * *

(3) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid Small Vessel category permit, and NE multispecies Confirmation of Permit Histories, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(3)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(3). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (v) of this section.

(i) Except as provided in paragraphs (c)(3)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (u)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) Used DAS will be counted as described under paragraph (n) of this section.

(4) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(3) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional

Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (v) of this section.

* * * * *

(l) * * *

(2) * * *

(viii) NE multispecies Category A and Category B DAS, as defined under paragraphs (v)(1) and (2) of this section, shall be reduced by 20 percent upon transfer.

(ix) Category C DAS, as defined under paragraph (v)(3) of this section, will be reduced by 90 percent upon transfer.

* * * * *

(n) *Accrual of DAS.* (1) *Actual time.* Unless otherwise specified under this paragraph (n) and paragraph (s)(1)(iii) of this section, DAS shall accrue to the nearest minute and will be counted as actual time called, or logged into the DAS program.

(2) *Differential Category A DAS counting.* (i) *Vessels fishing outside of the U.S./Canada Management Area.* For any fishing trip, or part of a fishing trip, in which a NE multispecies declares vessel declares, pursuant to § 648.85(a)(3)(viii), that it intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS outside of the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1.4 to 1.0. For example, if a vessel fishes on a Category A DAS for 24 hr (1 DAS) outside of the U.S./Canada Management Area, 33.6 hr (24 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation. If a fishing trip in which a vessel fishes Category A DAS in the GOM and inside the Western U.S./Canada Area on the same trip lasts 120 hr (5 DAS), 168 hr (7 DAS) (120 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation.

(ii) *Vessels fishing in the U.S./Canada Management Area.* For any fishing trip in which a NE multispecies vessel declares, pursuant to § 648.85(a)(3)(viii), that it intends to fish, and fishes, under a Category A DAS exclusively within, other than for transiting to and from, the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1:1. For example, if a vessel declares its intent to fish exclusively within the Western U.S./Canada Area and the trip lasts for 120 hr (5 DAS) including transiting time, 120 hr (5 DAS), will be deducted from that vessel's NE multispecies Category A DAS allocation. A fishing vessel that declares its intent to fish exclusively in the Eastern U.S./Canada Area and fishes a total of 24 hr exclusively in the Eastern U.S./Canada Area and, therefore, is not subject to differential DAS counting for the part of the trip used to a transit to and from the Eastern U.S./Canada Area, shall be charged NE multispecies Category A DAS at a 1:1 ratio only for that part of the trip in the Eastern U.S./Canada Area (i.e., 24 hours, or 1 DAS).

(3) *Regular B DAS Program 24-hr clock.* For any fishing trip which a NE multispecies vessel elects to fish in the Regular B DAS Program, as specified at § 648.85(b)(10), and remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fishes on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that leaves on a trip at 11 p.m. on the first calendar day and returns at 10 p.m. on the next calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation will determine the amount of fish the vessel may legally land.

(o) *Good Samaritan credit.* See § 648.53(f).

(p) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (u)(5) or (6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(q) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (s)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(r) [Reserved]

(s) *Gillnet restrictions.* A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (s)(1)(i) through (iii) of this section. A vessel electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.*—(A) During each fishing year, a vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (p) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE

multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) A vessel shall declare its periods of required time through the notification procedures specified in § 648.10(f)(3).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of paragraph (n)(3) of this section; or fishing exclusively within the U.S./Canada Management Area specified at § 648.85(a)(1), and therefore subject to the DAS accrual provisions of paragraph (n)(2)(ii) of this section, a Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, or under a NE multispecies Category B DAS in an approved SAP specified at § 648.85(b), shall accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 11 hours. For a trip less than or equal to 3 hours, or more than 11 hours, the ratio of Category A DAS used to time called into the DAS program will be 1.4 to 1.0.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(7). When not fishing under a NE multispecies DAS, a Trip gillnet vessel may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. A vessel electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(t) *NE Multispecies DAS Leasing Program*—(1) *Program description.* Eligible vessels, as specified in paragraph (t)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.*—(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (u)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (t)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS. Any leased DAS used are subject to differential DAS accounting as described under paragraphs (n) and (t) of this section.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (t)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in

which such leases were approved by NMFS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (v)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (t)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (t)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement. Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(P) and (F), or any other provision, respectively.

(u) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (u)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (v) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. The number of Category A DAS shall be

increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (u)(2)(iii), and (c)(4)(ii) of § 648.80.

(5) *Small Vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(*2*), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(N), may retain, per trip, up to 250 lb (113.4 kg) of cod, one Atlantic halibut, and the daily limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(i)). For example if the GOM cod trip limit specified at § 648.86(i) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(v) *DAS categories and allocations.* For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, ''NE multispecies DAS'' refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (v)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (u)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (v)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(10). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(10)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (*i.e.*, when fishing in an approved SAP as described in § 648.85(b)).

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Reserve B DAS are calculated as follows:

(*1*) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(*2*) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(*3*) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) *Category C DAS*—(i) *Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(3) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (n)(2) of this

section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(w) *DAS credit for standing by entangled whales.* Limited access vessels fishing under the DAS program that report and stand by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(1) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(4) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG, and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

* * * * *

■ 8. In § 648.85, paragraphs (a)(3)(ii); (a)(3)(iv)(C)(*1*), (*2*) and (4); (a)(3)(v); (b)(5) and (6); (b)(7)(iv)(A); (b)(7)(v)(A); (b)(7)(vi)(A); and (b)(8)(i), (iv), and (v) are suspended; the introductory text of paragraph (a)(3)(iii) is revised; and paragraphs (a)(3)(iv)(C)(*5*) through (*7*), (a)(3)(viii) and (ix), (b)(7)(iv)(J), (b)(7)(v)(F), (b)(7)(vi)(G), (b)(8)(vi), (vii) and (viii), and (b)(9) and (10) are added to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(iii) NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Other types of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(iv) * * *

(C) * * *

(5) Initial yellowtail flounder landing limit. The initial yellowtail flounder possession limit for the U.S./Canada Area is 10,000 lb (4,536 kg) per trip. A separate yellowtail flounder trip limit for the Closed Area II Yellowtail Flounder SAP is specified under paragraph (b)(3)(viii) of this section. The trip limits specified under this paragraph, or paragraph (b)(3)(viii) of this section, may be adjusted by the Regional Administrator pursuant to paragraphs (a)(3)(iv)(C)(*3*) and (*6*) of this section.

(6) Authority to further restrict yellowtail flounder landing limits. Unless further restricted by the initial yellowtail flounder landing limit as specified by paragraph (a)(3)(iv)(C)(*5*) of this section, when the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western and Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(7) Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip. A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(viii)(B) of this section, must comply with the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

* * * * *

(viii) *Declaration.* To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must declare through the VMS, in accordance

with instructions to be provided by the Regional Administrator, which specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or which specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area the vessel will fish in, and comply with the restrictions and conditions in paragraphs (a)(3)(viii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Area.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip and the requirements of paragraphs (a)(3)(viii)(A)(*1*) and (*2*) of this section and does not discard legal-sized yellowtail flounder. If a vessel is fishing inside the Eastern U.S./Canada Area, and possesses yellowtail flounder in excess of what is allowed in either the CC/GOM Yellowtail Flounder Area or the SNE/MA Yellowtail Flounder Area, as defined in § 648.86(g), it may not fish outside of the Eastern U.S./Canada Area on the same trip. On trips when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS that it is electing to fish outside the Eastern U.S./Canada Area either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. Category A DAS shall accrue for the entire duration of the trip, regardless of whether the vessel began its trip under a Category A or Category B DAS. If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish exclusively within the Eastern and Western U.S./Canada Areas on the same trip, pursuant to paragraph (a)(3)(viii) of this section, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(ii). If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish within the Eastern U.S./Canada Area and outside of the U.S./Canada Management Area on the same trip, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(i).

(*2*) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(ix) for the duration of the trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it declares its intent to do so via VMS prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, and complies with the most restrictive regulations applicable to the area fished for the entire trip (*e.g.*, the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in § 648.85(a)(3)(ix). Category A DAS shall accrue in accordance with the regulations at § 648.82(n)(2)(ii) if the vessel fishes outside of the U.S./Canada Management Area on the same trip.

(ix) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(ix)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(viii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(b) * * *

(7) * * *

(iv) * * *

(J) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(10) of this section.

(v) * * *

(F) *DAS use restrictions.* A Sector vessel fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(v).

(vi) * * *

(G) *DAS use restrictions.* A non-Sector vessel fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(v)(2)(i)(C) and (v)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(H) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by a non-Sector vessel from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(9)(ii) of this section.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(H) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) * * *

(vi) *Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(viii)(E) of this section, is eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (vii) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(viii)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(vii) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program only from August 1 through December 31.

(viii) *Program restrictions*—(A) *DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(v)(2)(i)(A) and the restrictions of this paragraph (b)(8)(viii)(A).

(*1*) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(viii)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(viii)(J) of this section.

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8)(vi) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(viii)(D) of this section.

(*4*) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(viii)(A), must fish under the most restrictive trip provisions of any of the areas fished for the entire trip.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(vi) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(vi) of this section, as required under paragraph (b)(8)(viii)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(viii)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. Other types of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, provided the other gear is stowed in accordance with § 648.23(b).

(F) *Landing limits.* Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program, and fishing under a Category B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder or GB winter flounder, and no more than 500 lb (227 kg) of all flounder species, combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) each and possession of lobsters is prohibited.

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(ix) of this section.

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, and GB winter flounder (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by a vessel fishing under a Category B DAS, as authorized in paragraph (b)(8)(viii)(A) is the amount specified in paragraph (b)(9)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod, yellowtail flounder, or winter flounder. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod, yellowtail flounder, or winter flounder than the landing limits specified under paragraph (b)(8)(viii)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (*i.e.*, at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS, according to the regulations at § 648.82(n)(2). Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod, yellowtail flounder, and winter flounder no longer applies.

(J) *Minimum Category A DAS.* To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS that the vessel has at the start of the trip divided by 1.4.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(viii)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of

the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

(9) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(9), incidental TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(9) of this section, for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder and GB winter flounder, the incidental TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(9), shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* The incidental TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(10) *Regular B DAS Program*—(i) *Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS is eligible to participate in the Regular B DAS Program in the area specified in paragraph (b)(10)(ii) of this section, and may elect to fish under a Regular B DAS, provided it complies with the requirements and restrictions of this paragraph (b)(10), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(10)(iv)(G) or (H), or paragraph (b)(10)(vi) of this section. An eligible vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(10)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(10)(iv)(F) of this section. An eligible vessel may fish under the Regular B DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip. A Category C, D, or F monkfish vessel may only participate in this program if fishing under a NE multispecies DAS only (*i.e.*, a Category C, D, or F monkfish vessel may not use a Regular B DAS and a monkfish DAS on the same trip under the Regular B DAS Program).

(ii) *Scope of the program.* Fishing under this program may occur only in the geographic area defined for the U.S./Canada Management Areas, described under paragraph (a)(1), of this section.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs, as follows: The first quarter shall receive 13 percent of the incidental TACs and the remaining quarters shall receive 29 percent of the quarterly TACs each. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements*—(A) *VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(10)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting a vessel for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Program as required under paragraph (b)(10)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder, yellowtail flounder and windowpane flounder, with a maximum limit of 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder and yellowtail flounder), combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) per trip each and possession of lobsters is prohibited, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish or monkfish is prohibited. If such a vessel harvests and brings on board more legal-sized regulated groundfish or monkfish than the applicable maximum landing limit per trip specified under paragraph (b)(10)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (*i.e.*, at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared it DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish and monkfish no longer applies. A vessel that has declared a DAS flip will be subject to the most restrictive landing restrictions specified under paragraph (a)(3)(iv) of this section and paragraph § 648.86. Category C, D, or F monkfish vessels that have declared a DAS flip will be subject to the monkfish possession limits at § 648.94(b)(3).

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS divided by 1.4 that the

vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(n)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* When the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of the quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section is projected to have been harvested, Regular B DAS may not be used in the Regular B DAS Program for the duration of the calendar quarter. The closure of the Regular B DAS Program will occur even if the quarterly incidental TACs for other stocks have not been completely harvested.

(H) *Closure of Regular B DAS program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an incidental TAC as described in paragraph (b)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(v) of this section, when the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 500 Regular B DAS have been used during the May–July quarter, or when 1,000 Regular B DAS have been used during any other calendar quarter of the fishing year, in accordance with § 648.82(n)(3), Regular B DAS may not be used for the duration of the calendar quarter.

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(10)(iv)(c) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(J) *Trawl Gear Requirement.* Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section.

(v) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program.

* * * * *

■ 9. In § 648.86, paragraphs (b) and (g)(1) and (2) are suspended; paragraph (e) is revised; and paragraphs (g)(4) and (5), (i), and (j) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(e) *White hake.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may land or possess on board only up to 500 lb (226.8 kg) per DAS, or any part of a DAS, up to a maximum possession limit of 5,000 lb (2,268.1 kg) per trip of white hake.

* * * * *

(g) * * *

(4) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(4)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(4)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. Latitude	W. Longitude
SYT13	(1)	70° 00′
SYT12	41° 20′	70° 00′
SYT11	41° 20′	69° 50′
SYT10	41° 10′	69° 50′
SYT9	41° 10′	69° 30′
SYT8	41° 00′	69° 30′
SYT7	41° 00′	68° 50′
USCA1	42° 20′	68° 50′
USCA12	42° 20′	67° 40′
NYT1	43° 50′	67° 40′
NYT2	43° 50′	66° 50′
NYT3	44° 20′	66° 50′
NYT4	44° 20′	67° 00′
NYT5	(2)	67° 00′

[1] South facing shoreline of Cape Cod, MA.
[2] East facing shoreline of Maine.

(ii) *Requirements.* A vessel fishing in the Cape Cod/GOM Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

(5) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(3) and (u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the SNE/MA Yellowtail Flounder Area described in paragraph (g)(5)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(5)(ii) of this section.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. Latitude	W. Longitude
SYT1	38° 00′	(1)
SY2	38° 00′	72° 00′
SY3	39° 00′	72° 00′
SY4	39° 00′	71° 40′
SY5	39° 50′	71° 40′
USCA2	39° 50′	68° 50′
SYT7	41° 00′	68° 50′
SYT8	41° 00′	69° 30′
SYT9	41° 10′	69° 30′
SYT10	41° 10′	69° 50′
SYT11	41° 20′	69° 50′
SYT12	41° 20′	70° 00′
SYT13	(2)	70° 00′

[1] East facing shoreline of Virginia.
[2] South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* A vessel fishing in the SNE/MA Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

* * * * *

(i) *Cod*—(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (i)(1)(ii) and (i)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 600 lb (272.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 600 lb (272.2 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24-hr, a vessel may land up to an additional 600 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr,

may land up to, but no more than 1,200 lb (544.4 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 600 lb (272.2 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (i)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 600 lb (272.2 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 1,200 lb (544.4 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 1,200 lb (544.4 kg) of cod and would be charged 49 hr of DAS use (35 hours x 1.4).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (i)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt, pursuant to paragraph (i)(4) of this section, from the landing limit described in paragraph (i)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (*e.g.*, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (*e.g.*, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (*e.g.*, a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (i)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 2,000 lb (907.2 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod and would be charged 49 hr of DAS use (35 hours × 1.4).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (i)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (i)(1)(ii)(A) and (i)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (i)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00′ N. lat. and running eastward along 42°00′ N. lat. until it intersects with 69°30′ W. long., then northward along 69°30′ W. long. until it intersects with 42°0′ N. lat., then eastward along 42°20′ N. lat. until it intersects with 67°20′ W. long., then northward along 67°20′ W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(j) *GB winter flounder.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, a vessel fishing under a limited access Handgear A permit, a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may not possess or land more than 5,000 lb (2,268.1 kg) per trip of GB winter flounder.

* * * * *

10. In § 648.89, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are suspended and paragraphs (b)(3) and (4), (c)(1)(v) and (vi), and (c)(2)(v) and (vi) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(3) *Minimum fish sizes.* Unless further restricted under paragraph (b)(4) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies

DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22 (58.4 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole).	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
Atlantic halibut	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback).	12 (30.5 cm)
Redfish	9 (22.9 cm)

(4) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(3) of this section, may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(c) * * *

(1) * * *

(v) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(vi) of this section, each person on a private recreational vessel may possess up to 10 cod per day, in, or harvested from the EEZ.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board private recreational fishing vessels may not fish for or possess any cod in or from the GOM Regulated Mesh Area from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

(2) * * *

(v) Unless further restricted under paragraph (c)(2)(vi) of this section, each person on the vessel may possess up to 10 cod per day.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board charter/party fishing vessels may not fish for or possess any cod in the GOM Regulated Mesh Area from November 1 through March 31. Charter/party vessels in or from possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

* * * * *

■ 11. In § 648.91, paragraphs (c)(1)(i), (ii), and (iv) are suspended, and paragraphs (c)(1)(v) through (vii) are added to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(v) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE Multispecies DAS.* Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(vi). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(v) of this section.

(vii) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(v) of this section.

* * * * *

■ 12. In § 648.92, paragraphs (a)(1), (b)(2)(i) through (iii) are suspended, and paragraphs (a)(3), (b)(2)(iv) and (v) are added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

* * * * *

(b) * * *

(2) * * *

(iv) Unless otherwise specified in paragraph (b)(2)(v) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H monkfish vessel with a limited access NE multispecies DAS permit has a net annual allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than its net annual allocation of monkfish DAS. Under this circumstance, the number of monkfish-only DAS is equal to the difference between its net allocated monkfish DAS and its net allocated NE multispecies Category A DAS, unless modified by paragraphs (b)(2)(iv)(A), (B), and (C) of this section to account for differential DAS counting of NE multispecies DAS. When the total number of NE multispecies Category A DAS has been used, the vessel may utilize its monkfish-only DAS without concurrent use of a NE multispecies DAS, provided the vessel fishes under the provisions applicable to limited access monkfish Category A and B vessels. For the purposes of paragraph (b)(2)(iv) of this section, net allocated monkfish DAS is defined as the sum of the vessel's allocated monkfish DAS, plus its monkfish carry-over DAS, minus any monkfish DAS deducted from that vessel due to a DAS sanction, minus any forfeited monkfish DAS due to leasing of NE multispecies Category A DAS, pursuant to paragraph (b)(2)(v) of this section. For the purposes of paragraph (b)(2)(iv) of this section, net allocated NE multispecies Category A DAS is defined as the sum of the vessel's NE multispecies DAS allocated, pursuant to § 648.82, plus NE multispecies carry-over DAS, minus any NE multispecies DAS deducted from that vessel due to a DAS sanction, minus DAS leased to another vessel,

pursuant to § 648.82(t), plus any NE multispecies DAS leased from another vessel, pursuant to § 648.82(t).

(A) *Monkfish Category C, D, F, G, or H vessels fishing exclusively outside the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), the number of monkfish-only DAS that may be used by a monkfish Category C, D, F, G, or H vessel that fishes all of its allocated NE multispecies DAS exclusively outside of the U.S./Canada Management Area, as defined at § 648.85(a), is calculated using the following formula: Monkfish-only DAS = Net Allocated Monkfish DAS Allocation − (Net Allocated NE Multispecies Category A DAS ÷ 1.4). For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively outside of the U.S./Canada Management Area, the number of monkfish-only DAS that may be used by this vessel is equal to 18.57 DAS (40 monkfish DAS − (30 NE multispecies Category A DAS ÷ 1.4)).

(B) *Monkfish Category C, D, F, G, or H vessels fishing both inside and outside of the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS on a trip in which a vessel fishes inside and outside of the U.S./Canada Management Area on the same trip, for each NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), limited access monkfish Category C, D, F, G, or H vessels shall be allocated an additional 0.286 monkfish-only DAS for every NE multispecies Category A DAS that vessel used outside of the U.S./Canada Management Area. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies Category A DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies Category A DAS outside of the U.S./Canada Management Area, the vessel would actually be charged 2.8 NE multispecies Category A DAS (2 × 1.4 = 2.8 DAS), and its monkfish-only DAS would be adjusted upward by 0.57 DAS (2 × 0.286 = 0.57 DAS). If this same vessel fishes the remainder of its NE multispecies Category A DAS (i.e., 28 DAS) exclusively within the U.S./Canada Management Area, the vessel would not accrue any additional monkfish-only DAS. Therefore, this vessel's total allocation of monkfish-only DAS for the fishing year would be 10.57 DAS (10 DAS + 0.57 DAS). This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS used outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation − (Net Groundfish DAS Allocation ÷ 1.4).

(C) *Monkfish Category C, D, F, G, or H vessels fishing exclusively within the U.S./Canada Management Area.* No adjustment of monkfish-only DAS is required for a vessel fishing exclusively within the U.S./Canada Management Area throughout the fishing year because such a vessel is not charged at a differential rate for any NE multispecies Category A DAS used. For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively within the U.S./Canada Management Area, the number of monkfish-only DAS that could be used by this vessel is equal to 10 DAS (40 Allocated Monkfish DAS—30 Allocated NE Multispecies Category A DAS).

(v) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(iv) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(t), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(t), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated NE multispecies DAS, lease 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS—37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

■ 13. In § 648.94, paragraphs (b)(3) and (c)(3)(I) are suspended, and paragraphs (b)(7) and (c)(3)(iii) are added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(7) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program*—(i) *NFMA*—(A) *Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA*—(A) *Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

* * * * *

(c) * * *

(3) * * *

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit

(Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(vi), and (b)(2)(vii), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

* * * * *

■ 14. In § 648.95, paragraph (e)(3) is suspended, and paragraph (e)(5) is added to read as follows:

§ 648.95 Offshore Fishery Program in the SFMA.

* * * * *

(e) * * *

(5) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(v) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

* * * * *

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Part IV

Millennium Challenge Corporation

Notice of Entering Into a Compact With the Government of the Republic of Armenia; Notice

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–07]

Notice of Entering Into a Compact With the Government of the Republic of Armenia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Armenia. Representatives of the United States Government and the Government of the Republic of Armenia executed the Compact documents on March, 27, 2006.

Dated: April 6, 2006.

Jon A. Dyck,

Vice President & General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Republic of Armenia

I. Introduction

A small, landlocked country in the Caucasus region, Armenia is struggling to recover from the severe economic setbacks caused by the collapse of the Soviet Union in the early 1990s. In 1994, Armenia adopted a comprehensive stabilization and reform program that transformed it into a liberal market economy and launched a period of uninterrupted growth that saw its GDP increase at an average annual rate of 8% over the next decade. Today, the per-capita GDP of Armenia's 3.2 million inhabitants is estimated at $1,100. Economic growth to date has disproportionately benefited inhabitants of the capital, Yerevan, and the rural poverty rate remains above 30%. More than one million Armenians, or about 35% of the population, live in rural areas and are dependant on semi-subsistence agriculture. These farmers are operating on small, fragmented parcels of land and are constrained by poor infrastructure and an underdeveloped agricultural economy.

The $235 million Millennium Challenge Compact with the Republic of Armenia is focused on the reduction of rural poverty through a sustainable increase in the economic performance of the agricultural sector. The Program to be funded under the Compact will advance this goal through a five-year program of strategic investments in rural roads, irrigation infrastructure and technical assistance, and financial support to water supply entities, farmers, and commercial agribusinesses (the ''Program'').

II. Program Overview and Budget

To transform the economic performance of Armenia's agricultural sector and reduce rural poverty, the Program will undertake a Rural Road Rehabilitation Project and an Irrigated Agriculture Project.

A. *Rural Road Rehabilitation Project ($67 million):* This project will rehabilitate up to 943 km of rural roads, or 35% of the government-proposed lifeline road network. When complete, the lifeline network will ensure that every rural community has essential road access to markets, social services and the main road/interstate network. In addition, funding will be provided to the Armenian Road Directorate for a technical audit of the ongoing maintenance contracts and for a road maintenance strategic plan.

B. *Irrigated Agriculture Project ($146 million):* This project includes two activities:

- The *Infrastructure Activity* ($113 million) will rehabilitate up to 21 targeted irrigation infrastructure schemes across the country, expanding the total area under irrigated production and improving the overall efficiency of sourcing and delivery of water to farmers.
- The *Water-to-Market Activity* ($33 million) will build the management capacities of the local and national water supply entities and support the transition to higher-value agricultural systems of some 60,000 farmers by providing technical and rural credit assistance. This will ensure the sustainable management of the improved irrigation infrastructure and enable the emergence of profitable farming operations.

The following table outlines the MCA contribution to the Program by year and category.

Description	Timeline					Total
	CY1 ($US mil)	CY2 ($US mil)	CY3 ($US mil)	CY4 ($US mil)	CY5 ($US mil)	
Rural Road Rehabilitation Project	0.89	18.32	23.32	14.16	10.40	67.10
Irrigated Agriculture Project	8.24	37.24	41.23	34.20	24.77	145.67
Program Administration and Audits	2.06	4.12	4.69	3.81	3.11	17.79
Monitoring and Evaluation	1.44	0.92	0.95	0.97	0.81	5.08
Total*	12.63	60.61	70.20	53.13	39.09	235.65

*Total amounts may not sum due to rounding.

III. Impact

The Program will directly impact approximately 750,000 people, or 75% of the rural population, increasing their annual income by an estimated $36 million in 2010 and over $113 million in 2015. This corresponds to agricultural value-added gains of 4% and 11% over the same periods. By 2013, the rural poverty rate is projected to fall by 5 percentage points as a result of the Program. Continued reductions in rural poverty are expected with a sustained transformation of the agricultural sector.

The Rural Road Rehabilitation Project will reduce transport costs for the greater rural community, including farmers and processors, by an estimated $20 million annually beginning five years after material project benefits are realized. The principal beneficiaries of this project will be approximately 360,000 rural Armenians living in 265 communities connected by the portion of the road network to be rehabilitated with MCC funds.

The Irrigated Agriculture Project will benefit approximately 250,000 farmer households, 34% of which are headed by women. The Infrastructure Activity improvements will extend irrigation to an additional 46,000 hectares (114,000 acres) of new and recovered farmland, expanding the total area under irrigated production by more than 40%.

Technical support provided under the Water-to-Market Activity will enable over 60,000 participating farmers to increase their average net incomes by approximately 25% through the adoption of improved on-farm water management techniques and the cultivation of higher-value agriculture. The Water-to-Market Activity will also boost the development of small- and medium-sized agribusinesses by expanding rural access to credit and providing training in post-harvest processing and marketing.

IV. Program Management

The GOA will create a legal entity, MCA-Armenia, to manage and oversee the Program. MCA-Armenia will consist of a Governing Council and a Management Unit. The Governing Council, responsible for making key strategic and management decisions, will be chaired by the Prime Minister and include voting representatives from both government and civil society. The Management Unit will include technical experts and be responsible for the day-to-day management of the Program.

Project implementation will be carried out by three separate entities reporting to the Management Unit. The Rural Road Rehabilitation Project will be implemented by the Armenian Road Directorate, and the Infrastructure Activity of the Irrigated Agriculture Project will be implemented by the Irrigation Project Implementation Unit previously established by the World Bank. Implementation of the Water-to-Market Activity of the Irrigated Agriculture Project will be contracted out to a private firm or non-governmental organization (''NGO'').

A third-party non-government entity will be engaged to provide fiscal agent services to MCA-Armenia, including funds control, disbursement documentation and management, cash management and accounting. The fiscal agent will have sole signatory authority to authorize re-disbursements from the MCA-Armenia bank account into which MCC funds will be disbursed.

The World Bank procurement guidelines—modified as necessary to conform to MCC policies—will be used for procurement of the works, goods and consulting services needed under the Program. MCC will review and approve procurement plans on a periodic basis, as well as quarterly reports of all completed procurement actions. Independent auditors will also audit the procurement activity quarterly for compliance with MCC requirements.

V. Assessment

A. Economic Analysis

The projects included in the Program represent sound investments that will alleviate key constraints to economic growth and poverty reduction in rural Armenia. Economic rates of return (''ERRs'') were calculated for each infrastructure investment and technical assistance activity to select the highest return projects. These returns, which were modeled by the GOA's transaction team and reviewed by MCC, quantify the expected incremental increase in income from each individual activity. For the Rural Road Rehabilitation Project, savings in transport costs were estimated. For the Irrigated Agriculture Project, quantified benefits include additional income from newly irrigated land, the increase in high value-added crop cultivation, higher yields, lower production costs, and energy and water savings. The economic rates of return of each of the activities were compared to a benchmark of 12.5%, the average real growth rate for the past three years. The overall economic rate of return of the Compact is estimated at 25%.

Scenario	Key underlying assumptions	Project ERR (percent)	ERR for the Armenia Compact
Base case	Base traffic estimates and cost estimates Base benefit and cost estimates	Roads—26 Irrigation—25	25
Low return case 1	Cost increase of 30%	Roads—21 Irrigation—20	20
Low return case 2	Current traffic is only 50% of estimated value Benefits are delayed by two years	Roads—18 Irrigation—18	18

B. Consultative Process

The GOA based its Program proposal on a comprehensive consultative process that was initiated in 2003 for the development of its Poverty Reduction Strategy Paper (''PRSP''). The opportunity to apply for MCC funding led to further review and dissemination of the PRSP through electronic and printed media. In the initial priority-setting stage, the GOA engaged a broad cross-section of civil society—including rural community members, NGOs, and the private sector—through public meetings and regional roundtables focused specifically on MCA proposal development. The NGO community contributed substantially to the proposal development and due diligence processes by electing its own representatives to participate in meetings of the inter-governmental board of trustees (''Board of Trustees'').

Issues raised will continue to be addressed through an ongoing consultative process that incorporates feedback mechanisms reaching out to stakeholders, particularly those involved in irrigation, agriculture, rural road, policy development and advocacy, and groups that specialize in monitoring and evaluation. In order to provide an Internet-based resource and information portal, MCA-Armenia maintains an interactive website that provides up-to-date information on the Program, all meeting minutes, a forum page on which to post and debate issues related to proposal development and implementation, and an e-mail address for sending inquiries and concerns.

To ensure meaningful stakeholder participation in Compact implementation, the MCA-Armenia Governing Council will include five voting representatives of civil society. These representatives will be appointed by a Stakeholders' Committee consisting of eight to twelve individuals who represent Water User Associations (''WUAs''), farmer groups, NGOs involved in the PRSP and MCA consultative processes, and regional stakeholder committees. The Stakeholders' Committee will also consult with the chairman of the Board of Trustees on its views and recommendations regarding the performance and progress of the Program, project and sub-project activities, components of the Implementation Plan, procurement, and financial management. The minutes of these meetings and discussions will be posted on the MCA-Armenia Web site.

C. Government Commitment and Effectiveness

The GOA has exhibited a high degree of commitment to the Program, and will take the following measures to ensure

the effectiveness of the MCA investment:

- Adopting into legislation policies that will ensure the sustainability of the infrastructure investments, including user fee-based cost recovery mechanisms for irrigation systems and assigning maintenance responsibilities of the lifeline network to the Armenian Road Directorate.
- Developing and implementing a plan to restructure the Water Supply Agency and transferring certain operations and maintenance responsibilities to developing federations of WUAs.
- Identifying and contributing to financing for the rehabilitation of the rest of the lifeline network, in addition to the roads rehabilitated with MCC funding.
- Meeting the co-financing requirements of the WUAs for tertiary canals consistent with the ongoing World Bank Irrigation Development Project.

D. Sustainability

Currently, the GOA expends approximately $9 million per year for routine maintenance on the entire road network. As rehabilitation of the lifeline network proceeds, the GOA will commit additional resources for future financing of routine maintenance on the lifeline network. The Rural Road Rehabilitation Project will further help to institutionalize performance-based contracts, which were instituted by the Armenian Road Directorate in 2005.

The management of Armenia's irrigation network has recently been decentralized to 53 WUAs, and the GOA has enhanced water management efficiency by merging responsibilities for irrigation and drainage. The Irrigated Agriculture Project will benefit from an extensive Water-to-Market Activity that will provide technical and organizational support to ensure WUAs and federations of WUAs have systems to effectively manage and finance their operations. In addition, credit organizations will receive training and capital to expand financing opportunities to WUA member farmers and enterprises. The resulting transition to more profitable operations by member farmers will enhance the financial sustainability of the irrigation system, as will the replacement of pumping systems with more energy-efficient gravity irrigation and the increased capacity of the WUAs to finance themselves through member contributions.

E. Environmental and Social Impacts

The Program is unlikely to cause significant environmental, health, or safety hazards, and immitigable impacts on sensitive areas are not expected. The Rural Road Rehabilitation Project is classified as a ''Category B'' according to MCC guidelines, requiring environmental and social analyses due to potentially adverse site-specific environmental impacts. The Irrigated Agriculture Project is classified as a ''Category A,'' requiring environmental and social impact assessments due to potentially adverse environmental impacts resulting from the construction of reservoirs, gravity schemes, and the Ararat Valley drainage scheme. A baseline study will be required for the Ararat Valley drainage scheme prior to initiating the required environmental and social impact assessment, and a land compensation framework may be required for certain reservoirs. Environmental management plans will be developed for both projects. The environmental benefits expected from the Irrigated Agriculture Project include reduced water losses through increased efficiency, improved energy conservation and more sustainable agricultural practices. After reviewing an initial environmental assessment, the Armenian Ministry of Nature Protection issued a positive evaluation of the overall Program, a prerequisite for further environmental assessment and project design.

F. Donor Coordination

The Program builds upon an extensive body of work by several international donors, particularly the World Bank, which produced much of the research upon which the Program is based. In transportation, the main donors have been the World Bank and the Lincy Foundation. The Rural Road Rehabilitation Project complements the rehabilitation and construction of larger roads, and serves as a catalyst for contributions of future donors to the completion of the lifeline network. In irrigation, the main donors have been the World Bank and the International Fund for Agricultural Development. Other significant donor projects include the USDA Marketing Assistance Project, the USAID Micro Enterprise Development Initiative, and the USAID Armenia Agribusiness Small and Medium Enterprise Market Development Project. The Irrigated Agriculture Project will work closely with and build on the contributions of these donors.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Armenia

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Millennium Challenge Compact

This Millennium Challenge Compact (the ''*Compact*'') is made between the

United States of America, acting through the Millennium Challenge Corporation, a United States Government corporation (''*MCC*''), and the Government of the Republic of Armenia (the ''*Government*'') (referred to herein individually as a ''*Party*'' and collectively, the ''*Parties*''). A compendium of capitalized terms defined herein is included in Exhibit A attached hereto.

Recitals

Whereas, MCC, acting through its Board of Directors, has selected the Republic of Armenia as eligible to present to MCC a proposal for the use of Millennium Challenge Account (''*MCA*'') assistance to help facilitate poverty reduction through economic growth in Armenia;

Whereas, the Government has carried out a consultative process with the country's private sector and civil society to outline the country's priorities for the use of MCA assistance and developed a proposal, which was submitted to MCC on March 28, 2005 (the ''*Proposal*'');

Whereas, the Proposal focused on increasing agricultural production in poor, rural areas of the country through investments in irrigation and rural roads;

Whereas, MCC has evaluated the Proposal and related documents to determine whether the Proposal is consistent with core MCA principles and includes proposed activities and projects that will advance the progress of Armenia towards achieving economic growth and poverty reduction;

Whereas, based on MCC's evaluation of the Proposal and related documents and subsequent discussions and negotiations between the Parties, the Government and MCC determined to enter into this Compact to implement a program using MCC Funding to advance Armenia's progress towards economic growth and poverty reduction (the ''*Program*''); and

Whereas, the Government intends to establish a legal entity, in a form mutually agreeable to the Parties, which shall be responsible for the oversight and management of the implementation of this Compact on behalf of the Government (''*MCA-Armenia*'').

Now, Therefore, in consideration of the foregoing and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

Article I. Purpose and Term

Section 1.1 Objectives

The overall objective of this Compact is to reduce rural poverty through a sustainable increase in the economic performance of the agricultural sector in Armenia (the ''*Compact Goal*''). The Parties have identified the following project-level objectives (the ''*Objectives*'') to advance the Compact Goal, each of which is described in more detail in the Annexes attached hereto:

Expand the access of rural communities to agricultural markets, non-farm income opportunities and social infrastructure by improving the condition of rural roads (the ''*Rural Road Rehabilitation Objective*''); and

Increase the productivity of the agricultural sector by extending and improving the quality of the irrigation system, strengthening the entities that manage the system and enabling farmers to commercialize their products (the ''*Irrigated Agriculture Objective*'').

The Government expects to achieve, and shall use its best efforts to ensure the achievement of, these Objectives during the Compact Term.

Section 1.2 Projects

The Annexes attached hereto describe the specific projects and the policy reforms and other activities related thereto (each, a ''*Project*'') that the Government will carry out, or cause to be carried out, in furtherance of this Compact to achieve the Objectives.

Section 1.3 Entry into Force; Compact Term

This Compact shall enter into force on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that each Party has completed its domestic requirements for entry into force of this Compact and that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC (such date, the ''*Entry into Force*''). This Compact shall remain in force for five (5) years from the Entry into Force of this Compact, unless earlier terminated in accordance with Section 5.4 (the ''*Compact Term*'').

Article II. Funding and Resources

Section 2.1 MCC Funding

(a) MCC's Contribution. MCC hereby grants to the Government, subject to the terms and conditions of this Compact, an amount not to exceed Two Hundred Thirty-Five Million Six Hundred Fifty Thousand United States Dollars (USD $235,650,000) (''*MCC Funding*'') during the Compact Term to enable the Government to implement the Program and achieve the Objectives.

(i) Subject to Sections 2.1(a)(ii), 2.2(b) and 5.4, the allocation of MCC Funding within the Program and among and within the Projects shall be as generally described in Annex II or as otherwise agreed upon by the Parties from time to time.

(ii) If at any time MCC determines that a condition precedent to an MCC Disbursement has not been satisfied, MCC may, upon written notice to the Government, reduce the total amount of MCC Funding by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the Program, Project or Project Activity for which such condition precedent has not been met. Upon the expiration or termination of this Compact, (1) any amounts of MCC Funding not disbursed by MCC to the Government shall be automatically released from any obligation in connection with this Compact and (2) any amounts of MCC Funding disbursed by MCC to the Government as provided in Section 2.1(b)(i), but not re-disbursed as provided in Section 2.1(b)(ii) or otherwise incurred as permitted pursuant to Section 5.4(e) prior to the expiration or termination of this Compact, shall be returned to MCC in accordance with Section 2.5(a)(ii).

(iii) Notwithstanding any other provision of this Compact and pursuant to the authority of section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''*Act*''), upon the conclusion of this Compact (and without regard to the satisfaction of all of the conditions for Entry into Force required under Section 1.3), MCC shall make available Five Hundred Thousand United States Dollars (USD $500,000) (''*Compact Implementation Funding*'') to facilitate certain aspects of Compact implementation as described in Schedule 2.1(a)(iii) attached hereto; *provided*, such Compact Implementation Funding shall be subject to (1) the limitations on the use or treatment of MCC Funding set forth in Section 2.3, as if such provision were in full force and effect, and (2) any other requirements for, and limitations on the use of, such Compact Implementation Funding as may be required by MCC in writing; *provided, further,* that any Compact Implementation Funding granted in accordance with this Section 2.1(a)(iii) shall be included in, and not additional to, the total amount of MCC Funding; and *provided, further,* any obligation to provide such Compact Implementation Funding shall expire upon the expiration or termination of this Compact or five (5) years from the conclusion of this Compact, whichever occurs sooner. Notwithstanding anything to the contrary in this Compact, this Section 2.1(a)(iii) shall provisionally apply prior to Entry into Force.

(b) Disbursements.

(i) Disbursements of MCC Funding. MCC shall from time to time make disbursements of MCC Funding (each such disbursement, an ''*MCC Disbursement*'') to a Permitted Account or through such other mechanism agreed by the Parties under and in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(ii) Re-Disbursements of MCC Funding. The release of MCC Funding from a Permitted Account (each such release, a ''*Re-Disbursement*''), shall be made in accordance with the procedures and requirements set forth in Annex I, the Disbursement Agreement or as otherwise provided in any other relevant Supplemental Agreement.

(c) Interest. Unless the Parties agree otherwise in writing, any interest or other earnings on MCC Funding that accrue (collectively, ''*Accrued Interest*'') shall be held in a Permitted Account and accrue in accordance with the requirements for the accrual and treatment of Accrued Interest as specified in Annex I or any relevant Supplemental Agreement. On a quarterly basis and upon the termination or expiration of this Compact, the Government shall return, or ensure the return of, all Accrued Interest to any United States Government account designated by MCC.

(d) Conversion; Exchange Rate. The Government shall ensure that all MCC Funding that is held in the Permitted Account(s) shall be denominated in the currency of the United States of America (''*United States Dollars*'') prior to Re-Disbursement; *provided*, that a certain portion of MCC Funding may be transferred to a Local Account and may be held in such Local Account in the currency of the Republic of Armenia prior to Re-Disbursement in accordance with the requirements of Annex I and any relevant Supplemental Agreement. To the extent that any amount of MCC Funding held in United States Dollars must be converted into the currency of the Republic of Armenia for any purpose, including for any Re-Disbursement or any transfer of MCC Funding into a Local Account, the Government shall ensure that such amount is converted consistent with Annex I, including the rate and manner set forth in Annex I, and the requirements of the Disbursement Agreement or any other Supplemental Agreement between the Parties.

(e) Guidance. From time to time, MCC may provide guidance to the Government through Implementation Letters on the frequency, form and content of requests for MCC Disbursements and Re-Disbursements or any other matter relating to MCC Funding. The Government shall apply such guidance in implementing this Compact.

Section 2.2 Government Resources

(a) The Government shall provide or cause to be provided such Government funds and other resources, and shall take or cause to be taken such actions, including obtaining all necessary approvals and consents, as are specified in this Compact or in any Supplemental Agreement to which the Government is a party or as are otherwise necessary and appropriate to effectively carry out the Government Responsibilities or other responsibilities or obligations of the Government under or in furtherance of this Compact during the Compact Term and through the completion of any post-Compact Term activities, audits or other responsibilities.

(b) If at any time during the Compact Term, the Government materially reallocates or reduces the allocation in its national budget or any other Armenian governmental authority at a departmental, municipal, regional or other jurisdictional level materially reallocates or reduces the allocation of its respective budget, of the normal and expected resources that the Government or such other governmental authority, as applicable, would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein, the Government shall notify MCC in writing within fifteen (15) days of such reallocation or reduction, such notification to contain information regarding the amount of the reallocation or reduction, the affected activities, and an explanation for the reduction. In the event that MCC independently determines upon review of the executed national annual budget that such a material reallocation or reduction of resources has occurred, MCC shall notify the Government and, following such notification, the Government shall provide a written explanation for such reallocation or reduction and MCC may (i) reduce, in its sole discretion, the total amount of MCC Funding or any MCC Disbursement by an amount equal to the amount estimated in the applicable Detailed Financial Plan for the activity for which funds were reduced or reallocated or (ii) otherwise suspend or terminate MCC Funding in accordance with Section 5.4(b).

(c) The Government shall use its best efforts to ensure that all MCC Funding is fully reflected and accounted for in the annual budget of the Republic of Armenia on a multi-year basis.

Section 2.3 Limitations on the Use or Treatment of MCC Funding

(a) Abortions and Involuntary Sterilizations. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is subject to prohibitions on use of funds contained in (i) paragraphs (1) through (3) of section 104(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(f)(1)–(3), a United States statute, which prohibitions shall apply to the same extent and in the same manner as such prohibitions apply to funds made available to carry out Part I of such Act; or (ii) any provision of law comparable to the eleventh and fourteenth provisos under the heading ''Child Survival and Health Programs Fund'' of division E of Public Law 108–7 (117 Stat. 162), a United States statute.

(b) United States Job Loss or Displacement of Production. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, including:

(i) Providing financial incentives to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(ii) Supporting investment promotion missions or other travel to the United States with the intention of inducing United States firms to relocate a substantial number of United States jobs or a substantial amount of production outside the United States;

(iii) Conducting feasibility studies, research services, studies, travel to or from the United States, or providing insurance or technical and management assistance, with the intention of inducing United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(iv) Advertising in the United States to encourage United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(v) Training workers for firms that intend to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States;

(vi) Supporting a United States office of an organization that offers incentives

for United States firms to relocate a substantial number of United States jobs or cause a substantial displacement of production outside the United States; or

(vii) Providing general budget support for an organization that engages in any activity prohibited above.

(c) Military Assistance and Training. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support the purchase or use of goods or services for military purposes, including military training, or to provide any assistance to the military, police, militia, national guard or other quasi-military organization or unit.

(d) Prohibition of Assistance Relating to Environmental, Health or Safety Hazards. The Government shall ensure that MCC Funding shall not be used to undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard. Unless MCC and the Government agree otherwise in writing, the Government shall ensure that activities undertaken, funded or otherwise supported in whole or in part (directly or indirectly) by MCC Funding comply with environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time (the ''*Environmental Guidelines*''), including any definition of ''likely to cause a significant environmental, health, or safety hazard'' as may be set forth in such Environmental Guidelines.

(e) Taxation.

(i) Taxes. The Government shall ensure that the Program, all Program Assets, MCC Funding and Accrued Interest shall be free from any taxes imposed under laws currently or hereafter in effect in the Republic of Armenia during the Compact Term. This exemption shall apply to any use of any Program Asset, MCC Funding and Accrued Interest, including any Exempt Uses, and to any work performed under or activities undertaken in furtherance of this Compact by any person or entity (including contractors and grantees) funded by MCC Funding, and shall apply to all taxes, tariffs, duties, and other levies (each a ''*Tax*'' and collectively, *''Taxes''*), including:

(1) To the extent attributable to MCC Funding, income taxes and other taxes on profit or businesses imposed on organizations or entities, other than nationals of the Republic of Armenia, receiving MCC Funding, including taxes on the acquisition, ownership, rental, disposition or other use of real or personal property, taxes on investment or deposit requirements and currency controls in the Republic of Armenia, or any other tax, duty, charge or fee of whatever nature, except fees for specific services rendered; for purposes of this Section 2.3(e), the term ''national'' refers to organizations established under the laws of the Republic of Armenia, other than MCA-Armenia or any other entity established solely for purposes of managing or overseeing the implementation of the Program or any wholly-owned subsidiaries, divisions, or Affiliates of entities not registered or established under the laws of the Republic of Armenia;

(2) Customs duties, tariffs, import and export taxes, or other levies on the importation, use and re-exportation of goods, services, or the personal belongings and effects, including personally-owned automobiles, for Program use or the personal use of individuals who are neither citizens nor permanent residents of the Republic of Armenia and who are present in the Republic of Armenia for purposes of carrying out the Program or their family members, including all charges based on the value of such imported goods;

(3) Taxes on the income or personal property of all individuals who are neither citizens nor permanent residents of the Republic of Armenia, including income and social security taxes of all types and all taxes on the personal property owned by such individuals, to the extent such income or property are attributable to MCC Funding; and

(4) Taxes or duties levied on the purchase of goods or services funded by MCC Funding, including sales taxes, tourism taxes, value-added taxes (''*VAT*''), or other similar charges.

(ii) This Section 2.3(e) shall apply, but is not limited to (1) any transaction, service, activity, contract, grant or other implementing agreement funded in whole or in part by MCC Funding; (2) any supplies, equipment, materials, property or other goods (referred to herein collectively as ''goods'') or funds introduced into, acquired in, used or disposed of in, or imported into or exported from, the Republic of Armenia by MCC, or by any person or entity (including contractors and grantees) as part of, or in conjunction with, MCC Funding or the Program; (3) any contractor, grantee, or other organization carrying out activities funded in whole or in part by MCC Funding; and (4) any employee of such organizations (the uses set forth in clauses (1) through (4) are collectively referred to herein as ''*Exempt Uses*'').

(iii) If a Tax has been levied and paid contrary to the requirements of this Section 2.3(e), whether inadvertently, due to the impracticality of implementation of this provision with respect to certain types or amounts of taxes, or otherwise, the Government shall refund promptly to MCC to an account designated by MCC the amount of such Tax in the currency of the Republic of Armenia, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing according to procedures agreed by the Parties, whether by MCC or otherwise, of such levy and tax payment; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.3(e)(iii) and no MCC Funding, Accrued Interest, or any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding (''*Program Assets*'') may be applied by the Government in satisfaction of its obligations under this paragraph.

(iv) The Parties shall memorialize in a mutually acceptable Supplemental Agreement or Implementation Letter or other suitable document the mechanisms for implementing this Section 2.3(e), including (1) a formula for determining refunds for Taxes paid, the amount of which is not susceptible to precise determination, (2) a mechanism for ensuring the tax-free importation, use, and re-exportation of goods, services, or the personal belongings of individuals (including all Providers) described in paragraph (i)(2) of this Section 2.3(e), and (3) any other appropriate Government action to facilitate the administration of this Section 2.3(e).

(v) The Parties agree that this Section 2.3(e) shall supplement, without limiting in any manner, the provisions relating to tariffs, dues, customs duties, import taxes and other similar taxes or charges contained in the bilateral agreement entered into on December 12, 1992 between the Government of the United States of America and the Government of the Republic of Armenia Regarding Cooperation to Facilitate the Provision of Humanitarian and Technical Economic Assistance (the ''*Bilateral Agreement*''), which agreement continues in full force and effect. In case of any inconsistency between the provisions of this Section 2.3(e) and the provisions relating to tariffs, dues, customs duties, import taxes and other similar taxes or charges contained in the Bilateral Agreement, the provisions of this Section 2.3(e) shall prevail.

(f) Alteration. The Government shall ensure that no MCC Funding, Accrued Interest or Program Assets shall be

subject to any impoundment, rescission, sequestration or any provision of law now or hereafter in effect in the Republic of Armenia that would have the effect of requiring or allowing any impoundment, rescission or sequestration of any MCC Funding, Accrued Interest or Program Asset.

(g) Liens or Encumbrances. The Government shall ensure that no MCC Funding, Accrued Interest or Program Assets shall be subject to any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind (each a ''*Lien*''), except with the prior approval of MCC in accordance with Section 3(c) of Annex I, and in the event of the imposition of any Lien not so approved, the Government shall promptly seek the release of such Lien; *provided, however,* the Government shall satisfy its obligations under this Section 2.3(g) at its own expense and no MCC Funding, Accrued Interest or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.3(g).

(h) Other Limitations. The Government shall ensure that the use or treatment of MCC Funding, Accrued Interest and Program Assets shall be subject to such other limitations (i) as required by the applicable law of the United States of America now or hereafter in effect during the Compact Term, (ii) as advisable under or required by applicable United States Government policies now or hereafter in effect during the Compact Term, or (iii) to which the Parties may otherwise agree in writing.

(i) Utilization of Goods, Services and Works. The Government shall ensure that any Program Assets, services, facilities or works funded in whole or in part (directly or indirectly) by MCC Funding, unless otherwise agreed by the Parties in writing, shall be used solely in furtherance of this Compact.

(j) Notification of Applicable Laws and Policies. MCC shall notify the Government of any applicable United States law or policy affecting the use or treatment of MCC Funding, whether or not specifically identified in this Section 2.3, and shall provide to the Government a copy of the text of any such applicable law and a written explanation of any such applicable policy.

Section 2.4 Incorporation; Notice; Clarification

(a) The Government shall include, or ensure the inclusion of, all of the requirements set forth in Section 2.3 in all Supplemental Agreements to which MCC is not a party and shall use its best efforts to ensure that no such Supplemental Agreement is implemented in violation of the prohibitions set forth in Section 2.3.

(b) The Government shall ensure notification of all of the requirements set forth in Section 2.3 to any Provider and all relevant officers, directors, employees, agents, representatives, Affiliates, contractors, sub-contractors, grantees and sub-grantees of any Provider. The term ''*Provider*'' shall mean (i) MCA-Armenia and any Government Affiliate or Permitted Designee involved in any activities in furtherance of this Compact or (ii) any third party who receives at least USD $50,000 in the aggregate of MCC Funding (other than employees of MCA-Armenia) during the Compact Term or such other amount as the Parties may agree in writing, whether directly from MCC, indirectly through Re-Disbursements, or otherwise.

(c) In the event the Government or any Provider requires clarification from MCC as to whether an activity contemplated to be undertaken in furtherance of this Compact violates or may violate any provision of Section 2.3, the Government shall notify, or ensure that such Provider notifies, MCC in writing and provide in such notification a detailed description of the activity in question. In such event, the Government shall not proceed, and shall use its best efforts to ensure that no relevant Provider proceeds, with such activity, and the Government shall ensure that no Re-Disbursements shall be made for such activity, until MCC advises the Government or such Provider in writing that the activity is permissible.

Section 2.5 Refunds; Violation

(a) Notwithstanding the availability to MCC, or exercise by MCC of, any other remedies, including under international law, this Compact, or any Supplemental Agreement:

(i) If any amount of MCC Funding or Accrued Interest, or any Program Asset, is used for any purpose prohibited under this Article II or otherwise in violation of any of the terms and conditions of this Compact, any guidance in any Implementation Letter, or any Supplemental Agreement between the Parties, MCC may require the Government to repay promptly to MCC to an account designated by MCC or to others as MCC may direct the amount of such misused MCC Funding or Accrued Interest, or the cash equivalent of the value of any misused Program Asset, in United States Dollars, plus any interest that accrued or would have accrued thereon, within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified, whether by MCC or otherwise, of such prohibited use; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 2.5(a)(i) and no MCC Funding, Accrued Interest or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.5(a)(i); and

(ii) If all or any portion of this Compact is terminated or suspended and upon the expiration of this Compact, the Government shall, subject to the requirements of Sections 5.4(e) and 5.4(f), refund, or ensure the refund, to MCC to such account(s) designated by MCC the amount of any MCC Funding, plus any Accrued Interest, promptly, but in no event later than thirty (30) days after the Government receives MCC's request for such refund; *provided,* that if this Compact is terminated or suspended in part, MCC may request a refund for only the amount of MCC Funding, plus any Accrued Interest, then allocated to the terminated or suspended portion; *provided, further,* that any refund of MCC Funding or Accrued Interest shall be to such account(s) as designated by MCC.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 2.5 for a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

(c) If MCC determines that any activity or failure to act violates, or may violate, any Section in this Article II, MCC may refuse any further MCC Disbursements for or conditioned upon such activity, and may take any action to prevent any Re-Disbursement related to such activity.

Article III. Implementation

Section 3.1 Implementation Framework

This Compact shall be implemented by the Parties in accordance with this Article III and as further specified in the Annexes and in relevant Supplemental Agreements.

Section 3.2 Government Responsibilities

(a) The Government shall have principal responsibility for oversight and management of the implementation of the Program (i) in accordance with the terms and conditions specified in this Compact and relevant

Supplemental Agreements, (ii) in accordance with all applicable laws then in effect in the Republic of Armenia, and (iii) in a timely and cost-effective manner and in conformity with sound technical, financial and management practices (collectively, the ''*Government Responsibilities*''). Unless otherwise expressly provided, any reference to the Government Responsibilities or any other responsibilities or obligations of the Government herein shall be deemed to apply to any Government Affiliate and any of their respective directors, officers, employees, contractors, sub-contractors, grantees, sub-grantees, agents or representatives.

(b) The Government shall ensure that no person or entity shall participate in the selection, award, administration or oversight of a contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding, in which (i) the entity, the person, members of the person's immediate family or household or his or her business partners, or organizations controlled by or substantially involving such person or entity, has or have a financial or other interest or (ii) the person or entity is negotiating or has any arrangement concerning prospective employment, unless such person or entity has first disclosed in writing to the Government the conflict of interest and, following such disclosure, the Parties agree in writing to proceed notwithstanding such conflict. The Government shall ensure that no person or entity involved in the selection, award, administration, oversight or implementation of any contract, grant or other benefit or transaction funded in whole or in part (directly or indirectly) by MCC Funding shall solicit or accept from or offer to a third party or seek or be promised (directly or indirectly) for itself or for another person or entity any gift, gratuity, favor or benefit, other than items of de minimis value and otherwise consistent with such guidance as MCC may provide from time to time.

(c) The Government shall not designate any person or entity, including any Government Affiliate, to implement, in whole or in part, this Compact or any Supplemental Agreement between the Parties (including any Government Responsibilities or any other responsibilities or obligations of the Government under this Compact or any Supplemental Agreement between the Parties) or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, except as expressly provided herein or with the prior written consent of MCC; *provided, however,* the Government may designate MCA-Armenia or, with the prior written consent of MCC, such other mutually acceptable persons or entities, to implement some or all of the Government Responsibilities or any other responsibilities or obligations of the Government or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties (referred to herein collectively as ''*Designated Rights and Responsibilities*''), in accordance with the terms and conditions set forth in this Compact or such Supplemental Agreement (each, a ''*Permitted Designee*''). Notwithstanding any provision herein or any other agreement to the contrary, no such designation shall relieve the Government of such Designated Rights and Responsibilities, for which the Government shall retain ultimate responsibility. In the event that the Government designates any person or entity, including any Government Affiliate, to implement any portion of the Government Responsibilities or other responsibilities or obligations of the Government, or to exercise any rights of the Government under this Compact or any Supplemental Agreement between the Parties, in accordance with this Section 3.2(c), then the Government shall (i) cause such person or entity to perform such Designated Rights and Responsibilities in the same manner and to the full extent to which the Government is obligated to perform such Designated Rights and Responsibilities, (ii) ensure that such person or entity does not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any other person or entity and (iii) cause such person or entity to certify to MCC in writing that it will so perform such Designated Rights and Responsibilities and will not assign, delegate, or contract (or otherwise transfer) any of such Designated Rights and Responsibilities to any person or entity without the prior written consent of MCC.

(d) The Government shall, upon a request from MCC, execute, or ensure the execution of, an assignment to MCC of any cause of action which may accrue to the benefit of the Government, a Government Affiliate or any Permitted Designee, including MCA-Armenia, in connection with or arising out of any activities funded in whole or in part (directly or indirectly) by MCC Funding.

(e) The Government shall ensure that (i) no decision of MCA-Armenia is modified, supplemented, unduly influenced or rescinded by any governmental authority, except by a non-appealable judicial decision or any judicial decision which MCA-Armenia, with the agreement of MCC, decides not to appeal, and (ii) the authority of MCA-Armenia shall not be expanded, restricted, or otherwise modified, except in accordance with this Compact, the Governance Agreement or any other Supplemental Agreement between the Parties.

(f) The Government shall ensure that all persons and individuals that enter into agreements to provide goods, services or works under the Program or in furtherance of this Compact shall do so in accordance with the Procurement Guidelines and shall obtain all necessary immigration, business and other permits, licenses, consents and approvals to enable them and their personnel to fully perform under such agreements.

Section 3.3 Government Deliveries

The Government shall proceed, and cause others to proceed, in a timely manner to deliver to MCC all Government deliveries required to be delivered by the Government under this Compact or any Supplemental Agreement between the Parties, in form and substance as set forth in this Compact or in any such Supplemental Agreement.

Section 3.4 Government Assurances

The Government hereby provides the following assurances to MCC that as of the date this Compact is signed:

(a) The information contained in the Proposal and any agreement, report, statement, communication, document or otherwise delivered or otherwise communicated to MCC by or on behalf of the Government on or after the date of the submission of the Proposal (i) are true, correct and complete in all material respects and (ii) do not omit any fact known to the Government that if disclosed would (1) alter in any material respect the information delivered, (2) likely have a material adverse effect on the Government's ability to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact, or (3) have likely adversely affected MCC's determination to enter into this Compact or any Supplemental Agreement between the Parties;

(b) Unless otherwise disclosed in writing to MCC, the MCC Funding made available hereunder is in addition to the normal and expected resources that the

Government usually receives or budgets for the activities contemplated herein from external or domestic sources;

(c) This Compact does not conflict and will not conflict with any international agreement or obligation to which the Government is a party or by which it is bound; and

(d) No payments have been (i) received by any official of the Government or any other government body in connection with the procurement of goods, services or works to be undertaken or funded in whole or in part (directly or indirectly) by MCC Funding, except fees, taxes, or similar payments legally established in the Republic of Armenia or (ii) made to any third party, in connection with or in furtherance of this Compact, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. 78a *et seq.*).

Section 3.5 Implementation Letters; Supplemental Agreements

(a) MCC may, from time to time, issue one or more letters to furnish additional information or guidance to assist the Government in the implementation of this Compact (each, an ''*Implementation Letter*''). The Government shall apply such guidance in implementing this Compact.

(b) The details of any funding, implementing and other arrangements in furtherance of this Compact may be memorialized in one or more agreements between (i) the Government (or any Government Affiliate or Permitted Designee) and MCC, (ii) MCC and/or the Government (or any Government Affiliate or Permitted Designee) and any third party, including any of the Providers or Permitted Designee or (iii) any third parties where neither MCC nor the Government is a party, before, on or after the Entry into Force (each, a ''*Supplemental Agreement*''). The Government shall deliver, or cause to be delivered, to MCC within five (5) days of its execution a copy of any Supplemental Agreement to which MCC is not a party.

Section 3.6 Procurement; Awards of Assistance

(a) The Government shall ensure that the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact shall be consistent with the procurement guidelines (the ''*Procurement Guidelines*'') reflected in a Supplemental Agreement between the Government (and/or a mutually acceptable Government Affiliate such as MCA-Armenia) and MCC (the ''*Procurement Agreement*''), which Procurement Guidelines shall include the following requirements:

(i) Internationally accepted procurement rules with open, fair and competitive procedures are used in a transparent manner to solicit, award and administer contracts, grants, and other agreements and to procure goods, services and works;

(ii) Solicitations for goods, services, and works shall be based upon a clear and accurate description of the goods, services or works to be acquired;

(iii) Contracts shall be awarded only to qualified and capable contractors that have the capability and willingness to perform the contracts in accordance with the terms and conditions of the applicable contracts and on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, services, and works.

(b) The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, records regarding the receipt and use of goods, services and works acquired in furtherance of this Compact, the nature and extent of solicitations of prospective suppliers of goods, services and works acquired in furtherance of this Compact, and the basis of award of contracts, grants and other agreements in furtherance of this Compact.

(c) The Government shall use its best efforts to ensure that information, including solicitations, regarding procurement, grant and other agreement actions funded (or to be funded) in whole or in part (directly or indirectly) by MCC Funding shall be made publicly available in the manner outlined in the Procurement Guidelines or in any other manner agreed upon by the Parties in writing.

(d) The Government shall ensure that no goods, services or works funded in whole or in part (directly or indirectly) by MCC Funding are procured pursuant to orders or contracts firmly placed or entered into prior to the Entry into Force, except as the Parties may otherwise agree in writing.

(e) The Government shall ensure that MCA-Armenia and any other Permitted Designee follows, and uses its best efforts to ensure that all Providers follow, the Procurement Guidelines in procuring (including soliciting) goods, services and works and in awarding and administering contracts, grants and other agreements in furtherance of this Compact, and shall furnish MCC evidence of the adoption of the Procurement Guidelines by MCA-Armenia no later than the time specified in the Disbursement Agreement.

(f) The Government shall include, or ensure the inclusion of, the requirements of this Section 3.6 into all Supplemental Agreements between the Government or any Government Affiliate or Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, on the one hand, and a Provider, on the other hand.

(g) The Government shall ensure that approvals of the procurement of goods, works and services in furtherance of this Compact by the Governing Council pursuant to the terms of the Procurement Agreement shall not be subject to any additional approval by the Government.

Section 3.7 Policy Performance; Policy Reforms

In addition to the specific policy and legal reform commitments identified in Annex I and the Schedules thereto, the Government shall seek to maintain and improve its level of performance under the policy criteria identified in section 607 of the Act, and the MCA selection criteria and methodology published by MCC pursuant to section 607 of the Act from time to time (*''MCA Eligibility Criteria''*).

Section 3.8 Records and Information; Access; Audits; Reviews

(a) Reports and Information. The Government shall furnish to MCC, and shall use its best efforts to ensure that all Providers and any other third party receiving MCC Funding, as appropriate, furnish to the Government (and the Government shall provide to MCC), any records and other information required to be maintained under this Section 3.8 and such other information, documents and reports as may be necessary or appropriate for the Government to effectively carry out its obligations under this Compact, including under Section 3.12.

(b) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Providers maintain, accounting books, records, documents and other evidence relating to this Compact adequate to show, to the satisfaction of MCC, without limitation, the use of all MCC Funding, including all costs incurred by the Government and the Providers in furtherance of this Compact, the receipt, acceptance and use of goods, services and works acquired in furtherance of this Compact by the Government and the Providers, agreed-upon cost sharing requirements,

the nature and extent of solicitations of prospective suppliers of goods, services and works acquired by the Government and the Providers in furtherance of this Compact, the basis of award of Government and other contracts and orders in furtherance of this Compact, the overall progress of the implementation of the Program, and any documents required by this Compact or any Supplemental Agreement between the Parties or reasonably requested by MCC upon reasonable notice (''*Compact Records*''). The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with the prior written approval by MCC, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in the Republic of Armenia. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Access. Upon the request of MCC, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, the Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or a Permitted Designee to conduct any assessment, review or evaluation of the Program, at all reasonable times the opportunity to audit, review, evaluate or inspect activities funded in whole or in part (directly or indirectly) by MCC Funding or undertaken in connection with the Program, the utilization of goods and services purchased or funded in whole or in part (directly or indirectly) by MCC Funding, and Compact Records, including of the Government or any Provider, relating to activities funded or undertaken in furtherance of, or otherwise relating to, this Compact, and shall use its best efforts to ensure access by MCC, the Inspector General, the United States Government Accountability Office or relevant auditor, reviewer or evaluator or their respective representatives or agents to all relevant directors, officers, employees, Affiliates, contractors, representatives and agents of the Government or any Provider.

(d) Audits.

(i) Government Audits. The Government shall, on at least an annual basis and as the Parties may otherwise agree in writing, conduct, or cause to be conducted, financial audits of all MCC Disbursements and Re-Disbursements during the year since the Entry into Force or since the prior anniversary of the Entry into Force in accordance with the following terms, except as the Parties may otherwise agree in writing. As requested by MCC in writing, the Government shall use, or cause to be used, or select, or cause to be selected, an auditor named on the approved list of auditors in accordance with the *Guidelines for Financial Audits Contracted by Foreign Recipients* (the ''*Audit Guidelines*'') issued by the Inspector General (the ''*Inspector General*'') of the United States Agency for International Development (''*USAID*'') and as approved by MCC, to conduct such annual audits. Such audits shall be performed in accordance with such Audit Guidelines and be subject to quality assurance oversight by the Inspector General in accordance with such Audit Guidelines. An audit shall be completed no later than 90 days after the first anniversary of the Entry into Force of this Compact and no later than 90 days after each anniversary of the Entry into Force thereafter, or such other period as the Parties may otherwise agree in writing.

(ii) Audits of U.S. Entities. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, state that the United States organization is subject to the applicable audit requirements contained in OMB Circular A–133, notwithstanding any other provision of this Compact to the contrary. The Government shall ensure that Supplemental Agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(iii) Audit Plan. The Government shall submit, or cause to be submitted, to MCC, no later than twenty (20) days prior to the date of its adoption, in form and substance satisfactory to MCC, a plan, in accordance with the Audit Guidelines, for the audit of the expenditures of any Covered Providers, which audit plan, in the form and substance as approved by MCA-Armenia, the Government shall adopt, or cause to be adopted, no later than sixty (60) days prior to the end of the first anniversary of the Entry into Force of this Compact or prior to the end of the first period to be audited.

(iv) Covered Provider. A ''*Covered Provider*'' is (1) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $300,000 or more of MCC Funding in any MCA-Armenia fiscal year or any other non-United States person or entity that receives (directly or indirectly) USD $300,000 or more of MCC Funding from any Provider in such fiscal year or (2) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) USD $500,000 or more of MCC Funding in any MCA-Armenia fiscal year or any other United States person or entity that receives (directly or indirectly) USD $500,000 or more of MCC Funding from any Provider in such fiscal year.

(v) Corrective Actions. The Government shall use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of its own records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(vi) Audit Reports. The Government shall furnish, or use its best efforts to cause to be furnished, to MCC an audit report in a form satisfactory to MCC for each audit required by this Section 3.8, other than audits arranged for by MCC, no later than 90 days after the end of the period under audit, or such other time as may be agreed by the Parties from time to time.

(vii) Other Providers. For Providers who receive MCC Funding under this Compact pursuant to direct contracts or agreements with MCC, MCC shall include appropriate audit requirements in such contracts or agreements and shall, on behalf of the Government, unless otherwise agreed by the Parties, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(viii) Audit by MCC. MCC retains the right to perform, or cause to be performed, the audits required under this Section 3.8 by utilizing MCC Funding or other resources available to MCC for this purpose, and to audit, conduct a financial review, or otherwise ensure accountability of any Provider or any other third party receiving MCC

Funding, regardless of the requirements of this Section 3.8.

(e) Application to Providers. The Government shall include, or ensure the inclusion of, at a minimum, the requirements of:

(i) Paragraphs (a), (b), (c), (d)(ii), (d)(iii), (d)(v), (d)(vi), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents (each, a ''*Government Party*''), on the one hand, and a Covered Provider that is not a non-profit organization domiciled in the United States, on the other hand;

(ii) Paragraphs (a), (b), (c), (d)(ii), and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Provider that does not meet the definition of a Covered Provider; and

(iii) Paragraphs (a), (b), (c), (d)(ii), (d)(v) and (d)(viii) of this Section 3.8 into all Supplemental Agreements between a Government Party and a Covered Provider that is a non-profit organization domiciled in the United States.

(f) Reviews or Evaluations. The Government shall conduct, or cause to be conducted, such performance reviews, data quality reviews, environmental and social audits, or program evaluations during the Compact Term or otherwise and in accordance with the M&E Plan or as otherwise agreed in writing by the Parties.

(g) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any Audits, reviews or evaluations required under this Compact, including as reflected on Exhibit A to Annex II, and in no event shall the Government be responsible for the costs of any such Audits, reviews or evaluations from financial sources other than MCC Funding.

Section 3.9 Insurance

The Government shall, to MCC's satisfaction, insure or cause to be insured all Program Assets and shall obtain or cause to be obtained such other appropriate insurance and other protections to cover against risks or liabilities associated with the operations of the Program, including by requiring Providers to obtain adequate insurance and post adequate performance bonds or other guarantees. MCA-Armenia or the Implementing Entity, as applicable, shall be named as the payee on any such insurance and the beneficiary of any such guarantee, including performance bonds. MCC and, to the extent it is not named as the payee, MCA-Armenia shall be named as additional insureds on any such insurance or other guarantee, to the extent permissible under applicable laws. The Government shall ensure that any proceeds from claims paid under such insurance or any other form of guarantee shall be used to replace or repair any loss of Program Assets or to pursue the procurement of the covered goods, services or works; *provided, however*, at MCC's election, such proceeds shall be deposited in a Permitted Account as designated by MCA-Armenia and acceptable to MCC or otherwise as directed by MCC. To the extent MCA-Armenia is held liable under any indemnification or other similar provision of any agreement between MCA-Armenia, on the one hand, and any other Provider or other third party, on the other hand, the Government shall pay in full on behalf of MCA-Armenia any such obligation; *provided, further*, the Government shall apply national funds to satisfy its obligations under this Section 3.9 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 3.9.

Section 3.10 Domestic Requirements

The Government shall proceed in a timely manner to seek any required ratification of this Compact or similar domestic requirement, which process the Government shall initiate promptly after the conclusion of this Compact. Notwithstanding anything to the contrary in this Compact, this Section 3.10 shall provisionally apply prior to the Entry into Force.

Section 3.11 No Conflict

The Government shall undertake not to enter into any agreement in conflict with this Compact or any Supplemental Agreement during the Compact Term.

Section 3.12 Reports

The Government shall provide, or cause to be provided, to MCC at least on each anniversary of the Entry into Force and otherwise within thirty (30) days of any written request by MCC, or as otherwise agreed in writing by the Parties, the following information:

(a) The name of each entity to which MCC Funding has been provided;

(b) The amount of MCC Funding provided to such entity;

(c) A description of the Program and each Project funded in furtherance of this Compact, including:

(i) A statement of whether the Program or any Project was solicited or unsolicited; and

(ii) A detailed description of the objectives and measures for results of the Program or Project;

(d) The progress made by the Republic of Armenia toward achieving the Compact Goal and Objectives;

(e) A description of the extent to which MCC Funding has been effective in helping the Republic of Armenia to achieve the Compact Goal and Objectives;

(f) A description of the coordination of MCC Funding with other United States foreign assistance and other related trade policies;

(g) A description of the coordination of MCC Funding with assistance provided by other donor countries;

(h) Any report, document or filing that the Government, any Government Affiliate or any Permitted Designee submits to any government body in connection with this Compact;

(i) Any report or document required to be delivered to MCC under the Environmental Guidelines, any Audit Plan, or any component of the Implementation Plan; and

(j) Any other report, document or information requested by MCC or required by this Compact or any Supplemental Agreement between the Parties.

Article IV. Conditions Precedent; Deliveries

Section 4.1 Conditions Prior to the Entry Into Force and Deliveries

As conditions precedent to the Entry into Force, the Parties shall satisfy the conditions set forth in this Section 4.1.

(a) The Government (acting through a mutually acceptable Government Affiliate and/or MCA-Armenia) and MCC shall execute a Disbursement Agreement, which agreement shall be in full force and effect and, if required, ratified in Armenia as of the Entry into Force.

(b)(i) The Government (acting through a mutually acceptable Government Affiliate and/or MCA-Armenia) shall deliver one or more of the Supplemental Agreements identified in *Exhibit B* attached hereto, which agreements shall be duly executed by the parties thereto and in full force and effect and, if required, ratified in Armenia as of the Entry into Force, or (ii) the Government (acting through a mutually acceptable Government Affiliate and/or MCA-Armenia) and MCC execute one or more term sheets that set forth the material and principal terms and conditions that will be included in any such

Supplemental Agreement that has not been entered into as of the Entry into Force (the *''Supplemental Agreement Term Sheets''*).

(c) The Government (acting through a mutually acceptable Government Affiliate and/or MCA-Armenia) and MCC shall execute a Procurement Agreement, which agreement shall be in full force and effect and, if required, ratified in Armenia as of the Entry into Force.

(d) The Government shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact, such written statement to be signed by the Prime Minister or a duly authorized official of the Government other than the Principal Representative or any such Additional Representative.

(e) The Government shall deliver a letter signed and dated by the Minister of Justice of the Government certifying:

(i) That the Government has completed all of its domestic requirements for this Compact to be fully enforceable under Armenian law; and

(ii) That attached thereto are true, correct and complete copies of any decree, legislation, regulation or other governmental document relating to its domestic requirements for this Compact to enter into force, which MCC may post on its Web site or otherwise make publicly available.

(f) MCC shall deliver a letter signed and dated by the Principal Representative of MCC certifying that MCC has completed its domestic requirements for this Compact to enter into force.

(g) MCC shall deliver a written statement as to the incumbency and specimen signature of the Principal Representative and each Additional Representative executing any document under this Compact, such written statement to be signed by a duly authorized officer of MCC other than the Principal Representative or any such Additional Representative.

Section 4.2 Conditions Precedent to MCC Disbursements or Re-Disbursements

Prior to, and as condition precedent to, any MCC Disbursement or Re-Disbursement, the Government shall satisfy, or ensure the satisfaction of, all applicable conditions precedent in the Disbursement Agreement.

Article V. Final Clauses

Section 5.1 Communications

Unless otherwise expressly stated in this Compact or otherwise agreed in writing by the Parties, any notice, certificate, request, report, document or other communication required, permitted, or submitted by either Party to the other under this Compact shall be: (a) In writing; (b) in English; and (c) deemed duly given: (i) Upon personal delivery to the Party to be notified; (ii) when sent by confirmed facsimile or electronic mail, if sent during normal business hours of the recipient Party, if not, then on the next business day; or (iii) two (2) business days after deposit with an internationally recognized overnight courier, specifying next day delivery, with written verification of receipt to the Party to be notified at the address indicated below, or at such other address as such Party may designate:

To MCC:

Millennium Challenge Corporation, Attention: Vice President of Operations, (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Phone: (202) 521–3600, E-mail: *VPOperations@mcc.gov* (Vice President of Operations); *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel).

To the Government:

Ministry of Finance and Economy, Attention: Minister of Finance and Economy, 1, Melik-Adamyan Str., Yerevan 375010, Republic of Armenia, Facsimile: +374 (10) 59–53–28, Phone: +374 (10) 59–52–22 or 23, E-mail: *minister@mfe.am.*

Notwithstanding the foregoing, any audit report delivered pursuant to Section 3.8, if delivered by facsimile or electronic mail, shall be followed by an original in overnight express mail. This Section 5.1 shall not apply to the exchange of letters contemplated in Section 1.3 or any amendments under Section 5.3.

Section 5.2 Representatives

Unless otherwise agreed in writing by the Parties, for all purposes relevant to this Compact, the Government shall be represented by the individual holding the position of, or acting as, Minister of Finance and Economy, and MCC shall be represented by the individual holding the position of, or acting as, Vice President of Operations (each, a ''*Principal Representative*''), each of whom, by written notice, may designate one or more additional representatives (each, an ''*Additional Representative*'') for all purposes other than signing amendments to this Compact. The names of the Principal Representative and any Additional Representative of each of the Parties shall be provided, with specimen signatures, to the other Party, and the Parties may accept as duly authorized any instrument signed by such representatives relating to the implementation of this Compact, until receipt of written notice of revocation of their authority. A Party may change its Principal Representative to a new representative of equivalent or higher rank upon written notice to the other Party, which notice shall include the specimen signature of the new Principal Representative.

Section 5.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives of the Parties and subject to the respective domestic approval requirements to which this Compact was subject.

Section 5.4 Termination; Suspension

(a) Subject to Section 2.5 and paragraphs (e) through (h) of this Section 5.4, either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) Notwithstanding any other provision of this Compact, including Section 2.1, or any Supplemental Agreement between the Parties, MCC may suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation or sub-obligation related thereto, upon giving the Government written notice, if MCC determines, in its sole discretion that:

(i) Any use or proposed use of MCC Funding or Program Assets or continued implementation of the Compact would be in violation of applicable law or United States Government policy, whether now or hereafter in effect;

(ii) The Government, any Provider, or any other third party receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(iii) The Government or any Permitted Designee has committed an act or omission or an event has occurred that would render Armenia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(iv) The Government or any Permitted Designee has engaged in a pattern of

actions or omissions inconsistent with the MCA Eligibility Criteria, or there has occurred a significant decline in the performance of the Republic of Armenia on one or more of the eligibility indicators contained therein;

(v) The Government or any Provider has materially breached one or more of its assurances or any covenants, obligations or responsibilities under this Compact or any Supplemental Agreement;

(vi) An audit, review, report or any other document or other evidence reveals that actual expenditures for the Program or any Project or any Project Activity were greater than the projected expenditure for such activities identified in the applicable Detailed Financial Plan or are projected to be greater than projected expenditures for such activities;

(vii) If the Government (1) materially reduces the allocation in its national budget or any other Government budget of the normal and expected resources that the Government would have otherwise received or budgeted, from external or domestic sources, for the activities contemplated herein; (2) fails to contribute or provide the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact; or (3) fails to pay any of its obligations as required under this Compact or any Supplemental Agreement, including such obligations which shall be paid solely out of national funds;

(viii) If the Government, any Provider, or any other third party receiving MCC Funding or using Program Assets, or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;

(ix) Any MCC Funding or Program Assets are applied (directly or indirectly) to the provision of resources and support to, individuals and organizations associated with terrorism, sex trafficking or prostitution;

(x) An event or condition of any character has occurred that: (1) Materially and adversely affects, or is likely to materially and adversely affect, the ability of the Government or any other party to effectively implement, or ensure the effective implementation of, the Program or any Project or to otherwise carry out its responsibilities or obligations under or in furtherance of this Compact or any Supplemental Agreement or to perform its obligations under or in furtherance of this Compact or any Supplemental Agreement or to exercise its rights thereunder; (2) makes it improbable that the Objectives will be achieved during the Compact Term; (3) materially and adversely affects the Program Assets or any Permitted Account; or (4) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government, any Government Affiliate, Permitted Designee or Provider, or any officer, director, employee, agent, representative, Affiliate, contractor, grantee, subcontractor or sub-grantee thereof;

(xi) The Government or any Permitted Designee or Provider has taken any action or omission or engaged in any activity in violation of, or inconsistent with, the requirements of this Compact or any Supplemental Agreement to which the Government or any Permitted Designee or Provider is a party;

(xii) There has occurred a failure to meet a condition precedent or series of conditions precedent or any other requirements or conditions in connection with MCC Disbursement as set out in and in accordance with any Supplemental Agreement between the Parties; or

(xiii) Any MCC Funding, Accrued Interest or Program Asset becomes subject to a Lien without the prior approval of MCC, and the Government fails to obtain the release of such Lien (at its own expense and not with MCC Funding, Accrued Interest or Program Assets) within 30 days after the imposition of such Lien.

(c) MCC may reinstate any suspended or terminated MCC Funding under this Compact or any Supplemental Agreement if MCC determines, in its sole discretion, that the Government or other relevant party has demonstrated a commitment to correcting each condition for which MCC Funding was suspended or terminated.

(d) The authority to suspend or terminate this Compact or any MCC Funding under this Section 5.4 includes the authority to suspend or terminate any obligations or sub-obligations relating to MCC Funding under any Supplemental Agreement without any liability to MCC whatsoever.

(e) All MCC Disbursements and Re-Disbursements shall cease upon expiration, suspension, or termination of this Compact; *provided, however,* (i) reasonable expenditures for goods, services and works that are properly incurred under or in furtherance of this Compact before expiration, suspension or termination of this Compact and (ii) reasonable expenditures for goods and services (including certain administrative expenses) properly incurred within one hundred and twenty (120) days after the expiration, suspension or termination of the Compact in connection with the winding up of the Program may be paid from MCC Funding, provided that in the case of clauses (i) and (ii) the request for such payment is (1) properly submitted within ninety (90) days after the expiration, suspension or termination of the Compact and (2) subject to the prior written consent of MCC.

(f) Other than payments permitted pursuant to Section 5.4(e), in the event of the suspension or termination of this Compact or any Supplemental Agreement, in whole or in part, each Party, shall suspend, for the period of the suspension, or terminate, or ensure the suspension or termination of, as applicable, any obligation or sub-obligation of the Parties to provide financial or other resources under this Compact or any Supplemental Agreement, or to the suspended or terminated portion of this Compact or such Supplemental Agreement, as applicable. In the event of such suspension or termination, the Government shall use its best efforts to suspend or terminate, or ensure the suspension or termination of, as applicable, all such noncancelable commitments related to the suspended or terminated MCC Funding. Any portion of this Compact or any such Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(g) Upon the full or partial suspension or termination of this Compact or any MCC Funding, MCC may, at its expense, direct that title to Program Assets be transferred to MCC if such Program Assets are in a deliverable state; *provided,* for any Program Asset(s) partially purchased or funded (directly or indirectly) by MCC Funding, the Government shall reimburse to a United States Government account designated by MCC the cash equivalent of the portion of the value of such Program Asset(s).

(h) Prior to the expiration of this Compact or upon the termination of this Compact, the Parties shall consult in good faith with a view to reaching an agreement in writing on (i) the post-Compact Term treatment of MCA-Armenia, (ii) the process for ensuring the refunds of MCC Disbursements that have not yet been released from a Permitted Account through a valid Re-Disbursement nor otherwise committed in accordance with Section 5.4(e), or (iii) any other matter related to the

winding up of the Program and this Compact.

Section 5.5 Privileges and Immunities

MCC is an agency of the Government of the United States of America and its personnel assigned to the Republic of Armenia will be notified pursuant to the Vienna Convention on Diplomatic Relations as members of the mission of the Embassy of the United States of America. The Government shall ensure that any personnel of MCC, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in the Republic of Armenia, shall enjoy the privileges and immunities that are enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service, as appropriate, of comparable rank and salary of such personnel, if such personnel or the members of the families of such personnel are not a national of, or permanently resident in the Republic of Armenia.

Section 5.6 Attachments

Any annex, schedule, exhibit, table, appendix or other attachment expressly attached hereto (collectively, the ''*Attachments*'') is incorporated herein by reference and shall constitute an integral part of this Compact.

Section 5.7 Inconsistencies

(a) Conflicts or inconsistencies between any parts of this Compact shall be resolved by applying the following descending order of precedence:

(i) Articles I through V; and

(ii) Any Attachments.

(b) In the event of any conflict or inconsistency between this Compact and any Supplemental Agreement between the Parties, the terms of this Compact shall prevail. In the event of any conflict or inconsistency between any Supplemental Agreement between the Parties and any other Supplemental Agreement, the terms of the Supplemental Agreement between the Parties shall prevail. In the event of any conflict or inconsistency between Supplemental Agreements between any parties, the terms of a more recently executed Supplemental Agreement between such parties shall take precedence over a previously executed Supplemental Agreement between such parties. In the event of any inconsistency between a Supplemental Agreement between the Parties and any component of the Implementation Plan, the terms of the relevant Supplemental Agreement shall prevail.

Section 5.8 Indemnification

The Government shall indemnify and hold MCC and any MCC officer, director, employee, Affiliate, contractor, agent or representative (each of MCC and any such persons, an ''*MCC Indemnified Party*'') harmless from and against, and shall compensate, reimburse and pay such MCC Indemnified Party for, any liability or other damages which (i) are (directly or indirectly) suffered or incurred by such MCC Indemnified Party, or to which any MCC Indemnified Party may otherwise become subject, regardless of whether or not such damages relate to any third-party claim, and (ii) arise from or as a result of the negligence or willful misconduct of the Government, any Government Affiliate, MCA-Armenia or any Permitted Designee, (directly or indirectly) connected with, any activities (including acts or omissions) undertaken in furtherance of this Compact; *provided, however,* the Government shall apply national funds to satisfy its obligations under this Section 5.8 and no MCC Funding, Accrued Interest, or Program Asset may be applied by the Government in satisfaction of its obligations under this Section 5.8.

Section 5.9 Headings

The Section and Subsection headings used in this Compact are included for convenience only and are not to be considered in construing or interpreting this Compact.

Section 5.10 Interpretation; Definitions

(a) Any reference to the term ''including'' in this Compact shall be deemed to mean ''including without limitation'' except as expressly provided otherwise.

(b) Any reference to activities undertaken ''in furtherance of this Compact'' or similar language shall include activities undertaken by the Government, any Government Affiliate, MCA-Armenia, any Permitted Designee, any Provider or any other third party receiving MCC Funding involved in carrying out the purposes of this Compact or any Supplemental Agreement, including their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents, whether pursuant to the terms of this Compact, any Supplemental Agreement or otherwise.

(c) References to ''day'' or ''days'' shall be calendar days unless provided otherwise.

(d) The term ''*United States Government*'' shall, for the purposes of this Compact, mean any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

(e) The term *''Affiliate''* of a party is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence.

(f) The term *''Government Affiliate''* is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government.

(g) References to any Affiliate or Government Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

(h) Any references to *''Supplemental Agreement between the Parties''* shall mean any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Section 5.11 Signatures

Other than a signature to this Compact or an amendment to this Compact pursuant to Section 5.3, a signature delivered by facsimile or electronic mail in accordance with Section 5.1 shall be deemed an original signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form. Such signature shall be accepted by the receiving Party as an original signature and shall be binding on the Party delivering such signature.

Section 5.12 Designation

MCC may designate any Affiliate, agent, or representative to implement, in whole or in part, its obligations, and exercise any of its rights, under this Compact or any Supplemental Agreement between the Parties.

Section 5.13 Survival

Any Government Responsibilities, covenants, or obligations or other responsibilities to be performed by the Government after the Compact Term shall survive the termination or expiration of this Compact and expire in accordance with their respective terms. Notwithstanding the termination or expiration of this Compact, the following provisions shall remain in

force: Sections 2.2, 2.3, 2.5, 3.2, 3.3, 3.4, 3.5, 3.8, 3.9 (for one year), 3.12, 5.1, 5.2, 5.4(d), 5.4(e) (for 120 days), 5.4(f), 5.4(g), 5.4(h), 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, this Section 5.13, 5.14, and 5.15.

Section 5.14 Consultation

Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact or any Supplemental Agreement between the Parties. Such consultations shall begin at the earliest possible date. The request for consultations shall designate a representative for the requesting Party with the authority to enter consultations and the other Party shall endeavor to designate a representative of equal or comparable rank. If such representatives are unable to resolve the matter within 20 days from the commencement of the consultations then each Party shall forward the consultation to the Principal Representative or such other representative of comparable or higher rank. The consultations shall last no longer than 45 days from date of commencement. If the matter is not resolved within such time period, either Party may terminate this Compact pursuant to Section 5.4(a). The Parties shall enter any such consultations guided by the principle of achieving the Compact Goal in a timely and cost-effective manner.

Section 5.15 MCC Status

MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. As such, MCC has no liability under this Compact, is immune from any action or proceeding arising under or relating to this Compact and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, MCC is not subject to the jurisdiction of the courts or other body of the Republic of Armenia or any other jurisdiction.

Section 5.16 Language

This Compact is prepared in English and in the event of any ambiguity or conflict between this official English version and any other version translated into any language for the convenience of the Parties, this official English version shall prevail.

Section 5.17 Publicity; Information and Marking

The Government shall give appropriate publicity to this Compact as a program to which the United States, through MCC, has contributed, including by posting this Compact, and any amendments thereto, on the MCA-Armenia Web site, identifying Program activity sites, and marking Program Assets; *provided,* any announcement, press release or statement regarding MCC or the fact that MCC is funding the Program or any other publicity materials referencing MCC, including the publicity described in this Section 5.17, shall be subject to prior approval by MCC and shall be consistent with any instructions provided by MCC from time to time in relevant Implementation Letters. Upon the termination or expiration of this Compact, MCC may request the removal of, and the Government shall, upon such request, remove, or cause the removal of, any such markings and any references to MCC in any publicity materials or on the MCA-Armenia Web site.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 27th day of March, 2006 and this Compact shall enter into force in accordance with Section 1.3.

Done at Washington, DC in the English language.

For the United States of America, acting through the Millennium Challenge Corporation, Name: John J. Danilovich, Title: Chief Executive Officer.

For the Government of the Republic of Armenia, Name: Vardan Khachatryan, Title: Minister of Finance and Economy.

Exhibit A—Definitions

The following compendium of capitalized terms that are used in this Compact is provided for the convenience of the reader. To the extent that there is a conflict or inconsistency between the definitions in this Exhibit A and the definitions elsewhere in the text of this Compact, the definition elsewhere in this Compact shall prevail over the definition in this Exhibit A. Defined terms importing the singular also include the plural and vice versa.

Accrued Interest is any interest or other earnings on MCC Funding that accrues as specified in Section 2.1(c).

Act means the Millennium Challenge Act of 2003, as amended.

Ad Hoc Evaluation shall have the meaning set forth in Section 3(b) of Annex III.

Additional Representative is a representative as may be designated by a Principal Representative, by written notice, for all purposes other than signing amendments to this Compact.

Affiliate means the affiliate of a party, which is a person or entity that controls, is controlled by, or is under the same control as the party in question, whether by ownership or by voting, financial or other power or means of influence. References to Affiliate herein shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

AMD means Armenian Drams, the currency of the Republic of Armenia.

Annex means any annex to this Compact.

ARD means the Armenian Road Directorate that manages the main and republican roads.

Attachments means any annex, schedule, exhibit, table, appendix or other attachment to this Compact.

Audit Guidelines means the ''Guidelines for Financial Audits Contracted by Foreign Recipients'' issued by the Inspector General of the United States Agency for International Development.

Auditor means an auditor as defined in, and engaged pursuant to, Section 3(h) of Annex I and as required by Section 3.8(d) of the Compact.

Auditor/Reviewer Agreement is an agreement between MCA-Armenia and each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer.

Bank(s) means any bank holding a Permitted Account referenced in Section 4(d) of Annex I.

Bank Agreement means an agreement between MCA-Armenia and a Bank, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to a Permitted Account.

Beneficiaries means the intended beneficiaries identified in accordance with Annex I.

Bilateral Agreement means the bilateral agreement entered into on December 12, 1992 between the Government of the United States of America and the Government of the Republic of Armenia Regarding Cooperation to Facilitate the Provision of Humanitarian and Technical Economic Assistance.

Chair means the Chair of the Governing Council.

Chief Executive Officer means the Chief Executive Officer of MCA-Armenia.

Civil Society Members are the five members of civil society appointed by

the Stakeholders' Committee as described in Section 3(d)(ii)(2)(A)(vii) of Annex I, to serve as voting members on the Governing Council.

Compact means the Millennium Challenge Compact made between the United States of America, acting through the Millennium Challenge Corporation, and the Government of the Republic of Armenia.

Compact Goal means reducing rural poverty through a sustainable increase in the economic performance of the agricultural sector in Armenia.

Compact Goal Indicator(s) means the Indicators in the M&E Plan that will measure the results for the overall Program. A table of Compact Goal Indicators with their definitions is set forth at Section 2(a)(i) of Annex III.

Compact Implementation Funding shall have the meaning set forth in Section 2.1(a)(iii).

Compact Records shall have the meaning set forth in Section 3.8(b).

Compact Reports means any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties.

Compact Term means the term for which this Compact shall remain in force, which shall be the five (5) year period from the Entry into Force, unless earlier terminated in accordance with Section 5.4.

Covered Provider shall have the meaning set forth in Section 3.8(d)(iv).

Designated Rights and Responsibilities shall have the meaning set forth in Section 3.2(c).

Detailed Financial Plan means the financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and each Project, projected both on a commitment and cash requirement basis.

Disbursement Agreement is a Supplemental Agreement that MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Armenia shall enter into that (i) further specifies the terms and conditions of any MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Armenia.

EMPs means environmental management plans.

Entry into Force means the entry into force of this Compact, which shall be on the date of the last letter in an exchange of letters between the Principal Representatives of each Party confirming that all conditions set forth in Section 4.1 have been satisfied by the Government and MCC.

Environmental Guidelines means the environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site or otherwise publicly made available, as such guidelines may be amended from time to time.

Environmental Observer is a representative of an environmentally focused NGO appointed by the Stakeholders' Committee to serve as an Observer on the Governing Council.

ESI Officer means the Environmental and Social Impact Officer within the Management Unit of MCA-Armenia who will ensure that environmental and social mitigation measures are followed for all Project Activities in accordance with the provisions set forth in this Compact and in relevant Supplemental Agreements.

ESIAs means environmental and social impact assessments.

Evaluation Component means the component of the M&E Plan that specifies a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project Activities to determine their efficiency, effectiveness, impact and sustainability.

Exempt Uses shall have the meaning set forth in Section 2.3(e)(ii).

Final Evaluation shall have the meaning set forth in Section 3(a) of Annex III.

Financial Plan means collectively, the Multi-Year Financial Plan, each Detailed Financial Plan and each amendment, supplement or other change thereto.

Financial Plan Annex means Annex II of this Compact, which summarizes the Multi-Year Financial Plan for the Program.

Fiscal Accountability Plan shall have the meaning set forth in Section 4(c) of Annex I.

Fiscal Agent shall have the meaning set forth in Section 3(g) of Annex I.

Fiscal Agent Agreement is an agreement between MCA-Armenia and each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent.

GDP means gross domestic product.

Governance Agreement is an agency agreement to be entered into by the Government, MCC and MCA-Armenia, that, in addition to the Governing Documents, sets forth the terms and conditions that govern MCA-Armenia and as is further described in Section 3(d)(i) of Annex I.

Governing Council means an independent governing council of MCA-Armenia to oversee MCA-Armenia's responsibilities and obligations under this Compact.

Governing Documents shall have the meaning set forth in Section 3(c)(i)(10) of Annex I.

Government means the Government of the Republic of Armenia.

Government Affiliate is an Affiliate, ministry, bureau, department, agency, government corporation or any other entity chartered or established by the Government. References to Government Affiliate shall include any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives, and agents.

Government Members are the government members identified in Section 3(d)(ii)(2)(A)(i–vi) of Annex I serving as voting members on the Governing Council, and any replacements thereof in accordance with Section 3(d)(ii)(2)(A) of Annex I.

Government Party means the Government, any Government Affiliate, any Permitted Designee or any of their respective directors, officers, employees, Affiliates, contractors, sub-contractors, grantees, sub-grantees, representatives or agents.

Government Responsibilities shall have the meaning set forth in Section 3.2(a).

HVA means high value added.

IDP means the Irrigation Development Project of the World Bank.

IFAD means the International Fund for Agricultural Development.

Implementation Letter is a letter that may be issued by MCC from time to time to furnish additional information or guidance to assist the Government in the implementation of this Compact.

Implementation Plan is a detailed plan for the implementation of the Program and each Project, which will be memorialized in one or more documents and shall consist of: (i) A Financial Plan; (ii) a Fiscal Accountability Plan; (iii) Procurement Plans; (iv) Program and Project Work Plans; and (v) an M&E Plan.

Implementing Entity means a Government Affiliate, nongovernmental organization or other public- or private-sector entity or persons to which MCA-Armenia may provide MCC Funding to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact.

Implementing Entity Agreement is an agreement between MCA-Armenia and

an Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity.

Indicators means the quantitative, objective and reliable data that the M&E Plan will use to measure the results of the Program.

Infrastructure Activity is the Project Activity described in Section 2(a) of Schedule 2 of Annex I under the Irrigated Agriculture Project.

Inspector General means the Inspector General of the United States Agency for International Development.

Irrigated Agriculture Objective is an Objective of this Compact to increase the productivity of the agricultural sector by extending and improving the quality of the irrigation system, strengthening the entities that manage the system and enabling farmers to commercialize their products.

Irrigated Agriculture Project means the Project described and summarized in Schedule 2 of Annex I that the Parties intend to implement in furtherance of the Irrigated Agriculture Objective.

Irrigation PIU means the Water Sector Development and Institutional Project Implementation Unit under the authority of the State Water Committee that will implement the Infrastructure Activity of the Irrigated Agriculture Project.

Lien means any lien, attachment, enforcement of judgment, pledge, or encumbrance of any kind.

LLN means a lifeline network of roads from among the republican and local roads in Armenia, the objective of which is to ensure that all communities, towns and villages are linked to the main road network, either directly or through other communities.

Local Account is an interest-bearing local currency of Armenia account at either the Central Bank of Armenia or at a commercial bank that is procured through a competitive process to which the Fiscal Agent may authorize transfers from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency.

M&E Annex means Annex III of this Compact, which generally describes the components of the M&E Plan for the Program.

M&E Plan means the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact.

Management Unit means the management unit of MCA-Armenia that will have overall management responsibility for the implementation of this Compact.

Material Agreement shall have the meaning set forth in Section 3(c)(i)(3) of Annex I.

Material Re-Disbursement means any Re-Disbursement that requires MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

Material Terms of Reference means any terms of reference for the procurement of goods, services or works that require MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, or any Supplemental Agreement.

MCA means the Millennium Challenge Account.

MCA-Armenia shall have the meaning set forth in the Recitals.

MCA-Armenia Web site means the Web site operated by MCA-Armenia.

MCA Eligibility Criteria means the MCA selection criteria and methodology published by MCC pursuant to section 607 of the Act from time to time.

MCC means the Millennium Challenge Corporation.

MCC Disbursement means the disbursement of MCC Funding by MCC from time to time to a Permitted Account or through such other mechanism agreed by the Parties as defined in and in accordance with Section 2.1(b)(i) of this Compact.

MCC Disbursement Request means the applicable request that the Government and MCA-Armenia will jointly submit for an MCC Disbursement as may be specified in the Disbursement Agreement.

MCC Funding shall have the meaning set forth in Section 2.1(a).

MCC Indemnified Party means MCC and any officer, director, employee, Affiliate, contractor, agent or representative of MCC.

MCC Representative is a representative appointed by MCC to serve as an Observer on the Governing Council.

Monitoring Component means the component of the M&E Plan that specifies how progress toward the Objectives and intermediate results of each Project and Project Activity set forth in the M&E Annex will be monitored.

MoTC means the Ministry of Transport and Communications.

Multi-Year Financial Plan means the multi-year financial plan for the Program and for each Project, which is summarized in Annex II.

Multi-Year Financial Plan Summary means a multi-year Financial plan summary attached to this Compact as Exhibit A of Annex II.

NGOs means non-governmental organizations.

Objective(s) are the following project-level objectives of this Compact that have been identified by the Parties, each of which is (i) key to advancing the Compact Goal and (ii) described in more detail in the Annexes attached hereto: (a) The Rural Road Rehabilitation Objective and (b) the Irrigated Agriculture Objective.

Objective Indicator means the Indicator for each Objective in the M&E Plan that will measure the final results of the Projects to monitor their success in meeting each of the Objectives. A table of Objective Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Observers means the non-voting observers of the Governing Council described in Section 3(d)(ii)(2) of Annex I.

Outcome Indicator means the Indicator in the M&E Plan that will measure the intermediate results achieved under each of the Project Activities to provide an early measure of the likely impact of the Project Activities. A table of Outcome Indicator definitions is set forth at Section 2(a)(ii) of Annex III.

Outcomes is the progress made toward the Objectives and the intermediate results of each Project and Project Activity.

Output Indicator means the Indicator in the M&E Plan to measure the direct outputs of the Project Activities.

Outside Project Manager means the qualified persons or entities engaged by MCA-Armenia, to serve as outside project managers in accordance with Section 3(f) of Annex I.

Parties means the United States, acting through MCC, and the Government.

Party means (i) the United States, acting through MCC or (ii) the Government.

Permitted Account(s) shall have the meaning set forth in Section 4(d) of Annex I.

Permitted Designee shall have the meaning set forth in Section 3.2(c).

Pledge means any pledge of any MCC Funding or any Program Assets, or any guarantee (directly or indirectly) of any indebtedness.

Principal Representative means (i) for the Government, the individual holding the position of, or acting as, the Minister of Finance and Economy, and (ii) for MCC, the individual holding the position of, or acting as, the Vice President of Operations.

Procurement Agent(s) are the procurement agents that MCA-Armenia will engage to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government, MCA-Armenia, any Outside Project Manager or Implementing Entity.

Procurement Agent Agreement is an agreement between MCA-Armenia and each Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent.

Procurement Agreement is a Supplemental Agreement between the Government (and/or a mutually acceptable Government Affiliate such as MCA-Armenia) and MCC, which includes the Procurement Guidelines, and governs the procurement of all goods, services and works by the Government or any Provider in furtherance of this Compact.

Procurement Guidelines shall have the meaning set forth in Section 3.6(a).

Procurement Plan means a procurement plan adopted by MCA-Armenia, which forecasts the upcoming six month procurement activities and be updated every six months.

Program means the program to be implemented under this Compact using MCC Funding to advance Armenia's progress towards economic growth and poverty reduction.

Program Annex means Annex I to this Compact, which generally describes the Program that MCC Funding will support in Armenia during the Compact Term and the results to be achieved from the investment of MCC Funding.

Program Assets means (i) MCC Funding, (ii) Accrued Interest, or (iii) any assets, goods, or property (real, tangible, or intangible) purchased or financed in whole or in part by MCC Funding.

Project(s) are the specific projects and the policy reforms and other activities related thereto that the Government will carry out, or cause to be carried out in furtherance of this Compact to achieve the Objectives and the Compact Goal, specifically the Rural Road Rehabilitation Project and the Irrigated Agriculture Project.

Project Activity means the activities that will be undertaken in furtherance of each Project.

Proposal is the proposal for use of MCA assistance submitted to MCC by the Government on March 28, 2005.

Provider shall have the meaning set forth in Section 2.4(b).

Re-Disbursement is the release of MCC Funding from a Permitted Account.

Reviewer shall have the meaning set forth in Section 3(h) of Annex I.

Rural Road Rehabilitation Objective is an Objective of this Compact to expand the access of rural communities to agricultural markets, non-farm income opportunities and social infrastructure by improving the condition of rural roads.

Rural Road Rehabilitation Project means the Project described and summarized in Schedule 1 of Annex I that the Parties intend to implement in furtherance of the Rural Road Rehabilitation Objective.

Stakeholders' Committee is a committee that shall be representative of the various beneficiaries of the Program and as is further described in Section 3(d)(iv)(1) of Annex I.

Supplemental Agreement shall have the meaning set forth in Section 3.5(b).

Supplemental Agreement between the Parties means any agreement between MCC on the one hand, and the Government or any Government Affiliate or Permitted Designee on the other hand.

Supplemental Agreement Term Sheets shall have the meaning set forth in Section 4.1(b).

Target means each Indicator will have one or more expected results that specify the expected value and the expected time by which that result will be achieved.

Tax(es) shall have the meaning set forth in Section 2.3(e)(i).

USAID means the United States Agency for International Development.

USDA means the United States Department of Agriculture.

United States Dollars or U.S. Dollars (USD) means the currency of the United States of America.

United States Government means any branch, agency, bureau, government corporation, government chartered entity or other body of the Federal government of the United States.

VAT means value-added taxes.

Voting Members are the voting members on the Governing Council as described in Section 3(d)(ii)(2) of Annex I.

Water-to-Market Activity is the Project Activity described in Section 2(b) of Schedule 2 of Annex I under the Irrigated Agriculture Project.

Work Plans means work plans for the overall administration of the Program and for each Project.

WSA means the national Water Supply Agency.

WUAs means Water User Associations.

Exhibit B—List of Certain Supplemental Agreements

1. Governance Agreement.
2. Fiscal Agent Agreement.
3. Implementing Entity Agreements.
4. Bank Agreement.

Schedule 2.1(a)(iii)—Description of Compact Implementation Funding

Compact Implementation Funding

The Compact Implementation Funding provided pursuant to Section 2.1(a)(iii) shall support the following activities and expenditures in an amount not to exceed the amounts specified below:

(a) Payments for reasonable and normal staff salaries and administrative expenses of MCA-Armenia (or mutually acceptable Government Affiliate) such as rent, computers, and other information technology equipment, in an amount not to exceed USD $500,000; * and

(b) Conduct fiscal and procurement administration activities, in an amount not to exceed USD $500,000.*

[* **Note:** Notwithstanding the amount specified for this activity or payment, the total amount of funds disbursed in accordance with Section 2.1(a)(iii) shall not exceed the amount set forth in Section 2.1(a)(iii).]

Annex I—Program Description

This Annex I to the Compact (the "*Program Annex*") generally describes the Program that MCC Funding will support in Armenia during the Compact Term and the results to be achieved from the investment of MCC Funding. Prior to any MCC Disbursement or Re-Disbursement, including for the Projects described herein, MCC, the Government (or a mutually acceptable Government Affiliate) and MCA-Armenia shall enter into a Supplemental Agreement that (i) further specifies the terms and conditions of such MCC Disbursements and Re-Disbursements, (ii) is in a form and substance mutually satisfactory to the Parties, and (iii) is signed by the Principal Representative of each Party (or in the case of the Government, the principal representative of the applicable Government Affiliate) and of MCA-Armenia (the "*Disbursement Agreement*").

Except as specifically provided herein, the Parties may amend this Program Annex only by written agreement signed by the Principal Representative of each Party. Except as defined in this Program Annex, each capitalized term in this Program Annex shall have the same meaning given such term elsewhere in this Compact. Unless otherwise expressly stated, each Section

reference herein is to the relevant Section of the main body of the Compact.

1. Background; Consultative Process

(a) Background. Economic development in Armenia suffered a severe setback in the early 1990s following the collapse of the Soviet Union. In 1994, Armenia adopted a comprehensive stabilization and reform program that transformed it into a liberal market economy and launched a period of uninterrupted growth with an average increase of eight percent of gross domestic product (''*GDP*'') per year. In recent years, the Government has continued to focus on improving the business investment climate by pursuing macroeconomic stability, low inflation, strong fiscal discipline, and the privatization of state-owned enterprises.

Armenia's economic growth, however, has mainly benefited inhabitants of the capital Yerevan and a few other cities, and poverty remains widespread among the rural population. In 2004, per capita GDP was estimated at USD $1,100, with 35 percent of the population classified as poor. Data from household surveys show that the impact of agricultural sector growth on reducing rural poverty in Armenia has been much stronger than that of GDP growth. Consequently, specific policies and investments aimed at promoting sustainable growth in the agricultural sector are central to bringing about a reduction in rural poverty.

There are two important preconditions for growth in the Armenian agricultural sector: (i) Investment in the rural road network, which is essential for improving access to markets and communities and (ii) investment in irrigated agriculture to increasing productivity. Only 10 percent of Armenia's rural road network is in good condition and there has been minimal investment in, or maintenance of, the network over the past decade. Currently, less than ten percent of total agricultural land is irrigated, while nearly 85 percent of total crop production is produced with irrigation.

(b) Consultative Process. In connection with the Program, Armenia engaged in a comprehensive consultative process based on the Poverty Reduction Strategy Paper initiated in 2003. In the initial priority-setting stage, the Government engaged a broad cross-section of the public, specifically civil society and rural communities, in a consultative process focused on MCA compact development. Issues were addressed through a continuous process that incorporated a feedback mechanism reaching out to stakeholders, particularly those involved in irrigation, rural road, policy development and advocacy, and groups that specialize in monitoring and evaluation.

The Government engaged in rounds of regional, municipal, and local village level meetings to seek input and feedback on potential Proposal components. Meetings were held outside of city centers with announcements published beforehand. In addition to face-to-face meetings, the Government utilized various forms of mass media to reach more remote areas of Armenia, including radio and television announcements and programs, electronic mailing lists that are managed by non-governmental organizations (''*NGOs*'') throughout Armenia, and the printing of information brochures.

The selection of the irrigation and rural roads components of the Program also introduced new challenges that focused on issues ranging from communal land rights and responsibilities, sustainability of the investments and involvement of civil society in compact development and implementation. To address concerns of the NGO community, the Government offered to have the NGOs elect their own representatives to participate in the meetings of the MCA-Armenia Board of Trustees—an inter-governmental body, chaired by the Prime Minister that was established to oversee the MCC Proposal and Compact development process. Using existing NGO electronic mailing lists and a self-regulated selection process, NGOs voted to select three representatives to participate in the meetings.

The Government has created and maintains an interactive Web site (*http://www.mca.am*) (the ''*MCA-Armenia Web site*'') that provides access to up-to-date information and a forum page on which to post and debate issues related to the Proposal process. The MCA-Armenia Web site also makes publicly available the Board of Trustees meeting minutes and the minutes of all meetings convened to discuss the Proposal.

2. Overview

(a) Program. The Program involves a series of specific and complementary interventions that the Parties expect will achieve the Irrigated Agriculture Objective and the Rural Road Rehabilitation Objective and advance the progress of Armenia toward the Compact Goal.

(b) Projects. To achieve the Objectives, the Parties have identified Projects that the Government will implement, or cause to be implemented, using MCC Funding, each of which is described in the Schedules to this Program Annex. The Schedules to this Program Annex identify the activities that will be undertaken in furtherance of each Project (each, a ''*Project Activity*''). Notwithstanding anything to the contrary in this Compact, the Parties may agree to amend, terminate or suspend these Projects or Project Activities or create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact; *provided, however,* any such amendment of a Project or Project Activity or creation of a new project is (i) consistent with the Objectives; (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact; (iii) does not cause the Government's responsibilities or contribution of resources to be less than specified in Section 2.2 of this Compact or elsewhere in this Compact; and (iv) does not extend the Compact Term.

(c) Beneficiaries. The intended beneficiaries of each Project are described in the respective Schedule to this Program Annex and Annex III to the extent identified as of the date hereof. The intended beneficiaries shall be identified more precisely during the initial phases of the implementation of the Program. The Parties shall agree upon the description of the intended beneficiaries of the Program, including publishing such description on the MCA-Armenia Web site.

(d) Civil Society. Civil society will participate in overseeing the implementation of the Program through its representation on the Stakeholders' Committee as further described in Section 3(d)(iv) of this Program Annex. In addition, the Work Plans for each Project shall note the extent to which civil society will have a role in the implementation of a particular Project Activity. Finally, members of civil society may be recipients of training or other public awareness programs that are related to the Project Activities.

(e) Monitoring and Evaluation. Annex III of this Compact generally describes the plan to measure and evaluate progress toward achievement of the Compact Goal and Objectives of this Compact (the *''M&E Plan''*). As outlined in the Disbursement Agreement and other Supplemental Agreements, continued payment of MCC Funding under this Compact will be contingent on successful achievement of targets set forth in the M&E Plan.

3. Implementation Framework

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring, evaluation and fiscal accountability for the use of MCC Funding is summarized below and in the Schedules attached to this Program Annex, or as may otherwise be agreed in writing by the Parties.

(a) General. The elements of the implementation framework will be further described in relevant Supplemental Agreements and in a detailed plan for the implementation of the Program and each Project (the *''Implementation Plan''*), which will be memorialized in one or more documents and shall consist of a Financial Plan, a Fiscal Accountability Plan, Procurement Plans, Program and Project Work Plans, and an M&E Plan. MCA-Armenia shall adopt each component of the Implementation Plan in accordance with the requirements and timeframe as may be specified in this Program Annex, the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time. MCA-Armenia may amend the Implementation Plan or any component thereof without amending this Compact, *provided*, any material amendment of the Implementation Plan or any component thereof has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties. By such time as may be specified in the Disbursement Agreement or as may otherwise be agreed by the Parties from time to time, MCA-Armenia shall adopt one or more work plans for the overall administration of the Program and for each Project (collectively, the *''Work Plans''*). The Work Plan(s) shall set forth the details of each activity to be undertaken or funded by MCC Funding as well as the allocation of roles and responsibilities for specific Project activities, or other programmatic guidelines, performance requirements, targets, or other expectations for a Project.

(b) Government.

(i) The Government shall promptly take all necessary and appropriate actions to carry out the Government Responsibilities under and in furtherance of this Compact, including undertaking or pursuing such legal, legislative or regulatory actions, procedural changes and contractual arrangements as may be necessary or appropriate to achieve the Objectives, to successfully implement the Program, and to establish MCA-Armenia. The Government shall promptly deliver to MCC certified copies of any documents, orders, decrees, laws or regulations evidencing such legal, legislative, regulatory, procedural, contractual or other actions.

(ii) During the Compact Term, the Government shall ensure that MCA-Armenia is duly authorized and organized and sufficiently staffed and empowered to fully carry out the Designated Rights and Responsibilities. Without limiting the generality of the preceding sentence, MCA-Armenia shall be organized, and have such roles and responsibilities, as described in Section 3(d) of this Program Annex and as provided in the Governance Agreement and any Governing Documents, which shall be in a form and substance satisfactory to MCC; *provided, however,* the Government may, subject to MCC approval, carry out any of the roles and responsibilities designated to be carried out by MCA-Armenia and described in Section 3(d) of this Program Annex or elsewhere in this Program Annex, applicable law, the Governing Documents, or any Supplemental Agreement prior to and during the initial period of the establishment and staffing of MCA-Armenia, but in no event longer than the earlier of (i) the formation of the Management Unit and the engagement of each of the officers and (ii) six months from the Entry into Force, unless otherwise agreed by the Parties in writing.

(c) MCC.

(i) Notwithstanding Section 3.1 of this Compact or any provision in this Program Annex to the contrary, and except as may be otherwise agreed upon by the Parties from time to time, MCC must approve in writing each of the following transactions, activities, agreements and documents prior to the execution or carrying out of such transaction, activity, agreement or document and prior to MCC Disbursements or Re-Disbursements in connection therewith:

(1) MCC Disbursements;

(2) The Financial Plan and any amendments and supplements thereto;

(3) Agreements (i) between the Government and MCA-Armenia, (ii) between the Government, MCA-Armenia or other Government Affiliate, on the one hand, and any Provider or Affiliate of a Provider, on the other hand, which require such MCC approval under applicable law, the Governing Documents, the Procurement Agreement or any other Supplemental Agreement, or (iii) in which the Government, MCA-Armenia or other Government Affiliate appoints, hires or engages any of the following in furtherance of this Compact:

(A) Auditor or Reviewer;

(B) Fiscal Agent;

(C) Bank;

(D) Procurement Agent;

(E) Outside Project Manager;

(F) Implementing Entity; and

(G) Director, Observer, officer and/or other key employee or contractor of MCA-Armenia, including any compensation for such person. (Any agreement described in clause (i) through (iii) of this Section 3(c)(i)(3) and any amendments and supplements thereto, each, a *''Material Agreement''*);

(4) Any modification, termination or suspension of a Material Agreement, or any action that would have the effect of such a modification, termination or suspension of a Material Agreement;

(5) Any agreement that is (i) not at arm's length or (ii) with a party related to the Government, including MCA-Armenia, or any of their respective Affiliates;

(6) Any Re-Disbursement (each, a *''Material Re-Disbursement''*) that requires such MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement;

(7) Terms of reference for the procurement of goods, services or works that require such MCC approval under applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines or any Supplemental Agreement (each, a *''Material Terms of Reference''*);

(8) The Implementation Plan, including each component plan thereto, and any material amendments and supplements to the Implementation Plan or any component thereto;

(9) Any pledge of any MCC Funding or any Program Assets or any guarantee (directly or indirectly) of any indebtedness (each, a *''Pledge''*);

(10) Any decree, legislation, contractual arrangement or other document establishing or governing MCA-Armenia, including the Governance Agreement and the charter of MCA-Armenia (the *''Governing Documents''*), and any disposition (in whole or in part), liquidation, dissolution, winding up, reorganization or other change of (A) MCA-Armenia, including any revocation or modification of, or supplement to, any Governing Document, or (B) any subsidiary or Affiliate of MCA-Armenia;

(11) Any change in character or location of any Permitted Account;

(12) Formation or acquisition of any subsidiary (direct or indirect) or other Affiliate of MCA-Armenia;

(13) Any (A) change of a Director, Observer, officer or other key employee or contractor of MCA-Armenia, or in the composition of the Governing Council, including approval of the nominee for Chair, or (B) filling of any vacant seat of the Chair, a Director or an Observer or vacant position of an officer or other key employee or contractor of MCA-Armenia;

(14) The management information system to be developed and maintained by the Management Unit of MCA-Armenia, and any material modifications to such system;

(15) Any decision to amend, supplement, replace, terminate or otherwise change any of the foregoing; and

(16) Any other activity, agreement, document or transaction requiring the approval of MCC in this Compact, applicable law, the Governing Documents, the Procurement Agreement, Procurement Guidelines, the Disbursement Agreement, or any other Supplemental Agreement between the Parties.

The Chair of the Governing Council (the *''Chair''*) and/or the Chief Executive Officer of MCA-Armenia (the *''Chief Executive Officer''*) or other designated officer, as provided in applicable law and the Governing Documents, shall certify any documents or reports delivered to MCC in satisfaction of the Government's reporting requirements under this Compact or any Supplemental Agreement between the Parties (the *''Compact Reports''*).

(ii) MCC shall have the authority to exercise its approval rights set forth in this Section 3(c) in its sole discretion and independent of any participation or position taken by the MCC Representative at a meeting of the Governing Council. MCC retains the right to revoke its approval of a matter if MCC concludes that its approval was issued on the basis of incomplete, inaccurate or misleading information furnished by the Government or MCA-Armenia.

(d) MCA-Armenia.

(i) General. Unless otherwise agreed by the Parties in writing, MCA-Armenia shall be responsible for the oversight and management of the implementation of this Compact. MCA-Armenia shall be governed by the Governing Documents, including the terms and conditions set forth in an agency agreement to be entered into by the Government, MCC and MCA-Armenia (the *''Governance Agreement''*) on or before the Entry into Force, and based on the following principles:

(1) The Government shall ensure that MCA-Armenia shall not assign, delegate or contract any of the Designated Rights and Responsibilities without the prior written consent of the Government and MCC. MCA-Armenia shall not establish any Affiliates or subsidiaries (direct or indirect) without the prior written consent of the Government and MCC; and

(2) Unless otherwise agreed by the Parties in writing, MCA-Armenia shall consist of (a) an independent governing council (the *''Governing Council''*) to oversee MCA-Armenia's responsibilities and obligations under this Compact (including any Designated Rights and Responsibilities) and (b) a management unit (the *''Management Unit''*) to have overall management responsibility for the implementation of this Compact.

(ii) Governing Council.

(1) Formation. The Government shall ensure that the Governing Council shall be formed, constituted, governed, maintained and operated in accordance with applicable law and the terms and conditions set forth in this Section 3(d), the Governing Documents and relevant Supplemental Agreements.

(2) Composition. Unless otherwise agreed by the Parties in writing, the Governing Council shall consist of eleven (11) voting members (the *''Voting Members''*) and two non-voting observers (the *''Observers''*), each of whom must be acceptable to MCC, taking into consideration appropriate gender and ethnic representation.

(A) The Voting Members shall be as follows, *provided,* that the members identified in subsections (i)–(vi) below (the *''Government Members''*) may be replaced by another government official of comparable rank from a ministry or other government body relevant to the Program activities, subject to approval by the Government and MCC (such replacement to be referred to thereafter as a Government Member):

(i) Prime Minister;

(ii) Chief Economic Advisor to the President;

(iii) Minister of Finance and Economy;

(iv) Minister of Transport and Communication;

(v) Minister of Agriculture;

(vi) Minister of Territorial Administration; and

(vii) Five (5) members of civil society appointed by the Stakeholders' Committee (the *''Civil Society Members''*).

The following provisions apply to the Voting Members:

(a) Each Government Member may be replaced by another government official, subject to approval by the Government and MCC;

(b) Subject to the Governing Documents, the Parties contemplate that the Prime Minister shall initially fill the seat of Chair;

(c) Each Government Member position shall be filled by the individual then holding the office identified and such individuals shall serve in their capacity as the applicable Government official and not in their personal capacity. In the event that a Government Member is unable to participate in a meeting of the Governing Council such member's principal deputy or equivalent may participate in the member's stead; and

(d) Each Civil Society Member may appoint an alternate, approved by majority vote of the other Civil Society Members, to serve when he or she is unable to participate in a meeting of the Governing Council.

(B) The Observers shall be:

(i) A representative appointed by MCC (the *''MCC Representative''*); and

(ii) A representative of an environmentally focused NGO appointed by the Stakeholders' Committee (the *''Environmental Observer''*); *provided,* that if one of the Civil Society Members on the Governing Council already represents an environmentally focused NGO, then such Civil Society Member shall also act as the Environmental Observer. The initial Environmental Observer shall serve for a period of one year from the date of the first Governing Council meeting after the Entry into Force, and on each anniversary thereof, the Stakeholders' Committee shall appoint another representative to serve as the Environmental Observer for the subsequent year. The Stakeholders' Committee may nominate an alternate to attend one or more meetings of the Governing Council in the event that the Environmental Observer is unable to attend.

The Observers shall have the right to attend all meetings of the Governing Council, participate in discussions of the Governing Council, and receive all information and documents provided to the Governing Council, together with any other rights of access to records, employees or facilities as would be granted to a member of the Governing Council under the Governance Agreement and any Governing Document.

(3) Voting. Unless otherwise agreed by the Parties, the Governing Documents of MCA-Armenia shall include voting and quorum provisions so as to require participation by the Civil Society Members in all decisions of the Governing Council.

(4) Roles and Responsibilities.

(A) The Governing Council shall oversee the overall implementation of the Program and the performance of the Designated Rights and Responsibilities.

(B) Certain actions may be taken, and certain agreements and other documents may be executed and delivered, by MCA-Armenia only upon the approval and authorization of the Governing Council as provided under applicable law and in the Governing Documents, including each MCC Disbursement Request, selection or termination of certain Providers, any component of the Implementation Plan, certain Re-Disbursements and certain terms of reference.

(C) The Chair shall certify the approval by the Governing Council of all Compact Reports or any other documents or reports from time to time delivered to MCC by MCA-Armenia (whether or not such documents or reports are required to be delivered to MCC), and that such documents or reports are true, accurate and complete.

(D) Without limiting the generality of the Designated Rights and Responsibilities, and subject to MCC's contractual rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement, the Governing Council shall have the exclusive authority for all actions defined for the Governing Council under applicable law and in the Governing Documents and which are expressly designated therein as responsibilities that cannot be delegated further.

(5) Meetings. The Governing Council shall hold at least quarterly meetings as well as such other periodic meetings or subcommittee meetings as may be necessary from time to time.

(6) Indemnification of Civil Society Members; MCC Representative. The Government shall ensure, at the Government's sole cost and expense, that appropriate insurance is obtained and appropriate indemnifications and protections are provided, acceptable to MCC, to ensure that Civil Society Members shall not be held personally liable for the actions or omissions of the Governing Council. Pursuant to Section 5.5 and Section 5.8 of this Compact, the Government and MCA-Armenia shall hold harmless the MCC Representative and the Environmental Observer for any liability or action arising out of their roles as non-voting Observers on the Governing Council. The Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to the Compact, the MCC Representative is not subject to the jurisdiction of the courts or other body of Armenia.

(iii) Management Unit. Unless otherwise agreed in writing by the Parties, the Management Unit shall report, through the Chief Executive Officer or other officer as designated in the Governing Documents, directly to the Governing Council, and shall have the composition, roles and responsibilities described below and set forth more particularly in the Governing Documents.

(1) Composition. The Government shall ensure that the Management Unit shall be composed of qualified experts from the public or private sectors, including such officers and staff as may be necessary to carry out effectively its responsibilities, each with such powers and responsibilities as set forth in the Governance Agreement, any Governing Document, and from time to time in any Supplemental Agreement between the Parties, including without limitation the following: (i) A Chief Executive Officer, (ii) a chief financial officer, (iii) a monitoring and evaluation officer, (iv) an environment and social impact officer, (v) a rural roads project officer, (vi) an irrigation project officer, (vii) a water-to-market project officer and (viii) a procurement officer. The Management Unit will be supported by an office manager and appropriate administrative and support personnel.

(2) Appointment of Management Unit. Unless otherwise specified in the Governance Agreement or any Governing Documents, the Governing Council shall appoint the Chief Executive Officer after an open and competitive recruitment and selection process, which appointment shall be subject to the approval of MCC. The remaining officers of the Management Unit shall be appointed by the Chief Executive Officer after an open and competitive recruitment and selection process, which appointments shall be subject to the approval of the Governing Council and MCC.

(3) Roles and Responsibilities.

(A) The Management Unit shall assist the Governing Council in overseeing the implementation of the Program and shall have principal responsibility (subject to the direction and oversight of the Governing Council and subject to MCC's rights of approval as set forth in Section 3(c) of this Program Annex or elsewhere in this Compact or any relevant Supplemental Agreement) for the overall management of the implementation of the Program.

(B) The Management Unit shall report to and meet with, on a quarterly basis, the Stakeholders' Committee, and shall include a report on the feedback provided by the Stakeholders' Committee and the ways in which that feedback has informed the activities of MCA-Armenia in the next following quarterly report to the Governing Council.

(C) Without limiting the foregoing general responsibilities or the generality of Designated Rights and Responsibilities that the Government may designate to MCA-Armenia, the Management Unit shall develop the components of the Implementation Plan, oversee the implementation of the Projects, manage and coordinate monitoring and evaluation, maintain internal accounting records, conduct and oversee certain procurements, and such other responsibilities as set out in the Governing Documents or delegated to the Management Unit by the Governing Council from time to time.

(D) Subject to the provisions of this Compact, the Procurement Agreement and the Governing Documents, appropriate officers of the Management Unit shall have the authority to contract on behalf of MCA-Armenia.

(E) The Management Unit shall have the obligation and right to approve certain actions and documents or agreements, including certain Re-Disbursements, certain human resources decisions, and certain procurement actions, as provided in the Governing Documents. The Management Unit shall also prepare MCC Disbursement Requests and Compact Reports for approval by the Governing Council.

(iv) Stakeholders' Committee.

(1) Formation. The Government shall ensure the establishment of a stakeholders' committee (the ''*Stakeholders' Committee*'') that shall be representative of the various beneficiaries of the Program. Unless otherwise agreed by the Parties, the Government shall invite members of the NGO community, representatives of the WUAs and farmer groups to participate in national and regional forums to elect the Stakeholders' Committee. The Government will provide adequate notice of such forums to ensure widespread participation. Initially, the Stakeholders' Committee will consist of eleven (11) members, taking into consideration appropriate gender and ethnic representation. The number of members of the Stakeholders' Committee may be increased, but in no event to more than fifteen (15) members, upon the majority vote of the then existing members and the vacancies created by such increase shall be filled by the majority vote of the then existing members, subject to the approval of MCA-Armenia and MCC. Each Stakeholders' Committee member may

appoint an alternate, approved by majority vote of the other members, to serve when he or she is unable to participate in a meeting of the Stakeholders' Committee.

(2) Roles and Responsibilities.

(A) The Stakeholders' Committee shall be a mechanism to provide representatives of the private sector, civil society and local and regional communities the opportunity to provide advice and input to MCA-Armenia regarding the implementation of the Compact.

(B) During quarterly meetings of the Stakeholders' Committee, the Management Unit shall present an update on the implementation of this Compact and progress towards achievement of the Objectives. The Management Unit shall provide copies of the M&E Plan, the Implementation Plan, and reports on the Projects and Project Activities. The Stakeholders' Committee will have an opportunity to regularly provide to the Chief Executive Officer and to the Governing Council its views and recommendations. The Governing Council may, in response to the Stakeholders' Committee, require the Management Unit to provide such other information and documents as the Governing Council deems advisable.

(C) The Management Unit shall include in its quarterly reports to the Governing Council, a report on the Stakeholders' Committee meetings that occurred during the period covered by such report.

(D) The Stakeholders' Committee shall appoint one of their members to be the secretary to, among other things, take official minutes of the meetings of the Stakeholders' Committee.

(3) Meetings. The Stakeholders' Committee shall hold quarterly meetings of the full Stakeholders' Committee as well as such other periodic meetings of the Stakeholders' Committee or subcommittees thereof designated along sectoral, regional, or other lines, as may be necessary or appropriate from time to time.

(4) Accessibility; Transparency. Stakeholders' Committee members will be accessible to the beneficiaries they represent to receive the beneficiaries' comments or suggestions regarding the Program. The minutes of all meetings of the Stakeholders' Committee and any subcommittees shall be made public on the MCA-Armenia Web site in a timely manner.

(e) Implementing Entities. Subject to the terms and conditions of this Compact and any other Supplemental Agreement between the Parties, MCA-Armenia may provide MCC Funding, to one or more Government Affiliates or to one or more nongovernmental or other public- or private-sector entities or persons to implement and carry out the Projects or any other activities to be carried out in furtherance of this Compact (each, an ''*Implementing Entity*''). The Government shall ensure that MCA-Armenia enters into an agreement with each Implementing Entity, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions, such as payment of the Implementing Entity (the ''*Implementing Entity Agreement*''). An Implementing Entity shall report directly toMCA-Armenia as designated in the applicable Implementing Entity Agreement or as otherwise agreed by the Parties.

(f) Outside Project Manager.MCA-Armenia shall have the authority to engage qualified persons or entities to serve as outside project managers (each, an ''*Outside Project Manager*'') in the event that it is advisable to do so for the proper and efficient day-to-day management of a Project; *provided, however,* that the appointment or engagement of any Outside Project Manager after a competitive selection process shall be subject to approval by the Governing Council and MCC prior to such appointment or engagement. Upon Governing Council approval,MCA-Armenia may delegate, assign, or contract to the Outside Project Managers such duties and responsibilities as it deems appropriate with respect to the management of the Implementing Entities and the implementation of the specific Projects; and *provided, further,* that the Management Unit shall remain accountable for those duties and responsibilities and all reports delivered by the Outside Project Manager notwithstanding any such delegation, assignment or contract and the Outside Project Manager shall be subject to the oversight of the Fiscal Agent and Procurement Agent. The Governing Council may determine that it is advisable to engage one or more Outside Project Managers and instructMCA-Armenia and, where appropriate, a Procurement Agent to commence and conduct the competitive selection process for such Outside Project Manager.

(g) Fiscal Agent. The Government shall ensure thatMCA-Armenia engages one or more fiscal agents (each, a ''*Fiscal Agent*''), who shall be responsible for, among other things, (i) ensuring and certifying that Re-Disbursements are properly authorized and documented in accordance with established control procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement and other relevant Supplemental Agreements, (ii) instructing a Bank to make Re-Disbursements from a Permitted Account, following applicable certification by the Fiscal Agent, (iii) providing applicable certifications for MCC Disbursement Requests, (iv) maintaining proper accounting of all MCC Funding financial transactions, and (v) producing reports on MCC Disbursements and Re-Disbursements (including any requests therefore) in accordance with established procedures set forth in the Disbursement Agreement, the Fiscal Agent Agreement or any other relevant Supplemental Agreements. Upon the written request of MCC, the Government shall ensure thatMCA-Armenia terminates a Fiscal Agent, without any liability to MCC, and the Government shall ensure thatMCA-Armenia engages a new Fiscal Agent, subject to the approval by the Governing Council and MCC. The Government shall ensure thatMCA-Armenia enters into an agreement with each Fiscal Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions, such as payment of the Fiscal Agent (''*Fiscal Agent Agreement*'').

(h) Auditors and Reviewers. The Government shall ensure thatMCA-Armenia carries out the Government's audit responsibilities as provided in Sections 3.8(d), (e) and (f), including engaging one or more auditors (each, an ''*Auditor*'') required by Section 3.8(d). As requested by MCC in writing from time to time, the Government shall ensure thatMCA-Armenia shall also engage an independent (i) reviewer to conduct reviews of performance and compliance under this Compact pursuant to Section 3.8(f), which reviewer shall have the capacity to (1) conduct general reviews of performance or compliance, (2) conduct environmental and social audits, and (3) conduct data quality assessments in accordance with the M&E Plan, as described more fully in Annex III, and/or (ii) evaluator to assess performance as required under the M&E Plan (each, a ''*Reviewer*'').MCA-Armenia shall select the Auditor(s) or Reviewers in accordance with the Governing Documents or relevant Supplemental Agreement. The Government shall ensure thatMCA-Armenia enters into an agreement with each Auditor or Reviewer, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Auditor

or Reviewer with respect to the audit, review or evaluation, including access rights, required form and content of the applicable audit, review or evaluation and other appropriate terms and conditions such as payment of the Auditor or Reviewer (the ''*Auditor/Reviewer Agreement*''). In the case of a financial audit required by Section 3.8(f), such Auditor/Reviewer Agreement shall be effective no later than 120 days prior to the end of the relevant fiscal year or other period to be audited; *provided, however,* if MCC requires concurrent audits of financial information or reviews of performance and compliance under this Compact, then such Auditor/Reviewer Agreement shall be effective no later than a date agreed by the Parties in writing.

(i) Procurement Agent. If requested by MCC, the Government shall ensure thatMCA-Armenia engages one or more procurement agents (each, a ''*Procurement Agent*'') to carry out and/or certify specified procurement activities in furtherance of this Compact on behalf of the Government,MCA-Armenia, any Outside Project Manager or Implementing Entity. The roles and responsibilities of such Procurement Agent and the criteria for selection of a Procurement Agent shall be as set forth in the applicable Implementation Letter or Supplemental Agreement. The Government shall ensure thatMCA-Armenia enters into an agreement with the Procurement Agent, in form and substance satisfactory to MCC, that sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring and review of procurements and other appropriate terms and conditions, such as payment of the Procurement Agent (the ''*Procurement Agent Agreement*''). Any Procurement Agent shall adhere to the procurement standards set forth in the Procurement Agreement and Procurement Guidelines and ensure procurements are consistent with the procurement plan (the ''*Procurement Plan*'') adopted byMCA-Armenia, which plan shall forecast the upcoming six month procurement activities and be updated every six months.

4. Finances and Fiscal Accountability

(a) Financial Plan.

(i) Financial Plan. The multi-year financial plan for the Program and for each Project (the ''*Multi-Year Financial Plan*'') is summarized in Annex II to this Compact.

(ii) Detailed Financial Plan. During the Compact Term, the Government shall ensure thatMCA-Armenia delivers to MCC for approval timely financial plans that detail the annual and quarterly budget and projected cash requirements for the Program (including administrative costs) and each Project, projected both on a commitment and cash requirement basis (each a ''*Detailed Financial Plan*''). Each Detailed Financial Plan shall be delivered by such time as specified in the Disbursement Agreement or as may otherwise be agreed by the Parties. The Multi-Year Financial Plan, each Detailed Financial Plan and each amendment, supplement or other change thereto are collectively, the ''*Financial Plan.*''

(iii) Expenditures. No financial commitment involving MCC Funding shall be made, no obligation of MCC Funding shall be incurred, and no Re-Disbursement shall be made or MCC Disbursement Request submitted for any activity or expenditure, unless the expense is provided for in the Detailed Financial Plan and unless uncommitted funds exist in the balance of the Detailed Financial Plan for the relevant period or unless the Parties otherwise agree in writing.

(iv) Modifications to Financial Plan. Notwithstanding anything to the contrary in this Compact,MCA-Armenia may amend or supplement the Financial Plan or any component thereof without amending this Compact, *provided,* any material amendment or supplement has been approved by MCC and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

(b) Disbursement and Re-Disbursement. The Disbursement Agreement (and disbursement schedules thereto), as amended from time to time, shall specify the terms, conditions and procedures on which MCC Disbursements and Re-Disbursements shall be made. The obligation of MCC to make MCC Disbursements or approve Re-Disbursements is subject to the fulfillment or waiver of any such terms and conditions. The Government and MCA-Armenia shall jointly submit the applicable request for an MCC Disbursement (the ''*MCC Disbursement Request*'') as may be specified in the Disbursement Agreement. MCC will make MCC Disbursements in tranches to a Permitted Account from time to time as provided in the Disbursement Agreement or as may otherwise be agreed by the Parties, subject to Program requirements and performance by the Government, MCA-Armenia and other relevant parties in furtherance of this Compact. Re-Disbursements will be made from time to time based on requests by an authorized representative of the appropriate party designated for the size and type of Re-Disbursement in accordance with the Governing Documents and Disbursement Agreement; *provided, however,* unless otherwise agreed by the Parties in writing, no Re-Disbursement shall be made unless and until the written approvals specified herein or in the Governing Documents and Disbursement Agreement for such Re-Disbursement have been obtained and delivered to the Fiscal Agent.

(c) Fiscal Accountability Plan. By such time as specified in the Disbursement Agreement or as otherwise agreed by the Parties, MCA-Armenia shall adopt as part of the Implementation Plan a fiscal accountability plan that identifies the principles and mechanisms to ensure appropriate fiscal accountability for the use of MCC Funding provided under this Compact, including the process to ensure that open, fair, and competitive procedures will be used in a transparent manner in the administration of grants or cooperative agreements and the procurement of goods and services for the accomplishment of the Objectives (the ''*Fiscal Accountability Plan*''). The Fiscal Accountability Plan shall set forth, among other things, requirements with respect to the following matters: (i) Funds control and documentation; (ii) separation of duties and internal controls; (iii) accounting standards and systems; (iv) content and timing of reports; (v) policies concerning public availability of all financial information; (vi) cash management practices; (vii) procurement and contracting practices, including timely payment to vendors; (viii) the role of independent auditors; and (ix) the roles of fiscal agents and procurement agents.

(d) Permitted Accounts. The Government shall establish, or cause to be established, such accounts (each, a ''*Permitted Account*,'' and collectively ''*Permitted Accounts*'') as may be agreed by the Parties in writing from time to time, including:

(i) A single, completely separate U.S. Dollar interest-bearing account at either the Central Bank of Armenia or at a commercial bank to receive MCC Disbursements;

(ii) If necessary, an interest-bearing local currency of Armenia account (the ''*Local Account*'') at either the Central Bank of Armenia or at a commercial bank that is procured through a competitive process to which the Fiscal Agent may authorize transfer from any U.S. Dollar Permitted Account for the purpose of making Re-Disbursements payable in local currency; and

(iii) Such other interest-bearing accounts to receive MCC Disbursements

in such banks as the Parties mutually agree upon in writing.

No other funds shall be commingled in a Permitted Account other than MCC Funding and Accrued Interest thereon. All MCC Funding held in an interest-bearing Permitted Account shall earn interest at a rate of no less than such amount as the Parties may agree in the respective Bank Agreement or otherwise. MCC shall have the right, among other things, to view any Permitted Account statements and activity directly on-line or at such other frequency as the Parties may otherwise agree. By such time as shall be specified in the Disbursement Agreement or as otherwise agreed by the Parties, the Government shall ensure that MCA-Armenia enters into an agreement with each Bank, respectively, satisfactory to MCC, that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to the Permitted Account, respectively (each a ''*Bank Agreement*''). For purposes of this Compact, any bank holding a Permitted Account referenced in Section 4(d) of this Program Annex are each a ''*Bank*'' and, are collectively referred to as the ''*Banks.*''

(e) Currency Exchange. The Bank shall convert MCC Funding to the currency of the Republic of Armenia at a rate to which the Parties mutually agree with the Bank in the Bank Agreement.

5. Transparency; Accountability

Transparency and accountability to MCC and to the beneficiaries are important aspects of the Program and Projects. Without limiting the generality of the foregoing, in an effort to achieve the goals of transparency and accountability, the Government shall ensure that MCA-Armenia:

(a) Establishes an e-mail suggestion box as well as a means for other written comments that interested persons may use to communicate ideas, suggestions or feedback to MCA-Armenia;

(b) Considers as a factor in its decision-making the recommendations of the Stakeholders' Committee;

(c) Develops and maintains the MCA-Armenia Web site in a timely, accurate and appropriately comprehensive manner, such MCA-Armenia Web site to include postings of information and documents in English and Armenian and other languages where relevant; and

(d) Posts on the MCA-Armenia Web site and otherwise makes publicly available from time to time the following documents or information:

(i) The Compact and all Compact Reports;

(ii) All minutes of the meetings of the Governing Council and Stakeholders' Committee;

(iii) The M&E Plan, as amended from time to time, along with periodic reports on Program performance;

(iv) All Project environmental and social impact assessments (''*ESIAs*'') and supporting documents;

(v) All audit reports by an Auditor and any periodic reports or evaluations by a Reviewer;

(vi) Disbursement Agreement, as amended from time to time;

(vii) All procurement policies and procedures (including standard documents and procurement plans) and any other documents required to be made publicly available pursuant to the Procurement Agreement; and

(viii) A copy of any legislation and other documents related to the formation, organization and governance of MCA-Armenia, including the Governing Documents, and any amendments thereto.

Schedule 1 to Annex I—Rural Road Rehabilitation Project

This Schedule 1 describes and summarizes the key elements of the rural road rehabilitation project (''*Rural Road Rehabilitation Project*'') that the Parties intend to implement in furtherance of the Rural Road Rehabilitation Objective. Additional details regarding the implementation of the Rural Road Rehabilitation Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Armenia's public road network consists of 7,703 km of roads, including 1,561 km of main roads, 1,800 km of secondary roads (referred to in Armenia as ''republican'' roads) and 4,342 km of local roads. Main and republican roads are managed by the Armenian Road Directorate (''*ARD*'') and local roads are managed at the regional (*Marz*) level.

In 2002, the World Bank financed a rural infrastructure study which identified a lifeline network (the ''*LLN*'') from among the republican and local roads. The objective was to ensure all communities, towns and villages are linked to the main road network, either directly or through other communities. The resulting network comprises 2703 km, of which 759 km (28 percent) are republican roads, and 1943 km (72 percent) are local roads.

The Government is committed to bringing the entire LLN up to a maintainable standard and ensuring sustainable maintenance of this network. Moreover, the Government has committed to re-classifying the entire LLN as republican roads so that they will come under the management and maintenance responsibility of the ARD.

2. Summary of the Project

(a) Project Description. MCC Funding will be used to rehabilitate up to 943 km of high priority LLN roads (45 percent of the LLN), consisting of 85 road segments throughout the country and amounting to 321 km of republican roads and 622 km of local roads. All rehabilitation works will be on existing alignments and will include pavement rehabilitation, improvements to up to 19 bridges, drainage facilities, and road safety features.

MCA-Armenia will select roads from among the LLN roads described above. MCC Funding will be provided to rehabilitate selected roads subject to the condition that each road must:

- Have an economic rate of return at least equal to 12.5 percent, calculated in a manner acceptable to MCC and based on a feasibility study and final design;
- Conform to Government requirements and MCC's Environmental Guidelines; and
- Conform to the World Bank policy on Involuntary Resettlement, where relevant.

MCC Funding will also be provided to ARD to conduct a technical audit of its existing performance based maintenance contracts and for technical assistance to create a long-term road maintenance strategic plan.

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress of the Rural Road Rehabilitation Project. Performance against these benchmarks and the overall impact of the Rural Road Rehabilitation Project will be assessed and reported at regular intervals to be specified in the M&E Plan or otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks may be identified during implementation of the Project. Estimated amounts of MCC Funding for the Rural Road Rehabilitation Project are identified in Annex II of this Compact. Conditions precedent and sequencing of the Project shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements.

(b) Project Implementation. The Rural Road Rehabilitation Project will be implemented through the ARD, under the authority of the Ministry of Transport and Communications (''*MoTC*''). ARD is responsible for planning, design and construction of all

state owned roads in Armenia and is responsible for the maintenance of all main and republican roads. It has departments for design and tender, planning (road survey and economic evaluation), construction and rehabilitation and routine maintenance, as well as a road safety group and an on-site laboratory. ARD was the project implementation unit for two World Bank projects in the last 10 years and has a trained staff and the basic technical capacity to implement the Project. The Government will establish a rural roads coordination unit within the ARD, staffed with members of the former project implementation unit established by the World Bank for its completed transportation project. MCA-Armenia will enter into an Implementing Entity Agreement with the ARD that will set out the terms and conditions for the use of MCC Funding in implementing the Rural Road Rehabilitation Project.

3. Beneficiaries

The principal beneficiaries of the Rural Road Rehabilitation Project are expected to be approximately 360,000 Armenians living in 265 rural communities connected by the rehabilitated LLN. Particular beneficiaries include: Farmers who use the improved roads to get products to market and to get inputs to production; users of public transport; and other travelers.

4. Donor Coordination

The Rural Road Rehabilitation Project will complement the rehabilitation and construction of larger roads and other rural roads recently undertaken by other donors. In addition, MCC support to the redefinition and management of the LLN will require collaboration and coordination with other donors active in the road sector. Although the World Bank's two transportation projects in Armenia, the Highway Project and the Transport Project, are closed, the World Bank takes an active interest in the sustainable maintenance arrangements of the roads. Coordination will also continue with the Lincy Foundation, which has completed several main road rehabilitation projects and is considering additional ones. Other donors include: The Japan International Cooperation Agency which is currently funding a landslide survey; the Kuwait Fund, which is currently considering a request to fund the rehabilitation of rural roads leading to places of historical and tourist significance; and the Asian Development Bank, which is establishing a country office in Armenia and has also expressed interest in road sector investments.

5. Sustainability

(a) Institutional Sustainability

The Government will ensure continued institutional support of the Project through the passage of appropriate legislation establishing the LLN as republican roads, placing them under the operations and maintenance jurisdiction of the ARD. The portion of the LLN to be rehabilitated with MCC Funding represents the initial phase of the establishment of this network and creates a commitment by the Government to build out the rest of the LLN, as well as establish a sustainable maintenance program for the LLN and main road network. The Rural Road Rehabilitation Project will further help to institutionalize performance based contracts, which were instituted by ARD in 2005 and provide a mechanism to promote local contractors by establishing a competitive and reliable contracting environment.

(b) Financial Sustainability

Financial sustainability is a function of the Government's commitment to finance necessary annual road maintenance programs for the rehabilitated roads. Currently, the Government finances approximately USD $9 million annually of routine maintenance on the entire road network. As rehabilitation on the LLN proceeds, additional resources will be committed by the Government to cover routine maintenance on the additional roads. Moreover, the Government will establish a plan for financing periodic maintenance so as to ensure the long term sustainability of the entire road network. In addition, the Government agrees to fund any environmental mitigation costs associated with the Rural Road Rehabilitation Project in excess of MCC Funding allocated to cover such costs.

(c) Environmental and Social Sustainability

The key to ensuring environmental and social sustainability of the Project is ongoing public consultation. The Environment and Social Impact Officer (''*ESI Officer*'') within the Management Unit will ensure that environmental and social mitigation measures are followed for all Project Activities in accordance with the provisions set forth in this Compact and in relevant Supplemental Agreements. The ESI Officer will serve as the point of contact for comments and concerns of parties affected by the implementation of all Project Activities under the Compact and will lead the effort to find feasible resolutions to those problems. The ESI Officer will convene periodic public meetings to provide implementation updates and to identify and address public concerns. The Stakeholders' Committee will also appoint representatives of civil society to the Governing Council and provide a link between local NGOs and program managers. Environmental and social analyses of the roads will be conducted as part of the technical survey and design to determine the environmental impacts and existence of economic and physical displacement. In addition to the analyses, environmental management plans (''*EMPs*'') satisfactory to MCC will be developed, implemented and monitored during project implementation. Disbursement of MCC Funding will be contingent upon issuance of environmental licenses, as needed, or any other required permits.

6. Policy, Legal and Regulatory Reforms

The Parties have identified the following policy, legal and regulatory reforms and actions that the Government will pursue in support of the Rural Road Rehabilitation Project to reach its full benefits. Satisfactory implementation of these reforms may be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The Government will define and adopt into legislation the concept of a LLN of no less than 2,703 km of roads. LLN roads are to be defined as those which ensure road access from each community to the main road network. LLN roads should be classified as republican roads so that the maintenance of the LLN falls under the jurisdiction of the ARD.

(b) The Government will present an annual plan for the repair and routine maintenance of the entire LLN, acceptable to MCC, including the roads to be rehabilitated with MCC Funding.

(c) The Government will allocate sufficient funds in the budget for continued rehabilitation of a minimum of 532 km of the LLN over the Compact Term, with the following minimum annual km and threshold expenditure amounts (actual budgeted in Armenian Drams (''AMD'')):

(i) Fiscal year 2006: 32 km; 1.01 billion AMD;

(ii) Fiscal year 2007: 100 km; 3.15 billion AMD;

(iii) Fiscal year 2008: 100 km; 3.31 billion AMD;

(iv) Fiscal year 2009: 120 km; 3.97 billion AMD; and

(v) Fiscal year 2010: 180 km; 5.95 billion AMD.

(d) The Government will allocate funds in the budget for routine maintenance of the entire Armenian road network in amounts at least equal to the amounts set out below for the following fiscal years, will expend such amounts for their intended purpose, and will make up any budget shortfall from the prior year's road maintenance budget:

(i) Fiscal year 2006: 5.02 billion AMD;

(ii) Fiscal year 2007: 5.99 billion AMD;

(iii) Fiscal year 2008: 6.29 billion AMD;

(iv) Fiscal year 2009: 6.90 billion AMD; and

(v) Fiscal year 2010: 7.36 billion AMD.

(e) The Government will submit a long-term routine and periodic maintenance plan for the entire road network by the end of the third year of the Compact Term.

Schedule 2 to Annex I—Irrigated Agriculture Project

This Schedule 2 describes and summarizes the key elements of the irrigated agriculture project that the Parties intend to implement in furtherance of the Irrigated Agriculture Objective (the ''*Irrigated Agriculture Project*''). Additional details regarding the implementation of the Irrigated Agriculture Project will be included in the Implementation Plan and in relevant Supplemental Agreements.

1. Background

Armenian agricultural productivity and profitability are constrained by dilapidated irrigated infrastructure and an outdated system characterized by water losses, inefficient operations and high costs of electric pumping. Farmers operate on small plots of land and are limited by an underdeveloped market economy. In addition, agriculture lending in Armenia is at a very low level. Despite this, a reformed institutional environment for modern irrigation management and agribusiness development is emerging at a critical juncture in the post-Soviet era. The Irrigated Agriculture Project will address the conditions necessary to achieve higher rural incomes based on irrigated agriculture. It includes infrastructure improvements on targeted irrigation schemes, as well as technical support and training for key actors in the irrigation sector, namely: The national Water Supply Agency (the ''*WSA*''), the Water User Associations (the ''*WUAs*''), federations of WUAs and their member farmers. In addition, the Project will provide medium and long-term lending to farmers and enterprises participating in the Project through registered credit organizations.

2. Summary of the Project and Project Activities

The Irrigated Agriculture Project addresses the physical, managerial and financial investments needed to generate sustainable increases in rural incomes through irrigated agriculture. These investments will be implemented through two critical activities:

- Improving dilapidated infrastructure to expand the land area under irrigated production and improvements to the overall efficiency of sourcing and delivering water to member farmers (the ''*Infrastructure Activity*''); and
- Building the management capacities of the WSA and WUAs and providing training and access to credit for member farmers to transition to more profitable, market-oriented agriculture (the ''*Water-to-Market Activity*'').

The M&E Plan (described in Annex III) will set forth anticipated results and, where appropriate, regular benchmarks that may be used to monitor implementation progress. Performance against these benchmarks and the overall impact of the Irrigated Agriculture Project will be assessed and reported at the intervals to be specified in the M&E Plan or as otherwise agreed by the Parties from time to time. The Parties expect that additional benchmarks may be identified during the implementation of each Project Activity. Estimated amounts of MCC Funding for each Project Activity for this Irrigated Agriculture Project are identified in Annex II of this Compact. Conditions precedent to each Irrigated Agriculture Project Activity and sequencing of these Project Activities shall be set forth in the Disbursement Agreement or other relevant Supplemental Agreements.

(a) Infrastructure Activity.

(i) MCC Funding will be used to increase the land area under irrigated production and improve the overall efficiency of sourcing and water delivery to member farmers. This will be done by selectively:

(1) Rehabilitating infrastructure and equipment for up to 21 regional irrigation schemes, including:

(A) Conversion of part or all of 15 schemes from pump to gravity systems;

(B) Construction or rehabilitation of 7 reservoirs;

(C) Rehabilitation of 200 km of main canals;

(D) Renovation and resizing of 68 pumping stations; and

(E) Rehabilitation of tertiary canals utilizing a 15 percent beneficiary co-investment;

(2) Rehabilitating additional tertiary canal systems in up to nine WUAs utilizing a 15 percent beneficiary co-investment and not included in clause (i)(1)(E) above; and

(3) Renovating the drainage system serving the Ararat Valley production systems, including renovating open and closed drains, tube wells and artesian wells within 3 sub-regions.MCA-Armenia will select individual components or groups of components from among the foregoing irrigation schemes for rehabilitation. MCC Funding will be provided to rehabilitate such components, subject to the condition that each individual component or group of components must:

- Have an economic rate of return at least equal to 12.5 percent, calculated in a manner acceptable to MCC and based on a feasibility study and final design;
- Conform to Government regulations and MCC's Environmental Guidelines; and
- Conform to the World Bank policy on Involuntary Resettlement, where relevant.

(ii) The Infrastructure Activity will be implemented through the Water Sector Development and Institutional Project Implementation Unit under the authority of the State Water Committee (the ''*Irrigation PIU*''). Originally established for the World Bank's irrigation projects, the Irrigation PIU has a trained staff and the basic technical capacity to implement the Infrastructure Activity. MCC Funding will be used to recruit an outside project management advisor to assist the Irrigation PIU. MCA-Armenia will enter into an Implementing Entity Agreement with the Irrigation PIU that will set out the terms and conditions for the use of MCC Funding in implementing the Infrastructure Activity.

(b) Water-to-Market Activity.

(i) The Water-to-Market Activity will ensure that MCC Funding of the Infrastructure Activity is sustained through a combination of training, technical assistance, access to credit and essential equipment. Under the Water-to-Market Activity, MCC Funding will be used to build management capacities within the WSA and 53 WUAs and improve the ability of member farmers to convert the improved water supply to profitable production and pay for water charges through two sub-activities:

(1) Strengthening Irrigation System Entities. MCC Funding will be used to:

(A) Support organizational reforms and institutional strengthening of the WSA;

(B) Build administrative and operational capacity of the WUAs and the developing federations of WUAs; and

(C) Support the establishment of a professional irrigation association.

(2) Improving the Profitability of WUA Member Farmers. MCC Funding will be used to:

(A) Provide member farmers with access to technology and training in on-farm water management and higher value agricultural production;

(B) Provide training and consulting to individual member farmers, farmer groups and small and medium enterprises on post-harvest, processing and marketing investments; and

(C) Build capacity within credit organizations and provide funding to such credit organizations which will on-lend to member farmers and related enterprises.

(ii) The sub-activity to strengthen irrigation system entities will be managed in the Irrigation PIU. The sub-activity to improve profitability of WUA member farmers will be managed by an Outside Project Manager to be selected through a competitive international tender process.

3. Beneficiaries

The beneficiaries of the Irrigated Agriculture Project will be the 53 WUAs and their approximately 250,000 member farmers who will benefit from more efficient and reliable irrigation water and intensive institutional strengthening. Among these member farmers, an estimated 60,000 will be reached with on-farm water management techniques. At least 30,000 member farmers will be reached with transition to higher value agriculture technology. A further subset of an estimated 15,000 member farmers will be reached with modern post-harvest, processing and marketing techniques. Some 300 enterprises involved with post-harvest, processing and marketing are expected to benefit leading to significant additional job creation.

4. Donor Coordination

The Irrigated Agriculture Project builds upon and complements an extensive body of work by several donors in irrigation and agriculture.

(a) World Bank and IFAD. The World Bank has contributed to the irrigation sector through three operations: the Irrigation Dam Safety Projects I and II; the Irrigation Development Project (the ''*IDP*''); and the Irrigation Rehabilitation Project. The International Fund for Agricultural Development (''*IFAD*'') has also contributed to the sector under the latter two World Bank projects, as well as its own Agriculture Research Project. Regarding improvements in WUA members' capacity to pay for water services, the World Bank is initiating a loan package to support the agricultural sector called the Rural Enterprise and Small-Scale Commercial Agriculture Development Project. IFAD is also extending a loan focusing on providing credit, grants and training to rural enterprises in communities of mountainous regions. Coordination with the World Bank and IFAD programs is advantageous in the following areas: (i) The phase-out of the Government's subsidy policies and establishment of effective cost recovery mechanisms; (ii) the co-financing contributions by the WUAs to capital investments in the tertiary canal system; (iii) institutional strengthening; and (iv) technical and marketing support programs for member farmers.

(b) USAID and USDA. USAID is currently funding a Water Management Program that focuses on national water policy (including drinking water) and the institutional framework for that policy. The Government and MCA-Armenia will align policy reform and support to the WSA and WUAs through this program's progress and insights. The USAID-supported Armenia SME Market Development Project will continue to support agribusiness, textiles and stone-work enterprises until September 2006, and the Micro Enterprise Development Initiative provides management consulting services to financial institutions and business service providers also until September, 2006. United States Department of Agriculture (''*USDA*'') funding supports the Center for Agribusiness and Rural Development to develop value-adding enterprises producing high quality product to meet market demand. The USAID and USDA programs represent economic development approaches that will be complemented by MCA-Armenia's support to WUA member farmers and related enterprises.

5. Sustainability

(a) Institutional Sustainability

The Government has taken substantial steps to strengthen the institutional framework for rural development. The management of Armenia's irrigation system has recently been decentralized to 53 regional WUAs. The Government has enhanced water management efficiency by merging responsibilities for irrigation and drainage. The Irrigated Agriculture Project will benefit from an extensive Water-to-Market Activity which will provide organizational support for the WSA reforms, management capacity building of the WUAs and developing regional federations of WUAs, and guidance for the formation of a professional irrigation association. Technical assistance will be targeted to ensure that the WSA, WUAs and federations of WUAs have systems to effectively manage and finance their operations. In addition, credit organizations will receive training and capital to expand financial services targeted at WUA member farmers.

(b) Financial Sustainability

Armenia's irrigation system has suffered from a lack of resources for maintenance. The Irrigated Agriculture Project aims to address this problem, which has led to the degradation of the system over time.

First, the Irrigated Agriculture Project is designed to rely less on pumping systems and more on gravity-based irrigation, which should decrease energy costs. However, to the extent pumping systems will be rehabilitated, the Government will present an adequate plan for coverage of operations and maintenance costs, including depreciation, before MCC Funding will be disbursed for civil works on these systems.

Second, the institutional strengthening of the WUAs under the Water-to-Market Activity will also increase the capacity of WUAs to finance themselves through member contributions and water charges. Investing in human capacities (farmers' technical and management skills and approach toward the market) to transform their enterprises to be profitable by competing in commercial markets significantly contributes to the financial sustainability of the irrigation system. Improved capacity of credit organizations to on-lend to rural borrowers will be sustained and expanded as new profit opportunities in the value chain emerge.

Third, the Government will continue its policy of WUA co-financing of tertiary canals consistent with the World Bank IDP and will implement such co-financing in a manner satisfactory to MCC. In addition, the Government agrees to fund any environmental mitigation costs associated with the Irrigated Agriculture Project in excess of MCC Funding allocated to cover such costs.

(c) Environmental and Social Sustainability

The key to ensuring environmental and social sustainability of the Project is ongoing public consultation. The ESI Officer within the Management Unit will ensure that environmental and social mitigation measures are followed for all Project Activities in accordance with the provisions set forth in this Compact and in relevant Supplemental Agreements. The ESI Officer will serve as the point of contact for comments and concerns of parties affected by the implementation of all Project Activities and will lead the effort to find feasible resolutions to those problems. The ESI Officer will convene periodic public meetings to provide implementation updates and to identify and address public concerns. The Stakeholders' Committee will also appoint representatives of civil society to the Governing Council and provide a link between local NGOs and program managers.

ESIAs of the Irrigated Agriculture Project will be conducted as part of the technical survey and design. EMPs satisfactory to MCC will be developed, implemented and monitored during project implementation. Should the issue of involuntary resettlement arise, the Irrigated Agriculture Project will be conducted in compliance with the World Bank Policy on Involuntary Resettlement. To maximize the positive social impacts of the Project, the Implementing Entities for the Water-to-Market Activity will ensure that women are adequately represented in the groups targeted for assistance.

6. Policy Actions; Legislative and Regulatory Reform

The Parties have identified the following policy actions and legislative and regulatory reforms that the Government will pursue in support of the Irrigated Agriculture Project to reach its full benefits. Satisfactory implementation of these reforms may be conditions precedent to certain MCC Disbursements as provided in the Disbursement Agreement:

(a) The Government will arrange for 15 percent WUA co-financing of investments in tertiary canal systems consistent with the World Bank IDP and will implement such co-financing in a manner satisfactory to MCC.

(b) Before the end of the second quarter of the second year of the Compact Term, the Government will adopt and implement a plan acceptable to MCC for the restructuring of the WSA.

(c) Before the end of the second year of the Compact Term, the Government will adopt appropriate legislation and/or regulations required by the Water Code of 2002 to establish a national policy on irrigation that will govern the relationships among the State Committee of Water Economy, the WSA, WUAs and the federations of WUAs.

(d) The Government will use its best efforts to ensure that water charges collected from WUAs continue towards the goal of full recovery of operations and maintenance costs. During the Compact Term, at least the following percentages of annual operations and maintenance costs will be covered:

(i) 2006: 46 percent;

(ii) 2007: 55 percent;

(iii) 2008: 60 percent;

(iv) 2009: 66 percent; and

(v) 2010: 70 percent.

These percentages will be calculated in a manner acceptable to MCC according to the following formula: WC/SC.

WC = Actual water charges collected during the most recently completed fiscal year as reported by the Board of WUAs and federations of WUAs pursuant to the Law on Water User Associations and Federations of Water User Associations.

SC = Operations and maintenance costs for the most recently completed fiscal year of the WSA and the WUAs as reported by the Board of WUAs and federations of WUAs pursuant to the Law on Water User Associations and Federations of Water User Associations.

(e) The Government will allocate funds to cover rehabilitation of the irrigation system in at least the amounts specified in the recommendation of the Technical Commission on Water System Operation and Maintenance, excluding any amounts provided for rehabilitation by MCC Funding.

(f) The Technical Commission on Water System Operation and Maintenance will make a recommendation with respect to the overall costs to cover depreciation of the irrigation system. The Government will ensure that such depreciation costs are reflected in its annual budgets throughout the life of the Program Assets.

(g) Before the end of the 18th month of the Compact Term, the Government will develop and adopt legislation and/or regulations, or amend existing legislation and regulations, to facilitate the establishment of agricultural cooperatives.

(h) By the end of the first year of the Compact Term, the Government will develop and adopt legislation and/or regulations to improve statistics on agriculture, including an accounting of the sector and data collection procedures.

(i) The Central Banking Authority will modify the regulatory framework for the licensing of MFIs as credit organizations.

(j) In an effort to ensure that the councils of the Water User Associations are more representative of their constituencies, the Government will adopt the amendment of Article 16 of the Law on Water User Associations and Federations of Water User Associations proposed by the Government on September 13, 2005.

(k) The Government will allocate in its budget and expend amounts satisfactory to MCC to fund the activities of the National Statistical Service, including conducting the Integrated Survey of Living Standards and the Community Survey. These surveys will be used by MCC as a key monitoring indicator and for impact evaluations. Funding by the Government should increase year-to-year to ensure sustainability post-Compact.

Annex II—Financial Plan Summary

This Annex II to the Compact (the ''*Financial Plan Annex*'') summarizes the Multi-Year Financial Plan for the Program. Except as defined in this Financial Plan Annex, each capitalized term in this Financial Plan Annex shall have the same meaning given such term elsewhere in this Compact.

1. General

A multi-year financial plan summary (''*Multi-Year Financial Plan Summary*'') is attached hereto as Exhibit A. By such time as specified in the Disbursement Agreement, MCA-Armenia will adopt, subject to MCC approval, a Multi-Year Financial Plan that includes, in addition to the multi-year summary of anticipated estimated MCC Funding and the Government's contribution of funds and resources, an estimated draw-down rate for the first year of the Compact based on the achievement of performance milestones, as appropriate, and the satisfaction or waiver of conditions precedent. Each year, at least 30 days prior to the anniversary of the Entry into Force, the Parties shall mutually agree in writing to a Detailed Financial Plan for the upcoming year of the Program, which shall include a more detailed plan for such year, taking into account the status of the Program at such time and making any necessary adjustments to the Multi-Year Financial Plan.

2. Implementation and Oversight

The Multi-Year Financial Plan and each Detailed Financial Plan shall be implemented by MCA-Armenia, consistent with the approval and oversight rights of MCC and the Government as provided in this Compact, the Governance Agreement and the Disbursement Agreement.

3. Estimated Contributions of the Parties

The Multi-Year Financial Plan Summary identifies the estimated annual contribution of MCC Funding for Program administration, monitoring and evaluation, and each Project. The Government's contribution of resources to Program administration, monitoring and evaluation, and each Project shall consist of (i) ''in-kind'' contributions in the form of Government Responsibilities and any other obligations and responsibilities of the Government identified in this Compact, including contributions identified in the notes to the Multi-Year Financial Plan Summary and (ii) such other contributions or amounts as may be identified in relevant Supplemental Agreements between the Parties or as may otherwise be agreed by the Parties; *provided*, in no event shall the Government's contribution of resources be less than the amount, level, type and quality of resources required to effectively carry out the Government Responsibilities or any other responsibilities or obligations of the Government under or in furtherance of this Compact.

4. Modifications

The Parties recognize that the anticipated distribution of MCC Funding between and among the various Program activities and Project and Project Activities will likely require adjustment from time to time during the Compact Term. In order to preserve flexibility in the administration of the Program, the Parties may, upon agreement of the Parties in writing and without amending the Compact, change the designations and allocations of funds between Program administration and a Project, between one Project and another Project, between different activities within a Project, or between a Project identified as of the Entry into Force of this Compact and a new Project, without amending the Compact; *provided, however*, that such reallocation (i) is consistent with the Objectives, (ii) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (iii) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.2(a) of this Compact, this Annex II or elsewhere in the Compact.

5. Conditions Precedent; Sequencing

MCC Funding will be disbursed in tranches. The obligation of MCC to approve MCC Disbursements and Material Re-Disbursements for the Program and each Project is subject to satisfactory progress in achieving the Objectives and on the fulfillment or waiver of any conditions precedent specified in the Disbursement Agreement for the relevant Program activity or Project or Project Activity. The sequencing of Projects or Project Activities and other aspects of how the Parties intend the Projects to be implemented will be set forth in the Implementation Plan, including Work Plans for the applicable Project, and MCC Disbursements and Re-Disbursements will be disbursed consistent with that sequencing.

EXHIBIT A.—MULTI-YEAR FINANCIAL PLAN SUMMARY

Component	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Rural Road Rehabilitation Project:						
A. Infrastructure Improvements	$0.49	$17.92	$22.62	$13.46	$10.00	$64.50
B. Technical Audit of Performance Based Maintenance Contracts	.....	.....	0.30	.....	.....	0.30
C. Road Maintenance Strategic Plan	.....	.....	.....	0.30	.....	0.30
D. Project Administration	0.40	0.40	0.40	0.40	0.40	2.00
Sub-Total	0.89	18.32	23.32	14.16	10.40	67.10
2. Irrigated Agriculture Project:						
A. *Infrastructure Activity*						
Infrastructure*	5.31	30.16	32.07	25.17	15.87	108.59
Project Administration	0.93	0.93	0.93	0.93	0.93	4.67
B. *Water-to-Market Activity*						
Institutional Strengthening	0.53	0.98	1.45	0.69	0.51	4.16
Improved Profitability of WUA Members	0.74	4.55	6.14	6.99	7.07	25.50
Project Administration	0.72	0.61	0.64	0.41	0.39	2.76
Sub-Total	8.24	37.24	41.23	34.20	24.77	145.67
3. Monitoring and Evaluation	1.44	0.92	0.95	0.97	0.81	5.08
4. Program Administration and Control:						
A. Program Administration	1.41	0.99	1.06	1.06	1.09	5.60
B. Audit	0.17	0.80	0.93	0.71	0.52	3.13
C. Fiscal Management	0.49	2.33	2.70	2.04	1.50	9.06
Sub-Total	2.06	4.12	4.69	3.81	3.11	17.79
MCC Contribution	12.63	60.61	70.20	53.13	39.09	235.65

*Tertiary canals will be subject to a 15% farmer co-financing requirement.

Annex III—Description of the M&E Plan

This Annex III to the Compact (the ''*M&E Annex*'') generally describes the components of the M&E Plan for the Program. Except as defined in this M&E Annex, each capitalized term in this M&E Annex shall have the same meaning given such term elsewhere in this Compact.

1. Overview

MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) shall formulate, agree to and the Government shall implement, or cause to be implemented, an M&E Plan that specifies (1) how progress toward the Objectives and the intermediate results of each Project and Project Activity set forth in this M&E Annex (the ''*Outcomes*'') will be monitored (the ''*Monitoring Component*''), (2) a methodology, process and timeline for the evaluation of planned, ongoing, or completed Projects and Project Activities to determine their efficiency, effectiveness, impact and sustainability (the ''*Evaluation Component*''), and (3) other components of the M&E Plan described below. Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as periodically generated reports, will be made publicly available on the MCA-Armenia Web site and elsewhere.

2. Monitoring Component

To monitor progress toward the achievement of the Objectives and Outcomes, the Monitoring Component of the M&E Plan shall identify (a) the Indicators, (b) the party or parties responsible, the timeline, and the instrument for collecting data and reporting on each Indicator to MCA-Armenia, and (c) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan shall measure the results of the Program using quantitative, objective and reliable data (''*Indicators*''). Each Indicator will have one or more expected results that specify the expected value and the expected time by which that result will be achieved (each, a ''*Target*''). The M&E Plan will measure and report on Indicators at four levels. First, the Indicators for the Compact Goal (each, a ''Compact Goal Indicator'') will measure the results for the overall Program. Second, the Indicators for each Objective (each, an ''*Objective Indicator*'') will measure the final results of the Projects to monitor their success in meeting each of the Objectives, including results for the intended beneficiaries identified in accordance with Annex I (collectively, the ''*Beneficiaries*''). Third, intermediate Indicators (each, an ''*Outcome Indicator*'') will measure the intermediate results achieved under each of the Project Activities to provide an early measure of the likely impact of the Project Activities. A fourth level of Indicators (each, an ''*Output Indicator*'') will be included in the M&E Plan to measure the direct outputs of the Project Activities. All Indicators will be disaggregated by gender, income level and age, to the extent practicable. Subject to prior written approval from MCC, MCA-Armenia may add Indicators or refine the Targets of existing Indicators.

(i) Compact Goal Indicators. The M&E Plan shall contain the Compact Goal Indicators listed in the table below with their definitions. The corresponding Targets to be achieved are in the following tables.

COMPACT GOAL INDICATORS

Purpose	Indicator	Definition of indicator
Reduced rural poverty	Poverty rate in rural areas	Poverty rate in rural areas as measured by the National Statistical Service of Armenia.
Increased economic performance of the agricultural sector.	Change in real income from agriculture in rural areas.	Change in real income from sale of agricultural produce per household member measured as an index.

COMPACT GOAL TARGETS

Indicators	Baseline	Year 4 2009	Year 5 2010	Year 6 2011	Year 7 2012	Year 8 2013
Poverty rate in rural areas (percentage) Baseline: 2004	32	31	30	29	28	26
Change in real income from agriculture in rural areas (Index) Baseline: 2005 = 100	100	102	105	109	115	123

(ii) Objective and Outcome Indicators. The M&E Plan shall contain the Objective and Outcome Indicators listed in the tables below, with their definitions. The corresponding Targets to be achieved are in the tables following the definitions.

RURAL ROAD REHABILITATION PROJECT INDICATORS

Purpose	Indicator	Definition of indicator
Objective:		
Better access to economic and social infrastructure.	Satisfaction with public transportation in rural areas.	Percentage satisfied.
Outcomes:		
Reduced transportation costs	International Roughness Index (IRI) for roads in Project area.	Weighted index to measure road roughness (correlated with transportation costs).
Increased vehicular activity	Average daily traffic in Project area	Average daily number of vehicles on road sections in Project area weighted by length of corresponding road sections.

RURAL ROAD REHABILITATION PROJECT INDICATORS—Continued

Purpose	Indicator	Definition of indicator
Sustained maintenance of road network	Government budgetary allocations for rehabilitation of road sections in the road lifeline network. Government budgetary allocations for routine maintenance of the entire road network.	State budget expenditure on rehabilitation of road sections in the road lifeline network (AMD in millions). State budget expenditures on routine maintenance of the entire road network (AMD in millions).

RURAL ROAD REHABILITATION PROJECT TARGETS

Objective level indicators (metric of project success observable by end of compact)	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Satisfaction with public transportation in rural areas (percentage) [1]	TBD	TBD	TBD	TBD	TBD	TBD
Outcome Level Indicators (early Indicators of Project Activities impact on Objectives)						
International Roughness Index (IRI) for roads in Project area (m/km)	9.3	9.9	10.2	7.7	5.7	5.0
Average daily traffic in Project area (vehicles)	380	390	400	410	440	460
Government budgetary allocations for rehabilitation of road sections in the road lifeline network (AMD in millions)	n/a	1,010	3,150	3,310	3,970	5,950
Government budgetary allocations for routine maintenance of the entire road network (AMD in millions)	n/a	5,020	5,990	6,290	6,900	7,360

[1] The Targets for this Indicator will be calculated using baseline information from the 2007 Integrated Survey of Living Standards (ISLS) to be conducted by the National Statistical Service of the Republic of Armenia.

IRRIGATED AGRICULTURE PROJECT INDICATORS

Purpose	Indicator	Definition of indicators
Objectives:		
Increased agricultural productivity	Increase in area covered by high value added ("HVA") crops.	Increase in hectares covered by HVA crops (*i.e.*, vegetables, potato, fruits, grapes).
Improved quality of irrigation	Share of respondents satisfied with irrigation services.	Percentage of respondents satisfied with irrigation services.

INFRASTRUCTURE ACTIVITY INDICATORS

Purpose	Indicator	Definition of indicators
Outcomes:		
Increased irrigated land	Additional land irrigated under Project	Annual increase in irrigated land in Project area (hectares).
Maintenance of irrigation system	Government budgetary allocations for maintenance of irrigation system.	State budget expenditures on maintenance of irrigation system (AMD in millions).
Reduced energy costs	Annual energy savings under Project	Reduction in Kilowatt hours used (thousand KWh).
Reduced water losses	Water losses in primary canals under Project	Share of water losses compared to total water intake (percentage).
	Water losses in tertiary canals under Project ..	Share of water losses compared to total water intake (percentage).

WATER-TO-MARKET ACTIVITY INDICATORS

Purpose	Indicator	Definition of indicators
Outcomes:		
Improved WUA cost recovery	Recovery of WUA operations and maintenance cost by water charges.	Share of WUA water charges compared WUA annual operations and maintenance cost (percentage).
Farmers using improved on-farm water management.	Number of farmers using better on-farm water management.	Number of farmers using better on-farm water management: Drip irrigation; ET Gage, and soil moisture monitoring.

WATER-TO-MARKET ACTIVITY INDICATORS—Continued

Purpose	Indicator	Definition of indicators
Access to credit to improve agricultural activities.	Loans provided	Loans provided under the Project (USD in thousands).

IRRIGATED AGRICULTURE PROJECT TARGETS

Objective level indicators (metric of project success observable by end of compact)	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5
Increase in area covered by high value added (HVA) crops (hectares).	0	0	110	1,100	4,020	2,540.
Share of respondents satisfied with irrigation services (percentage) [1].	TBD	TBD	TBD	TBD	TBD	TBD.
Infrastructure Activity: Outcome Level Indicators (Early Indicators of Project Activities impact on Objectives).	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5.
Additional land irrigated under Project (hectares)	0	0	0	2,400	10,900	20,340.
Government budgetary allocations for maintenance of irrigation system (AMD in millions) [2].	TBD	TBD	TBD	TBD	TBD	TBD.
Annual energy savings under Project (thousand KWh).	0	0	0	0	2,800	25,520.
Water losses in primary canals under Project (percentage).	28%	30%	31%	28%	23%	17%
Water losses in tertiary canals under Project (percentage) [3].	TBD	TBD	TBD	TBD	TBD	TBD.
Water-to-Market Activity: Outcome Level Indicators. (Early Indicators of Project Activities impact on objectives).	Baseline	Year 1	Year 2	Year 3	Year 4	Year 5.
Recovery of WUA operations and maintenance cost by water charges (percentage).	n/a	46%	55%	60%	66%	70%.
Number of farmers using improved on-farm water management (number; cumulative).	0	0	5,390	14,300	24,900	35,420.
Loans provided (USD in thousands)	0	0	1,600	2,400	2,500	2,000.

[1] The Targets for this Indicator will be calculated using baseline information from the 2007 Integrated Survey of Living Standards (ISLS) to be conducted by the National Statistical Service of the Republic of Armenia.

[2] The Targets for this Indicator will be available at the end of the second quarter of 2006, when the recommendations of the Technical Commission on Water System Operation and Maintenance are due for Government confirmation.

[3] The Targets for this Indicator will be incorporated once individual WUAs agree to the 15% co-financing required to proceed with the investments in tertiary canals.

(b) Data Collection and Reporting. The M&E Plan shall establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible parties. The Management Unit shall conduct regular assessments of program performance to inform MCA-Armenia and MCC of progress under the Program and to alert these parties to any problems. These assessments will report the actual results compared to the Targets on the Indicators referenced in the Monitoring Component, explain deviations between these actual results and Targets, and in general, serve as a management tool for implementation of the Program. With respect to any data or reports received by MCA-Armenia, MCA-Armenia shall promptly deliver such reports to MCC along with any other related documents, as specified in the M&E Plan or as may be requested from time to time by MCC.

(c) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan shall be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection. The data quality reviewer shall enter into an Auditor / Reviewer Agreement with MCA-Armenia in accordance with Annex I.

3. Evaluation Component

The Program shall be evaluated on the extent to which the interventions contribute to the Compact Goal. The Evaluation Component shall contain a methodology, process and timeline for analyzing data in order to assess planned, ongoing, or completed Project Activities to determine their efficiency, effectiveness, impact and sustainability. This component should use state-of-the-art methods for addressing selection bias and should make provisions for collecting data from both treatment and control groups, where practicable. The Evaluation Component shall contain two types of reports: Final Evaluations and Ad Hoc Evaluations, and shall be finalized before any MCC Disbursement or Re-Disbursement for specific Program activities or Project Activities.

(a) Final Evaluation. MCA-Armenia, with the prior written approval of MCC, may engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term (''*Final Evaluation*'') or at MCC's election, MCC may engage such independent evaluator. The Final Evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Program; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between

the Compact Goal (to the extent possible), the Objectives and Outcomes; (iii) determine if, and analyze the reasons why, the Compact Goal, Objectives and Outcomes were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Armenia, such independent evaluator shall enter into an Auditor/Reviewer Agreement with MCA-Armenia in accordance with Annex I.

(b) Ad Hoc Evaluations. Either MCC or MCA-Armenia may request ad hoc or interim evaluations or special studies of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term (''*Ad Hoc Evaluations*''). If MCA-Armenia engages an evaluator, the evaluator will be an externally contracted independent source selected by MCA-Armenia, subject to the prior written approval of MCC, following a tender in accordance with the Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or Supplemental Agreement. The cost of an independent evaluation or special study may be paid from MCC Funding. If MCA-Armenia requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project Activity or to seek funding from other donors, no MCC Funding or MCA-Armenia resources may be applied to such evaluation or special study without MCC's prior written approval.

4. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan shall include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Objectives and Outcomes; *provided*, such assumptions and risks shall not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

5. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, shall be in accordance with the Program Annex, this M&E Annex, the Governance Agreement, and any other relevant Supplemental Agreement.

(b) Stakeholders' Committee. The completed portions of the M&E Plan will be presented to the Stakeholders' Committee at the Stakeholders' Committee's initial meetings, and any amendments or modifications thereto or any additional components of the M&E Plan will be presented to the Stakeholders' Committee at appropriate subsequent meetings of the Stakeholders' Committee. The Stakeholders' Committee will have opportunity to present its suggestions to the M&E Plan, which the Governing Council will take into consideration in its review of any amendments to the M&E Plan during the Compact Term.

(c) MCC Disbursement and Re-Disbursement for a Project Activity. As a condition to each MCC Disbursement or Re-Disbursement there shall be satisfactory progress on the M&E Plan for the relevant Project or Project Activity, and substantial compliance with the M&E Plan, including any reporting requirements.

(d) Modifications. Notwithstanding anything to the contrary in the Compact, including the requirements of this M&E Annex, MCC and the Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending the Compact; *provided*, any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant Supplemental Agreement between the Parties.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1259/P.L. 109–213

To award a congressional gold medal on behalf of the Tuskegee Airmen, collectively, in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces. (Apr. 11, 2006; 120 Stat. 322)

S. 2116/P.L. 109–214

To transfer jurisdiction of certain real property to the Supreme Court. (Apr. 11, 2006; 120 Stat. 326)

S. 2120/P.L. 109–215

Milk Regulatory Equity Act of 2005 (Apr. 11, 2006; 120 Stat. 328)

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