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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551–AA7O

The Dairy Import Licensing Program

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the historical license reduction provisions of the dairy tariff-rate import quota licensing program by suspending the provisions with respect to the reduction of historical licenses based on surrenders of unused quantities until 2011.

DATES: This rule is effective October 16, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Lord, Branch Chief, Sugar and Dairy Branch, Import and Trade Support Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–6939, or e-mail at *ronald.lord@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The final rule has been determined to be non-significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This final rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988. The provisions of this final rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The final rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this final rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this final rule.

Unfunded Mandates Reform Act (Pub. L. 104–4)

Public Law 104–4 requires consultation with State and local officials and Indian tribal governments. This final rule does not impose an unfunded mandate or any other requirement on State, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This final rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

The Foreign Agricultural Service administers the Dairy Tariff-Rate Import Quota Licensing program, 7 CFR 6,20–6.37, that provides the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) system, as set forth in the Harmonized Tariff Schedule of the United States. These dairy products may only be imported into the United States at the in-quota rate, by or for the account of a person or firm to whom such licenses have been issued, and only in accordance with the terms and conditions of the 6.25(b)(1)(i) provides that if a licensee has surrendered more than 50 percent of a historical license in each of the 3 prior years, that license will be permanently reduced to the average amount entered during those 3 years. Section 6.25(b)(1)(ii) provides that if a licensee surrenders more that 50 percent of a historical license in at least 3 out of the 5 prior years, that license will be permanently reduced to the average amount entered during those 5 years. Any amounts permanently reduced are transferred to the non-historical quota, which is allocated by a lottery.

The current regulation permitted the Secretary of Agriculture to suspend the historical license reduction provisions on a one-time basis, ''in light of market conditions,'' prior to 1999. In 1998, the Secretary published a notice in the **Federal Register** suspending these provisions for 5 years, thereby delaying their implementation until 2004.

From 2004 through 2007, historical licenses were reduced from 77,010,604 kilograms to 72,394,927 kilograms, as quota-filled rates decreased, especially for certain types of cheeses from the European Union (EU). EU milk production has been constrained by quotas while EU domestic consumption has reduced the availability of exportable cheese supplies. In addition, U.S. cheese prices are now competitive on global markets, and the price differentials that made the U.S. cheese market attractive to EU exporters have diminished significantly.

The proposed rule, published on October 4, 2007 (72 FR 56677–78), proposed suspending the provisions of 7 CFR 6.25 with respect to the reduction of historical licenses based on unused amounts, delaying further reductions under the 3-years-in-a-row provision until 2011, and the at-least-3-out-of-5-years provision until 2014.

Summary of public comments: The Department requested public comments on the proposed rule published on October 4, 2007. Public comments were

submitted by 30 entities during the comment period from October 4, 2007, to November 5, 2007. The comments were submitted by 25 importers, 3 associations, 1 transport company, and 1 foreign government entity. Most of the comments from importers favored a 5 year suspension, citing market conditions as the primary reason for the suspension. Other importers opposed the suspension, or favored a 1 year suspension of the provisions. Arguments against the proposed 5 year suspension included that market conditions over the next 5 years could not be predicted and, therefore, should not be used as a justification for the suspension.

Two associations favored the proposed suspension, while a third association opposed it. The transport company supported the proposed 5 year suspension. The foreign government entity recommended combining different quotas for specific types of cheeses to maximize quota filled rates for the more popular types of cheeses.

Conclusion: Quota-filled rates for Swiss, Gruyere and low fat type cheeses have remained low even after transfer to the lottery, although this fact by itself does not provide justification for a suspension of the historical license reduction provisions. Market conditions are always subject to fluctuation and change, and it is incumbent upon all license holders to adjust to these changing conditions. Nonetheless, to allow additional time to adjust to changes in EU's supply and demand, due to its long-term dairy policy changes, the Department will temporarily suspend the historical license reduction provisions for a period of 2 years, commencing in 2009. Historical license reductions will again be implemented beginning 2011, rather than in 2012 or 2014, as in the proposed rule. In 2011, historical license reductions will be based on import data from years 2006 through 2010. Because there will already be 5 years of historical import data, the 3-years-in-a-row provision is unnecessary, which was not the case when the regulation was originally promulgated in 1996, and is therefore being eliminated.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, and Imports.

■ For the reasons described in the conclusion, The Department of Agriculture amends 7 CFR part 6 as follows:

PART 6—IMPORT QUOTAS AND FEES

■ 1. The authority citation for part 6 continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23, and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97 258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and sections 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

■ 2. In § 6.25 revise paragraph (b) to read as follows:

§ 6.25 Allocation of Licenses.

* * * * *

(b) *Historical licenses for the 2009 and subsequent quota years (Appendix 1).* (1) A person issued a historical license for the 2008 quota year will be issued a historical license in the same amount for the same article from the same country for the 2009 quota year and for each subsequent quota year except that:

(i) Beginning with the 2011 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(ii) [Reserved]

* * * * *

Issued at Washington, DC the 21st day of August 2008.

Ronald Lord,

Licensing Authority.

[FR Doc. E8–21467 Filed 9–15–08; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute Payments and Indemnification Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Interim Final Regulation with Request for Comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing an interim final regulation, with a request for comments, setting forth factors to be considered by the Director of FHFA in acting upon the Director's authority to limit golden parachute payments to entity-affiliated parties in connection with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks.

DATES: *Effective date:* September 16, 2008.

Comment date: Comments on the Interim Final Regulation must be received on or before October 31, 2008. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the interim final regulation, identified by regulatory information number ''RIN 2590–AA08,'' by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel (Office of Federal Housing Enterprise Oversight (OFHEO)) and Christopher Curtis, General Counsel (Federal Housing Finance Board (FHFB)), Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel (OFHEO) and Christopher Curtis, General Counsel (FHFB), Attention: Comments/RIN 2590–AA08, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel (OFHEO) and Christopher Curtis, General Counsel (FHFB), may be sent by e-mail at *RegComments@FHFA.gov*. Please include ''RIN 2590–AA08'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel (OFHEO), telephone (202) 414–3788 or Christopher Curtis, General Counsel (FHFB), telephone (202) 408–2802 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

The Federal Housing Finance Agency (FHFA) invites comments on all aspects of the interim final regulation, and will take all comments into consideration before issuing the final regulation. FHFA requests that comments submitted in hard copy also be

accompanied by the electronic version in Microsoft® Word or in portable document format (PDF) on 3.5″ disk or CD–ROM.

Copies of all comments will be posted on the Internet Web site at *www.OFHEO.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel (OFHEO) at (202) 414–3751.

II. Background

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to establish FHFA as an independent agency of the Federal Government.[1] FHFA was established to oversee the prudential operations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, Enterprises), and the Federal Home Loan Banks (Banks) (collectively, regulated entities) and to ensure that they operate in a safe and sound manner including being capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; comply with the Act and rules, regulation, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of the HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB until such regulations are supplanted by regulations promulgated by the FHFA.

II. Interim Final Regulation and Request for Comments

Section 1114 of HERA amended 12 U.S.C. 4518 to provide additional authorities for FHFA in addressing certain compensation and benefits, specifically golden parachute payments and indemnification payments. HERA added a new paragraph (e) to section 4518 addressing regulation and prohibition of these benefits. While paragraphs (e)(1) and (e)(3)–(6) are self executing, Congress provided that for paragraph (e)(2) addressing factors to be taken into account when acting regarding golden parachutes and indemnification, FHFA prescribe, by regulation, factors to be considered. The factors set forth in (e)(2) are explicit and provide strong guidance to the Director in taking an action under the statute. Therefore, FHFA is promulgating an interim final rule and requesting comment on paragraph (2) of section 4518(e). FHFA will consider other comments regarding section 4518(e) as part of the public notice and comment period.

The FHFA is issuing this regulation as an interim final rule in order to provide clarity on the standards it will employ in addressing golden parachutes and indemnification payments as provided in statute. Additionally, with payments at issue for separating employees, an interim final rule provides clarity for the standards the agency will employ in exercising its authority; at the same time, comments are to be taken regarding the rule. For these reasons, FHFA finds that there is good cause, and that it is in the public interest, to make the rule effective immediately upon publication in the **Federal Register** and allow for public comment after publication. *See* 5 U.S.C. 553(b) and (d). The language of the rule reflects congressional intent embodied in the statute.

The interim final rule provides parties an opportunity to comment on all aspects of the regulation and for future revision, if necessary or appropriate, by the FHFA. Comments are specifically requested with respect to the definition of the term ''troubled condition,'' with respect to other factors the Director should consider in determining whether golden parachute payments should be limited or prohibited, and what payments made pursuant to a bona fide deferred compensation plan or arrangement should be determined to be permissible golden parachute payments.

Section 1313(f) of the Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the interim final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision to the interim final rule as they relate to the Banks.

Regulatory Impacts

Paperwork Reduction Act

The interim final regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final regulation under the Regulatory Flexibility Act. FHFA certifies that the interim final regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the regulated entities, which are not small entities for the purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1231

Golden parachutes, Government-sponsored enterprises, Indemnification.

■ Accordingly, for the reasons stated in the preamble, FHFA establishes a new 12 CFR Chapter XII, consisting of part 1231, to read as follows:

PART 1231—GOLDEN PARACHUTE PAYMENTS AND INDEMNIFICATION PAYMENTS

Sec.
1231.1 Purpose.
1231.2 Definitions.
1231.3 Golden parachute payments.
1231.4 Indemnification payments.
1231.5 Factors to be taken into account.

Authority: 12 U.S.C. 4518(e).

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' TITLE I, Section 1101 of HERA.

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Act by setting forth the standards which the Director will take into consideration in determining whether to limit or prohibit golden parachute payments or indemnification payments to entity-affiliated parties.

§ 1231.2 Definitions.

The following definitions apply to the terms used in this part:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended by the Federal Housing Finance Regulatory Reform Act of 2008, enacted under Division A of the HERA.

(b) *Director* means the Director of FHFA or his or her designee.

(c) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and, except as provided by the Director, any affiliate thereof.

(d) *Entity-affiliated party* means—

(1) Any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

(2) Any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, provided that a member of a Bank shall not be deemed to have participated in the affairs of that Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank;

(3) Any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

(i) The independent contractor knowingly or recklessly participates in—

(A) Any violation of any law or regulation;

(B) Any breach of fiduciary duty; or

(C) Any unsafe or unsound practice; and

(ii) Such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity;

(4) Any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity; and

(5) The Office of Finance.

(e) *Federal Home Loan Bank* means a bank established under the Federal Home Loan Act; the term ''Federal Home Loan Banks'' means, collectively, all the Federal Home Loan Banks.

(f)(1) *Golden parachute payment* means any payment (or any agreement to make any payment) in the nature of compensation by any regulated entity for the benefit of any current entity-affiliated party pursuant to an obligation of such regulated entity that—

(i) Is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the regulated entity; and

(ii) Is received on or after the date on which—

(A) The regulated entity became insolvent;

(B) Any conservator or receiver is appointed for such regulated entity; or

(C) The Director determines that the regulated entity is in a troubled condition.

(2) The term ''golden parachute payment'' shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country;

(ii) Any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Director determines, by regulation or order, to be permissible; or

(iii) Any payment made by reason of death or by reason of termination caused by the disability of an entity-affiliated party.

(3) Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in paragraph (f)(1)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described that paragraph.

(g) *FHFA* means the Federal Housing Finance Agency.

(h) *HERA* means the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (July 30, 2008).

(i) *Office of Finance* means the Office of Finance of the Federal Home Loan Bank System (or any successor thereto).

(j) *Regulated entity* means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; or any Federal Home Loan Bank; the term ''regulated entities'' means, collectively, the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.

(k) *Troubled condition* means a regulated entity that—

(1) Is subject to a cease-and-desist order or written agreement issued by the FHFA that requires action to improve the financial condition of the regulated entity or is subject to a proceeding initiated by the Director, which contemplates the issuance of an order that requires action to improve the financial condition of the regulated entity, unless otherwise informed in writing by the FHFA; or

(2) Is informed in writing by the Director that it is in a troubled condition for purposes of the requirements of this part on the basis of the regulated entity's most recent report of examination or other information available to the FHFA.

(l)–(n) [Reserved]

§ 1231.3 Golden parachute payments.

No regulated entity shall make or agree to make any golden parachute payment except with the concurrence of the Director.

§ 1231.4 Indemnification payments.

No regulated entity shall make or agree to make any indemnification payment except with the concurrence of the Director.

§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment or indemnification payment, the Director shall consider the following factors—

(a) Whether there is a reasonable basis to believe that the entity-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the regulated entity that has had a material effect on the financial condition of the regulated entity;

(b) Whether there is a reasonable basis to believe that the entity-affiliated party is substantially responsible for the insolvency of the regulated entity, the appointment of a conservator or receiver for the regulated entity, or the troubled condition of the regulated entity (as defined in regulations prescribed by the Director);

(c) Whether there is a reasonable basis to believe that the entity-affiliated party has materially violated any applicable provision of Federal or State law or regulation that has had a material effect on the financial condition of the regulated entity;

(d) Whether the entity-affiliated party was in a position of managerial or fiduciary responsibility;

(e) The length of time that the party was affiliated with the regulated entity, and the degree to which the payment

reasonably reflects compensation earned over the period of employment and the compensation involved represents a reasonable payment for services rendered; and

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute or indemnification payment, including but not limited to negligence, gross negligence, neglect, willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Dated: September 11, 2008.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–21650 Filed 9–12–08; 11:15 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0939; Airspace Docket No. 08–ASW–7]

RIN 2120–AA66

Change of Using Agency for Restricted Area R–3807, Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of R–3807, Glencoe, LA, from ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL,'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' The FAA is taking this action in response to a request from the United States Air Force (USAF) to reflect an administrative change of responsibility for the restricted area. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

DATES: *Effective Dates:* 0901 UTC, November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, 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 13, 2008, the USAF requested that the FAA change the using agency for R–3807 from, ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL,'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' The USAF request was based on the Southeast Air Defense Sector (SEADS) transitioning to a new mission and the WADS unit assuming responsibility for the SEADS area of responsibility, including all special use airspace within that area. Coordination between the two air defense sector airspace management offices, as well as Houston Air Route Traffic Control Center, was effected prior to this using agency change request being submitted by the USAF.

Section 73.63 of Title 14 CFR part 73 was republished in FAA Order 7400.8P, effective February 16, 2008.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising the using agency listed for R–3807, Glencoe, LA; transferring using agency responsibility for R–3807 from ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it is amending the using agency for R–3807, Glencoe, LA.

Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' There are no extraordinary circumstances that would require additional environmental analysis.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.38 [Amended]

■ 2. Section 73.38 is amended as follows:

* * * * *

R–3807 Glencoe, LA [Amended]

Under using agency, remove ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL'' and insert the words ''Western Air Defense Sector (WADS), McChord AFB, WA.''

* * * * *

Issued in Washington, DC, on September 4, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–21522 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB93

Terrorism Risk Insurance Program; Terrorism Risk Insurance Program Reauthorization Act Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of amendments made by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Reauthorization Act) to Title I of the Terrorism Risk Insurance Act of 2002

(TRIA, or Act), as previously amended by the Terrorism Risk Insurance Extension Act of 2005 (Extension Act). The Act established a temporary Terrorism Risk Insurance Program (Program) that was scheduled to expire on December 31, 2005, under which the Federal Government shared the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers. The Extension Act extended the Program through December 31, 2007, and made other changes. The Reauthorization Act extends the Program through December 31, 2014, revises the definition of an ''act of terrorism,'' and makes other changes. This interim final rule contains regulations that Treasury is issuing to implement certain aspects of the Reauthorization Act. In particular, the rule addresses mandatory availability (''make available'') and disclosure requirements.

DATES: This interim final rule is effective September 16, 2008. Written comments on this interim final rule must be submitted on or before October 16, 2008.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov*, or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''TRIA Reauthorization Act Interim Final Rule Comments.'' Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments will be available for public inspection on the Federal eRulemaking Portal and by appointment at the TRIP Office. To make appointments, call (202) 622–6770 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, Terrorism Risk Insurance Program (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism which, as defined by the Act, is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program (the Program), including the issuance of regulations and procedures.

Each entity that meets the Act's definition of insurer must participate in the Program. The amount of federal payment for an insured loss resulting from an act of terrorism is determined by insurance company deductibles and excess loss sharing with the Federal Government as specified in the Act and Treasury's implementing regulations. An insurer's deductible is calculated based on the value of direct earned premiums collected over certain prescribed calendar periods. Once an insurer has met its individual deductible, the federal payments cover a percentage of the insured losses above the deductible, all subject to an annual industry aggregate limit of $100 billion.

The Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges. The Act reduces the Federal share of compensation for insured losses that have been covered under any other federal program. The Act also contains provisions designed to manage certain litigation arising from or relating to a certified act of terrorism. Section 107 of the Act creates an exclusive federal cause of action, provides for claims consolidation in federal court, and contains a prohibition on federal payments for punitive damages under the Program. The Act provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

The Program was originally set to expire on December 31, 2005. On December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660), which extended the Program through December 31, 2007, and made other significant changes to TRIA that included a revised definition of property and casualty insurance and creation of a new Program trigger that prohibits payment of Federal compensation by Treasury unless the aggregate industry insured losses resulting from a certified act of terrorism exceed a certain amount ($100 million in 2007).

B. Terrorism Risk Insurance Program Reauthorization Act of 2007

Under the Extension Act, the Program was set to expire on December 31, 2007. On December 26, 2007, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160, 121 Stat. 1839), which extends the Program through December 31, 2014 (*i.e.*, adds additional Program Years to the Program). Other provisions of the Reauthorization Act:

- Revise the definition of ''act of terrorism'' to remove the requirement that the act of terrorism be committed by an individual acting on behalf of any foreign person or foreign interest in order to be certified as an act of terrorism for purposes of the Act.
- Define ''insurer deductible'' for all additional Program Years as the value of an insurer's direct earned premiums for commercial property and casualty insurance for the immediately preceding calendar year multiplied by 20 percent.
- Set the Federal share of compensation for insured losses (subject to a $100,000,000 Program trigger) for all additional Program Years at 85 percent of that portion of the amount of insured losses that exceeds the applicable insurer deductible.
- Require Treasury to submit a report to Congress and issue final regulations for determining the *pro rata* share of insured losses to be paid under the Program when aggregate insured losses exceed $100,000,000,000.
- Require the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed $100,000,000,000.
- Require for policies issued after the date of enactment, that insurers provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap at the time of offer, purchase, and renewal of a policy (in addition to current disclosure requirements).
- Revise the recoupment provisions of the Act. For purposes of recouping the Federal share of compensation under the Act, the ''insurance marketplace aggregate retention amount'' for all additional Program Years is the lesser of $27,500,000,000

and the aggregate amount, for all insurers, of insured losses during each Program Year. With regard to mandatory recoupment of the Federal share of compensation through policyholder surcharges, collection is required within a certain schedule specified in the Reauthorization Act. The limitation that surcharges not exceed 3 percent of the premium charged for property and casualty insurance coverage under the policy is eliminated (but remains in the case of discretionary recoupment).

• Require Treasury to issue recoupment regulations within 180 days of enactment, and publish an estimate of aggregate insured losses within 90 days after an act of terrorism.

• Require the President's Working Group on Financial Markets to perform an ongoing analysis regarding the long-term availability and affordability of terrorism risk insurance and submit reports in 2010 and 2013.

• Require the Comptroller General to examine and report on the availability and affordability of insurance coverage for nuclear, biological, chemical, and radiological terrorist events; the future outlook for such coverage; and the capacity of insurers and State workers compensation funds to manage the risk associated with nuclear, biological, chemical, and radiological terrorist events.

• Require the Comptroller General to study and report on the question of whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

C. Previously Issued Interim Guidance

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Reauthorization Act, on December 31, 2007, Treasury posted draft interim guidance on its Web site. A Notice containing that interim guidance was published in the **Federal Register** on January 29, 2008 (73 FR 5264). The notice stated that the guidance could be relied upon by insurers in complying with new statutory requirements prior to the issuance of regulations, but was not the exclusive means of compliance. The interim guidance is superseded by this interim final rule.

II. Analysis of the Interim Final Rule

This interim final rule incorporates certain changes to 31 CFR Part 50 required by the amendments to TRIA in the Reauthorization Act. The rule generally incorporates the substance of the interim guidance previously issued by Treasury. In addition, the rule includes various conforming changes, such as a change to the definition of ''act of terrorism,'' and extension of applicable insurer deductible amounts and the Federal share of compensation for insured losses for additional Program Years. Regulations for determining how the *pro rata* share of insured losses is to be paid under the Program when aggregate insured losses exceed the annual liability cap and regulations implementing the recoupment provisions of the Act will be issued separately. Treasury has consulted with the National Association of Insurance Commissioners (NAIC) in developing this rule.

Although Treasury is issuing these requirements as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties.

A. Definitions (§ 50.5)

The interim final rule incorporates revised definitions for the terms ''act of terrorism,'' ''Program Years,'' ''insurer deductible,'' and ''Program Trigger event.''

To conform to the Reauthorization Act, the definition of ''act of terrorism'' in § 50.5(b)(1)(iv) is revised to remove the requirement that the act be committed by an individual ''acting on behalf of any foreign person or foreign interest'' in order to be certified as an act of terrorism for purposes of TRIA.

As noted in the Interim Guidance, Treasury recognizes that the existing language in property and casualty insurance policies describing a ''certified'' act of terrorism covered by TRIA and other terrorist events has varied. In addition, insurers have designed their insurance contracts and notifications to policyholders concerning potential changes to the certification criteria for acts of terrorism differently. Insurers must determine how their existing policy language and particular circumstances are affected by the revised definition of an act of terrorism. The decision whether to certify an act of terrorism will be governed by the criteria in TRIA, as amended by the Reauthorization Act. Treasury will consider losses resulting from an act of terrorism (as now defined in TRIA) that are covered by an insurer under a policy for property and casualty insurance to be insured losses covered by the Program, provided the insurer makes payment to the policyholder in accordance with the terms and conditions of the policy, appropriate business practices, and other applicable requirements and conditions, *e.g.*, disclosure.

The revisions to the definitions of ''Program Years,'' ''insurer deductible,'' and ''Program Trigger event'' merely conform these definitions to the changes in the Reauthorization Act.

B. Interim Guidance Safe Harbors (§ 50.7)

Section 50.7 of the interim final rule adds the Interim Guidance issued by Treasury on January 22, 2008, and published at 73 FR 5264 (January 29, 2008) to the list of Interim Guidance documents Treasury has issued.

C. Disclosure (§ 50.12)

The Reauthorization Act made no change to the requirement in section 103(b) of TRIA that insurers provide clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. These disclosures must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. However, because an ''insured loss'' is defined, in part, as a loss resulting from an act of terrorism, the revision of the definition of an act of terrorism to eliminate the ''foreign person or interest'' element (*i.e.*, to add what is often referred to as ''domestic terrorism'') may affect the premium charged for insured losses and an insurer's compliance with the disclosure requirements.

Under Section 50.13(a) of the current regulations, disclosures must be made no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder. Section 50.12(b)(2) of the interim final rule states that if an insurer makes an initial offer of coverage, or offers to renew an existing policy on or after December 26, 2007, the disclosure provided to the policyholder must reflect the premium charged for insured losses covered by the Program consistent with the definition of an act of terrorism as amended by the Reauthorization Act. As a general matter, and as further explained below, the requirement to make available coverage for insured losses must be met according to the provisions of the Act in effect at the time the offer is made. The disclosure must be consistent with the offer that is made.

The Interim Guidance addressed the possibility that an insurer processed a policy application or renewal in 2007 for coverage becoming effective in 2008, but did not make available terrorism coverage or did not provide a proper disclosure due, in part, to the expected expiration of TRIA on December 31,

2007. Treasury also recognized that an insurer might have to modify operations and might be subject to rate and policy form filing and/or prior approval processes to reflect changes to TRIA in the Reauthorization Act.

Section 50.12(e)(3) of the interim final rule provides that if an insurer made available coverage for insured losses in a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not provide a disclosure at the time of offer, purchase or renewal of the policy, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a disclosure as soon as possible following January 1, 2008. For example, if an insurer made available coverage in an offer of renewal in January 2008 as required by the Reauthorization Act, but did not provide a disclosure either at the time of the offer of renewal or the purchase, then it must provide a disclosure as soon as possible after January 1, 2008.

Treasury considers March 31, 2008, to be the latest reasonable date for compliant disclosures to policyholders, barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

D. Cap Disclosure (§§ 50.15 and 50.11)

Section 103(e)(2) of TRIA provides that if aggregate insured losses exceed $100,000,000,000 during any Program Year, Treasury shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000. Section 103(b)(3) of TRIA, as amended by the Reauthorization Act, requires an insurer to provide a clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The requirement applies to ''any policy that is issued after the date of enactment'' of the Reauthorization Act, or December 26, 2007. The disclosure must be made at the time of offer, purchase, and renewal of the policy.

New section 50.15 in the interim final rule addresses these requirements. Section 50.11 also includes a minor change to clarify that the term ''cap disclosure'' in the regulations refers to this disclosure required by section 103(b)(3) of the Act.

For policies issued after December 26, 2007, this cap disclosure must initially be provided to the policyholder at the first occurrence thereafter of an offer, purchase or renewal. The interim final rule provides that, for policies issued after December 26, 2007, if an insurer does not provide a cap disclosure by the time of the first offer, purchase or renewal of the policy after December 26, 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided the disclosure as soon as possible following December 26, 2007. As stated in the Interim Guidance, Treasury considers March 31, 2008, to be the latest reasonable date for providing the cap disclosure (including reprocessing of policies, if necessary, where a compliant disclosure was not possible), barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

E. Use of Model Forms (§ 50.17)

Under current section 50.17(e) of the TRIA regulations, insurers are permitted to use NAIC Model Disclosure Forms No. 1 and 2 to satisfy the disclosure requirements of section 103(b)(2) of the Act, provided that the insurer uses the most current forms that are available at the time of disclosure. On December 19, 2007, the NAIC modified the forms and Treasury has deemed the newly modified forms to satisfy the disclosure requirements, including the cap disclosure requirement under section 103(b)(3). The new forms are found on the Treasury Web site at *http://www.treasury.gov/trip*. However, insurers are not required to use the NAIC forms, and may use other means to comply with the disclosure requirements.

Section 50.17(e) of the interim final rule adds a provision specifically addressing the cap disclosure. In addition, a minor refinement of current section 50.17(a)(2) has been made in order to more accurately reflect section 105(c) of the Act.

F. Make Available (§§ 50.20 and 50.21)

The Reauthorization Act made no change to the TRIA requirements in section 103(c) that insurers make available, in all property and casualty insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. However, because the ''make available'' requirements apply to insured losses, and an ''insured loss'' is defined, in part, as a loss resulting from an act of terrorism, the revision of the definition of an act of terrorism in the Reauthorization Act to add domestic terrorism may have an impact on an insurer's compliance with the ''make available'' requirements.

The Reauthorization Act was effective immediately upon enactment, December 26, 2007. The TRIA regulations in 31 CFR 50.21(a) generally provide that the ''make available'' requirements apply at the time of the initial offer of coverage or offer of renewal of an existing policy. Thus, any initial offers of coverage or offers of renewal of existing policies, made on or after the date of enactment, must be consistent with the revised definition of act of terrorism. In addition, if an insurer makes an offer of coverage on or after December 26, 2007 on a policy that is in mid term, then the insurer must make available coverage for insured losses consistent with the revised definition of an act of terrorism. These general rules are included in revised section 50.21(b) of the interim final rule.

Section 50.21 addresses in detail insurer implementation of the ''make available'' requirements under various circumstances as a result of enactment of the Reauthorization Act. Although there are no substantive changes to existing provisions, the entire section is set forth in the interim final rule for the convenience of the reader. In all cases where new offers are required, the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following January 1, 2008. The Interim Guidance stated that Treasury considers March 31, 2008, to be the latest reasonable date for compliant offers of coverage (including reprocessing of policies, if necessary, where a compliant post-December 26, 2007 offer was not possible), barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

Section 50.21(c)(2) addresses policies where the coverage for insured losses expired as of December 31, 2007, but other coverage under the policy continued in force in 2008. An insurer must make coverage for insured losses available for the remaining portion of the policy term and, under section 50.21(e)(4), an insurer must be able to demonstrate to Treasury's satisfaction

that it has offered such coverage as soon as possible following January 1, 2008. However, if a policyholder had declined an offer made by an insurer for coverage for insured losses expiring as of December 31, 2007, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed.

Section 50.21(e)(5) addresses situations where coverage became effective in 2008. Section 50.21(e)(5)(i) requires that if an insurer processed a new policy or policy renewal in 2007 or in the first three months of 2008, for coverage becoming effective in 2008, but did not make available coverage for insured losses, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following January 1, 2008. As noted in the Interim Guidance, if an insurer wishes to receive Federal compensation under the Program for insured losses, the insurer must make available coverage for insured losses for all policies becoming effective in 2008, even if the policy was processed in late 2007 or early 2008.

Under section 50.21(e)(5)(ii), if an insurer made an initial offer or offer of renewal of coverage for insured losses on or after December 26, 2007, for a policy term becoming effective in 2008, but the scope of the insured losses in the offer was inconsistent with the Reauthorization Act's revised definition of an act of terrorism, then an insurer must make a new offer of coverage as soon as possible following January 1, 2008. If an insurer made an initial offer of coverage or offer of renewal before December 26, 2007, for a policy term becoming effective in 2008, and coverage for insured losses was in compliance with the Act and the definition of an act of terrorism at the time of the offer, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed. These rules are consistent with the Interim Guidance Treasury first released on December 31, 2007, which has been in effect since that time.

G. Federal Share of Compensation (§§ 50.50 and 50.53)

These sections of the interim final rule include other minor and conforming changes to reflect the extension of the Program and the inclusion of the cap disclosure.

III. Procedural Requirements

The Reauthorization Act extended the Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act's extension and other new provisions became effective immediately upon the date of enactment. Changes contained in the Reauthorization Act applied immediately to those entities that come within the Act's definition of ''insurer.''

The Reauthorization Act revised the definition of an ''act of terrorism'' to include domestic terrorism within the Program, which had an immediate impact on insurers' compliance with existing disclosure and ''make available'' requirements under TRIA. In addition, the Reauthorization Act added a new disclosure that applied to any policies issued beginning on the day after the date of enactment. These changes, which affected both insurers' obligations under TRIA and the conditions for payment by the Federal Government, resulted in the need to provide immediate guidance to insurers, policyholders, and regulators. Given the significance of these changes made by the Reauthorization Act, there is an urgent need to issue immediately effective regulations that incorporate the substance of interim guidance with regard to these requirements.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form pending an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule. This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this interim final rule will not have a significant economic impact on a substantial number of small entities. The interim final rule implements changes prescribed or authorized by the Reauthorization Act. TRIA requires all insurers, regardless of size or sophistication, that receive direct earned premiums for any type of commercial property and casualty insurance, to participate in the Program. The Act also defines ''property and casualty insurance'' to mean commercial lines without any reference to the size or scope of the commercial entity. The rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. The disclosure and ''make available'' requirements are required by the Act. In addition, the Act now defines an ''act of terrorism'' to include domestic terrorism. Any economic impact associated with the interim final rule flows from the Act and not the interim final rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance-type backstop to commercial property and casualty insurers and spreading the risk of insured losses resulting from an act of terrorism. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Public Law 107–297, 116 Stat. 2322, as amended by Public Law 109–144, 119 Stat. 2660 and Public Law 110–160, 121 Stat. 1839 (15 U.S.C. 6701 note).

■ 2. Section 50.1 is amended by revising paragraph (a) to read as follows:

§ 50.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, and the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839.

* * * * *

■ 3. Section 50.5 is amended by revising paragraphs (b)(1)(iv), (g)(1)(vi), (l), and (m) to read as follows:

§ 50.5 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

* * * * *

(g) * * *

(1) * * *

(vi) For Program Year 5 (January 1, 2007 through December 31, 2007), or any Program Year thereafter, the value of an insurer's direct earned premiums over the calendar year immediately preceding that Program Year, multiplied by 20 percent; and

* * * * *

(l) *Program Trigger event* means a certified act of terrorism that occurs after March 31, 2006, for which the aggregate industry insured losses resulting from such act exceed $50,000,000 with respect to such insured losses occurring in 2006 or $100,000,000 with respect to such insured losses occurring in 2007 and any Program Year thereafter.

(m) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 though December 31, 2004), Program Year 3 (January 1, 2005 through December 31, 2005), Program Year 4 (January 1, 2006 through December 31, 2006), Program Year 5 (January 1, 2007 through December 31, 2007), and any Program Year thereafter (calendar years 2008 through 2014).

* * * * *

■ 4. Section 50.7 is amended by revising paragraphs (b)(3) and (b)(4) and adding paragraph (b)(5) to read as follows:

§ 50.7 Special Rules for Interim Guidance Safe Harbors.

* * * * *

(b) * * *

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003);

(4) Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006); and

(5) Interim Guidance issued by Treasury on January 22, 2008, and published at 73 FR 5264 (January 29, 2008).

■ 5. Section 50.11 is revised to read as follows:

§ 50.11 Definition.

For purposes of this subpart, unless the context indicates otherwise, the term ''disclosure'' or ''disclosures'' refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term ''cap disclosure'' refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

■ 6. Section 50.12 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding paragraphs (b)(2) and (e)(3) to read as follows:

§ 50.12 Clear and conspicuous disclosure.

* * * * *

(b) * * *

(2) *Premium to reflect definition of act of terrorism.* If an insurer makes an initial offer of coverage, or offers to renew an existing policy on or after December 26, 2007, the disclosure provided to the policyholder must reflect the premium charged for insured losses covered by the Act, consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839.

* * * * *

(e) * * *

(3) If an insurer made available coverage for insured losses in a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not provide a disclosure at the time of offer, purchase or renewal of the policy, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a disclosure as soon as possible following January 1, 2008.

■ 7. Section 50.15 is added to read as follows:

§ 50.15 Cap disclosure.

(a) *General.* Under section 103(e)(2) of the Act, if the aggregate insured losses exceed $100,000,000,000 during any Program Year, the Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

(b) *Other requirements.* As a condition for federal payments under section 103(b) of the Act, in the case of any policy that is issued after December 26, 2007, an insurer must provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The cap disclosure must be made at the time of offer, purchase, and renewal of the policy.

(c) *Demonstration of compliance.* For policies issued after December 26, 2007, if an insurer does not provide a cap disclosure by the time of the first offer, purchase or renewal of the policy after December 26, 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided the disclosure as soon as possible following December 26, 2007.

(d) *Other applicable rules.* The rules in § 50.12(a), (c), (d), (e)(1), and (f) (relating to clear and conspicuous disclosure) and in § 50.13 (relating to offer, purchase, and renewal) apply to the cap disclosure.

■ 8. Section 50.17 is amended by revising the second sentence of paragraph (a)(2), by redesignating paragraph (e) as paragraph (f), and by adding paragraph (e) to read as follows:

§ 50.17 Use of model forms.

(a) * * *

(2) * * * Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the notice requirement of section 105(c) of the Act.* * *

* * * * *

(e) *Cap disclosure.* An insurer may use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 dated December 19, 2007, or as subsequently modified in accordance with paragraph (f) of this section, to satisfy the cap disclosure requirement, or another disclosure that meets the requirements of § 50.15 may be developed.

■ 9. Section 50.18 is amended by revising the section title to read as follows:

§ 50.18 Notice required by reinstatement provision.

■ 10. Section 50.20 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 50.20 General mandatory availability requirements.

* * * * *

(c) *Program Years 4 and 5—calendar years 2006 and 2007.* Under section 103(c) of the Act, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Years 4 and 5.

(d) *Program Years thereafter.* Under section 103(c) of the Act, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Years 2008 through 2014.

(e) *Beyond 2014.* Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2014, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

■ 11. Section 50.21 is revised to read as follows:

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, and new policies issued and renewals of existing

policies during the period beginning on November 26, 2002 and ending on December 31, 2002, and in any Program Year thereafter. Except as provided in paragraph (c) of this section, the requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Offer consistent with amended definition of act of terrorism.* An insurer must make available coverage for insured losses in a policy of property and casualty insurance consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 beginning with the first initial offer of coverage or offer of renewal of the policy made on or after December 26, 2007. Notwithstanding this requirement, if an insurer makes an offer of coverage on or after December 26, 2007 on a policy that is in mid term, then the insurer must make available coverage for insured losses consistent with the definition of an act of terrorism.

(c) *Rules concerning extension of Program.* (1) *Special Program Year 4 requirement for certain new policies issued and renewals of existing policies in Program Year 3.* If coverage for insured losses under a policy of property and casualty insurance (as defined by the Act, as amended) expired as of December 31, 2005, but the remainder of coverage under the policy continued in force in Program Year 4, then an insurer must make available coverage as provided in § 50.20 for insured losses for the remaining portion of the policy term in the manner specified in paragraphs (e)(1) and (e)(2) of this section. This requirement does not apply if during Program Year 3 a policyholder declined an offer of coverage for insured losses made at the time of the initial offer of coverage or offer of renewal of the existing policy.

(2) *Special 2008 requirement for certain policies where coverage expired.* If coverage for insured losses under a policy of property and casualty insurance expired as of December 31, 2007, but the remainder of coverage under the policy continued in force in 2008, then an insurer must make available coverage as provided in § 50.20 for insured losses for the remaining portion of the policy term in the manner specified in paragraphs (e)(1) and (e)(4) of this section. However, if a policyholder declined an offer made by an insurer for such coverage expiring as of December 31, 2007, then the insurer is not required to make a new offer of coverage for insured losses before any offer of renewal.

(d) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to ''make available'' coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(e) *Demonstrations of compliance.* (1) *No contract.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(2) *Policy periods beginning in Program Year 3.* If an insurer must make available coverage for insured losses as required by paragraph (c)(1) of this section for a policy whose coverage period began in Program Year 3 but extends into Program Year 4, then the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage by January 1, 2006, or as soon as possible following that date.

(3) *Coverage becoming effective in Program Year 4.* If an insurer processed a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not make available coverage for insured losses as required by § 50.20 by January 1, 2006, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following that date.

(4) *Coverage expired as of December 31, 2007.* If an insurer must make available coverage for insured losses under the circumstances described in paragraph (c)(2) of this section, the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage as soon as possible following January 1, 2008.

(5) *Coverage becoming effective in 2008.* (i) *No coverage.* If an insurer processed a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not make available coverage for insured losses as required by § 50.20(a), then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following January 1, 2008.

(ii) *Not consistent with amended definition of act of terrorism.* If an insurer made an initial offer of coverage or offer of renewal on or after December 26, 2007 for a policy term becoming effective in 2008, and made available coverage for insured losses, but the scope of the coverage for insured losses in the offer was not consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a new offer of coverage as soon as possible following January 1, 2008. If an insurer made an initial offer of coverage or offer of renewal before December 26, 2007, for a policy term becoming effective in 2008, and the insurer made available coverage for insured losses in compliance with the Act and the definition of an act of terrorism in effect at the time of the offer, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed by its terms, regardless of whether the offer was accepted or rejected.

■ 12. Section 50.50 is amended by revising paragraphs (a)(1)(ii), (b)(2), and (d)(5) to read as follows:

§ 50.50 Federal share of compensation.

(a) * * *

(1) * * *

(ii) 85 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during Program Year 5 and any Program Year thereafter.

(b) * * *

(2) For a certified act of terrorism occurring in 2007 and any Program Year thereafter: $100 million.

* * * * *

(d) * * *

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19 and a cap disclosure as required by § 50.15;

* * * * *

■ 13. Section 50.53 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 50.53 Loss certifications.

* * * * *

(b) * * *

(2) * * *

(iv) The insurer has complied with the disclosure requirements of §§ 50.10

through 50.19, and the cap disclosure requirement of § 50.15, for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

* * * * *

David G. Nason,

Assistant Secretary (Financial Institutions).

[FR Doc. E8–21578 Filed 9–15–08; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1043; FRL–8714–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving into Michigan's State Implementation Plan (SIP) specified revisions to add the prevention of significant deterioration (PSD) construction permit program for the purpose of meeting the requirements of the Clean Air Act (CAA) with regard to new source review in areas attaining the National Ambient Air Quality Standards. The Michigan Department of Environmental Quality (MDEQ) submitted these rules to EPA for approval and inclusion into the Michigan SIP on December 21, 2006. In addition, in a separate action in today's **Federal Register**, EPA is proposing to partially disapprove the portion of Michigan's SIP revision submission consisting of Michigan Rule R 336.2816. The PSD SIP revision affects major stationary sources in Michigan that are subject to, or potentially subject to, the PSD construction permit program.

DATES: This final rule is effective on October 16, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1043. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Laura Cossa, Environmental Engineer, at (312) 886–0661 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Laura Cossa, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0661, *cossa.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Is Being Addressed in This Document?
II. What Proposed Revisions Are Included in the Conditional Approval?
III. What Proposed Revisions Are Not Included in Today's Conditional Approval?
IV. What Were the Comments Received and EPA's Response to Comments?
V. What Action Is EPA Taking?
VI. Statutory and Executive Order Reviews

I. What Is Being Addressed in This Document?

MDEQ submitted Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) (''Part 18'') to EPA on December 21, 2006, for EPA approval and inclusion into the Michigan SIP. Part 18 relates to Michigan's PSD permit program. Michigan adopted revisions to Part 18 on December 4, 2006. Prior to approval of Michigan's submitted PSD program, EPA delegated to Michigan the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21 (via delegation letter dated September 26, 1988).

On January 9, 2008, EPA proposed to conditionally approve Michigan's PSD SIP rules under section 110 of the CAA. (73 FR 1570, January 9, 2008). EPA received a number of comments on our proposal (see discussion in Section IV below). After considering the comments received, EPA is finalizing most of our proposed conditional approval of Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) (with one exception discussed in more detail below). Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the State to adopt specific enforceable measures by a date certain that is no more than twelve months from the date of the conditional approval.

In addition, in a separate action also published today, EPA is proposing to disapprove Michigan Rule R 336.2816, which is also included in the State's December 21, 2006, PSD program submission. This rule sets out the mechanisms which facilitate the participation of the Federal Land Manager (FLM) in the State's permitting process for purposes of protecting either the increment or the Air Quality Related Values (AQRVs) associated with a Class I area from potential impacts from a proposed major source or major modification. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and those rules are approved into its SIP. Under section 110(k)(3), EPA may disapprove a part of a SIP revision if the partial disapproval meets certain conditions discussed in Section III, below.

Further, EPA is proposing to approve in the alternative a revised Michigan Rule R 336.2816 once the State submits and EPA approves promulgated rules equivalent to 40 CFR 51.166(p), which the State has committed to do.

Michigan is not authorized to carry out its Federally approved air program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes: 1. All lands within the exterior boundaries of Indian reservations within the State of Michigan; 2. Any land held in trust by the U.S. for an Indian tribe; and 3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the CAA program in Indian Country.

II. What Proposed Revisions Are Included in the Conditional Approval?

EPA is conditionally approving the following sections of ''Part 18, Prevention of Significant Deterioration of Air Quality'' of Michigan's Air Pollution Control Rules, (a detailed discussion of the reasons for the conditional approval is available in 73 FR 1043, January 9, 2008):

R 336.2801 Definitions (a) through (tt) [except for R 336.2801 (j) and (ff), reserved in original rule];
R 336.2802 Applicability;
R 336.2803 Ambient Air Increments;
R 336.2804 Ambient Air Ceilings;

R 336.2805 Restrictions on Area Classifications;
R 336.2806 Exclusions from Increment Consumption;
R 336.2807 Redesignation;
R 336.2808 Stack Heights;
R 336.2809 Exemptions;
R 336.2810 Control Technology Review;
R 336.2811 Source Impact Analysis;
R 336.2812 Air Quality Models;
R 336.2813 Air Quality Analysis;
R 336.2814 Source Information;
R 336.2815 Additional Impact Analyses;
R 336.2817 Public Participation;
R 336.2818 Source Obligation;
R 336.2819 Innovative Control Technology; and,
R 336.2823 Actuals Plantwide Applicability Limits (PALs) (1) through (14).

III. What Proposed Revisions Are Not Included in Today's Conditional Approval?

Today's action does not extend conditional approval to Michigan Rule R 336.2816, ''Sources Impacting Federal Class I Areas—Additional Requirements.'' EPA determined that Michigan Rule R 336.2816 is not consistent with 40 CFR 51.166(p), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification.

As further discussed below, commenters raised concerns that, insofar as Michigan Rule R 336.2816 does not fully provide this mechanism, EPA should act to ensure that the SIP contains these requirements. On November 30, 2007, in a letter from Steven Chester, Director, MDEQ, to Mary Gade, Regional Administrator, Michigan committed, among other things, to making changes to Michigan Rule R 336.2816 consistent with the requirements at 40 CFR 51.166(p).

Because Michigan currently implements the Federal PSD program under EPA's delegation of 40 CFR 52.21, EPA's conditional approval of Michigan Rule R 336.2816 would have made the Michigan SIP less stringent than the currently applicable, Federally delegated program. Therefore, in a separate action published today, EPA is proposing to disapprove Michigan's submittal as it relates to Michigan Rule R 336.2816. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) to administer Michigan Rule R 336.2816 until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) for approval, and these rules are approved into its SIP.

IV. What Were the Comments Received and EPA's Response to Comments?

The public comment period for our proposed conditional approval began on January 9, 2008 (73 FR 1570, January 9, 2008). During the public comment period, EPA received both supportive and adverse comments in response to our proposed rulemaking. EPA received comments in support of our proposed action from the Alliance of Automobile Manufacturers and Marathon Petroleum Company on February 7, 2008, and from Consumers Energy Company on March 11, 2008 (Comment 1, discussed below). EPA received adverse consolidated comments, dated March 11, 2008, from Clean Water Action, Environmental Law and Policy Center, Michigan Energy Alternatives, Michigan Land Use Institute, Midland Cares, Natural Resources Defense Council and Sierra Club ((''Consolidated Commenters'') Comment 2, discussed below). EPA also received three requests, from Sidley and Austin LLP, Alliance of Automobile Manufacturers and Marathon Petroleum Company, on January 8, February 7, and March 11, 2008, respectively, to terminate the PSD delegation agreement between MDEQ and EPA when the approval of PSD program is issued (Comment 3, discussed below). One commenter (Consumers Energy Company) requested that EPA explicitly state in this notice the appropriate appeal procedures once the SIP is conditionally approved (Comment 4, discussed below). One commenter (Alliance of Automobile Manufacturers) expressed concern that Michigan's definition of *''net emission increase''* was more stringent than the Federal definition. As described in 40 CFR 51.166(b), states can use definitions that are more stringent than the corresponding definitions listed in 40 CFR 51.166(b)(1) to (56). However, in a letter dated May 17, 2007, Michigan stated that it did not intend to implement a more stringent definition, and stated that the definition of *''net emissions increase''* is being rewritten under a State rulemaking, so that it will follow the same requirements as the Federal rule. Michigan indicates that the definition of *''net emissions increase''* as currently set forth in Michigan Rule R 336.2801(ee) will be applied until the state rules are revised. The same commenter (Alliance of Automobile Manufacturers) expressed concern that the requirements of Michigan Rule R 336.2818 (Source Obligation) are more stringent than the Federal requirements (Comment 5, discussed below).

On January 25, 2008, EPA received a request from the Consolidated Commenters to extend the public comment period an additional 30 days from the original closing date of February 8, 2008. Despite one comment to the contrary, EPA reopened the public comment period for an additional 30 days until March 10, 2008 (73 FR 8250, February 13, 2008).

EPA has considered the comments received and, with the exception of the proposed disapproval of Michigan Rule R 336.2816, has finalized our action as proposed. Presented below is a summary of the comments and our responses.

Comment 1: Three commenters supported the approval of Michigan's PSD Rules into the Michigan SIP and requested that EPA make the rule effective immediately upon publication.

Response: EPA acknowledges receipt of the comments and for reasons set forth in this Notice is proceeding with a conditional approval of the specified PSD rules (along with the proposed disapproval of Michigan Rule R 336.2816). Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the State to adopt specific, enforceable measures, no later than twelve months from the date of final conditional approval. The State must provide the corrected promulgated rules, not a new SIP submittal, to EPA for approval. If the State fails to actually make the changes within the twelve month period, EPA would subsequently publish a notice in the **Federal Register** providing notice and details of such disapproval. EPA is not required to propose the finding of disapproval. If Michigan submits final and effective rule revisions correcting the deficiencies, as discussed above, within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge that Michigan has met the criteria of a conditional approval and to inform the public about the conversion from a conditional approval to a full approval.

Federal regulations at 40 CFR 51.166 set forth the criteria for a PSD program approval that EPA applies. With the exception of several deficiencies that need to be corrected, EPA has determined that Michigan's PSD rules meet these criteria. These deficiencies are explained below, in Part IV of this document, entitled ''What Action Is EPA Taking.'' Therefore, EPA is conditionally approving a revision to the SIP that includes specified sections of Michigan's PSD construction permit program, with the exception of the proposed disapproval of Michigan Rule R 336.2816.

The requirement to provide at least 30 days notice before a rule becomes effective comes from the Administrative Procedures Act (APA), which governs all Federal rulemaking, not just EPA rulemaking. Section 553(d) of the APA provides that set

> [T]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—
> (1) A substantive rule which grants or recognizes an exemption or relieves a restriction;
> (2) Interpretative rules and statements of policy; or
> (3) As otherwise provided by the agency for good cause found and published with the rule.

5 U.S.C. 553(d)(1)–(3).

In rulemaking, exemptions from APA requirements are to be interpreted narrowly, not broadly. The commenters have not shown ''good cause,'' which, in this case, would be a demonstration of what actual hardship they would face as a result of a 30-day effective date. In the context of adoption of a State program, such as this, which essentially mirrors a Federal program, it is difficult to conceive of situations that would actually present such good cause. Arguments for rushing the new program into place imply that the new program is less stringent than the existing Federal rules, and undercut the rationale for approving it. Considerations supporting the 30 day notice period include: Providing advance notice to the regulated community and the public of the legal and practical requirements under the regulations, giving MDEQ time to get ready to implement the program, giving EPA time to work out the protocol of reviewing the State permits, and giving Michigan sources advance notice of which rules will apply and where their applications should be submitted. We find that the reasons listed by the commenters do not constitute a ''good cause'' to deviate from the general rule of section 553 of the APA. Therefore, the effective date of this rule is 30 days after the publication. Additionally, the commenter urges EPA to adopt an effective date concurrent with signature because this approach was followed by EPA in its conditional approval of the Ohio PSD SIP (66 FR 51570, October 10, 2001). The commenter is mistaken. In the case of the Ohio PSD SIP, the approval was not effective until the conditions were actually determined to be fulfilled, which would have taken more than 30 days.

Comment 2: One group of commenters requested that EPA deny approval of Michigan's current PSD SIP revision, require the State to resubmit a revision with materials addressing the comments made, and impose appropriate conditions on any subsequent approval.

Response: EPA acknowledges receipt of the comments and has addressed them specifically below (Comments A through F). As explained in EPA's response to Comment D.2, in a separate action EPA is proposing disapproval of Michigan Rule R 336.2816 (Sources Impacting Federal Class I Areas—additional requirements).

Comment A: The commenters requested that EPA should make explicit in its approval that provisions in the Michigan SIP concerning best available control technology (''BACT'') analysis and air quality analysis, 40 CFR 51.166(j) and (m), apply to construction of any new major stationary source or major modification that would result in any emissions of particulate matter of less than or equal to 2.5 micrometers in diameter (PM2.5), carbon dioxide, and/or other greenhouse gases (GHG), based on the definitions of *''significant''* and *''regulated New Source Review (NSR) pollutant''* contained in the Federal regulations.

Response: The minimum program requirements at 40 CFR 51.166 do not require States to designate individual pollutants as being covered by their PSD programs. As long as States adopt regulations that meet the requirements of 40 CFR 51.166 and their regulations include the pollutants covered by our definition of *''regulated NSR pollutant''* at 40 CFR 51.166(b)(49), then the State has satisfied the requirements for SIP approval. The definition of *''regulated NSR pollutant''* in Michigan Rule R 336.2801(nn) follows the Federal definition.

The BACT requirement set forth in 40 CFR 51.166(j) applies to each regulated NSR pollutant covered by the definition at 40 CFR 51.166(b)(49), and Michigan's submission is consistent with the requirement. In addition, EPA construes the air quality analysis requirement set forth in 40 CFR 51.166(m) to apply only to regulated NSR pollutants. The regulation at 40 CFR 51.166(m)(1)(a)–(b) indicates that the air quality analysis needs to cover the pollutants that a new major source would have the potential to emit in significant amounts and each pollutant for which a major modification would result in a net significant emissions increase. EPA's definition of *''major stationary source,'' ''major modification,'' ''net emissions increase''* and *''significant,''* each refer to emissions of regulated NSR pollutants. 40 CFR 51.166(b)(1), (2), (3), and (23). Since the applicability of 40 CFR 51.166(m) cannot be determined without reference to these other definitions, we construe 40 CFR 51.166(m) to apply to regulated NSR pollutants as well. Michigan's program satisfies the requirements of 40 CFR 51.166(m), as interpreted by the Agency.

On May 16, 2008, EPA finalized a specific regulation addressing implementation of the NSR program for PM2.5, which became effective on July 15, 2008. (73 FR 28321, May 16, 2008). Section V.H. of the preamble to the regulation discusses the process for transitioning State PSD programs to address PM2.5. (73 FR 28340, May 16, 2008). Michigan submitted its PSD program for approval to EPA prior to the publication of the implementation rule on May 16, 2008. The SIP revision that we are conditionally approving today does not specifically address the EPA PM2.5 rulemaking that became effective on July 15, 2008. Michigan has assured us that it has the authority under its SIP provisions to implement the PSD program for PM2.5, and that it intends to do so. Michigan is currently drafting revised regulations to address the PM2.5 rulemaking. EPA will act on those revisions when the State formally submits them as SIP revisions.

Comment B: The commenters requested that EPA should not approve the SIP revision until it undertakes the Section 7 consultation under the Endangered Species Act (''ESA'') to determine whether the proposed approval of major changes to the State's PSD permit program may affect any listed species. In addition, these commenters request that EPA retain its ESA oversight obligations under the Act.

Response: EPA disagrees with the commenters. Recent Supreme Court precedent has confirmed that the ESA requirements cited in the comments do not apply to EPA's decision to approve the PSD rules into a State's Federally authorized CAA program.

Section 7(a)(2) of the ESA generally requires Federal agencies to consult with the relevant Federal wildlife agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally listed endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. 16 U.S.C. 1536(a)(2). In accordance with relevant ESA implementing regulations, this requirement applies only to actions in which there is discretionary Federal involvement or control. 50 CFR 402.03. In *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 127 S. Ct. 2518 (2007) (Defenders of Wildlife), the

Supreme Court examined these provisions in the context of EPA's decision to approve a State permitting program under the Clean Water Act (CWA). In that case, the Court held that when a Federal agency is required by statute to undertake a particular action once certain specified triggering events have occurred, there is no relevant agency discretion, and thus the requirements of ESA Section 7(a)(2) do not apply. 127 S. Ct. at 2536.

With regard to EPA's transfer of CWA permitting authority to a State, the Court found that the relevant CWA provision mandated that EPA ''shall approve'' a state permitting program if a list of CWA statutory criteria are met. Therefore, EPA lacked the discretion to deny a transfer application that satisfied those criteria. Id. at 2531–32. The Court also found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species, and stated that ''[n]othing in the text of [the relevant CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application'' to transfer a permitting program to a State. Id. at 2537. Accordingly, the Court held that the CWA required EPA to approve the state's permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the non-discretionary action to transfer CWA permitting authority to the state did not trigger relevant ESA Section 7 requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife,* section 110(k)(3) of the CAA mandates that EPA ''shall approve'' a SIP submittal that meets applicable CAA requirements. 42 U.S.C. 7410(k)(3). The CAA provides a list of SIP submittal criteria in section 110. See 42 U.S.C. 7410(a)(2). As was the case with the CWA requirements in *Defenders of Wildlife,* the SIP requirements contained in section 110 of the CAA do not include protection of listed species, and Title I, Part C of the CAA does not explicitly state that consideration of the impacts on listed species is a required factor in SIP approval decisions. EPA's action on State SIP submittals is governed by section 110 of the Act, which unequivocally directs EPA to approve State plans meeting applicable CAA requirements.

EPA recognizes that it exercises some judgment when evaluating whether a SIP submittal meets specific statutory criteria. However, as the Supreme Court held in *Defenders of Wildlife,* the use of such judgment does not allow the Agency ''the discretion to add another entirely separate prerequisite''—such as the ESA Section 7(a)(2) consultation requirements—to the list of required criteria EPA considers when determining whether it ''shall approve'' a SIP revision request. 127 S. Ct. at 2537. Applying the reasoning of *Defenders of Wildlife,* the SIP approval criteria contained in the CAA do not provide EPA with the discretionary authority to consider whether approval of SIP revisions may affect any listed species. EPA has determined that MDEQ has submitted a SIP revision request to incorporate the PSD rules that satisfies all of the applicable SIP requirements contained in section 110 of the CAA. Thus, given the Supreme Court precedent and applicable regulations (see 50 CFR 402.03), EPA is without discretion to disapprove or condition the State's SIP revision request based on concerns for listed species, and the ESA requirements cited by the commenters are thus inapplicable to this approval action.

Comment C: Some commenters requested assurance that EPA's approval of the PSD revisions would not diminish Federal authority pursuant to Title V of the CAA to review, object to, or deny issuing an operating permit where the state has issued a permit under its federally approved SIP.

Response: Following approval of the Michigan's PSD revisions, EPA retains its authorities and obligations under Title V.

Comment D: Some commenters expressed concern over MDEQ's commitments made in its November 30, 2007, letter to EPA. Specifically, the concerns are related to the definitions of *''replacement unit''* and *''potential to emit,''* and the mechanism by which the FLM may present to a State a demonstration of impacts of air quality-related values from proposed sources or modifications. The responses to these two comments follow (*Response D:1* and *Response D:2*).

Response D.1: Regarding the missing definition of *''replacement unit,''* Michigan committed in a letter to EPA, dated May 17, 2007, to follow the Federal definition of *''replacement unit''* (40 CFR 51.166(b)) in its implementation of these rules, and to add the definition to the state rules in a future rulemaking.

Regarding the definition of the terms *''potential to emit''* and *''legally enforceable''* in the Michigan SIP rules, commenters requested that MDEQ provide to EPA a clear definition of these terms. EPA agrees with the commenters.

The MDEQ's definition of *''potential to emit''* (Michigan Rule R 336.2801(hh)) follows the Federal definition, except instead of ''federally enforceable'' the Michigan rules use the more general term *''legally enforceable.''* Michigan has committed, in its letter to EPA, dated September 11, 2007, to define the term *''legally enforceable''* to mean *''legally and practically enforceable* by the Administrator, a state or local air pollution agency,'' consistent with the Interim Policy dated January 22, 1996, and to revise the rule to make it consistent with this definition. In a subsequent letter to EPA, dated November 30, 2007, MDEQ committed to add this definition to its rules no later than one year after EPA's conditional approval of the State's PSD SIP. A final approval relies on MDEQ's commitment to submit a clear definition of *''legally enforceable.''*

Comment D.2: The Consolidated Commenters requested that EPA deny approval of Michigan's current PSD SIP revision until the State promulgates rule corrections to ensure that its regulations implementing the special requirements for sources impacting Class I areas are consistent with Federal requirements found at 40 CFR 51.166(p). The commenters assert that Michigan's current regulation to implement this provision (found at Michigan Rule R 336.2816) diminishes the role of the FLM in the State's permitting process. The commenters urge EPA to ensure that the State program provides, at a minimum, that: The FLM will receive timely written notice of proposed PSD permits that may affect the FLM's Class I area; the FLM will be provided with all relevant information to assess anticipated impacts to the Class I area; and the State will consult with the FLM regarding potential adverse impacts, and providing public notice and opportunity to comment on any FLM adverse impact findings and the State's response.

Response D.2: EPA agrees that a federally approved SIP must meet the minimum requirements set forth in 40 CFR 51.166(p) which: Requires that a PSD permitting authority transmits to EPA copies of permit applications and related documents for major sources and major modifications; provides for a process by which a FLM may present his or her comments, findings, and certifications relating to such draft permit applications to the State; and provides for a process by which the State consults with such FLM. The State has committed to incorporating the requirements of 40 CFR 51.166(p) into its PSD SIP rules via letter to EPA, dated November 30, 2007. In order to keep the Federally delegated requirements under

40 CFR 51.166(p) in place until Michigan has revised its rules to add these requirements and EPA has approved them into the SIP, EPA is proposing, in a separate notice, disapproval of Michigan Rule R 336.2816. In that same proposed disapproval notice, EPA is also proposing in the alternative to approve such rules once they are properly promulgated and submitted.

40 CFR 51.166(p) sets out those requirements that apply to major sources or major modifications that will affect Class I areas. This section contains both requirements for State plans and optional provisions. Pursuant to 40 CFR 51.166(p)(3), the State plan must provide a mechanism whereby the FLM may

> present to the State * * * a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the State concurs with such demonstration, the reviewing authority shall not issue the permit. 40 CFR 51.166(p)(3).

As submitted, Michigan's Rule R 336.2816 did not contain an equivalent to this required provision. Additionally, EPA sought clarification from the State as to how it planned to implement certain State rules corresponding to the variance provisions contained in 40 CFR 51.166(p)(4), (5), and (6).

On November 30, 2007, Michigan provided suggested rule clarification language to address both the lack of an equivalent to 40 CFR 51.166(p)(3) and how the State intends to implement the variance provisions in 40 CFR 51.166(p)(4), (5), and (6). Michigan also provided its commitment to promulgate these changes into its PSD regulations within one year of EPA's action on Michigan's PSD SIP submittal.

Because the State program currently lacks a functional equivalent to 40 CFR 51.166(p)(3), EPA cannot conditionally approve Michigan's Rule R 336.2816 without creating a regulatory gap. Therefore, by separate notice today, EPA is disapproving Michigan's Rule R 336.2816, and Michigan will retain federal delegation of this provision until such time as the State promulgates and EPA has approved the corrective rules it has proposed in its November 30, 2007 letter. Retention of the delegated program until such time as Michigan promulgates a corrective rule will ensure that the provisions of 40 CFR 51.166(p) will continue to apply, thereby avoiding any regulatory gap, and ensuring full participation of the FLM, as appropriate, in State permitting decisions.

The commenters also request that EPA provide public notice and opportunity for comment on any adverse finding made by an FLM, in addition to making public the State's decision on such finding. EPA's responsibilities regarding State permit actions that may impact Class I areas are set forth in Section 165(d) of the CAA, 42 U.S.C. 7475(d). EPA's functions include providing notice to FLMs of permit applications, consulting with FLMs regarding the potential impact of a proposed source on AQRVs, and coordinating with the State regarding issuance (or non-issuance) of permits. Information developed during this process is part of the public docket for permit issuance, and as such would be available to the public. Additionally, the regulations require public notice and comment, and the opportunity for a public hearing, on State proposed permits. Together these provisions enable fully informed public participation in State permit issuance. These provisions apply nationwide, and commenters have not shown why more should be required from Michigan here.

Comment E: The commenters asked EPA not to approve the PSD SIP until MDEQ demonstrates that the current fiscal situation of the State government and its agencies will not hinder the implementation of the PSD program. These commenters provide examples of current State funding problems, including the small portion of the State's overall budget that is devoted to environmental protection, the sunset of State environmental fee programs, and projected shortfalls in the State's ability to fund environmental programs.

Response: EPA agrees that the CAA requires the States to provide the ''necessary assurances'' that they are able to carry out the implementation of SIP requirements through adequate staffing and funding. 42 U.S.C. 7410(a)(2)(E), CAA section 110(a)(2)(E). MDEQ already implements the federal PSD program within the State. EPA finds that a demonstration of current fiscal capabilities is not necessary. There is no evidence that MDEQ has encountered financial difficulties in carrying out the PSD program. Moreover, because MDEQ is already implementing the program based on the Federal delegation of authority, these rules are not expected to result in additional costs for MDEQ.

The Consolidated Commenters enclosed a copy of a September 2007 Report by the Southeast Michigan Council of Governments titled ''Funding Environmental Protection in Michigan: The Need for Change,'' which, among other things, describes how funding sources for environmental protection programs in Michigan have shifted their priorities. Nevertheless, the overall funds available to MDEQ, as portrayed in this report, appear to have increased slightly. While EPA is aware that environmental regulators at the State level must make many difficult decisions between competing priorities in the allocation of available resources, EPA cannot conclude on the basis of this comment that Michigan is unable to fund its PSD program.

Comment F: The commenters request a shorter deadline for State adoption of SIP Rules meeting the terms of conditional approval (namely, 6 months instead of 1 year).

Response: EPA disagrees with the comment. Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the State to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. According to Michigan's rulemaking process, the rules have to go through several State agencies, such as the Michigan Legislature's Joint Committee on Administrative Rules and the State Office of Administrative Hearings and Rules, and be open for public comments for at least 30 days; then after the public comment period closes, the state must respond to comments. This procedure reasonably would take more than 6 months. In a letter dated November 30, 2007, MDEQ committed to adopt the revised rules, subject to the conditional approval, no later than one year after EPA's conditional approval of the State's PSD SIP. This one year commitment is reasonable here and the final approval relies on this commitment.

Comment 3: Some commenters requested that the PSD delegation agreement between MDEQ and EPA be terminated when EPA issues the final approval of PSD program.

Response: EPA agrees with the commenters, with one exception (relating to Michigan Rule R 336.2816). 40 CFR 52.02 and 40 CFR 52.21(a)(1) provide that EPA's delegation will not apply at such time as when the State's SIP is approved. In a similar situation to Michigan's, EPA's recent approval of South Dakota's PSD SIP (72 FR 72617, December 21, 2007) also includes a clear statement rescinding the prior delegation agreement. The one exception to the termination of EPA's

delegation of the PSD program in Michigan is, as discussed elsewhere in this notice, the Federal delegation for the requirements at 40 CFR 51.166(p), which is to remain in place until an equivalent State provision is approved into the Michigan SIP.

Comment 4: One commenter requested that EPA explicitly state in this notice that parties seeking to appeal PSD permits issued by the State under a Federally approved program must go through procedures contained in Michigan's laws and rules, and not appeal through Environmental Appeal Board (EAB).

Response: EPA agrees with the commenter, with the exception of those provisions Michigan will continue to retain as a Federally delegated program (See proposed partial disapproval of Michigan Rule R 336.2816 pursuant to a separate notice published today). For permits issued by the State under the rules covered by this conditional approval, appeals will not be made to the EAB; rather, such appeals will be subject to the opportunity for review and appeal procedures provided under the State law. Michigan's Rule R 336.2830 is intended to provide a parallel appeal procedure to the procedure that is currently in place for the Federal PSD program in Michigan under the regulation at 40 CFR part 124. The rule creates a right to an administrative hearing before a state administrative law judge that is similar to the current appeal rights under the Federal PSD permitting program. This rule was not submitted as part of Michigan's PSD SIP. Therefore, EPA is not taking action on Michigan Rule R 336.2830. However, EPA finds the State appeal process sufficient to conditionally approve the specified parts of the PSD program as submitted. An appeal of any permit requirement(s) under 40 CFR 51.166(p) would still need to be brought before the EAB until a replacement State regulation is approved into the SIP. Depending on other permit issues on appeal, the EAB can decide how to best structure such appeal.

Comment 5: One commenter expressed concern that the requirements of Michigan Rule R 336.2818 (Source Obligation) are more stringent than the Federal requirements, and requested that EPA allow MDEQ to review its rules and adopt the new rule in its next submittal. The commenter also suggested EPA issue a direct final rule to approve this aspect of the regulation.

Response: Michigan Rule R 336.2818 places specified requirements upon the PSD permit applicant, including recordkeeping requirements for applicants using certain methods for determining if a project results in a significant emissions increase.

On December 31, 2002, EPA published revisions to the Federal PSD and non-attainment NSR regulations. These revisions are commonly referred to as ''NSR Reform'' regulations and became effective on March 3, 2003. These regulatory revisions include provisions which require a source to follow the recordkeeping and reporting requirements in this section if there is a ''reasonable possibility'' that a source may exceed the projected actual emissions (40 CFR 51.166(r)(6)). The ''reasonable possibility'' clause of this provision of the Federal rule was remanded to EPA in the June 24, 2005, D.C. Circuit Court ruling in *State of New York et al.* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005). At the time of Michigan's PSD SIP submittal, EPA had responded to the remand order. However, the MDEQ's minor source permitting program—Michigan Rule R 336.201—requires this information to be submitted for all sources as part of a complete Permit To Install application before beginning actual construction on the proposed project (not just where there is a ''reasonable possibility'' that the source may exceed the projected actual emissions). Because this is more stringent than the Federal requirement, we approve this approach. All other requirements of Michigan Rule R 336.2818 are consistent with 40 CFR 51.166(r). At this time Michigan has made no request to adopt different language than what the state already requires for this rule.

V. What Action Is EPA Taking?

EPA is conditionally approving specified revisions to Michigan's SIP to include the State's PSD construction permit program.

What Is the Effect of Conditional Approval?

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the State to adopt specific, enforceable measures no later than twelve months from the date of final conditional approval. The State must only provide the rule changes, not a new SIP submittal to EPA for approval. If the State fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, EPA would subsequently publish a notice in the **Federal Register** providing notice and details of such disapproval. EPA is not required to separately propose a finding of disapproval. If Michigan submits final and effective rule revisions correcting the deficiencies, as discussed above, within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge conversion of the conditional approval to a full approval.

What Is Our Basis for Conditional Approval of Michigan's Rules?

EPA has identified several deficiencies that need to be corrected in Michigan's rules so that the rules are approvable. The deficiencies referenced above are summarized below.

Issues regarding definitions: In its May 17, 2007, letter to EPA, Michigan committed to follow the Federal definition of ''replacement unit'' (40 CFR 51.166(b)(7)) in its implementation of these rules, and to add the definition to the state rules in a future rulemaking. For the definition of ''potential to emit'' (Michigan Rule R 336.2801(hh)), Michigan follows the Federal definition, except instead of ''federally enforceable,'' the Michigan rules use the more general term ''legally enforceable.'' Michigan has committed, in its September 11, 2007 letter to EPA, to define the term ''legally enforceable'' to mean ''legally and practically enforceable by the Administrator, a State or local air pollution agency,'' consistent with the Interim Policy dated January 22, 1996.

Issues regarding FLM authority: The State's current Michigan Rule R 336.2816 does not include an equivalent State provision to 40 CFR 51.166(p), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification. Therefore, this provision of the State rule is subject to the proposed partial disapproval set forth in a separate rulemaking notice. A partial disapproval of this section would keep the Federal delegation to Michigan in place to implement 40 CFR 51.166(p) until an equivalent State provision is approved into the SIP. The deficiencies being addressed in this rulemaking are described in more detail in Part III of 73 FR 1570, January 9, 2008.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian Country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Nevertheless, EPA notified Michigan tribal environmental staff for the respective Michigan tribes of the proposed conditional approval via email message of November 29, 2007, and invited them to seek more information and to submit comments during the public notice and comment period for the proposed conditional approval.

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 action 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 November 17, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review, may be filed, nor will it postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Date: August 25, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ 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 X—Michigan

■ 2. A new § 52.1188 is added to read as follows:

§ 52.1188 Conditional approval.

The plan commitments listed below were submitted on the dates specified.

(a) On December 21, 2006, the State of Michigan submitted to EPA Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 [(a) through (tt) [except for (j) and (ff)] to R 336.2819 and R 336.2823(1) to (14) (''Part 18''), for inclusion in the SIP. Part 18 relates to the PSD permit program of the state of Michigan. Revisions to Part 18 were adopted by MDEQ on December 4, 2006. On January 9, 2008, EPA proposed to conditionally approve the PSD SIP rules under section 110 of the CAA. On September 16, 2008 EPA conditionally approved the revisions to Part 18.

(b) The conditional approval is based on the commitment from the State to adopt specific enforceable measures by a date certain that is no more than twelve months from the date of the conditional approval. The deficiencies that need to be corrected in Michigan's rule so that the rule is approvable include two missing definitions. In a separate action also published September 16, 2008, EPA is proposing to disapprove Michigan Rule R 336.2816, which is also included in the State's December 21, 2006, PSD program submission. This rule sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and those rules are approved into its SIP.

(c) In its May 17, 2007, letter to EPA, Michigan committed to follow the Federal definition of *''replacement unit''* (40 CFR 51.166(b)(7)) in its implementation of these rules, and to add the definition to the state rules in a future rulemaking. For the definition of ''potential to emit'' (Michigan Rule R 336.2801(hh)), Michigan follows the Federal definition, except instead of *''federally enforceable,''* the Michigan rules use the more general term *''legally enforceable.''* Michigan has committed in its September 11, 2007, letter to EPA, to define the term *''legally enforceable''* to mean *''legally and practically enforceable by the Administrator, a state or local air pollution agency,''* consistent with the Interim Policy dated January 22, 1996.

(d) The State must only provide the rule changes, not a new SIP submittal to EPA for approval. If the State fails to actually make the changes within the twelve month period, EPA would subsequently publish a notice in the **Federal Register** providing notice and details of such disapproval. If Michigan submits final and effective rule revisions correcting the deficiencies, as

discussed above, within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge that Michigan has met the criteria of the conditional approval and to inform the public about the conversion of the conditional approval to a full approval.

[FR Doc. E8–21209 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0603; FRL–8713–6]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the New Orleans Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving this revision to the Louisiana State Implementation Plan (SIP) concerning the maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area. On June 29, 2007, the State of Louisiana submitted a maintenance plan for the New Orleans Ozone Maintenance Area, which includes the parishes of Jefferson, Orleans, St. Bernard and St. Charles, which ensures continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. This maintenance plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving the revision pursuant to section 110 of the Federal Clean Air Act (CAA). On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the New Orleans area under the 2008 standard will be addressed in future actions.

DATES: This rule is effective on November 17, 2008 without further notice, unless EPA receives relevant adverse comment by October 16, 2008. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0603, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2007–0603. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by 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 *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana 70821.

FOR FURTHER INFORMATION CONTACT: Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164, fax number 214–665–7263; e-mail address *belk.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'' ''us'' or ''our'' is used, we mean the EPA.

Outline

I. Background
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

Under section 107 of the 1977 CAA, Louisiana's New Orleans Ozone Maintenance Area, which includes the

parishes of Jefferson, Orleans, St. Bernard and St. Charles, was designated as a nonattainment area because it did not meet the National Ambient Air Quality Standards (NAAQS) for 1-hour ozone (40 CFR 81.319). As required by section 110 of the CAA, the state of Louisiana submitted a SIP to EPA on December 10, 1979. EPA approved this SIP on October 29, 1981 (46 FR 53412). Under the 1990 CAA Amendments, the New Orleans Ozone Maintenance Area was classified as a ''transitional'' ozone nonattainment area, and the nonattainment designation for the 1-hour ozone NAAQS continued by operation of law since Louisiana had not yet collected the required three years of data necessary to petition for redesignation to attainment.

On October 15, 1994, Louisiana submitted a request to redesignate the New Orleans Ozone Maintenance Area to attainment for the 1-hour ozone standard. At the same time, the State submitted the required ozone monitoring data and maintenance plan for the New Orleans Ozone Maintenance Area to ensure the area would remain in attainment for 1-hour ozone for a period of 10 years. At the time of the 1994 maintenance plan submission, the New Orleans Consolidated Metropolitan Statistical Area was comprised of six parishes including Jefferson, Orleans, St. Bernard, St. Charles, St. John the Baptist and St. Tammany. Maintenance and contingency plans were not included in the action for the parishes St. John the Baptist and St. Tammany as St. John the Baptist Parish was previously redesignated to attainment and St. Tammany Parish was never designated as nonattainment.

Under the CAA, nonattainment areas may be redesignated to attainment if sufficient data are available to warrant the redesignation and the area meets the other CAA redesignation requirements. The submission met the maintenance plan and redesignation requirements set forth in the CAA, and EPA approved Louisiana's request to redesignate the New Orleans Ozone Maintenance Area to attainment for the 1-hour ozone standard and approved the New Orleans Ozone Maintenance Area maintenance plan on October 2, 1995 (60 FR 51354), with an effective date of December 1, 1995.

On April 30, 2004, EPA designated and classified areas for the new 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase 1 rule for implementation of the 1997 8-hour ozone NAAQS (69 FR 23951). The New Orleans Ozone Maintenance Area was designated as unclassifiable/attainment for the 1997 ozone standard, effective June 15, 2004. This designation included the parishes of Jefferson, Orleans, St. Bernard and St. Charles. The attainment area was consequently required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase 1 rule. On May 20, 2005, EPA issued guidance providing information regarding how a state might fulfill the maintenance plan obligation established by the Act and the Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act*, May 20, 2005). This SIP revision satisfies the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the New Orleans Ozone Maintenance Area.

On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Implementation Rule for the 1997 Ozone Standard. (*South Coast Air Quality Management District.* v. *EPA*, 472 F.3d 882 (DC Cir. 2006)). Petitions for rehearing were filed with the Court, and on June 8, 2007, the Court modified the scope of the vacatur of the Phase 1 rule. The Court vacated those portions of the Rule that provide for regulation of the 1997 8-hour ozone NAAQS nonattainment areas under Subpart 1 in lieu of Subpart 2 and that allow backsliding with respect to new source review, penalties, milestones, contingency plans, and motor vehicle emission budgets. Consequently, the Court's modified ruling does not alter any requirements under the Phase 1 8-hour ozone implementation rule for maintenance plans.

II. Analysis of the State's Submittal

On June 29, 2007, the State of Louisiana submitted a SIP revision containing a 1997 8-hour ozone maintenance plan for the New Orleans Ozone Maintenance Area, including the parishes of Jefferson, Orleans, St. Bernard and St. Charles. This June revision provides the maintenance plan for the 1997 8-hour ozone NAAQS for the maintenance area named above as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Implementation Rule (*see* 40 CFR 51.905(a)(4)). The purpose of this plan is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the New Orleans Ozone Maintenance Area, which includes the parishes of Jefferson, Orleans, St. Bernard and St. Charles.

In this action, EPA is approving the State's maintenance plan for the 1997 8-hour ozone NAAQS for the New Orleans Ozone Maintenance Area because EPA finds that the LDEQ submittal meets the requirements of section 110(a)(1) of the CAA, EPA's rule, and is consistent with EPA's guidance. As required, this plan provides for continued attainment and maintenance of the 1997 8-hour ozone NAAQS in this area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 1997 ozone NAAQS, includes components illustrating how the New Orleans Ozone Maintenance Area will continue in attainment of the 1997 8-hour ozone NAAQS and provides contingency measures. Each of the section 110(a)(1) plan components is discussed below.

(a) *Attainment Inventory*. The LDEQ developed comprehensive inventories of volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions from area, stationary, and mobile sources using 2002 as the base year to demonstrate maintenance of the 1997 ozone NAAQS for the New Orleans Ozone Maintenance Area. The year 2002 is an appropriate year for the LDEQ to base attainment level emissions because States may select any one of the three years on which the 8-hour attainment designation for the 1997 ozone NAAQS was based (2001, 2002, and 2003). The State's submittal contains the detailed inventory data and summaries by source category. The 2002 base year inventory is a good choice. Using the 2002 inventory as a base year reflects one of the years used for calculating the air quality design values on which the 8-hour ozone designation for the 1997 ozone NAAQS were based. It also is one of the years in the 2002–2004 period used to establish baseline visibility levels for the regional haze program.

A practical reason for selecting 2002 as the base year emission inventory is that Section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require States to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory was established in the rule as June 2004. In accordance with these requirements, the State of Louisiana compiles a statewide emissions inventory for point sources on an annual basis. For stationary point sources in the New Orleans Ozone Maintenance Area, the LDEQ provided estimates for each commercial or industrial operation that emits 100 tons or more per year of VOC or 100 tons or

more per year of NO_X in Appendix A.1 of the maintenance plan. Stationary non-point source data was provided by E.H. Pechan & Associates, Inc., through the Central Regional Air Planning Association (CENRAP) using the methodology in ''Consolidation of Emissions Inventories'', section C, page 26. On-road mobile emissions of VOC and NO_X were estimated using EPA's MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived from the ''Emission Inventory Development For Mobile Sources and Agricultural Dust Sources for the Central States'' produced by Sonoma Technology, Inc. for CENRAP in October 2004 using EPA's NONROAD 2004 non-road mobile emissions computer model. EPA finds that the LDEQ prepared the 2002 base year emissions inventories for the New Orleans Ozone Maintenance Area consistent with EPA's long-established guidance memoranda.

In projecting data for the attainment year 2014 inventory, LDEQ used several methods to project data from the base year 2002 to the years 2008, 2011, and 2014. These projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following table provides VOC and NO_X emissions data for the 2002 base attainment year inventory, as well as projected VOC and NO_X emission inventory data for the years 2008, 2011, and 2014 for the New Orleans Ozone Maintenance Area. Please see the Technical Support Document (TSD) for additional emissions inventory data including projections by source category.

NEW ORLEANS OZONE MAINTENANCE AREA VOC AND NO_X EMISSIONS INVENTORY BASELINE (2002) AND PROJECTIONS (2008, 2011, AND 2014)

Emissions	2002 tons per day	2008 tons per day	2011 tons per day	2014 tons per day
Total VOC	161.83	140.44	133.08	129.71
Total NO_X	384.83	377.43	381.43	388.83

As shown in the table above, total VOC emissions are projected to decrease and total NO_X emissions are projected to increase slightly for the New Orleans Ozone Maintenance Area over the 10-year period of the maintenance plan. Emission projections for future years in the New Orleans Ozone Maintenance Area indicate a downward trend in VOC emissions through 2014 as VOC emissions are projected to decrease by 32.12 tpd, or approximately 20% (from 161.83 tpd to 129.71 tpd). NO_X emission projections through 2014 initially show a downward trend in emissions, but then reflect an increase of 4 tons per day by the year 2014, or approximately 1% (from 384.83 tpd to 388.83 tpd). This projected increase (1%) is relatively small considering that it occurs over a period of approximately twelve years (as from the 2002 baseline). The slight upward trend in NO_X emissions results from projected increases for the point and non-point source emission categories. Emissions from non-road mobile and on-road mobile sources are projected to decrease.

Please see the TSD for more information on EPA's analysis and review of the State's methodologies, modeling data and performance, etc. for developing the base and attainment year inventories. As shown in the table above, the State has demonstrated that the future year 8-hour ozone emissions will be less than the 2002 base attainment year's emissions. The projected 20% reduction (32.12 tpd) in VOC emissions is expected to sufficiently offset the projected 1% increase (4 tpd) in NO_X emissions, enabling the area to continue to maintain the 1997 ozone standard. The attainment inventory submitted by the LDEQ for the New Orleans Ozone Maintenance Area is consistent with the criteria discussed in the EPA Maintenance Plan Guidance memo dated May 20, 2005. EPA finds that the future emissions levels in 2008, 2011 and 2014 are expected to be similar to or less than the emissions levels in 2002.

In the event that a future 8-hour ozone monitoring reading in the New Orleans Ozone Maintenance Area is found to violate the 1997 ozone NAAQS, the Contingency Plan section of Louisiana's maintenance plan includes contingency measures that will be promptly implemented to ensure that the area returns to maintenance of the 1997 ozone standard. Please see section (d) Contingency Plan, below, for additional information related to contingency measures.

(b) *Maintenance Demonstration*. The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 1997 ozone NAAQS for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the attainment designation for the 1997 ozone NAAQS, which for the New Orleans Ozone Maintenance Area was June 15, 2004. Therefore, the plan must demonstrate attainment through 2014. As discussed in section (a) Attainment Inventory above, Louisiana has identified the level of ozone-forming emissions in the New Orleans Ozone Maintenance Area; Louisiana has projected VOC and NO_X emissions for the years 2008, 2011, and 2014 in the New Orleans Ozone Maintenance Area; and EPA finds that the future emissions levels in those years are expected to be similar to or below the emissions levels in 2002. Please see the TSD for more information on EPA's review and evaluation of the State's 2008, 2011, and 2014 projected emissions inventories.

Louisiana relies on several air quality measures that will provide for additional 8-hour ozone emissions reductions in the New Orleans Ozone Maintenance Area. *These measures include the following, among others:* (1) Implementation of EPA's National Rule for VOC Emission Standards for Automobile Refinish Coatings (63 FR 48806), Consumer Products (63 FR 48819), and Architectural Coatings (63 FR 48848), (2) enacting of specific requirements from EPA's Tier 2 Motor Vehicle Emission Standards (65 FR 6697), EPA's Heavy-Duty Engine and Vehicle Standards (66 FR 5002), as well as EPA's gasoline and highway diesel fuel sulfur control requirements (66 FR 5002), and (3) EPA's required control of emissions from non-road diesel engines and fuels (69 FR 38958). The purpose of these control measures is to reduce levels of 8-hour ozone, including the New Orleans Ozone Maintenance Area.

(c) *Ambient Air Quality Monitoring*. The State of Louisiana has committed in its maintenance plan for the New

Orleans Ozone Maintenance Area to continue operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR Part 58 with regard to the continued adequacy of the network, if additional monitoring is needed, and when monitoring can be discontinued. There are four (4) monitoring sites in the New Orleans Ozone Maintenance Area that have operated in accordance with the requirements of 40 CFR Part 58 and the EPA-approved Quality Assurance Program Plan. Based on the June 2007 maintenance plan submission, each of the four (4) monitoring sites have recently monitored attainment with the 1997 ozone standard. The 1997 ozone NAAQS is 0.08 parts per million (ppm) based on the three-year average of the fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The 1997 ozone standard is considered to be attained at 84 parts per billion (ppb).

As identified in the June 2007 maintenance plan submission, the Jefferson Parish ozone monitor has monitored attainment with the 1997 ozone standard for the latest three complete three-year periods. The three most recent 8-hour ozone design values for the Jefferson Parish monitor, as reported in the June 2007 maintenance plan submission, are 82 ppb for 2003, 82 ppb for 2004 and 84 ppb for 2005. Based upon the most recent data available in EPA's Air Quality System (AQS) for the Jefferson Parish monitoring site, the design value for 2006 was 82 ppb, and the design value for 2007 was 83 ppb.

As identified in the June 2007 maintenance plan submission, the Orleans Parish ozone monitor has monitored attainment with the 1997 ozone standard for the latest six complete three-year periods. The three most recent 8-hour ozone design values for the Orleans Parish monitor, as reported in the June 2007 maintenance plan submission, are 69 ppb for 2003, 69 ppb for 2004 and 70 ppb for 2005. Hurricane Katrina disabled the Orleans Parish monitoring site in August 2005; this monitoring site went back into operation in January, 2008, at the same location. As a result, no additional monitoring data is available at the Orleans Parish monitor site between August 2005 and January 2008. The Orleans Parish monitor is back in operation for the 2008 ozone season at the same location. Since the 8-hour ozone design value is based on a three-year average of the fourth-highest daily maximum 8-hour average ozone concentration, the next available design value for this monitoring location will be when three ozone monitoring seasons (2008, 2009 and 2010) have been completed.

As identified in the June 2007 maintenance plan submission, the St. Bernard Parish ozone monitor has also monitored attainment with the 1997 ozone monitor for the latest six complete three-year periods. The three most recent 8-hour ozone design values for the St. Bernard Parish monitor, as reported in the June 2007 maintenance plan submission, are 78 ppb for 2003, 77 ppb for 2004 and 78 ppb for 2005. As with the Orleans Parish monitor, this monitoring site was also disabled by Hurricane Katrina in August 2005. A new St. Bernard Parish ozone monitor began operation at a new location in early 2007, and the summer of 2007 was the first full summer of data at the new location since Hurricane Katrina. Since the 8-hour ozone design value is based on a three-year average of the fourth-highest daily maximum 8-hour average ozone concentration, the first available design value for the new monitoring location will be available once three ozone monitoring seasons (2007, 2008 and 2009) have been completed.

As identified in the June 2007 maintenance plan submission, the St. Charles Parish ozone monitor has monitored attainment with the 1997 ozone standard for the latest four complete three-year periods. The three most recent 8-hour ozone design values for the St. Charles Parish monitor, as reported in the June 2007 maintenance plan submission, are 78 ppb for 2003, 77 ppb for 2004 and 78 ppb for 2005. Based upon the most recent data available in EPA's AQS for the St. Charles Parish monitoring site, the design value for 2006 was 77 ppb, and the design value for 2007 was also 77 ppb.

Based on the NAAQS discussed above, each of the available design values identified is considered to be in attainment of the 1997 ozone NAAQS and demonstrates that the New Orleans Ozone Maintenance Area is expected to continue attainment of the 1997 ozone NAAQS. However, in the event that a design value at one of the New Orleans Ozone Maintenance Area monitoring sites exceed the 1997 ozone standard of 84 ppb, the Contingency Plan included in Louisiana's maintenance plan submittal includes contingency measures which will be promptly implemented to ensure that the area returns to maintenance of the 1997 ozone standard. Additional information regarding contingency measures is included in section (d) Contingency Plan, below.

(d) *Contingency Plan*. The section 110(a)(1) maintenance plan includes contingency provisions to promptly correct any violation of the 1997 ozone NAAQS that occurs. The contingency indicator for the New Orleans Ozone Maintenance Area maintenance plan is based upon monitoring. The triggering mechanism for activation of contingency measures is a monitoring violation of the 1997 ozone standard and analysis of data to determine the cause of the violation. In this maintenance plan, if contingency measures are triggered, LDEQ is committing to implement the measures as expeditiously as practicable, but no longer than 24 months following the trigger.

The following contingency measures are identified for implementation: (1) Lowering VOC RACT applicability thresholds for Stage 1 gasoline controls, (2) NO_X controls on major sources (100 tpy and greater), (3) Emission offsets for permits (1.10 ratio for VOC and NO_X), and (4) Other measures deemed appropriate at the time as a result of advances in control technologies. These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) for continued attainment. Continued attainment of the 1997 ozone NAAQS in the New Orleans Ozone Maintenance Area will depend, in part, on the air quality measures discussed previously (see II. (b) above). The State will continue to operate appropriate ambient ozone monitoring sites in the New Orleans Ozone Maintenance Area to verify continued attainment of the 1997 ozone NAAQS. The air monitoring results will reveal changes in the ambient air quality as well as assist the State in determining whether or not implementation of any contingency measures is necessary. The state will continue to work with the EPA through the air monitoring network review process, as required by 40 CFR Part 58, to determine: (1) The adequacy of the ozone monitoring network; (2) if additional monitoring is needed; and (3) when monitoring can be discontinued. Air monitoring data will continue to be quality assured according to federal requirements.

III. Final Action

Pursuant to section 110 of the Act, EPA is approving the maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area including the parishes of Jefferson, Orleans, St. Bernard and St. Charles, which was submitted by LDEQ on June 29, 2007, which ensures continued attainment of the 1997 ozone NAAQS through the year 2014. We have evaluated the State's submittal and have determined that it

meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on November 17, 2008 without further notice unless we receive adverse comment by October 16, 2008. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. 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.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, *''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''* (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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 Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2008. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ 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 T—Louisiana

■ 2. In section § 52.970, the table in paragraph (e) entitled, ''EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES'', is amended by adding the new entry to the end of the table as follows:

§ 52.970 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	* *	*
1997 8-Hour Ozone Section 110 Maintenance Plan.	New Orleans Ozone Maintenance Area (including Jefferson, Orleans, St. Bernard and St. Charles Parishes), LA.	6/29/07	9/16/08. [Insert FR page number where document begins].	

3. Section § 52.975, entitled, ''Redesignations and maintenance plans; ozone'', is amended by adding a new paragraph (k) as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(k) *Approval.* The LDEQ submitted a maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area on June 29, 2007. This area is designated unclassifiable/attainment for the 1997 ozone standard. EPA determined this request for the New Orleans Ozone Maintenance Area was complete on August 8, 2007. This maintenance plan meets the requirements of section 110(a)(1) of the CAA, and is consistent with EPA's maintenance plan guidance document dated May 20, 2005. The EPA therefore approved the 1997 8-hour ozone NAAQS maintenance plan for the New Orleans Ozone Maintenance Area including the parishes of Jefferson, Orleans, St. Bernard and St. Charles on September 16, 2008.

* * * * *

[FR Doc. E8–21196 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0836–200739(a); FRL–8714–8]

Approval and Promulgation of Implementation Plans; Florida; Removal of Gasoline Vapor Recovery From Southeast Florida Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Florida (Florida) on May 31, 2007, for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Dade, Broward, and Palm Beach Counties (hereafter refer to as the ''Southeast Florida Area''), and to phase out Stage II requirements for existing facilities in those counties. In addition, EPA is approving this SIP revision which requires new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and phases in Stage I vapor control requirements statewide for existing gasoline dispensing facilities.

DATES: This direct final rule is effective November 17, 2008 without further notice, unless EPA receives adverse comment by October 16, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0836, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lesane.heidi@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0836,'' 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:* Heidi LeSane, 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. 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–2007–0836. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *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 home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *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 *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 federal holidays.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, 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) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Effective January 6, 1992, EPA under the Clean Air Act Amendments of 1990 (CAA or ''the Act''), designated and classified the three-county Southeast Florida Area consisting of Palm Beach, Broward, and Dade Counties as a ''moderate'' ozone nonattainment area. (56 FR 56694). The designation was based on the area's 1-hour ozone design value, 138 parts per billion (ppb), for the three-year period 1987–1989. Pursuant to the requirements of section 182(b)(3) of the CAA, the Florida Department of Environmental Protection (FDEP) developed Florida Administrative Code (F.A.C.) Rule 62–252.400, Gasoline Dispensing Facilities—Stage II Vapor Recovery, and submitted the rule to EPA for approval as part of Florida's ozone SIP. The rule was adopted by FDEP effective February 2, 1993, and approved by EPA effective April 25, 1994 (59 FR 13883). Under the State rule, new gasoline dispensing facilities built after November 15, 1992, were required to employ Stage II systems upon start-up; existing facilities were required to install Stage II systems by specific dates ranging from June 30, 1993, to November 15, 1994.

On November 8, 1993, having implemented all measures required of the State to that date for moderate ozone nonattainment areas under the CAA, and with three years of data (1990–1992) showing compliance with the 1-hour ozone standard, FDEP submitted to EPA an ozone maintenance plan and request for redesignation of the Southeast Florida Area to attainment status. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides (NO_X) and volatile organic compound (VOC) emissions in the area would remain below the 1990 ''attainment year'' levels throughout the ten-year period from 1995 to 2005. In making these projections, FDEP factored in the emissions benefit (primarily VOCs) of the area's Stage II program, thereby expressing the State's intent to maintain this program as part of its 1-hour ozone SIP. The redesignation request and maintenance plan were approved by EPA, effective April 25, 1995 (60 FR 10325). Subsequently, the maintenance plan was extended by FDEP to 2015 and approved by EPA, effective April 13, 2004 (69 FR 7127).

On April 6, 1994, EPA promulgated regulations requiring the phase-in of on-board refueling vapor recovery (ORVR) systems on new motor vehicles. Under Section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards. Since the Southeast Florida Stage II program was already in place and had been included in the State's November 8, 1993, redesignation request and 1-hour ozone maintenance plan for the area, FDEP elected not to remove the program from the SIP at that time.[1]

II. Analysis of State's Submittal

A. Requested Removal of Stage II Requirements

EPA's primary consideration for determining the approvability of Florida's request to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the Southeast Florida Area, and for the phase out of Stage II requirements for existing facilities in those counties is whether this requested action complies with section 110(l) of the CAA. Below is EPA's analysis of these considerations.

1. Federal Requirements for Stage II

As a result of the 1990 CAA amendments, states were required to adopt Stage II rules for all areas classified as ''moderate'' or worse under section 182(b)(3) of the CAA. In addition, Section 202(a)(6) of the CAA required EPA to promulgate Onboard Vapor Recovery standards. Section 202(a)(6) further provides that ''the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards.'' Onboard Refueling Vapor Recovery (ORVR) regulations were promulgated by EPA on April 6, 1994 (see, 59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIPs, subject to section 110(l) of the Act. Section 110(l) of the CAA, states:

> Plan Revision—Each revision to an implementation plan submitted by a State under this Chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this Chapter.

As such, Florida must make demonstration of noninterference to remove Stage II from the SIP for the Southeast Florida area. EPA's policy memoranda related to ORVR, dated March 9, 1993, and June 23, 1993, provided further guidance on an allowance for removing stage II requirements from certain areas.

2. Southeast Florida's Air Quality Status

On April 30, 2004, EPA published the nonattainment and attainment designations for the 1997 8-hour ozone standard (69 FR 23857). The Southeast Florida Area was determined to be in attainment for the 8-hour ozone standard. With regard to the 1-hour and 8-hour ozone NAAQS, Southeast Florida is still in attainment and has provided monitoring data in the submittal for both standards through 2006 which demonstrates this attainment. Compliance with the 8-hour ozone standard is demonstrated at 84 ppb and for the 1-hour ozone standard, compliance was demonstrated at 124 ppb. For the period of 2004–2006, the 8-hour ozone design value was 70 ppb, and the 1-hour ozone design value was 92 ppb.

On January 5, 2005, EPA published nonattainment and attainment designations for the $PM_{2.5}$ standard (70 FR 944). The Southeast Florida Area was designated as attainment for the $PM_{2.5}$ standard and has remained in attainment through 2006. Compliance for the current $PM_{2.5}$ annual standard is

[1] The Phase I implementation rule for the 1997 8-hour ozone standard, at 40 CFR 51.905(4), requires that any ''applicable requirement'' under the 1-hour ozone SIP, if rescinded, be retained as a contingency measure in the 8-hour ozone SIP. However, since the Southeast Florida Stage II vapor recovery program ceased to be an ''applicable requirement'' upon EPA's promulgation of the ORVR standards in 1994, the State is not obligated, and is not proposing, to retain the program as a contingency measure.

15 micro-grams per cubic meter (μg/m³). The annual $PM_{2.5}$ design value for Southeast Florida for the period of 2004–2006 was 9.5 μg/m³.

On October 17, 2006, EPA promulgated a revised NAAQS for $PM_{2.5}$. The effective date for the new standard was December 18, 2006. EPA retained the annual $PM_{2.5}$ standard of 15 μg/m³ and revised the 24-hour $PM_{2.5}$ standard, changing it from 65 μg/m³ to 35 μg/m³. FDEP submitted a letter dated December 12, 2007, which recommended that the entire State of Florida be designated as attainment for $PM_{2.5}$.

Although the Southeast Florida Area is in attainment for the 1-hour ozone, 8-hour ozone and $PM_{2.5}$ standards, section 110(l) still requires that this area demonstrate noninterference for any SIP revision related to these standards.

On March 12, 2008, EPA strengthened its NAAQS for ground-level ozone, the primary component of smog. These changes will improve protection of both public health and sensitive trees and plants. EPA is revising the 8-hour ''primary'' ozone standard, designed to protect public health, to a level of 0.075 parts per million (ppm). The previous standard, set in 1997, was 0.08 ppm. The Southeast Florida Area 8-hour ozone standard design values for the years 2004–2006 are as follows: 0.072 ppm for Dade, 0.066 ppm for Broward and 0.066 ppm for Palm Beach. These levels are below both the 1997 8-hour ozone standard and the 2008 8-hour ozone standard.

3. Noninterference Demonstration for Removal of Stage II

Removing the Stage II vapor recovery requirement from the Southeast Florida Area's portion of the Florida SIP may result in a small, temporary increase in VOC emissions within the three Southeast Florida counties. However, as explained below, implementation of the ORVR requirements ensures noninterference with the NAAQS. The following table shows the expected emission changes in comparison with the emissions that would occur if the Stage II vapor recovery requirement were to remain in force.

TABLE 1—VOC EMISSIONS FROM VEHICLE REFUELING (STAGE II)

[Tons per day (tpd)]

	2005	2010		2015	
	With Stage II	With Stage II	Without Stage II	With Stage II	Without Stage II
Miami-Dade	1.43	1.04	3.22	0.87	2.04
Broward	1.26	0.92	2.86	0.78	1.81
Palm Beach	0.95	0.71	2.19	0.61	1.42
SE Florida Total	3.64	2.67	8.27	2.26	5.27

EPA's analysis involved a comparison of the VOC emissions attributed to the Stage II program (see, Table 1 above) to the total VOC emissions projected for the Southeast Florida Area in the most recent 1-hour ozone maintenance plan [2] (see Table 2 below).

TABLE 2—TOTAL VOC [3] EMISSIONS FROM SOUTHEAST FLORIDA AREA WITH & WITHOUT VEHICLE REFUELING (STAGE II)

[tpd]

	1990	2005	2010		2015	
	Without Stage II	With Stage II	With Stage II	Without Stage II	With Stage II	Without Stage II
Miami-Dade	399.8	208.3	200.0	202.1	191.6	192.8
Broward	239.6	154.6	145.3	147.2	135.9	136.9
Palm Beach	228.4	149.7	143.2	144.7	136.7	137.5
SE Florida Total	867.8	512.6	488.4	494.0	464.2	467.2

Since 1990, the year that the Southeast Florida Area came into attainment with the 1-hour standard, VOC emissions from all sources have continued to decline. From a 1990 value of 867.8 tpd, VOC emissions decreased to 512.6 tpd in 2005. As a result of turnover of the vehicle fleet and other programs designed to reduce emissions, VOC emissions in the Southeast Florida Area are expected to further decline to 488.4 tpd and 464.2 tpd in 2010 and 2015, respectively, if the Stage II vapor recovery program is continued (and does not produce ORVR incompatibility-related excess emissions). Without credit for the Stage II program, the VOC emissions would potentially be 494.0 tpd in 2010 and 467.2 tpd in 2015, which is still below current levels and well below the 1990 attainment-year emissions ''ceiling.'' Thus, the additional emissions that may result from the phase-out of the Stage II program do not appear to compromise continued attainment of the former 1-hour ozone standard or the more restrictive 8-hour ozone standard.

Any VOC emissions increase that may result from the phase out of the Stage II program is not expected to cause a violation of the 8-hour ozone standard in the Southeast Florida Area. An analogous emissions ceiling for maintenance of the 8-hour standard can be approximated. Although the three-county Southeast Florida Area has never violated the 8-hour standard, the years 1988 and 1989 had the closest design values to the level of the standard (84 ppb and 83 ppb, respectively). Since VOC emissions have steadily decreased over the last two decades, emissions in 1988 and 1989 were greater than 1990 emissions. Thus, the 1990 attainment-

[2] Air Quality Maintenance Plan (2005–2015) Dade, Broward, Palm Beach Counties, December 2002.

[3] The total VOC emissions in this area also include a biogenic component that is assumed constant over time. The biogenic VOC emissions for the individual counties are estimated at 211.3 tpd for Miami-Dade, 174.5 tpd for Broward, and 399.6 tpd for Palm Beach. These amounts can be added to the man-made emissions to get the total VOC emissions.

year emissions ceiling, as determined for the 1-hour standard, represents a reasonable emissions ceiling for maintenance of the 8-hour standard, and the logic given above for noninterference with maintenance of the former 1-hour standard applies also to the current 8-hour standard. As mentioned previously in this rulemaking, the Southeast Florida Area has current monitoring data that demonstrates attainment with the 8-hour ozone standard.

It is expected that the removal of the Stage II gasoline vapor recovery program in the Southeast Florida Area will not interfere with continued compliance with the $PM_{2.5}$ standard. EPA's review of the available information indicates that sulfates and carbon make up approximately 70 percent of the precursors for $PM_{2.5}$ formation in Florida. As mentioned previously in this rulemaking, the Southeast Florida Area has current monitoring data that demonstrates attainment with both the annual and the daily $PM_{2.5}$ standards.

Based on the factors mentioned above, EPA believes that Florida's demonstration to remove the Stage II requirement from the Florida SIP for the Southeast Florida Area is consistent with section 110(l) of the CAA and will not interfere with compliance for the new NAAQS in the Southeast Florida Area.

B. Requested Approval of Statewide Stage I Vapor Control Requirements

Florida's Stage I vapor recovery is currently required for gasoline dispensing facilities in the seven counties designated as maintenance areas for ozone (Duval, Orange, Hillsborough, Pinellas, Palm Beach, Broward, and Miami-Dade). In addition to removing Stage II requirements for Southeast Florida, this SIP revision will require Stage I vapor recovery at new and upgraded gasoline dispensing facilities statewide; phase in Stage I vapor recovery statewide for existing gasoline dispensing facilities not previously required to have Stage I; and require tanker trucks and trailers to ensure connection of the vapor return line at facilities equipped for Stage I vapor recovery statewide. The phase-in of Stage I vapor control on a statewide basis will likely result in a net reduction in air pollutant transport across Florida's borders.

III. Final Action

EPA is approving the SIP revision submitted by the State of Florida for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Miami-Dade, Broward, and Palm Beach Counties, and phasing out Stage II requirements for existing facilities in those counties. EPA is also approving rule changes which would require new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and it would phase in Stage I vapor control requirements statewide for existing gasoline dispensing facilities. This SIP revision includes changes to F.A.C. Chapters 62–210.200 Definitions, 62–210.310 Air General Permits, 62–210.920 Air General Permit Forms, 62–252.200 Definitions, 62–252.300 Gasoline Dispensing Facilities—Stage I Vapor Recovery, 62–252.400 Gasoline Dispensing Facilities—Stage II Vapor Recovery, 62–252.500 Gasoline Tanker Trucks, 62–296–418 Bulk Gasoline Plants, and 62–296.509 Bulk Gasoline Plants (Repealed).

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial 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 November 17, 2008 without further notice unless the Agency receives adverse comments by October 16, 2008.

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 November 17, 2008 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 November 17, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2008.

Russell L. Wright, Jr.

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 K Florida

■ 2. Section 52.520(c) is amended by:

■ a. Revising entries for ''62–210.200'', ''62–210.300'', ''62–252.200'', ''62–252.300'', ''62–252.400'', ''62–252.500'', ''62–296.509'' and

■ b. Adding entries for ''62–210.310'', ''62–210.920'', and ''62–296.418'' to read as follows:

52.520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
*	*	*	*	*
62–210.200	Definitions	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–210.300	Permits Required	9/4/06	9/16/08 [Insert citation of publication].	
62–210.310	Air General Permits	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–210.920	Air General Permit Forms	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
Chapter 62–252 Gasoline Vapor Control				
*	*	*	*	*
62–252.200	Definitions	9/4/06	9/16/08 [Insert citation of publication].	
62–252.300	Gasoline Dispensing Facilities—Stage I Vapor Recovery.	9/4/06	9/16/08 [Insert citation of publication].	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery.	9/4/06	9/16/08 [Insert citation of publication].	
62–252.500	Gasoline Tanker Trucks	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
Chapter 62–296 Stationary Sources—Emission Standards				
*	*	*	*	*
62–296.418	Bulk Gasoline Plants	9/4/06	9/16/08 [Insert citation of publication].	
*	*	*	*	*
62–296.509	Bulk Gasoline Plants			Repealed.
*	*	*	*	*

* * * * *

[FR Doc. E8–21303 Filed 9–15–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

FMCSA Policy on Considering the Preventability of Crashes in Administrative Review Requests of Hazardous Materials Safety Permit Denials Based Upon Crash Rates in the Top 30 Percent of the National Average Under 49 CFR 385.407

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of enforcement policy.

SUMMARY: FMCSA may not issue a hazardous materials safety permit (safety permit) to a motor carrier that has a crash rate, driver, vehicle or hazardous material out-of-service rate in the top 30 percent of the national average pursuant to 49 CFR 385.407. This document provides notice of FMCSA policy that it will consider preventability when a motor carrier contests the denial of a safety permit based upon a crash rate in the top thirty percent of the national average and presents compelling evidence that one or more of the crashes listed in the Motor Carrier Management Information System (MCMIS) was not preventable and thus not reflective of the motor carrier's suitability to transport the type and quantity of hazardous materials that require a safety permit. Preventability is determined by the following standard: If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable. FMCSA currently uses this standard in evaluating accident factors under its safety rating process.

DATES: *Effective Date:* September 16, 2008.

FOR FURTHER INFORMATION CONTACT: James O. Simmons, Office of Enforcement and Compliance, Hazardous Materials Division, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 493–0496 (voice), *james.simmons@dot.gov* (e-mail), Debra S. Straus, Office of the Chief Counsel, (202) 366–2266 (voice), or *debra.straus@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On June 30, 2004, FMCSA issued a Final Rule containing the regulations implementing the safety permit program. 69 FR 39350. The Final Rule, codified at 49 CFR part 385, identifies who must hold a safety permit, establishes the application process for a safety permit, and the conditions that must be satisfied before FMCSA will issue a safety permit to a carrier. These conditions are set out in 49 CFR 385.407.

Background

Section 385.407 requires that a carrier have a ''Satisfactory'' safety rating, certify that it has a satisfactory security program, and be properly registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA). 49 CFR 385.407(a)(1), 385.407(b) & (c). Section 385.407(a)(2) additionally states that:

> FMCSA will not issue a safety permit to a motor carrier that: (ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or
>
> (iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS;

The safety permit requirement became effective for motor carriers on the date after January 1, 2005, when the motor carrier was required to file a Motor Carrier Identification Report Form (MCS–150) according to a schedule set forth in 49 CFR 390.19(a). The application for the safety permit was incorporated into the MCS–150, as an expanded form entitled ''MCS–150B or Combined Motor Carrier Identification Report and HM Permit Application.''

On or about January 3, 2005, the Office of Enforcement and Compliance (OEC) published on its public Web site [1] the formula used to determine the national averages and the crash rates and driver, vehicle and hazmat out-of-service (OOS) rates that establish the thresholds for the ''top 30 percent of the national average.'' The Web site also instructed motor carriers on how to calculate their own out-of-service rates. This information on calculating the national averages, crash rates and out-of-service rates was subsequently published in the **Federal Register**. 72 FR 62795 (Nov. 7, 2007).

Crash Rates

FMCSA may not issue a safety permit to a motor carrier that has a crash rate in the top 30 percent of the national average as indicated in the MCMIS. 49 CFR 385.407(a)(2)(ii). The threshold crash rate above which a carrier falls within the worst performing or top thirty percent of the national average is recalculated every two years using the crash data from the previous two years. The cut-off for motor carrier crash rates above which a carrier will fall into the top 30 percent of the national average has remained at 0.125 since the inception of the program.

To determine the crash rate for an individual carrier that is applying for a safety permit, FMCSA examines one year of crash data. FMCSA divides the number of crashes for the previous twelve-month period by the total number of power units that the motor carrier operated during that twelve-month period. For example, if a motor carrier had 2 crashes and 10 power units, the crash rate would be 0.20 based upon a calculation of (2 ÷ 10 = 0.20). FMCSA examines one year of data to remain consistent with FMCSA practice of reviewing one year of records during a compliance review. FMCSA does not consider a single crash to be statistically valid. Thus, crash rates will be calculated only for carriers with more than one crash in the relevant twelve-month period.

Preventability

Petitions for rulemaking filed by the Institute of Makers of Explosives and The Fertilizer Institute requested the Agency to consider crash preventability when evaluating a motor carrier's crash rate under the safety permit program, in the same manner that accident preventability is considered when a motor carrier contests an unfavorable safety rating. In the Agency's response to these petitions issued on June 21, 2007, the FMCSA Administrator agreed that the same preventability criteria used in assessing the ''Accident Factor'' under 49 CFR part 385, Appendix A.III.B(d), should be applied when a carrier contests denial of a safety permit application based upon its crash rate and provides compelling evidence a crash was not preventable.

The preventability standard found in Appendix A to Part 385, section III.B(d) states:

> The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. *Preventability will be determined according to the following standard: ''If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact*

[1] *http://www.safersys.org/HazMatRatesPost.aspx#OOSRates.*

occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.'' (Emphasis added.)

The intent of the safety permit program is to hold motor carriers that transport permitted materials to a higher safety standard due to the potential risks associated with transportation of these high-risk hazardous materials. In applying this standard to the safety fitness rating process, FMCSA recognizes that crashes in which the motor carrier's driver was not at fault and could not have reasonably avoided without further risk, should not adversely reflect on the safety fitness of the motor carrier. Similarly, denial of a safety permit based upon crashes which were not preventable, does not have a reasonable correlation to the safety standard required under the safety permit program.

In the safety rating context, FMCSA considers preventability when the carrier contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating the carrier's fitness under the accident factor. Similarly, FMCSA will consider preventability of crashes under the safety permit program. When a carrier contests the denial of its safety permit application based upon a crash rate that falls into the top thirty percent of the national average and submits compelling evidence that a crash or crashes listed in the MCMIS were not preventable, it should not be included in the crash rate calculation. The preventability standard that will be applied is the same standard that is used in the safety rating context.

Preventability Policy Procedures

Accordingly, FMCSA is implementing the following policy procedures: If a motor carrier's safety permit application is denied based upon a crash rate greater that the safety permit program crash rate threshold, the carrier may submit evidence to show that one or more crashes were not preventable. In order to preserve the right to seek administrative review of FMCSA's determination on the preventability of one or more crashes, the carrier should submit such evidence as part of a request for administrative review pursuant to § 385.423(c). The carrier should submit the request to FMCSA's Chief Safety Officer (CSO) and the Office of Chief Counsel, and must include adequate proof that the crash or crashes in question were not preventable. The standard for determining preventability is the same as the standard found in Appendix A to Part 385:

> If a driver who exercises normal judgment and foresight could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.

It is incumbent upon the carrier to provide reliable and objective evidence that the accident was not preventable. Such evidence may include but is not limited to police reports and other verifiable government reports or law enforcement and witness statements. The issue of whether a crash was or was not preventable under the above-stated standard will be initially addressed by the FMCSA Office of Enforcement and Compliance, Hazardous Materials Division in consultation with the Office of Chief Counsel, Enforcement and Litigation Division. If the initial determination results in a finding that one or more crashes were not preventable, the safety permit application will be reprocessed with the relevant crash or crashes removed from consideration in the crash rate calculation. If removal of the crash(es) results in a crash rate calculation that falls below the crash rate cut-off for the top 30 percent of the national average and no other disqualifying factors exist, FMCSA will issue a safety permit to the carrier. If the Office of Enforcement and the Office of Chief Counsel determine that the evidence submitted does not support a finding that the crash or crashes were preventable, the motor carrier may pursue its request for administrative review by the Chief Safety Officer of the denial of its safety permit application based upon its crash rate. The request for administrative review must have been timely filed and served in accordance with the requirements of 49 CFR 385.423.

Issued on: September 10, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–21563 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–2008–0015]

Final Policy Statement on FTA's School Bus Operations Regulations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final policy statement.

SUMMARY: Through this notice, the Federal Transit Administration (FTA) clarifies its policy with respect to its interpretation of *''tripper service''* and *''school bus operations''* under 49 CFR part 605.

DATE: *Effective Date:* The effective date of this final policy statement is September 16, 2008.

ADDRESSES: *Availability of the Final Policy Statement and Comments:* One may access this final policy statement, the proposed policy statement, and public comments on the proposed policy statement at docket number FTA–2008–0015. For access to the docket, please visit *http://www.regulations.gov* or the Docket Operations office located in the West Building of the U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael L. Culotta, Attorney, Office of Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., 5th Floor—East Building, Washington, DC 20590. *E-mail: Michael.Culotta@dot.gov. Telephone:* (202) 366–1936.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On May 19, 2008, FTA issued a Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations [1] to provide guidance in the context of the recent decision of the United States District Court for the Western District of New York in *Rochester-Genesee Regional Transportation Authority* v. *Hynes-Cherin.*[2] As of August 6, 2008, FTA received approximately 510 comments on its proposed policy statement.

In the final policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations. FTA shall construe the term ''tripper service,'' as it has historically, to include modifications to fare collection or subsidy systems, modifications to the frequency of service, and de minimus route alterations from route paths in the immediate vicinity of schools to stops

[1] 73 FR 28,790 (May 19, 2008).

[2] 531 F.Supp.2d 494, 507 (W.D.N.Y. 2008) (setting aside FTA's interpretation of its school bus operations regulations under 49 CFR part 605).

located at or in close proximity to the schools. Consistent with that construction, FTA shall interpret the definition of ''school bus operations'' to include service that a reasonable person would conclude was primarily designed to accommodate students and school personnel and only incidentally to serve the nonstudent general public.

FTA stresses that its intent with this final policy is not to overhaul its school bus operations regulatory scheme. Rather, in the context of *Rochester-Genesee Regional Transportation Authority*, FTA intends to provide its grantees a basis which will allow them to continue to provide the service that FTA historically has allowed through administrative adjudications, while simultaneously satisfying the statutory requirements.

FTA acknowledges that the 2008–2009 academic year has commenced. However, because FTA is not overhauling its regulatory scheme and is continuing to allow the type of tripper service that it historically has allowed, this final policy will not negatively impact transportation for the 2008–2009 academic year if grantees have been complying with FTA's historical interpretation of its school bus operations regulations.

FTA expects to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of ''tripper service'' and ''school bus operations,'' as well as generally to update the existing school bus regulation.

B. Statutory and Regulatory Framework

In 1973, Congress passed the Federal-Aid Highway Act, which requires FTA to provide financial assistance to a grantee under 49 U.S.C. Chapter 53 only if the grantee agrees ''not to provide school bus transportation that exclusively transports students and school personnel in competition with a private school bus operator.'' [3] Congress' intent in enacting this provision was to prevent unfair competition between Federally funded public transportation systems and private school bus operators.[4]

In 1976, the Urban Mass Transportation Administration, now FTA, codified regulations under 49 CFR part 605 which implemented the above statutory provision.[5] Under 49 CFR 605.14, FTA may not provide financial assistance to a grantee ''unless the applicant and the Administrator shall have first entered into a written agreement that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.'' [6] The regulation defines ''school bus operations'' as ''transportation by bus exclusively for school students, personnel and equipment * * *.'' [7]

The regulation exempts ''tripper service'' from the prohibition against school bus operations.[8] ''Tripper service'' is ''regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems.'' [9]

II. Rochester-Genesee Regional Transportation Authority v. Hynes-Cherin

On January 24, 2008, the United States District Court for the Western District of New York issued a decision in *Rochester-Genesee Regional Transportation Authority* which set aside FTA's interpretation of its school bus operations regulations under 49 CFR part 605.[10] The Court allowed the Rochester-Genesee Regional Transportation Authority (RGRTA) to restructure its public transportation operation through the addition of 240 new express school bus routes proposed to serve the Rochester City School District (RCSD) and its students.[11]

In its decision, the Court narrowly interpreted the word ''exclusively'' in FTA's definition of ''school bus operations'' and found that, because a member of the general public could, hypothetically, board a bus along one of RGRTA's proposed new 240 express routes, RGRTA's service technically would not ''exclusively'' transport students.[12] The Court therefore concluded that RGRTA's proposed express bus service did not constitute impermissible school bus operations.[13]

Additionally, the Court broadly interpreted FTA's definition of ''tripper service.'' [14] The Court cited *United States ex rel. Lamers* v. *City of Green Bay* for the proposition that a grantee may ''completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes.'' [15]

FTA believes that, following the Court's narrow interpretation of ''school bus operations'' and its broad interpretation of ''tripper service,'' a grantee could conclude that it would be permitted to restructure its public transportation operation dramatically to accommodate the needs of a local school district and its students, thereby displacing private school bus operators and their employees, provided the grantee keeps the service technically open to the public.[16] FTA believes that such an interpretation would contradict FTA's final policy as set forth herein.

III. Previous FTA Policy

A. Tripper Service

Under its tripper service definition, FTA originally allowed grantees to accommodate students only with respect to ''different fare collections and subsidy systems.'' However, through administrative decisions over the years, FTA broadened its interpretation of its tripper service definition to allow grantees to make accommodations beyond subsidies and fare collection systems. Specifically, FTA has allowed its grantees to make minor modifications to its route paths and frequency of service. As FTA stated in one matter concerning the Erie Metropolitan Transit Authority:

> Read narrowly, ''modification of regularly scheduled mass transportation service to accommodate the needs of school students and personnel'' means using different fare collections and subsidy systems. In practice, ''modification of mass transportation service'' has been broadened to include minor modifications in route or frequency of scheduling to accommodate the extra passengers that may be expected to use particular routes at particular times of day.[17]

For example, in *Travelways, Inc.* v. *Broome County Department of Transportation*, FTA stated that, ''A familiar type of modification would be where the route deviates from its regular path and makes a loop to a school returning back to the point of deviation to complete the path unaltered.'' [18] FTA

[3] Federal Aid Highway Act of 1973, Pub. L. No. 93–87, 164(b), 87 Stat. 250, 281–82 (1973) (codified as amended at 49 U.S.C. 5323(f) (2006)).

[4] *Chicago Transit Auth.* v. *Adams*, 607 F.2d 1284, 1292–93 (7th Cir. 1979) (citing H.R. Rep. No. 93–410, at 87 (1973) (Conf. Rep.); S. Rep. No. 93–355, at 87 (1973) (Conf. Rep.)).

[5] *See* Codification of Charter Bus Operations Regulations, 41 FR 14,122 (Apr. 1, 1976).

[6] 49 CFR 605.14 (2007).

[7] 49 CFR 605.3(b).

[8] 49 CFR 605.13.

[9] 49 CFR 605.3(b).

[10] *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507.

[11] *Id.* at 507–16.

[12] *Id.* at 507–09.

[13] *Id.*

[14] *Id.* at 512.

[15] *Id.* at 512 (citing *United States ex rel. Lamers* v. *City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999)).

[16] *Id.* at 509–16.

[17] *See In re* Erie Metropolitan Transit Authority 1, 4 (1989).

[18] *Travelways, Inc.* v. *Broome County Dep't of Transp.* 1, 7 (1985) (allowing a grantee to run a bus

Continued

reaffirmed this particular interpretation of tripper service in its October 12, 2007, RGRTA determination by permitting RGRTA to operate four loop-like route extensions, each only several blocks in length, to accommodate the needs of school students.[19]

FTA has not, however, allowed a grantee such as RGRTA to restructure its public transportation operation solely to accommodate the needs of school students—such a modification would be a major modification. Thus, in its October 12, 2007 letter to RGRTA, FTA rejected RGRTA's proposed addition of 240 new routes because it would have constituted a major overhaul of RGRTA's public transportation system exclusively for the purpose of accommodating the needs of school students.[20]

In addition to minor modifications to route paths, FTA has allowed grantees to modify route schedules and the frequency of service. For example, in *Travelways*, FTA stated, ''Other common modifications include operating the service only during school months, on school days, and during school and opening and closing periods.'' [21]

Jurisprudence in United States courts has broadened the scope of FTA's tripper service definition to include essentially any modification. In *United States ex rel. Lamers* v. *City of Green Bay*, the Seventh Circuit stated, arguably in dicta, ''[T]he City may completely redesign its transit system to accommodate school children as long as all routes are accessible to the public and the public is kept informed of route changes.'' [22] Citing *Lamers*, the Court in *Rochester-Genesee Regional Transportation Authority* allowed RGRTA to restructure its public transportation system by adding 240 new routes to accommodate the needs of RCSD and its students.[23]

B. ''Exclusive'' School Bus Operations

FTA has had little prior formal policy regarding ''exclusive'' school bus operations under 49 CFR part 605. In 1982, FTA attempted to clarify the meaning of ''exclusive'' school bus service through a rulemaking.[24] However, in 1990, FTA withdrew the rulemaking because it believed that the regulations were ''functioning adequately.'' [25]

In school bus adjudications, parties did not directly address the issue of ''exclusive'' school bus operations until *United Food and Commercial Workers District Union Local One* v. *Rochester-Genesee Regional Transportation Authority*.[26] In resolving that issue, FTA examined the Federal-Aid Highway Act of 1973, found the language of the Act's school bus provision ambiguous, and looked to the legislative history of Act for some guidance.

In an early version of the Federal-Aid Highway Act, Congress did not use the word ''exclusively'' in the school bus provision, but rather, focused the language of the Act on preventing unfair competition between Federally funded grantees and private school bus operators. That language is as follows:

> [N]o financial assistance is to be provided to an applicant which engages, directly or indirectly in transporting school children and personnel to and from school and school authorized functions or which proposes to expand present routes, schedules, or facilities for that purpose *in competition with or supplementary to service criteria provided by a private transportation company* or other person so engaged in so transporting such children and personnel.[27]

After the bill passed the House and the Senate, the conference modified the above provision in an effort to further protect private school bus operators from unfair competition with Federally funded grantees. The conferees used the following language:

> [N]o federal financial assistance is to be provided under those provisions of law for the purchase of buses to any applicant who has not first entered into an agreement with the Secretary of Transportation that *the applicant will not engage in school bus operations in competition with private school bus operators*.[28]

As evinced by the above language, Congress intended to prevent unfair competition between Federally funded grantees and private school bus operators. Therefore, in *District Union Local One*, FTA concluded that it would defeat the purpose of the Federal-Aid Highway Act and eviscerate 49 U.S.C. 5323(f) if it accepted a grantee's argument that its service was technically nonexclusive and open to the public, but where: (1) The grantee had designed the service specifically for students, without regard to demand from the nonstudent public; (2) the vast majority of passengers were students; and (3) as a result, the routes would displace the private school bus industry and its workers.[29] In efforts to prevent the unfair competition which Congress sought to prevent, FTA rejected RGRTA's arguments and prohibited RGRTA from providing its school bus service exclusively for school students. FTA utilized this same policy and analysis when it found non-compliant RGRTA's proposed service in its October 12, 2007 letter [30] and again in *Laidlaw Transit, Inc.* v. *Rochester-Genesee Regional Transportation Authority*.[31]

The Court in *Rochester-Genesee Regional Transportation Authority*, however, applied a narrower, more restrictive analysis when it interpreted the word ''exclusively'' in the context of ''school bus operations.'' Notwithstanding the fact that RGRTA designed its 240 express school bus routes exclusively for the benefit of RCSD and its students, without regard for demand from the nonstudent public, the Court held that, because a member of the general public hypothetically could board a bus along one of RGRTA's proposed 240 routes, RGRTA's proposed service was not ''exclusive'' and therefore technically did not constitute impermissible ''school bus operations.'' [32]

III. Response to Public Comments

As of August 6, 2008, approximately 510 parties commented on FTA's Notice of Proposed Policy Statement on FTA's School Bus Operations Regulations. At the closing date of the docket, June 18, 2008, approximately 157 parties commented on FTA's proposed policy statement. FTA subsequently considered all additional comments through August 6, 2008. The

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to a point and express to a school from that point if the grantee ran a second bus along the regular route path from the point at which the first bus expressed to the school).

[19] Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 6 (Oct. 12, 2007).

[20] *Id.* at 2–6.

[21] *Travelways* at 7.

[22] *United States ex rel. Lamers* v. *City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999).

[23] *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 512–13.

[24] Advance Notice of Proposed Rulemaking, 47 FR 44,795, 44,803–04 (Oct. 12, 1982).

[25] Notice of Proposed Rulemaking: Withdrawal, 55 FR 334 (Jan. 4, 1990).

[26] FTA School Bus Docket Number 2006–02 1 (2007).

[27] S. Rep. No. 93–355, at 86 (1973) (emphasis added).

[28] S. Rep. No. 93–355, at 87 (emphasis added).

[29] *District Union Local One*, FTA School Bus Docket Number 2006–02 at 10–11 (holding the Rochester-Genesee Regional Transportation Authority's (RGRTA) school bus service was designed and modified ''exclusively'' for the Rochester City School District and its students because students constituted a significant proportion of passengers on the school bus routes and RGRTA designed the routes without regard to demand from the nonstudent public).

[30] *See* Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority at 3–4 (Oct. 12, 2007).

[31] *See Laidlaw Transit, Inc.* v. *Rochester-Genesee Reg'l Transp. Auth.*, FTA School Bus Docket Number 2007–01 1, 4 (2007).

[32] *Rochester-Genesee Reg'l Transp. Auth.*, 531 F.Supp.2d at 507–09.

commenters represent a broad spectrum of stakeholders from geographic areas throughout the United States, and they provided comments on a wide variety of issues. Many commenters raised issues that are outside the scope of FTA's proposed policy statement, and FTA does not address those concerns in this final policy statement.

In this section, FTA responds to public comments by topic in the following order: (A) Policy Statement Generally; (B) ''School Bus Operations''; (C) ''Tripper Service''; (D) Unfair Competition; (E) Economic Issues; (F) Safety Issues; (G) Environmental Issues; (H) Congestion; (I) Rising Fuel Prices; (J) Local Issues; and (K) Alternative Policy Proposals and Amendments to 49 CFR part 605.

A. Policy Statement Generally

Some commenters questioned whether FTA has the legal authority to issue this Final Policy Statement on FTA's School Bus Operations Regulations. These commenters questioned whether FTA should promulgate amended regulations rather than issue a policy statement.

FTA Response: FTA concludes that it is not required to promulgate amended regulations to implement this final policy because FTA is not changing the language of the regulatory text at 49 CFR part 605. FTA merely is clarifying its interpretation of that regulatory language, and FTA lawfully may accomplish this clarification through a policy statement. Furthermore, FTA is not altering the substance of its regulatory requirements under 49 CFR part 605; FTA merely is summarizing thirty-two years of its policy in one document, based on public comments and FTA's historical interpretation and enforcement of its school bus operations regulations. Indeed, many commenters applauded FTA's efforts to issue a policy statement to provide guidance in the context of *Rochester-Genesee Regional Transportation Authority*.

B. ''School Bus Operations''

Some commenters asserted that the word *''exclusively,''* as used in 49 U.S.C. 5323(f) and in FTA's definition of *''school bus operations''* at 49 CFR 605.3, is not ambiguous and, therefore, FTA must implement a regulatory scheme that allows FTA's grantees to transport students and school personnel so long as the service is technically open to the public.

Additionally, some commenters asserted that FTA's use of a *''reasonable person''* standard in its interpretation of *''school bus operations''* is vague.

Finally, at least one commenter expressed concern regarding whether and to what extent, under FTA's proposed policy, a grantee may create a new route to serve a school—particularly in communities experiencing population growth and development.

FTA Response: FTA rejects the notion that 49 U.S.C. 5323(f) is unambiguous. FTA believes that one may reasonably interpret the term *''exclusively''* in 49 U.S.C. 5323(f) and 49 CFR 605.3 to prohibit service that essentially is exclusively for students and school personnel, even though the service technically may be open to the nonstudent public. The relevant language of the regulation prohibits service that is *''exclusively for''* students and school personnel. FTA consequently concludes that it is reasonable and proper to consider whether service is, in fact, *''for''* such riders. FTA also relies heavily on the subsequent qualifying language of 49 U.S.C. 5323(f)—''in competition with a private schoolbus operator''—to justify this interpretation. To illustrate, if FTA permitted a grantee to provide school bus operations so long as the service is technically open to the public, then Congress's purpose of protecting private school bus operators would be nullified. Such an interpretation would create a loophole in the statutory and regulatory scheme which would permit FTA's grantees to displace private school bus operators. Clearly, Congress did not intend this result, otherwise, Congress would not have passed this statutory provision. Accordingly, in this final policy statement, FTA relies on an interpretation of 49 U.S.C. 5323(f) which reasonably ensures that FTA's grantees that transport school students are not providing school bus operations that are exclusive-in-fact.

With respect to the *''reasonable person''* standard, FTA points out that the standard has nearly a two hundred year history in the common law, and therefore, the standard is an acceptable standard in FTA's interpretation of its school bus operations regulations.[33] Courts have held that the reasonable person standard is an objective standard, and that a *''reasonable person''* is a person: (1) Of ordinary prudence, (2) who has knowledge of the law and is aware of its consequences, and (3) who exercises caution in similar circumstances.[34]

Finally, FTA does not intend to discourage grantees from creating new routes to serve new demand, so long as a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public. Therefore, in the final policy set forth below, FTA will interpret its definition of *''school bus operations''* to allow a grantee to create a new route to serve school students and personnel if a reasonable person would conclude that the grantee designed the route to serve some segment of the nonstudent general public.

C. ''Tripper Service''

With respect to FTA's interpretation of its ''tripper service'' definition at 49 CFR 605.3, some commenters requested clarification as to what constitutes a ''de minimus'' route deviation. Additionally, some commenters recommended that FTA should allow route deviations at multiple points along a route path—not just within the immediate vicinity of a school.

FTA Response: FTA intends a ''de minimus'' route deviation, as FTA uses the term in this final policy statement, to mean a route alteration that is truly minor. For example, historically, FTA has allowed its grantees to provide tripper service that deviates from an existing route path by several blocks.[35] FTA intends to identify definitively a specific threshold for determining whether an alteration is *''de minimus''* in its forthcoming notice of proposed rulemaking.

With respect to the locations of the route alterations, FTA stresses that it does not intend to significantly alter the type of service that it historically has allowed. In the past, FTA has allowed route alterations only within the immediate vicinities of schools, and FTA does not intend to break from that precedent in this final policy statement.

D. Unfair Competition

Many commenters representing the interests of private school bus operators expressed support for FTA's proposed policy because the policy effectuates Congress's intent that Federally subsidized grantees do not displace private school bus operators. However, many commenters expressed concern that FTA's proposed policy would interfere with local transit agencies that transport students to school out of necessity, either because there are no private operators that provide the service in the local area or that private

[33] *See* Vaughan v. Menlove, (1837) 132 Eng. Rep. 490, and its progeny.

[34] *See* William L. Prosser & W. Page Keeton, Prosser and Keeton on Torts 173–93 (5th ed. 1984).

[35] *See, e.g., Travelways, Inc.* at 7; Letter from Federal Transit Administration to Rochester-Genesee Regional Transportation Authority, *supra* note 20, at 6.

operators charge an unreasonably high rate in exchange for its service.

FTA Response: In localities where no private operator exists or where a private operator charges an unreasonably high rate in exchange for service, FTA highlights an existing exemption for its school bus operations prohibition at 49 CFR 605.11(b). Under this provision, FTA allows its grantees to provide school bus operations if, in the local area, a private school bus operator is *''unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards.''* [36] FTA's final policy does not affect this exemption, and FTA suggests that interested parties apply to FTA for this exemption, if appropriate.

E. Economic Issues

Some commenters expressed economic concerns with respect to FTA's proposed policy. These commenters questioned the propriety of FTA's proposed policy, considering that many school districts have limited financial resources and a variety of educational needs. Additionally, some commenters proffered that private school bus operators are more expensive than Federally subsidized public transportation.

FTA Response: Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [37] In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters suggested that taxpayers ultimately spend much more in tax dollars on public transit service for students rather than on private school bus operators.[38] For example, they estimate that the base cost of a transit bus is between $300,000 and $500,000, while they estimate that the base cost of a private school bus is between $46,000 and $68,000.[39] These commenters also claim that the maintenance cost per mile for a transit bus is approximately $0.80 to $1.00, while they claim that the maintenance cost per mile for a private school bus is $0.34.[40] They therefore argue that, while a school district's direct payments to a federally subsidized public transit authority may be lower than payments to a private school bus operator, the total cost to the taxpayer may be much higher for federally subsidized transit service than for private school bus service. FTA lacks sufficient information to analyze this argument fully, but it will seek additional information and comment in connection with FTA's forthcoming notice of proposed rulemaking.

F. Safety Issues

Many commenters expressed concern that FTA, through its proposed policy, would create a more hazardous environment for school students commuting to school. Specifically, these commenters, with the notion that FTA intends to limit allowable service under its ''tripper service'' definition, suggest that FTA's proposed policy would result in more students walking, biking, and driving across busy roads while traveling to school. Some commenters raised a similar safety concern and believe that, with limitations on ''tripper service,'' FTA's proposed policy will result in less direct routes and increased transfers for students traveling to school. Consequently, these commenters write, FTA's proposed policy will cause school students to congregate at transfer points, which will lead to increased crime around these transfer points.

Many commenters also expressed concerns regarding the safety of private school buses. These commenters asserted that public buses are safer than private buses. Alternatively, many commenters asserted that private buses, which are subject to stringent safety standards imposed by the National Highway Traffic Safety Administration (NHTSA), are safer than public buses. For example, these commenters noted that NHTSA requires school buses to be equipped with warning lights, additional mirrors for drivers, ''stop arms,'' and rollover protection. Additionally, these commenters assert, that on public buses, school students may be exposed to any number of unknown influences, such as pedophiles and child molesters.

FTA Response: Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [41] In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, some commenters misconstrued FTA's intent. FTA did not propose to eliminate transit service that historically has qualified as tripper service. Therefore, FTA believes that its final policy will not result in the above-mentioned increased safety hazards.

With respect to the safety of public buses versus private buses, FTA recognizes that, most notably, private school buses are subject to stringent safety standards promulgated by NHTSA.[42] For example, NHTSA imposes on school bus manufacturers restrictions regarding rear view mirrors, safety lights, ''stop signal arms,'' rollover protection, body joint strength, passenger seating, and crash protection.[43] Accordingly, FTA does not believe that private school buses afford an inherently unsafe means of school transportation.

G. Environmental Issues

Many commenters asserted that FTA's proposal would result in the elimination of numerous transit routes. These commenters asserted that, with fewer transit routes available to students, more students would drive vehicles to school. The affect, these commenters argued, would be greater harm to the environment.

Some commenters also argued that public buses are more fuel-efficient than private buses. Alternatively, many commenters asserted that private buses are more fuel-efficient than public buses. One commenter provided evidence that the average fuel miles per gallon for transit buses is 4.5, while the

[36] 49 CFR 605.11(b).

[37] 49 U.S.C. 5323(f).

[38] *See* Comment Number FTA–2008–0015–0184.1 (June 19, 2008).

[39] *Id.* (noting that the useful life of a transit bus is approximately 12 to 15 years, while the useful life of a private school bus is comparable—approximately 12 years).

[40] *Id.*

[41] 49 U.S.C. 5323(f).

[42] *See, e.g.*, Federal Motor Vehicle Safety Standards, 49 CFR Part 571 (2007).

[43] 49 CFR Part 571.

average fuel miles per gallon for private school buses is 6.5.[44] Scores of commenters asserted that private school bus service is approximately 40% more fuel-efficient than public bus service.[45]

FTA Response: Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [46] In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators. Moreover, these concerns are based on the misperception that FTA's proposed policy would prohibit tripper service that FTA historically has permitted.

In response to specific concerns regarding environmental harm and fuel-efficiency concerns, FTA concludes that there is no reliable method to determine the effect of its school bus operations policy on the environment. There are numerous factors that will vary from locality to locality, such as, (1) the number of additional vehicles utilized as a direct result of FTA's school bus operations policy, (2) the fuel emissions of those vehicles, and (3) the manufacturing date of those vehicles. FTA notes that no commenter provided evidence that FTA's proposed policy would result in greater harm to the environment.

FTA does not anticipate that its school bus operations policy will have a significant environmental impact, and, thus, FTA does not believe that this final policy requires additional approvals under the National Environmental Policy Act.[47]

H. Congestion

Many commenters asserted that FTA proposes to eliminate numerous transit routes. These commenters alleged that, with less transit routes available to students, more students would drive vehicles to school. The affect, these commenters argued, would be increased congestion.

FTA Response: Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [48] In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these concerns are based on the misunderstanding that FTA's proposed policy would prohibit tripper service that FTA historically has permitted. In this final policy statement, FTA does not propose to alter its historical interpretation of ''tripper service'' fundamentally, and therefore, FTA does not believe that its final policy will affect congestion.

I. Rising Fuel Prices

Some commenters expressed concern about rising fuel prices and the effect these prices will have on school transportation.

FTA Response: Congress, by passing the statutory provision now codified at 49 U.S.C. 5323(f), already has spoken to this issue and has decided that it is concerned with preventing unfair competition between Federally subsidized grantees and private school bus operators. Under 49 U.S.C. 5323(f), FTA may provide financial assistance to a grantee only if the grantee agrees ''not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator.'' [49] In its regulations, guidance, and this final policy statement, FTA intends to implement this statutory provision to effectuate Congress's intent to prevent unfair competition between Federally subsidized grantees and private school bus operators.

Moreover, these commenters did not specify how rising fuel prices should affect FTA's final policy. Notably, rising fuel prices affect both public transit authorities and private school bus operators in any given locality, therefore, FTA estimates that rising fuel prices should affect school districts in a similar manner, regardless of the type of service that they use to transport students. Without a more particularized concern from these commentators, it is difficult for FTA to speculate how rising fuel prices should impact and factor into FTA's final policy.

J. Local Issues

Approximately 141 of the 510 commenters represent the Oakland, California area, and these commenters expressed concerns that FTA proposed to eliminate transit service in that region. Approximately 27 commenters from Washington State expressed similar concerns.

FTA Response: These comments are unfounded: FTA did not propose to eliminate any particular transit service through its proposed policy statement, and FTA does not propose to eliminate any particular transit service through this final policy statement. Moreover, FTA's final policy does not prohibit transportation that historically has qualified as tripper service. Therefore, so long as public transit authorities in these areas are complying with FTA's historical interpretation of its school bus operations regulations, FTA's final policy should not interfere with the transportation that these public transit authorities provide.

K. Alternative Policy Proposals and Amendments to 49 CFR Part 605

Some commenters offered alternative policy proposals, including amendments to 49 CFR part 605, for FTA's consideration. Specifically, some commenters proposed that FTA require an annual period of open bidding on school transportation, with bid submissions from interested parties received in April and FTA selections, based on quality and cost, in May.

Some commenters also proposed additional exemptions under 49 CFR part 605, such as exemptions for: (1) Areas with populations of less than 200,000 persons; (2) transit agencies that operate in communities without school district transportation subsidies; (3) grantees that provide service to school districts that operate some service with their own private fleets; and (4) routes serving secondary schools.

Lastly, some commenters suggested that FTA utilize a negotiated rulemaking proceeding to formulate its forthcoming proposed rule.

FTA Response: With respect to the open bidding proposal, FTA believes that such a proposal amounts to a new regulatory scheme, which FTA cannot appropriately adopt through a policy

[44] *See* Comment Number FTA–2008–0015–0184.1 (June 19, 2008).

[45] *See, e.g.*, Comment Number FTA–2008–0015–0242.1 (July 25, 2008).

[46] 49 U.S.C. 5323(f).

[47] *See* 23 CFR 771.117(c)(20) (2008).

[48] 49 U.S.C. 5323(f).

[49] 49 U.S.C. 5323(f).

statement. The proposal would require an amendment to FTA's school bus operations regulations, not its interpretation of those regulations, and FTA would have to adopt such a scheme through a rulemaking.

With respect to the proposed exemptions, FTA believes that, if adopted, these proposals would constitute substantive changes to the text of FTA's school bus operations regulations. FTA already lists a series of allowable exemptions at 49 CFR 605.11. Thus, FTA believes that it cannot appropriately consider these exemptions within the rubric of this final policy statement.

Finally, FTA believes that the comments suggesting a negotiated rulemaking fall outside the scope of this policy statement. FTA will appropriately address any comments regarding a notice of proposed rulemaking in that forum.

IV. Final FTA Policy

A. Purpose of Final FTA Policy

In the final policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations under 49 CFR part 605 in light of the Court's decision in *Rochester-Genesee Regional Transportation Authority.* FTA respects the Court's decision in the Western District of New York. However, FTA finds that the Court's decision is problematic because, if applied elsewhere in the United States, it could obstruct FTA's ability to execute and implement Congress's school bus prohibition and Congress's express intent regarding that prohibition. Therefore, FTA issues this final policy statement to clarify the status of FTA's guidance regarding its interpretation of its school bus operations regulations under 49 CFR part 605, and to resolve, for jurisdictions outside of the Western District of New York, conflicting issues between FTA's school bus operations policy and the Court's decision in *Rochester-Genesee Regional Transportation Authority.*

Additionally, FTA intends to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of ''tripper service'' and ''school bus operations,'' as well as generally to update the existing school bus regulation.

B. Tripper Service

With respect to a grantee's regularly scheduled public transportation service, FTA shall interpret the definition of ''tripper service'' under 49 CFR 605.3(b), as it historically has interpreted that definition, to allow a grantee to (1) utilize ''various fare collections or subsidy systems,'' (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. For example, a grantee may provide more frequent service on an existing route to accommodate increased student ridership before and after school. Furthermore, a grantee may alter route paths to accommodate the needs of school students by making de minimis route alterations from route paths to drop off and pick up students at stops located on school grounds or in close proximity to the schools.

FTA believes that this policy regarding its interpretation of the definition of ''tripper service'' is consistent with both the statutory language and the language of 49 CFR 605.3(b). This policy permits only the type of design or modification accommodations that FTA historically has allowed and does not represent a departure from FTA's prior guidance on this matter.

C. ''Exclusive'' School Bus Operations

To effectuate the intent of Congress when it enacted its school bus operations prohibition now codified at 49 U.S.C. 5323(f), FTA shall interpret the term ''exclusively'' in the definition of ''school bus operations'' under 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude was primarily designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public. Additionally, grantees may create new routes to serve school students and personnel if a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public.

FTA believes that maintaining this interpretation of ''exclusively'' is consistent with the legislative history on the issue and would allow FTA effectively to implement the express intent of Congress, which is to prevent unfair competition between Federally funded grantees and private school bus operators. This policy does not represent a departure from FTA's prior guidance on this matter, and is merely intended to provide FTA with additional flexibility when interpreting 49 U.S.C. 5323(f) and 49 CFR 605.3(b) and effectuating the intent of Congress.

Issued in Washington, DC on this 11th day of September 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–21601 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080225265–81165–02]

RIN 0648–AW28

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system transmitter from check–in/check–out requirements. This action reduces paperwork requirements for certain catcher/processors and motherships and changes the definitions for ''active'' period for motherships and trawl, longline, and pot gear catcher/processors. This action reduces administrative costs for both the fishing industry and NMFS.

DATES: Effective October 16, 2008.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection–of–information requirements contained in this final rule may be submitted to NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802 or the Alaska Region NMFS website at *http://alaskafisheries.noaa.gov* and by email to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council

prepared the FMPs pursuant to the Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson–Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Check–in/check–out Reports

A fish processor uses a check–in/check–out report to notify NMFS that it will participate or cease participation in a groundfish fishery. The check–in/check–out report also tells NMFS where fishing will occur (if a catcher/processor) or where groundfish will be received (if a mothership). NMFS inseason managers originally used the check–in/check–out information to monitor fishing capacity and effort. The information also was used by the United States Coast Guard to monitor catcher/processor and mothership vessel location.

According to regulations at § 679.5(h), catcher/processor and mothership operators, and shoreside processor and stationary floating processor managers must submit check–in/check–out reports on behalf of the processor. This action exempts operators of catcher/processors and motherships equipped with an operational vessel monitoring system (VMS) transmitter from submitting a check–in/check–out report to NMFS. Specifically, this action revises the text at § 679.5(h) to state that a catcher/processor or mothership that is not carrying onboard an operational VMS transmitter that meets the requirements of § 679.28(f) must submit check–in/check–out reports.

This action does not change the check–in/check–out report submission requirement for shoreside processors and stationary floating processors.

Vessel Monitoring System (VMS)

Over the past ten years, NMFS has added the requirement for VMS use in many fishery management programs to monitor vessel location. VMS transmitters combine global positioning systems and satellite communications to automatically provide precise location reports to NMFS several times each hour. NMFS requires VMS transmissions when a vessel is operating in:

- Any reporting area off Alaska while any fishery requiring VMS for which the vessel has a species and gear endorsement on its Federal Fisheries Permit is open;
- The Aleutian Islands subarea;
- The Gulf of Alaska (GOA) and mobile bottom contact gear is onboard; and
- The Central GOA Rockfish Pilot Program.

Active and Inactive Status

NMFS' current recordkeeping and reporting regulations are based on the active/inactive status of fishery participants. Processors, including motherships and trawl, longline, and pot gear catcher/processors, must record the occurrence of active and inactive periods. If inactive, a processor is required to do minimum recordkeeping and is not required to submit a check–in/check–out report. If active, a processor must submit a check–in/check–out report in addition to recording and reporting detailed catch information in logbooks and electronic and non–electronic reports.

The definition for an active period for a mothership and catcher/processor currently means ''when checked–in or processing.'' Because this action eliminates the check–in/check–out report submittal requirement for certain of the motherships and catcher/processors, these processors would not qualify as being active and therefore would not need to report catch information. Therefore, the definition for an active period must change by removing ''checked–in'' as a reason for being active.

For a catcher/processor using longline or pot gear, the definition for ''active'' status is revised at § 679.5(a)(7)(i)(D)(*1*) to describe that ''active'' status starts when all or part of the longline or pot gear is in the water. For a catcher/processor using trawl gear, the definition for ''active'' status is revised at § 679.5(a)(7)(i)(D)(*2*) to describe that ''active'' status starts when all or part of the trawl net is in the water. Further, for a mothership, the definition for ''active'' status is revised at § 679.5(a)(7)(i)(C) to describe that an ''active'' status is when a mothership is receiving or processing groundfish.

A proposed rule was published in the **Federal Register** on May 29, 2008 (73 FR 30876), and the public review and comment period closed on June 30, 2008. No comments were received, and no changes have been made to the proposed rule. Please refer to the proposed rule for more detailed background information.

Classification

The Administrator, Alaska Region, NMFS, determined that this regulatory amendment is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson–Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and no changes have been made to the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

Collection–of–Information

This rule contains a collection–of–information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under Control Number 0648–0213. Public reporting burden for the check–in/check–out report is estimated to average seven minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection–of–information. The removal of the requirement for check–in and check–out reports by catcher/processors and motherships will result in an estimated annual savings of 248 burden hours per year, $6,200 in personnel costs, and $3,928 in miscellaneous costs.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e–mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 10, 2008.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108–447.

■ 2. In § 679.5:

■ a. Paragraphs (h)(2) and (h)(3) are redesignated as paragraphs (h)(3) and (h)(4), respectively.

■ b. Paragraph (h)(2) heading and paragraph (h)(2)(i) are added.

■ c. Paragraph (h)(1)(iii) is redesignated as paragraph (h)(2)(ii).

■ d. Paragraphs (a)(7)(i)(C), (a)(7)(i)(D), and (h)(1) introductory text, and the heading for newly redesignated paragraph (h)(2)(ii) are revised.

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(7) * * *

(i) * * *

If participant is. . .	And fishing activity is. . .	An active period is. . .	An inactive period is. . .
* * * * * * *			
(C) MS	Receipt, discard, or processing of groundfish	When receiving or processing groundfish.	When not active
(D) C/P	Harvest, discard, or processing groundfish	A longline or pot gear catcher/processor is active when processing groundfish or when all or part of the longline or pot gear is in the water.	When not active
		A trawl gear catcher/processor is active when processing groundfish or when all or part of the trawl net is in the water.	When not active
* * * * * * *			

* * * * *

(h) * * *

(1) *Requirement.* Except as noted in paragraph (h)(2) of this section, the operator of a catcher/processor or mothership and the manager of a shoreside processor or stationary floating processor must submit to NMFS a check–in report (BEGIN message) prior to becoming active and a check–out report (CEASE message) for every check–in report submitted. The check–in report and check–out report must be submitted by fax to 907–586–7131, or by e–mail to *erreports.alaskafisheries@noaa.gov*.

* * * * *

(2) *Exceptions*—(i) *VMS onboard.* The operator of a catcher/processor or mothership is not required to submit to NMFS a check–in report or check–out report if the vessel is carrying onboard a transmitting VMS that meets the requirements of § 679.28(f).

(ii) *Two adjacent reporting areas.*

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[FR Doc. E8–21597 Filed 9–15–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 180

Tuesday, September 16, 2008

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.

FEDERAL TRADE COMMISSION

16 CFR Part 317

[Project No. P082900]

RIN 3084-AB12

Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007

AGENCY: Federal Trade Commission.

ACTION: Extension of period within which to submit comments in response to the Notice of Proposed Rulemaking.

SUMMARY: In a **Federal Register** notice published on August 19, 2008, the Federal Trade Commission (''Commission'' or ''FTC'') requested comment on its Notice of Proposed Rulemaking (''NPRM'') in connection with its rulemaking pursuant to Section 811 of the Energy Independence and Security Act of 2007 (''EISA''). The NPRM stated that comments must be received on or before September 18, 2008. In response to a request to extend the comment period received on September 5, 2008, the Commission has determined to extend the comment period until October 17, 2008.

DATES: Comments addressing the Market Manipulation NPRM must be received on or before October 17, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Market Manipulation Rulemaking, P082900'' to facilitate the organization of comments. Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] Comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records and other individually identifiable health information.

Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-marketmanipulationNPRM/*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-marketmanipulationNPRM/*). If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/ftc/oilgas/rules.htm*) to read the NPRM and the news release describing it.

A comment filed in paper form should include the ''Market Manipulation Rulemaking, P082900'' reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, Market Manipulation Rulemaking, P.O. Box 2846, Fairfax, VA 22031-0846. This address does not accept courier or overnight deliveries. Courier or overnight deliveries should be delivered to: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm.*) As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: James Mongoven, Deputy Assistant Director of Policy & Coordination, Bureau of Competition, Federal Trade Commission, Market Manipulation Rulemaking, P.O. Box 2846, Fairfax, VA 22031-0846, (202) 326-2879.

SUPPLEMENTARY INFORMATION: On August 19, 2008, the Commission published an NPRM[2] pursuant to the authority granted to it in Section 811 of EISA[3] to promulgate regulations prohibiting ''market manipulation'' in the petroleum industry. In the NPRM, the Commission solicited comment on a proposed Rule that would make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale:

(a) To use or employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.[4]

The NPRM requested comment on several issues, and set a deadline of

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] Federal Trade Commission, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of the Energy Independence and Security Act of 2007*, 73 FR 48317 (August 19, 2008). The NPRM was announced in a press release on August 13, 2008, available at (*http://www.ftc.gov/opa/2008/08/nprm.shtm*).

[3] 42 U.S.C. 17301.

[4] Proposed Rule, § 317.3(a)–(c). *See* Federal Trade Commission, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of the Energy Independence and Security Act of 2007*, 73 FR 48317, 48334 (August 19, 2008).

September 18, 2008, by which comments had to be received.

On September 5, 2008, the Commission received a letter from the American Petroleum Institute (''API'') requesting that the Commission extend the comment deadline in the NPRM proceeding until October 17, 2008. In its request, API advances three arguments in support of an extension of the comment period. First, API argues that it needs additional time to canvass its more than 400 members about the NPRM and to ''consolidate and present that information for the Commission's consideration.'' Second, API contends that the extension is necessary to ensure ''sufficient time for thoughtful deliberation'' about the ''many novel and complex issues'' addressed in the NPRM. Third, API opines that ''defining 'manipulation' is inherently difficult and not within the Commission's traditional antitrust or consumer protection experience,'' and thus providing additional time to commenters will yield more carefully considered comments, which will benefit the Commission as it proceeds.

Based on the arguments raised by API, the Commission believes that an extension of the initial 30-day comment period until October 17, 2008, is reasonable. The additional time should enable API and other commenters to finalize and submit detailed and thoughtful comments in response to the NPRM. Accordingly, the Commission has determined to extend the comment period set forth in the NPRM until October 17, 2008.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–21605 Filed 9–15–08: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

16 CFR Part 317

[Project No. P082900]

RIN 3084-AB12

Public Workshop Concerning Petroleum Market Manipulation Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Notice announcing public workshop.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will host a public workshop to discuss issues arising from, and comments submitted in regard to, its rulemaking proceeding concerning Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (''EISA''). In particular, the workshop will consider the desirability and scope of the proposed rule prohibiting market manipulation in wholesale petroleum markets. The Commission will publish an agenda on its website prior to the workshop.

DATES: The workshop will be held on Thursday, November 6, 2008, in Room H-432 of the Federal Trade Commission's Headquarters Building, located at 600 Pennsylvania Avenue, NW, Washington, DC 20580. Requests to participate as a panelist must comply with all applicable requirements set forth in this document and must be received by October 6, 2008. To be considered as a panelist for the workshop, interested parties must also submit a comment in response to the FTC's Notice of Proposed Rulemaking (''NPRM'') in this matter[1] by the close of the comment period on October 17, 2008.[2]

ADDRESSES: Requests to participate in the public workshop may be filed in paper form or sent via e-mail to *mmr@ftc.gov*,[3] and should refer to ''Market Manipulation Rulemaking Workshop—Request to Participate, P082900'' to facilitate organization of such requests. Requests must comply with all other applicable requirements set forth in the **SUPPLEMENTARY INFORMATION** section below and elsewhere in this document. A request to participate filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580. Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your request to participate via e-mail to: *mmr@ftc.gov*.

The workshop will be open to the public, and there is no fee for attendance. For admittance to the building, all attendees will be required to show a valid photo identification, such as a driver's license. Pre-registration is not required for attendees, but persons desiring to participate as panelists must submit a request to participate and file a comment in response to the FTC's NPRM in this matter. Members of the public and press who cannot attend in person may view a live webcast of the workshop on the FTC's website. The workshop will be transcribed, and the transcript will be placed on the public record.

The workshop venue will be accessible to persons with disabilities. If you need an accommodation related to a disability, call Carrie McGlothin at (202) 326-3388. Such requests should include a detailed description of the accommodations needed and a way to contact you if we need more information. Please provide advance notice of any needs for such accommodations.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, Bureau of Consumer Protection, Federal Trade Commission, Market Manipulation Rulemaking Workshop, P.O. Box 2846, Fairfax, VA 22031-0846; (202) 326-2452; *mmr@ftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

EISA became law on December 19, 2007.[4] Section 811 of EISA prohibits ''any person'' from directly or indirectly: (1) using or employing ''any manipulative or deceptive device or

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[1] FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 48317 (Aug. 13, 2008). The NPRM was announced in a press release on August 13, 2008, *available at* (*http://www.ftc.gov/opa/2008/08/nprm.shtm*).

[2] Specific instructions for submitting a comment are included in the NPRM. *See* 73 FR 48317. Please note that all such comments, like requests to participate, are public filings and will be placed on the public record of this proceeding, including the FTC's public website. *See* footnote 3 below for further information.

[3] Please note that your request constitutes a public filing before the Commission, and will be placed on the public record of the proceeding, including on the publicly accessible FTC website, at *http://www.ftc.gov/os/publiccomments.shtm*. Therefore, your request should not include any sensitive or confidential information. In particular, it should not include any sensitive personal information—such as any individual's Social Security Number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number—or any sensitive health information, such as medical records or other individually identifiable health information. Your request should also not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission rule 4.10(a)(2), 16 CFR 4.10(a)(2) (2008).

The Federal Trade Commission Act and other laws the Commission administers permit the collection of requests to participate in the above workshop to consider and use in this proceeding as appropriate. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals before placing requests to participate on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

[4] Public Law 110-140, *codified at* 42 U.S.C. 17001-17386.

contrivance;'' (2) ''in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale;'' (3) that violates a rule or regulation that the FTC ''may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.''[5]

On August 13, 2008, the FTC issued an NPRM seeking public comments on a proposed rule prohibiting market manipulation in the petroleum industry.[6] The proposed Rule would make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale:

(a) To use or employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

The comment period on the proposed Rule closes on October 17, 2008. The Commission has scheduled a public workshop for Thursday, November 6, 2008, to allow interested parties to discuss the proposed Rule and comments filed in response to the NPRM.

II. Issues for Discussion at the Workshop

The workshop will address the desirability and scope of the Commission's proposed Rule prohibiting market manipulation in wholesale petroleum markets. The Commission will consider the views expressed at the workshop, along with previously submitted comments, in determining the desirability of promulgating a market manipulation rule and the contours of any such rule. The issues that will be discussed include the basis for and the contours of the proposed Rule; the element of scienter and the recklessness standard proposed by the Commission to satisfy the scienter element; and the Commission's decision not to require a showing of price effects in order to establish a violation of the proposed Rule.

The Commission based its proposed Rule on Securities and Exchange Commission (''SEC'') Rule 10b-5.[7] The proposed Rule would prohibit fraud and deception in wholesale petroleum markets. At the workshop, staff will examine support for and opposition to this approach, as well as any alternatives raised in response to the NPRM. Staff will also explore the Rule 10b-5 concept of fraud and deception, including the contours of fraud and deception under securities law, and how such concepts might apply to wholesale petroleum markets.

The NPRM makes clear that the Commission anticipates requiring a showing of intent in determining whether there has been a violation of any final market manipulation rule. In the NPRM, the Commission indicated that a showing of recklessness may satisfy the intent requirement. At the workshop, staff will examine the types of evidence that could establish the requisite level of intent, with a particular focus on the evidentiary proof used to establish intent under securities law precedent. In addition, staff will explore the potential costs and benefits to industry and consumers of permitting a showing of recklessness to satisfy the intent element.

In the NPRM, the Commission noted that it does not anticipate requiring a showing of price effects as an element of a violation of any final market manipulation rule. At the workshop, staff will explore whether a showing of price effects should be required, and the advantages and disadvantages of requiring evidence of such effects. Staff also anticipates examining the kinds of direct or indirect evidence that would demonstrate price effects from manipulative or deceptive conduct in wholesale petroleum markets, including the treatment of such evidence under relevant securities law precedent.

III. Requests to Participate as Panelists

As noted earlier, parties interested in participating as panelists must submit written comments addressing the issues raised in the NPRM, in addition to a formal written request to participate in the form and manner described above. Parties must include in their request a brief statement setting forth their expertise or knowledge of the issues on which the workshop will focus, as well as their contact information, including, if available: a telephone number, facsimile number, and e-mail address to enable the FTC to notify requesters if they have been selected to participate.

FTC staff will select panelists based on the following criteria: 1) the party has expertise in or knowledge of the issues that are the focus of the workshop; 2) the party's participation would promote a balance of interests represented at the workshop; and 3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares the interests of the designator(s). Members of the general public who attend the workshop may have an opportunity to make brief oral statements presenting their views on issues raised in the NPRM. Oral statements by members of the general public will be limited on the basis of the time available and the number of persons who wish to make statements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–21604 Filed 9–15–08: 8:45 am]

BILLING CODE 6750–01–S

[5] 42 U.S.C 17301.

[6] The Commission previously issued an Advance Notice of Proposed Rulemaking (''ANPR'') in this proceeding. FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of The Energy Independence and Security Act of 2007*, 73 FR 25614 (May 7, 2008). The ANPR was announced in a press release on May 1, 2008, *available at* (*http://www.ftc.gov/opa/2008/05/anpr.shtm*).

[7] 17 CFR 240.10b-5.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0809]

RIN 1625–AA00

Safety Zone; St. Croix Coral Reef Swim, Buck Island Channel, USVI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of Buck Island Channel, St. Croix, USVI. This proposed regulation is necessary to provide for the safety of participants, marine spectators, and recreational and professional mariner traffic during the St. Croix Coral Reef Swim event. This zone is intended to restrict vessels from entering into, transiting through, or anchoring within the waters where the event will be held unless authorized by the Captain of the Port (COTP) San Juan or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 16, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0809 to the Docket Management Facility at the U.S. Department of Transportation. To avoid

duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. John Reyes of Sector San Juan, Prevention Operations Department at (787) 729–5381. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0809), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0809) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard, Sector San Juan, 5 Calle La Puntilla Street, San Juan, Puerto Rico 00901–1800 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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

This rule is required to provide for the safety of life in the Buck Island Channel during an organized swimming event. Buck Island Channel is frequented by both recreational and commercial vessels and a safety zone is necessary to maintain a safe distance between the swimmers and other users of the waterway. This rule creates a temporary regulation that will prohibit any non-participating vessel from entering the swim area without the authorization of the COTP San Juan or a designated representative.

Discussion of Proposed Rule

The proposed rule establishes a temporary safety zone on the north shore of St. Croix in Buck Island Channel. The zone includes all waters bound by a line connecting the following points: Beginning at Point 1 in position 17–44′42″N, 064–41′48″W; then north to Point 2 on Scotch Bank in position 17–45′36″N, 064–41′48″W; then east to Point 3 at Buck Island Reef National Monument Special Purpose Buoy ''J'' (LLNR 33112.1) in position 17–46′41″N, 064–38′17″W; then northeast to Point 4 on Buck Island Reef in position 17–47′24″N, 064–37′36″W; then east to Point 5 at Buck Island in position 17–47′24″N, 064–37′30″W; then south and east along the Buck Island shoreline to Point 6 in position 17–47′06″N, 064–37′24″W; then southwest to Point 7 at Coakley Bay in position 17–45′36″N, 064–38′24″W; then west along the St. Croix shoreline to origin. All non-participating persons and vessels are prohibited from entering the regulated area without permission from the COTP San Juan or a designated representative. This proposed rule would be effective from 6 a.m. through 1 p.m. on October 19, 2008.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

This rule may have an impact on the marine public, but these potential impacts will be minimized for the following reason: There is ample room for vessels to navigate around the proposed safety zone. Also, the Captain of the Port San Juan may, on a case-by-case basis, allow persons or vessels to enter the proposed safety zone.

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 rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit Buck Island Channel, St. Croix, USVI. This proposed regulation will not have a significant impact on a substantial number of small entities for the following reasons: (1) the event will occur on a Sunday, when no or small numbers of vessels transit Buck Island Channel, St. Croix, USVI; (2) small vessel traffic would be able to safely transit around the safety zone.

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. John Reyes of Sector San Juan, Prevention Operations Department at (787) 729–5381. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES** . We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07–0809 to read as follows:

§ 165.T07–0809 Safety Zone; St. Croix Coral Reef Swim, Buck Island Channel, USVI.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the navigable waters of Buck Island Channel for the annual St. Croix Coral Reef Swim. The zone includes all waters bound by a line connecting the following points: Beginning at Point 1 in position 17–44′42″N, 064–41′48″W; then north to Point 2 on Scotch Bank in position 17–45′36″N, 064–41′48″W; then east to Point 3 at Buck Island Reef National Monument Special Purpose Buoy ''J'' (LLNR 33112.1) in position 17–46′41″N, 064–38′17″W; then northeast to Point 4 on Buck Island Reef in position 17–47′24″N, 064–37′36″W; then east to Point 5 at Buck Island in position 17–47′24″N, 064–37′30″W; then south and east along the Buck Island shoreline to Point 6 in position 17–47′06″N, 064–37′24″W; then southwest to Point 7 at Coakley Bay in position 17–45′36″N, 064–38′24″W; then west along the St. Croix shoreline to origin. Reference Datum is NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in this zone is prohibited unless specifically authorized by the COTP San Juan or a designated representative. Coast Guard Sector San Juan will issue broadcast notice to mariners to advise mariners of this zone. Persons and vessels may request permission to enter the safety zone on VHF–FM Channel 16 or via telephone at (787) 289–2041.

(d) *Dates.* This rule is effective from 6 a.m. through 1 p.m. on October 19, 2008.

Dated: August 14, 2008.

J.M. Nunan,

Captain, U.S. Coast Guard, Acting Captain of the Port San Juan.

[FR Doc. E8–21555 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0912]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a discharge barge located at National Harbor, in Prince Georges County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: Comments and related material must reach the Coast Guard on or before October 16, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0912 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: http://www.regulations.gov.

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at 410–576–2674 or 410–576–2693. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0912), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0912) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding

our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The accidental discharge of fireworks and falling hot embers or other debris are a safety concern during such events. The Coast Guard has the authority to impose appropriate controls on marine events that may pose a threat to persons, vessels and facilities under its jurisdiction. The purpose of this rule is to promote maritime safety, and to protect mariners transiting the area from the potential hazards associated with a fireworks display. The rule is needed to ensure the safety of the maritime public in a portion of the waterway that is expected to be populated by vessel operators and persons seeking to view the fireworks display, as well as mariners operating unknowingly too close to the fireworks discharge site.

Discussion of Proposed Rule

On November 28, 2008, The Peterson Companies at National Harbor, in Prince Georges County, Maryland, will sponsor a fireworks display in support of the National Harbor Holiday Tree Lighting Celebration. The ten-minute aerial display will be launched by Pyrotechnico, Inc. from a fireworks discharge barge located on the Potomac River at 8 p.m. Due to the need for vessel control during the fireworks display, vessel traffic will be restricted to provide for the safety of spectators and transiting vessels.

The Captain of the Port Baltimore, Maryland is proposing to establish a safety zone that will be enforced during the fireworks display held over the Potomac River, at National Harbor, Maryland. This proposed rule establishes a safety zone on the Potomac River, an area approximately 700 yards long and 500 yards wide, within an area bounded by a line drawn from the following points: latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland. The proposed rule will impact the movement of all vessels operating in a specified area of the Potomac River, from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is little commercial vessel traffic during the enforcement period. Because the safety zone lies entirely outside the federal navigation channel, vessel operators may transit safely around the zone.

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 rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, remain or anchor within certain waters of the Potomac River, at National Harbor, Maryland, from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008. Because the zone is of limited duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected area. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

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 Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIATION 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, 3306, 3703; 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 temporary § 165.T05–0912 to read as follows:

§ 165.T05–0912 Safety zone; Fireworks Display, Potomac River, National Harbor, MD

(a) Definitions. For the purposes of this section, *Captain of the Port Baltimore*, Maryland means the Commander, Coast Guard Sector Baltimore 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) Regulated Area. The following area is a safety zone: All waters of the Potomac River, surface to bottom, within an area bounded by a line drawn from the following points: Latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland. All coordinates reference North American Datum 1983.

(c) Regulations:

(1) The general regulations governing safety zones, found in 33 CFR 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port Baltimore, Maryland 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 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 person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port Baltimore, Maryland.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Enforcement period. This rule is effective from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008.

Dated: August 28, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E8–21551 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1043; FRL–8712–9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove certain revisions to the State of Michigan's prevention of significant deterioration (PSD) State Implementation Plan (SIP), and in the alternative to approve the revisions if the deficiencies in the rules involved are corrected, as proposed by Michigan, and approved by EPA. These revisions are included in Michigan Rule R 336.2816, and set out the mechanisms which facilitate the participation of a potentially affected Federal Land Manager (FLM) in the State's permitting process for purposes of protecting either the increment or the Air Quality-Related Values (AQRVs) associated with a Class I area from potential impacts from a proposed major source or major modification. The Michigan Department of Environmental Quality (MDEQ) submitted these revisions as part of the SIP package on December 21, 2006. In a separate action in today's **Federal Register**, EPA is conditionally approving all other portions of Michigan's PSD SIP revision submission.

DATES: Comments must be received on or before October 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1043, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: blakley.pamela@epa.gov.*
- *Fax:* (312)886–5824.
- *Mail:* Pamela Blakley, Chief, Air Permits Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Pamela Blakley, Chief, Air Permits Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–1043. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by 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 U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Laura Cossa, Environmental Engineer, at (312) 886–0661 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Laura Cossa, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0661, *cossa.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Should I Consider as I Prepare My Comments for EPA?
II. What Is Being Addressed in This Document?
III. What Are the Changes That EPA Is Proposing To Disapprove and To Approve?
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. What Should I Consider as I Prepare My Comments for EPA?

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What Is Being Addressed in This Document?

MDEQ submitted Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) (''Part 18'') to EPA on December 21, 2006, for EPA approval and inclusion into the Michigan SIP. Part 18 relates to Michigan's PSD permit program. Michigan adopted revisions to Part 18 on December 4, 2006. Prior to approval of Michigan's submitted PSD program, EPA delegated to Michigan

(via delegation letter dated September 26, 1988) the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21.

On January 9, 2008, EPA proposed to conditionally approve Michigan's PSD SIP rules under section 110 of the Clean Air Act (CAA). (73 FR 1570, January 9, 2008). During the public comment period, EPA received a number of comments on our proposal. A summary of the comments and our answers are included in a separate action published in today's **Federal Register**, in which EPA is conditionally approving the remainder of the SIP submittal.

Michigan Rule R 336.2816 is based on 40 CFR 51.166(p)(1)–(7), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification.

EPA has determined that Michigan Rule R 336.2816, as submitted, is not consistent with 40 CFR 51.166(p). Specifically, Michigan Rule R 332.2816(2)(a) does not include the requirements of 40 CFR 51.166(p)(3), under which a plan must provide a mechanism whereby the FLM may present to the state a demonstration of adverse impacts to AQRVs from a proposed source or modification, notwithstanding that the change in air quality resulting from this proposed source or modification would not cause or contribute to an exceedence of the maximum allowable increase for the Class I area. In such cases, where the state concurs with the FLM's demonstration, the State does not issue a permit. Additionally, EPA sought clarification from the State as to how it planned to implement certain State rules corresponding to the variance provisions contained in 40 CFR 51.166(p)(4), (5), and (6).

On November 30, 2007, in a letter from Steven Chester, Director, MDEQ, to the Regional Administrator, Michigan committed, among other things, to making changes to Michigan Rule R 336.2816 consistent with the requirements at 40 CFR 51.166(p). Based on this commitment, EPA proposed to conditionally approve Michigan Rule R 336.2816.

During the comment period, commenters raised concerns that, insofar as Michigan Rule R 336.2816 does not fully implement the regulatory mechanism by which an FLM may participate in the State's permitting process, EPA should act to ensure that the SIP contains these requirements until such time as the State promulgates consistent regulations.

Because Michigan currently implements the Federal PSD program under EPA's delegation of 40 CFR 52.21, a conditional approval of Michigan Rule R 336.2816 would have made the Michigan SIP less stringent than the currently applicable, Federally delegated program. Therefore, EPA is proposing to disapprove Michigan's submittal as it relates to Michigan Rule R 336.2816. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and those rules are approved into its SIP. Retention of the delegated program until such time as Michigan promulgates and EPA approves a corrective rule will ensure that the provisions of 40 CFR 51.166(p) will continue to apply, thereby avoiding any regulatory gap, and ensuring full participation of the FLM, as appropriate, in State permitting decisions.

In the alternative, EPA is proposing to approve Michigan's revised Michigan Rule R 336.2816 if the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p). In its letter to EPA dated November 30, 2007, Michigan has committed to make this revision to its rule.

Michigan is not authorized to carry out its Federally approved air program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes: 1. All lands within the exterior boundaries of Indian reservations within the State of Michigan; 2. Any land held in trust by the U.S. for an Indian tribe; and 3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the CAA program in Indian Country.

III. What Are the Changes That EPA Is Proposing To Disapprove and To Approve?

EPA is proposing to disapprove the following section of ''Part 18, Prevention of Significant Deterioration of Air Quality'' of Michigan's Air Pollution Control Rules: ''R 336.2816, Sources Impacting Federal Class I Areas—additional requirements.'' In the alternative, EPA is proposing to approve this same section of Michigan's Rule R 336.2816, if the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p), as Michigan has committed to do in its letter to EPA dated November 30, 2007.

IV. What Action Is EPA Taking?

For reasons stated above, EPA is proposing to disapprove certain revisions to Michigan's SIP, specifically Michigan Rule R 336.2816, Sources Impacting Federal Class I Areas; additional requirements. EPA is, in the alternative, proposing to approve Michigan Rule R 336.2816 when the rule is revised to meet the requirements set forth in Federal rule 40 CFR 51.166(p), as Michigan has committed to do in its letter to EPA dated November 30, 2007.

What Is the Effect of the Proposed Disapproval?

Under section 110(k)(3) of the CAA, EPA may fully approve or disapprove a State submittal. Where portions of the State submittal are separable, EPA may approve portions of the submittal that meet the requirements of the CAA, and disapprove the portions of the submittal that do not meet the requirements of the CAA. (57 FR 13566, April 16, 1992.) Elsewhere in today's **Federal Register**, EPA is conditionally approving the remaining elements of the State's December 21, 2006 submittal. Under today's proposed disapproval, Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) to administer Michigan Rule R 336.2816 until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and these rules are approved into its SIP.

What Is Our Basis for Proposed Disapproval of Michigan's Rules?

The State's current Michigan Rule R 336.2816 is not consistent with 40 CFR 51.166(p), which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification.

What Is Our Basis for Proposed Approval of Michigan's Rules?

The State has committed to revise current Michigan Rule R 336.2816, which sets out the mechanisms which facilitate the participation of the FLM in the State's permitting process for purposes of protecting either the increment or the AQRVs associated with a Class I area from potential impacts from a proposed major source or major modification, by promulgating rules equivalent to 40 CFR 51.166(p). The State has formalized this commitment in a letter to EPA dated November 30, 2007. EPA has reviewed the State's proposed regulatory changes and has

made a preliminary determination that they are consistent with 40 CFR 51.166(p). Once properly promulgated by the State, EPA proposes to approve them into the State's SIP. A copy of the proposed revised rules can be seen at *http://www.regulations.gov* (add the docket number EPA–R05–OAR–2007–1043 to Advanced Docket Search option). If Michigan submits these revised rules to EPA for final approval, EPA plans to finalize the approval without an additional comment period. Any party interested in commenting on whether Michigan's proposed revision to Michigan Rule R 336.2816 meets the requirements of 40 CFR 51.166(p) should do so during the comment period on this action.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed 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.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed 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.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

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 proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed 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). Nevertheless, EPA anticipates providing outreach to tribes located in Michigan and other potentially affected areas regarding this proposed rulemaking.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed 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 proposes approval of a state rule implementing a Federal standard.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' 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).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the CAA. Therefore, the requirements of section 12(d) of the NTTAA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 25, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

[FR Doc. E8–21620 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0603; FRL—8713–7]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Approval of Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the New Orleans Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve this revision to the Louisiana State Implementation Plan (SIP) concerning the maintenance plan addressing the 1997 8-hour ozone standard for the New Orleans Ozone Maintenance Area. On June 29, 2007, the State of Louisiana submitted a maintenance plan for the New Orleans Ozone Maintenance Area, which includes the parishes of Jefferson, Orleans, St. Bernard and St. Charles, which ensures continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2014. This maintenance plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Federal Clean Air Act (CAA). On March 12, 2008, EPA issued a revised ozone standard. Today's action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the New Orleans area under the 2008

standard will be addressed in future actions.

DATES: Written comments must be received on or before October 16, 2008.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164; fax number 214–665–7263; e-mail address *belk.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: August 29, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–21202 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0836–200739(b); FRL–8714–9]

Approval and Promulgation of Implementation Plans; Florida; Removal of Gasoline Vapor Recovery From Southeast Florida Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Florida (Florida) on May 31, 2007, for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Dade, Broward, and Palm Beach Counties (hereafter referred to as the ''Southeast Florida Area''), and to phase out Stage II requirements for existing facilities in those counties. In addition, EPA is proposing to approve this SIP revision which would require new and upgraded gasoline dispensing facilities and new bulk gasoline plants statewide to employ Stage I vapor control systems, and would phase in Stage I vapor control requirements statewide for existing gasoline dispensing facilities.

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 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 October 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0836, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lesane.heidi@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2007–0836,'' 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:* Heidi LeSane, 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. 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: Heidi LeSane, 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) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: August 29, 2008.

Russell L. Wright, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8–21304 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 505

[GSAR Case 2008–G503; Docket 2008–0007; Sequence 18]

RIN 3090–AI71

General Services Acquisition Regulation; GSAR Case 2008–G503; Rewrite of GSAR Part 505, Publicizing Contract Actions

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language that provides requirements for publicizing contract actions.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before November 17, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G503 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2008–G503'' under the heading *''Comment or Submission''*. Select the link *''Send a Comment or Submission''* that corresponds with GSAR Case 2008–G503. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2008–G503'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008–G503 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Cecelia Davis at (202) 219–0202. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G503.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing GSAR 505 Publicizing Contract Actions, Subpart 505.1 Dissemination of Information, Subpart 505.2 Synopses of Proposed Contract Actions, and 505.5 Paid Advertisements. This rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the GSAR portion of Part 505. Currently, Subparts 505.1, 505.2 and 505.5 are identified as ''shaded'' for regulatory coverage; however, the agency has deemed, during the rewrite process, these Subparts as non-regulatory because the coverage addresses internal agency acquisition policy. These Subparts have been revised and will be moved to the non-regulatory portion of the GSAM.

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910, February 15, 2006.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Part 505 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G503), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 505

Government procurement.

Dated: August 27, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, under the authority of 40 U.S.C. 121(c), GSA proposes to remove 48 CFR part 505.

PART 505—[REMOVED]

[FR Doc. E8–21121 Filed 9–15–08; 8:45 am]

BILLING CODE 6820–61–S

Notices

Federal Register

Vol. 73, No. 180

Tuesday, September 16, 2008

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

Food Safety and Inspection Service

[Docket No. FSIS–2008–0007]

Revised FSIS Testing Methodology for Escherichia coli (E. coli) O157:H7

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that, since January 28, 2008, its laboratories have implemented a revised laboratory methodology for detecting and identifying *E. coli* O157:H7 in regulatory verification samples. This new method can be found in the *Microbiology Laboratory Guidebook* (MLG), Chapter 5.04.

DATES: Submit comments by November 17, 2008.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search Documents'' box type the docket number, FSIS–2008–0007. After accessing the docket, click on ''Send a Comment or Submission.''
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, 1400 Independence Avenue, SW., Room 2534 South Building, Washington, DC 20250.

All submissions received must include the Agency name and docket number FSIS–2008–0007.

All comments submitted in response to this notice will be posted to Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2008_Notices_Index/index.asp*. Individuals who do not wish FSIS to post their personal contact information—mailing address, e-mail address, telephone number—on the Internet may leave this information off of their comments. Comments will also be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information contact William K. Shaw, Jr., Ph.D., Office of Policy and Program Development, FSIS, USDA, Room 3533, South Building, 14th and Independence, SW., Washington, DC 20250–3700; Telephone (202) 205–0695, Fax (202) 720–7027, *E-mail: william.shaw@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FSIS' revised laboratory methodology for detecting and identifying *E. coli* O157:H7 in regulatory verification samples can be found in the *Microbiology Laboratory Guidebook* (MLG), Chapter 5.04 protocol, now available on the FSIS Web site at the following URL: *http://www.fsis.usda.gov/Science/Microbiological_Lab_Guidebook/index.asp*. The revised MLG 5.04 describes the use of an improved enrichment broth and confirmatory identification procedures for *E. coli* O157:H7. The revisions to the protocol include an updated limit of the level at which *E. coli* O157:H7 can be detected for various products, and new instructions for preparing sub-samples of beef manufacturing trimmings and other ground beef components, and for preparing environmental sponge samples for *E. coli* O157:H7 analysis.

In recent months, FSIS, in collaboration with the USDA Agricultural Research Service, has conducted an extensive validation of an enrichment broth, mTSB+n (also known as Modified Tryptone Soya Broth with Novobiocin and casamino acids or Modified Trypticase Soy with Novobiocin and casamino acids) to replace the broth that it had been using for detection of *E. coli* O157:H7. This broth has been found to support more rapid growth of *E. coli* O157:H7 than the mEC+n broth that FSIS laboratories have been using in past years. Moreover, the mTSB+n broth is cost-effective and is used by many laboratories around the world for detection of *E. coli* O157:H7.

The use of mTSB+n will allow FSIS laboratories greater flexibility in the conducting of screening test procedures because it allows for greater flexibility in incubation time than does the broth FSIS previously used. Also, for some samples, its use will allow screening tests to be conducted earlier on the second day of analysis because the incubation period using this broth can be less than the broth FSIS previously used. The ability to conduct screening test procedures earlier can assist in more efficient laboratory staffing. Use of the replacement enrichment broth will also allow FSIS to obtain results faster for some samples. In addition, its use will reduce the number of samples that need to be discarded when there are shipping problems that delay the arrival of samples.

Based on testing with inoculated samples, FSIS believes the new enrichment procedure is likely to provide increased sensitivity for detection in some samples. Therefore, there may be some increase in the number of *E. coli* O157:H7-positive samples found by FSIS laboratories.

FSIS is also implementing new technologies to make its confirmatory identification testing procedures more robust and comprehensive for accurately identifying *E. coli* O157:H7, including variant strains that react in an atypical manner. Because serological testing procedures may not provide reliable identification for some strains of *E. coli* O157:H7, the revised protocol in the MLG 5.04 includes the use in FSIS laboratories of genetic testing to determine ''O157'' and ''H7'' identity in circumstances where atypical serology or other reactions are encountered. FSIS will use genetic testing to determine if the *E. coli* isolate is positive for Shiga toxin production, positive for the Shiga toxin gene, or genetically determined to be ''H7''.

Since January 28, 2008, FSIS laboratories have been using the following terminology and criteria in the MLG 5.04 in reporting *E. coli* O157:H7 sample results:

- *Potential Positive*—a sample that causes a positive reaction with the screen test.
- *Presumptive Positive*—a sample that has typical colonies, observed on

Rainbow Agar, and reacts specifically with O157 antiserum.

• *Confirmed Positive*—a biochemically-identified *Escherichia coli* isolate that is serologically or genetically determined to be ''O157'' that meets at least one of the following criteria:

(1) Positive for Shiga toxin (ST) production
(2) Positive for the Shiga toxin gene (stx)
(3) Genetically determined to be ''H7''

If an FSIS laboratory's confirmatory test results are insufficient to allow identification of *E. coli* O157:H7, then the isolate is transferred to the Outbreaks Section of the Eastern Laboratory Microbiology Branch (OSEL), or to an FSIS reference laboratory, for further testing prior to issuance of a report of the test results.

State Programs and Foreign Government Programs

States that have their own meat inspection programs for meat products produced and transported solely within the State are required to have mandatory ante mortem and post mortem inspection, reinspection, and sanitation requirements that are at least equal to those in the Federal Meat Inspection Act (21 U.S.C. 661(a)(1)). Therefore, these States' sampling procedures and testing methods for *E. coli* O157:H7 in raw beef products must be at least as sensitive as FSIS' procedures and testing methods for *E. coli* O157:H7.

Foreign countries that are eligible to export meat products to the United States must apply inspection, sanitary, and other standards that are equivalent to those that FSIS applies to those products (21 U.S.C. 620). Thus, in evaluating a foreign country's meat inspection system to determine the country's eligibility to export products to the United States, FSIS considers whether the testing methods and procedures for *E. coli* O157:H7 that the country applies are equivalent to those that FSIS uses.

Establishment Testing or Testing on Behalf of Establishments (Non-FSIS Laboratories)

As discussed above, FSIS will use genetic testing to determine ''O157'' and ''H7'' identity in circumstances where atypical serology or other reactions are encountered. The genetic testing now used by FSIS laboratories for identification of certain strains of *E. coli* O157:H7 detected in FSIS laboratories may pose some difficulties for non-FSIS laboratories. Some non-FSIS laboratories may not be able to conduct genetic analyses because they do not have the necessary resources. Moreover, the improper application of a less robust or inadequately validated genetic test by a laboratory might lead to a false negative or other misleading results.

FSIS believes that alternative criteria for confirmatory identification of *E. coli* O157:H7 or *E. coli* O157:H7-like bacteria may be appropriate if it is equivalent to the criteria used by FSIS. To be regarded as equivalent to the FSIS criteria, a test would have to detect all hypothetical *E. coli* O157:H7 strains, typical or variant, that would be identified using FSIS' confirmatory testing procedures and criteria.

For establishment testing or testing on behalf of an establishment, FSIS recognizes that other criteria, while not used specifically by FSIS for identification of *E. coli* O157:H7, may be a significant and expedient indicator of the presence of *E. coli* O157:H7 in products. Such tests might be applied as rapid screening procedures to expedite analyses. If an establishment uses or contracts with a laboratory that uses such rapid screening procedures, and product is found positive by that test, FSIS expects the establishment to take appropriate corrective action and to ensure the proper disposition of adulterated products following a positive test result (9 CFR 417.3).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS' policies, procedures, regulations, **Federal Register** notices, public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Information is available about a variety of topics including recalls, exports, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and they have the option to password protect their accounts.

Done at Washington, DC, on September 4, 2008.

Alfred V. Almanza,

Administrator.

[FR Doc. E8–21575 Filed 9–15–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Supplemental Notice of a Meeting.

SUMMARY: The Manufacturing Council will hold a meeting to deliberate for approval a draft letter of recommendation on Sustainable Manufacturing metrics.

DATES: September 23, 2008.

TIME: 4 p.m. (EDT).

ADDRESSES: Louise Slaughter Building Conference Room 2120, Rochester Institute of Technology, Center for Integrated Manufacturing Studies, 111 Lomb Memorial Drive, Rochester, NY 14623.

FOR FURTHER INFORMATION, CONTACT: The Manufacturing Council Executive Secretariat, Room 4043, Washington, DC 20230 (*Phone:* 202–482–1369), or visit the Council's Web site at *http://www.manufacturing.gov/council*.

Dated: September 11, 2008.

Kate Sigler,

Executive Secretary, The Manufacturing Council.

[FR Doc. E8–21572 Filed 9–11–08; 4:15 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK41

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting, public hearing, and scoping meetings.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September and October 2008. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public. A public hearing and scoping meetings will be held in conjunction with the AP meeting.

DATES: The AP meeting will be held from 1 p.m. to 6 p.m. on Tuesday, September 30, 2008, from 8:30 a.m. to 6 p.m. on Wednesday, October 1, 2008; and from 8:30 a.m. to 12 noon on Thursday, October 2, 2008. See **SUPPLEMENTARY INFORMATION** for public hearing and scoping meeting dates, times, and locations.

ADDRESSES: All meetings will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Chris Rilling at 301–713–2347.

SUPPLEMENTARY INFORMATION: The Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on: the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), Amendment 1 to the Billfish FMP (April 1999), the Consolidated HMS FMP (October 2006), and Amendments 1 and 2 to the Consolidated HMS FMP (April 2008). The September and October 2008 AP meeting will focus on conservation and management options for Atlantic tunas, swordfish, billfish, and sharks. NMFS is considering several amendments to the 2006 Consolidated HMS FMP, including an amendment to update essential fish habitat, an amendment to rebuild blacknose sharks which are overfished with overfishing occurring, and an amendment to improve permitting and reporting and address other relevant management issues in Caribbean HMS fisheries. As listed in the table below, NMFS will hold a public hearing and scoping meetings to receive comments from the AP and members of the public.

Public Hearing and Scoping Meetings	Date	Location
Public hearing for Essential Fish Habitat Draft Amendment 1 to the Consolidated HMS FMP	September 30, 2008; 3:30–4:30 p.m.	Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910
Scoping meeting for Small Coastal Shark Draft Amendment 3 to the Consolidated HMS FMP	October 1, 2008; 3:30–4:30 p.m.	Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910
Scoping meeting for Caribbean Draft Amendment 4 to the Consolidated HMS FMP	October 2, 2008; 8:30–9:30 a.m.	Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman at (301) 713–2347, at least 7 days prior to the meeting.

Dated: September 11, 2008.

James P. Burgess

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

[FR Doc. E8–21596 Filed 9–15–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK34

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Target and Missile Launch Activities at San Nicolas Island, CA

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization for the take of marine mammals incidental to vehicle launches from San Nicolas Island (SNI), California, for the period 2009 2014. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than October 16, 2008.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648XK34@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext. 156.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (**ADDRESSES**), telephoning the contact listed above (**FOR FURTHER INFORMATION CONTACT**), or visiting the internet at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's Final Environmental Impact Statement (FEIS) for the Point Mugu Sea Range was made available to the public in March, 2002. To obtain a copy of the FEIS, contact Steven Schwartz, Naval Air Warfare Center Weapons Division (NAWCWD), via email at *steven.schwartz@navy.mil*.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on

the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With respect to military readiness activities, the MMPA defines ''harassment'' as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On September 3, 2008, NMFS received an application from the Navy requesting authorization for the take of three pinniped species incidental to vehicle launches to be conducted from the western part of SNI (see pages 3–4 of the application), over the course of 5 years. These activities are classified as military readiness activities. The Navy plans to launch up to 40 vehicles from SNI per year, with up to 10 launches per year during nighttime hours. The Navy states that these activities may have both acoustic and non-acoustic effects on pinnipeds. Aircraft and helicopter flights between the Pt Mugu airfield on the mainland, the airfield on SNI, and the target sites in the Sea Range will be a routine part of a planned launch operation. These flights generally do not pass at low levels over the beaches where pinnipeds are expected to be hauled out. The Navy requests authorization to take three species of pinnipeds by Level B Harassment: harbor seals, northern elephant seals, and California sea lions. Injury or mortality is unlikely during launch activities, and take by Level A harassment (including injury) or mortality is not requested in the Navy's application.

Specified Activities

The Navy issued a FEIS, which analyzed the effects on the human environment of implementing their preferred alternative (among other alternatives), which includes conducting five general categories of tests to evaluate sea, land, and air weapons systems (i.e., air-to-air tests, air-to-surface tests, surface-to-air tests, surface-to-surface tests, and subsurface-to-surface tests) and three general categories of training (i.e., fleet training exercises, small-scale amphibious warfare training, and special warfare training). NAWCWD plans to continue a launch program for missiles and targets from several launch sites on SNI, the purpose of which is to support test and training activities associated with operations on the NAWCWD Point Mugu Sea Range.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (**ADDRESSES**). All information, suggestions, and comments related to the Navy's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy on SNI will be considered by NMFS in developing regulations governing the issuance of letters of authorization.

Dated: September 10, 2008.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–21598 Filed 9–15–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New Collection.

Title: The Evaluation of the Implementation of the Rural and Low Income Schools (RLIS) Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 666.

Burden Hours: 250.

Abstract: This OMB package requests clearance for data collection instruments to be used in the Evaluation of the Implementation of the Rural and Low-Income Schools (RLIS) Program which will be administered by Berkeley Policy Associates (BPA). The purpose of the study is to obtain information useful

to the management and improvement of the RLIS program. In particular, the study will obtain information that will be used for preparing the Biennial Report to Congress on the RLIS program (mandated by Section 6224(c) of Title VI, Part B of the Elementary and Secondary Education Act), providing information for the next Office of Management and Budget (OMB) Program Assessment Rating Tool (PART), and providing context and greater depth of understanding when reporting on Government Performance and Results Act (GPRA) measures.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3760. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*, 540–776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–21520 Filed 9–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 11, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.

Title: Application for Grants under the State Charter School Facilities Incentive Grants Program.

Frequency: Semi-Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12. Burden Hours: 4,800.

Abstract: The Department of Education will use the application to award grants under the State Charter School Facilities Incentive grants Program. These grants are made to States to provide them with an incentive to create new or enhance existing per-pupil facilities aid programs for charter schools.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3715. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 202–401–1097. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–21595 Filed 9–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested

Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 11, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New Collection.

Title: Targeted Evaluations of State Vocational Rehabilitation (VR) Agency Practices.

Frequency: Other: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 100.

Abstract: The Rehabilitation Services Administration (RSA) is sponsoring a 24-month study entitled, ''Targeted Evaluation of State Vocational Rehabilitation (VR) agency practices'', which will collect information about VR agency practices in several areas. As part of the study, RSA plans to conduct a one-time survey of state VR agencies to collection information about their use of quality assurance procedures and third-party cooperative arrangements. The study will identify promising practices, analyze the effects of specific practices on VR program outcomes and consumers served, and provide information to assist RSA in its efforts to help state agencies ensure effective and efficient delivery of VR services. (A third topic included in the study will be addressed though other activities.)

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3756. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* 202–401–1097. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–21602 Filed 9–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 17, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Michaela Martin, Oak Ridge National Laboratory, P.O. Box 2008, MS–6070, Oak Ridge, TN 37831–6070 or by fax at 865–241–4152, or by e-mail at *martinma@ornl.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michaela Martin using the contact information listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* New; (2) *Package Title:* Save Energy Now Voluntary Pledge Report; (3) *Type of Review:* New; (4) *Purpose:* The Department of Energy is authorized to enter into voluntary agreements with U.S. industry under section 106 of the Energy Policy Act of 2005 (42 U.S.C. 15811). Data will be collected from industry pledge participants, annually, on progress made towards the reduction of energy intensity goals established by the voluntary agreements. The data collected will be used to evaluate the success of the voluntary agreements and to report results to Congress; (5) *Respondents:* 240; (6) *Estimated Number of Burden Hours:* 720.

Statutory Authority: Pub. L. No. 109–58, 42 U.S.C. 15811.

Issued in Washington, DC, on September 8, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–21570 Filed 9–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13272–000]

Alaska Village Electric Cooperative; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 10, 2008.

On August 6, 2008, Alaska Village Electric Cooperative filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Old Harbor Hydroelectric Project (Old Harbor). Old Harbor would be located on the east fork of Mountain Creek, in Kodiak Island Borough, Alaska.

The proposed Old Harbor project would consist of: (1) A 4-foot-high, 30-foot-long concrete diversion; (2) a proposed 6,200-foot-long, varying in diameter from 16-inches to 12-inches steel penstock; (3) a proposed powerhouse containing a 300-kilowatt generator; (4) a proposed tailrace; (5) a proposed 10,700-foot-long transmission line; and appurtenant facilities. The Old Harbor Hydroelectric Project is estimated to have an annual generation of 2.2-gigawatt-hours, which would be sold to a local utility.

Applicant Contact: Mr. Brent Petrie, Alaska Village Electric Cooperative, 4831 Eagle Street, Anchorage, AK 99503; phone (907) 565–5358.

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13272) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21585 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 9, 2008.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2210–179.

c. *Date Filed:* August 22, 2008.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Lake Hydroelectric Project.

f. *Location:* The project is located in Pittsylvania, Bedford, Franklin, and Roanoke Counties, Virginia. The proposed action would occur in Bedford County just north of the town of Kasey along Craddock Creek.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Ms. Elizabeth Parcell, Appalachian Power Company, 996 Old Franklin Turnpike, Rocky Mount, VA 24151, phone: (540) 489–2540.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: christopher.yeakel@ferc.gov.

j. *Deadline for filing comments and or motions:* October 10, 2008.

k. *Description of Request:* Appalachian Power Company requests approval to permit Mr. Donnie Crist to dredge approximately 489 cubic yards of sediment from the area around a private boat dock. The dredge area would include the area around and beneath the dock and would extend approximately 150 feet from the dock into the main channel of the cove. The dimensions of the dredge area would be about 150 feet by 62 feet. The dredged material will be deposited on upland property outside of the project boundary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing 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 field (p–2210) to access the document. 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, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–2210–179). All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21541 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–180]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 10, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license (for variance of minimum flow release).

b. *Project No.:* 2210–180.

c. *Date Filed:* August 25, 2008.

d. *Applicant:* Appalachian Power Company (licensee).

e. *Name of Project:* Smith Mountain Pumped Storage Hydroelectric Project.

f. *Location:* On the Roanoke River, in Bedford, Campbell, Franklin, Pittsylvania, and Roanoke counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Teresa P. Rogers, Process Supervisor I, Appalachian Power Company, P.O. Box No. 2021, Roanoke, VA. 24022. Telephone (540) 985–2441.

i. *FERC Contact:* CarLisa Linton-Peters, Telephone (202) 502–8416; e-mail: *carlisa.linton-peters@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protests: October 24, 2008.*

Please include the project number (P–2210) on any comments or motions filed. All documents (an original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper filings, 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Appalachian Power Company (licensee) is requesting modifications to and an extended continuance of its current 45-day temporary variance of the minimum flow release requirement under license article 29 for the Smith Mountain Pumped Storage Hydroelectric Project. As a result of sustained low inflow conditions at the project and the need to conserve water, Appalachian Power Company, after consultation with state resource agencies and stakeholders, requests that it be allowed to modify and continue a temporary flow variance under several modifying conditions (see licensee's request filed August 25, 2008), until Smith Mountain Lake returns to normal operating conditions (an adjusted elevation of 795.0 feet).

Concurrent with this notice, the Commission granted the licensee's requests (see Order Granting Temporary Amendment of Minimum Flow Requirement per Article 29, Project No. 2210–177 and –180), but reserved authority to require changes to project operation based upon comments received from this public notice.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371, or (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov*, for TTY, call (202) 502–8659. A copy of this filing is also available for inspection and reproduction at the address listed in item (h) above.

m. *Mailing list:* Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments (see item (j) above), it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper filings. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21586 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 9, 2008.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2413–107.

c. *Date Filed:* August 14, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Hydroelectric Project.

f. *Location:* The project is located in Putnam, Morgan, Oconee, Oglethorpe, Greene, and Hancock Counties, Georgia. The proposed action would occur in Greene County just north of U.S. Highway 278 along the westerly shore of Lake Oconee.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Lee Glenn, Lake Resources Manager, Georgia Power Company, Bin 45020, 125 Wallace Dam Road NE., Eatonton, Georgia 31024, telephone: 706–485–8704.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov*.

j. *Deadline for filing comments and or motions:* October 10, 2008.

k. *Description of Request:* Georgia Power Company requests approval to permit Lake Oconee Associates, to dredge approximately 20,586 cubic yards of sediment from the bed of Lake Oconee. The dredging would occur within the main channel of the lake along approximately 10,000 linear-feet of shoreline. The dredge spoil would be stored, stabilized, and eventually used as fill at a location outside of the project boundary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing 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 field (p-2413) to access the document. 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, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p-2413–107). All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21538 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 516–459]

South Carolina Electric & Gas Company; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

September 10, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–516–459.

c. *Date Filed:* August 28, 2008.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* On the Saluda River, in Lexington, Richland, Newberry, and Saluda Counties, South Carolina. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. James M. Landreth, Vice President, Fossil/Hydro Operations South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203; or Mr. William R. Argentieri, P.E., Manager—Civil Engineering, South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203; (803) 217–7224; *bargentieri@scana.com.*

i. *FERC Contact:* Lee Emery, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8379; *lee.emery@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: October 27, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status 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.

m. This application is not ready for environmental analysis at this time.

n. The existing 207.3-megawatt Saluda Project consists of: (1) A 7,800-foot-long, 213-foot-high earth-fill dam (Saluda dam), with South Carolina State Highway 6 (Highway 6) running along the top of the dam; (2) a dike that extends 2,550 feet from the north end of the dam, running parallel with Highway 6; (3) a 2,900-foot-long emergency spillway, with six steel Tainter gates, that is located 500 feet from the south end of Saluda dam, and a spillway channel that reconnects with the Saluda River about ¾ mile downstream from the Saluda powerhouse; (4) a 2,300 foot-long, 213-foot-high roller compacted concrete backup dam located along the downstream toe of the Saluda dam, with (i) a crest elevation of 372.0 feet National Geodetic Vertical Datum (NGVD), and (ii) rock fill embankment sections on the north and south ends of the backup dam, having a combined length of 5,700 feet; (5) a 41-mile-long, 50,900-acre reservoir (Lake Murray) at a full pool elevation of 358.5 NGVD, with a total usable storage of approximately 635,000 acre-feet; (6) five 223-foot-high intake towers and associated penstocks; (7) a concrete and brick powerhouse containing four vertical Francis turbine generating units (three at 32.5 MW and one at 42.3 MW), and a fifth vertical Francis turbine generating unit (67.5 MW), which is enclosed in a weather-tight housing located on a concrete deck attached to the south end of the main powerhouse; (8) a 150-foot-long tailrace; and (9) appurtenant facilities. There is no transmission line or bypassed reach associated with the project.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''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.

p. With this notice, we are initiating consultation with the South Carolina State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter—November 2008
Request Additional Information—November 2008
Issue Acceptance Letter—February 2009
Issue Scoping Document 1 for comments—March 2009
Request Additional Information (if necessary)—May 2009
Issue Scoping Document 2 (if necessary)—July 2009
Notice of application is ready for environmental analysis—July 2009
Notice of the availability of the draft EA—January 2010
Notice of the availability of the final EA—April 2010

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21580 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–467–000]

Texas Gas Transmission, LLC; Notice of Application

September 9, 2008.

Take notice that on September 2, 2008, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP08–467–000, an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations to: (i) Construct, own, operate and maintain a new compressor station located on the Fayetteville Lateral (Bald Knob Compressor Station) in White County, Arkansas, and a new compressor station located on the Greenville Lateral (Isola Compressor Station) in Humphreys County, Mississippi; and (ii) make certain modifications at the existing Greenville compressor station in Washington County, Mississippi, in order to meet the increased capacity demands of their existing mainline system. This project is hereafter referred to as the Fayetteville Shale Compressor Project (Project), and in addition seeking a predetermination that Texas Gas may roll-in the costs of the Project into its approved Incremental Rates for Service on the Fayetteville Lateral and the Greenville Lateral (Lateral Incremental Rates) in the next rate case, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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) 420–5589.

Specifically, the Bald Knob Compressor Station will consist of two 13,330 horsepower (hp) turbine compressor units designed to increase the Fayetteville Lateral's maximum capacity to approximately 1.3 Bcf per day. The Isla Compressor Station will consist of one 13,330 hp turbine compressor unit designed to increase the Greenville Lateral's maximum capacity to approximately 1.0 Bcf per day. The Project is designed to increase the market's access to production from the prolific Fayetteville Shale in an environmentally prudent manner and in a rational time frame that will meet the needs of the market. Chesapeake Energy Corporation (Chesapeake) and XTO Energy Inc. (XTO) are the primary customers supporting this Project, having executed new agreements for the firm transportation capacity created by the project. In addition, Southwestern Energy Company (Southwestern) and Petrohawk Energy Corporation (Petrohawk) have exercised options in their existing agreements that will utilize a portion of the additional firm transportation capacity that will be facilitated by the Project.[1]

Any questions regarding this application should be directed to J. Kyle Stephens, Vice President of Regulatory Affairs, Boardwalk Pipeline Partners,

[1] These options were exercised pursuant to the precedent agreements that these shippers signed in support of the Fayetteville and Greenville Lateral expansion project. *See*, 123 FERC ¶ 61,118 (2008).

LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at (713) 479–8033 or fax at (713) 479–1846.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made 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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: September 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21542 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–468–000]

Wyoming Interstate Company, Ltd.; Notice of Application

September 10, 2008.

Take notice that on September 4, 2008, Wyoming Interstate Company, Ltd. (WIC), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP08–468–000, an application under section 7 of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations for a certificate of public convenience and necessity authorizing the up rating and subsequent operation of an existing compressor unit at the existing Douglas Compressor Station in Converse County, Wyoming.

WIC's proposal is more fully described as set forth in the application that is on file with the Commission and open to public inspection. The instant filing may be also viewed on the Web 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, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to: Richard L. Derryberry, Director of Regulatory Affairs, Wyoming Interstate Company, Ltd. P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3782 or by fax at (719) 667–7534.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the 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.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: October 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21587 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 04, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2783–015; ER05–1266–009; ER99–3822–015; ER01–140–011; ER07–842–005; ER99–4160–016; ER01–141–011; ER01–1044–012; ER99–2157–012; ER03–42–016.

Applicants: Ontelaunee Power Operating Company, LLC, CASCO BAY ENERGY COMPANY, LLC, Dynegy Power Marketing, Inc., Sithe/Independence Power Partners, L.P., BRIDGEPORT ENERGY LLC, Dynegy Danskammer, L.L.C., Dynegy Kendall Energy, LLC, Riverside Generating Company, LLC, Dynegy Roseton, LLC, Rocky Road Power, LLC.

Description: Updated Market Power Analysis re Bridgeport Energy, LLC *et al.*

Filed Date: 08/29/2008.

Accession Number: 20080829–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 28, 2008.

Docket Numbers: ER00–2508–003.

Applicants: Orion Power Midwest, L.P., Reliant Energy Mid-Atlantic Pwr Holdings.

Description: Reliant Energy Mid-Atlantic Power Holdings, LLC submits a Supplement to the June 30, 2008 Triennial Market Update.

Filed Date: 09/02/2008.

Accession Number: 20080902–5148.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER05–717–009; ER05–721–009; ER04–374–009; ER99–2341–011; ER06–230–006; ER06–1334–006; ER07–277–004; ER07–810–003.

Applicants: Spring Canyon Energy LLC; Judith Gap Energy LLC; Invernergy TN LLC; Hardee Power Partners Limited; Wolverine Creek Energy LLC; Spindle Hill Energy LLC; Invenergy Cannon Falls LLC; Grays Harbor Energy LLC.

Description: Spring Canyon Energy LLC *et al.* submits notification of change of status under market-based rate authority.

Filed Date: 08/28/2008.

Accession Number: 20080829–0113.

Comment Date: 5 p.m. Eastern Time on Thursday, September 18, 2008.

Docket Numbers: ER06–456–015; ER06–954–011; ER06–1271–010; ER07–424–006; EL07–57–003; ER06–880–011.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits clean and redlined versions of the revised paragraph of the Offer of Settlement and Partial Settlement Agreement, in accordance with FERC's July 29, 2008 Order.

Filed Date: 08/29/2008.

Accession Number: 20080903–0078.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Docket Numbers: ER06–1364–002.

Applicants: International Paper Company.

Description: Notice of Change in Status re International Paper Co.

Filed Date: 09/02/2008.

Accession Number: 20080902–5144.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER08–1094–002; ER08–1095–002; ER08–1097–002.

Applicants: NAEA Energy Massachusetts, LLC; NAEA Ocean Peaking Power, LLC; NAEA Rock Springs, LLC.

Description: NAEA Energy Massachusetts, LLC *et al.* submits revisions to their respective market-based rate tariffs, rate schedules and agreements under ER08–1094 *et al.*

Filed Date: 08/29/2008.

Accession Number: 20080903–0077.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 9, 2008.

Docket Numbers: ER08–1477–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Large Generator Interconnection Agreement among American Transmission Company, LLC, Wisconsin Power and Light Co & Midwest ISO etc.

Filed Date: 08/29/2008.

Accession Number: 20080903–0109.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–11–004; OA07–33–003.

Applicants: Deseret Generation & Transmission Co-op.

Description: Order No. 890 OATT Compliance Filing re Deseret Generation & Transmission Co-operative, Inc. under OA07–11 *et al.*

Filed Date: 08/29/2008.

Accession Number: 20080829–5163.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Docket Numbers: OA07–110–002.

Applicants: NorthWestern Corporation (South Dakota).

Description: NorthWestern Corporation (North Western) submits a

substitute version of the Attachment K to its South Dakota Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 2 etc under OA07–110.

Filed Date: 08/29/2008.

Accession Number: 20080903–0076.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–21560 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12646–001—Oklahoma]

City of Broken Bow, OK; Notice of Availability of Environmental Assessment

September 10, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the City of Broken Bow, Oklahoma's application for license for the proposed Pine Creek Lake Dam Hydropower Project (or Project), located on Pine Creek dam in McCurtain County, Oklahoma, and has prepared an environmental assessment (EA) for the Project. The proposed Project would occupy a total of 10.12 acres of federal lands administered by the U.S. Army Corps of Engineers.

The EA contains Commission staff's analysis of the potential future environmental effects of the Project. Staff has concluded that licensing the Project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA 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. 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.

For further information, contact Allyson Conner by telephone at (202) 502–6082 or by e-mail at *allyson.conner@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21584 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2551–004]

Cargill Power Markets, LLC; Notice of Filing

September 9, 2008.

Take notice that on August 21, 2008, Cargill Power Markets, LLC filed a supplemental to its June 30, 2008, Category 1 status filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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.

Comment Date: 5 p.m. Eastern Time on September 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21539 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 11, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–445–001.

Applicants: Dauphin Island Gathering Partners.

Description: Revised Cash Out Refund Report.

Filed Date: 09/11/2008.

Accession Number: 20080911–5033.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: RP08–458–001.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, LLC submits Second Revised Sheet 1 et al. to modify their FERC Gas Tariff relating to Use of Off-System Storage Services Compliance Filing.

Filed Date: 09/05/2008.

Accession Number: 20080908–0184.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 17, 2008.

Docket Numbers: CP07–44–006, CP07–45–005.

Applicants: Southeast Supply Header, LLC.

Description: Southeast Supply Header, LLC., submits Substitute Original Sheet No. 200 to its FERC Gas Tariff, Original Volume No. 1, to be effective September 1, 2008.

Filed Date: 08/27/2008.

Accession Number: 20080828–0202.

Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Docket Numbers: CP08–31–002.

Applicants: Transcontinental Gas Pipe Line Corporation.

Description: Transcontinental Gas Pipe Line Corporation submits an application to amend the certificate for the Sentinel Expansion Project.

Filed Date: 09/11/08.

Accession Number: 20080911–5035.

Comment Date: 5 p.m. Eastern Time Friday, September 19, 2008.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–21621 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5862–000]

Licato, Robert J.; Notice of Filing

September 10, 2008.

Take notice that on September 4, 2008, Robert J. Licato filed an application for authorization to hold interlocking positions, pursuant to Part 45 of the Commission's Rules and Regulations, 18 CFR 48 (2007) and section 305(b) of the Federal Power Act, 16 U.S.C. 825(b).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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.

Comment Date: 5 p.m. Eastern Time on September 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21582 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5863–000]

Schwinger, Scott E.; Notice of Filing

September 10, 2008.

Take notice that on September 4, 2008, Scott E. Schwinger filed an application for authorization to hold interlocking positions, pursuant to Part 45 of the Commission's Rules and Regulations, 18 CFR 48 (2007) and section 305(b) of the Federal Power Act, 16 U.S.C. 825(b).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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.

Comment Date: 5 p.m. Eastern Time on September 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21583 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Independent Coordinator of Transmission (ICT) Stakeholder Policy Committee Meeting

September 10, 2008.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting: September 23, 2008 (9 a.m.–3 p.m. CST), Sheraton North Houston Hotel, 15700 John F. Kennedy Blvd., Houston, TX 77032.

The discussions may address matters at issue in the following proceedings:

Docket No. EL07–52—*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. OA07–32—Entergy Services, Inc.
Docket No. ER05–1065—Entergy Services, Inc.
Docket No. EL00–66—*Louisiana Public Service Commission* v. *Entergy.*
Docket No. EL95–33—*Louisiana Public Service Commission* v. *Entergy.*
Docket No. ER00–2854—*Louisiana Public Service Commission* v. *Entergy.*
Docket No. EL05–15—*Arkansas Electric Cooperative, Corp.* v. *Entergy Arkansas, Inc.*
Docket No. ER08–844—Entergy Services, Inc.
Docket No. EL01–88—*Louisiana Public Service Commission* v. *Entergy.*
Docket No. ER03–583—Entergy Services, Inc.
Docket No. ER08–879—Entergy Services, Inc.
Docket No. ER01–2214—Entergy Services, Inc.
Docket No. EL08–59—*ConocoPhillips* v. *Entergy Services, Inc.*
Docket No. EL08–60—*Union Electric* v. *Entergy Services, Inc.*
Docket No. OA08–92—Entergy Services, Inc.
Docket No. OA08–75—Entergy Services, Inc.
Docket No. OA08–59—Entergy Services, Inc.
Docket No. ER07–1252—Entergy Services, Inc.
Docket No. EL03–230—*ExxonMobil* v. *Entergy.*
Docket No. ER08–774—Entergy Services, Inc.
Docket No. ER08–1006—Entergy Services, Inc.
Docket No. ER08–1078—Entergy Services, Inc.
Docket No. ER08–1079—Entergy Services, Inc.
Docket No. ER08–1056—Entergy Services, Inc.
Docket No. ER08–1057—Entergy Services, Inc.
Docket No. ER08–682—Entergy Services. Inc.
Docket No. EL08–72—*NRG Energy, Inc.* v. *Entergy Services, Inc.*
Docket No. EL08–51—*LPSC* v. *Entergy Services, Inc.*
Docket No. EL08–84—*AEEC* v. *Entergy Services, Inc.*
Docket No. ER08–513—Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21581 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

September 11, 2008.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 18, 2008, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using

the eLibrary link, or may be examined in the Commission's Public Reference Room.

938th—Meeting

REGULAR MEETING

[September 18, 2008, 10 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	RM07–19–000, AD07–7–000	Wholesale Competition in Regions with Organized Electric Markets.
E–2	RM08–5–000	Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees.
E–3	NJ08–3–000	Southwestern Power Administration.
E–4	NJ08–4–000	East Kentucky Power Cooperative, Inc.
E–5	OA08–27–000	E.ON U.S. LLC.
E–6	OA08–36–000	Cleco Power LLC.
E–7	OA08–37–000	Southern Company Services, Inc.
E–8	OA08–46–000, OA08–46–001	South Carolina Electric & Gas Company.
E–9	OA08–50–000, OA08–51–000	Duke Energy Carolinas, LLC. Progress Energy Carolinas, Inc.
E–10	OA08–59–000	Entergy Services, Inc.
E–11	ER08–394–001	Midwest Independent Transmission System Operator, Inc.
E–12	ER08–394–002	Midwest Independent Transmission System Operator, Inc.
E–13	ER08–1146–000	Midwest Independent Transmission System Operator, Inc. and American Transmission Company LLC.
E–14	ER08–1113–000	California Independent System Operator Corporation.
E–15	ER05–1410–000, EL05–148–000	PJM Interconnection, L.L.C.
E–16	EL08–67–000	Maryland Public Service Commission, Delaware Public Service Commission, Pennsylvania Public Utility Commission, New Jersey Board of Public Utilities, Public Power Association of New Jersey, Maryland Office of the People's Counsel, Office of the People's Counsel of the District of Columbia, Southern Maryland Electric Cooperative, Inc., Blue Ridge Power Agency, Allegheny Electric Cooperative, Inc., Office of the Ohio Consumers' Counsel, New Jersey Department of the Public Advocate, Division of Rate Counsel, Pennsylvania Officer of Consumer Advocate, PJM Industrial Customer Coalition, American Forest and Paper Association, Portland Cement Association, Duquesne Light Company, and United States Department of Defense and other affected Federal Executive Agencies, v. PJM Interconnection, L.L.C.
E–17	EL08–68–000	WestConnect.
E–18	OMITTED.	
E–19	ER08–1144–000	PJM Interconnection, L.L.C.
E–20	ER06–456–014, ER06–954–010, ER06–1271–009, ER07–424–005.	PJM Interconnection, L.L.C.
E–21	OMITTED.	
E–22	ER02–2001–008	Electric Quarterly Reports.
	ER06–1039–000	Freedom Partners, LLC.
	ER03–752–000	Solaro Energy Marketing Corporation, Inc.
	ER06–63–000	Take Two, LLC.
E–23	OMITTED.	
E–24	RM01–8–011	Revised Public Utility Filing Requirements for Electric Quarterly Reports.
E–25	RM06–16–004	Mandatory Reliability Standards for the Bulk-Power System.
	RP08–1–001	North American Electric Reliability Corporation.
E–26	RM06–22–000	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–27	ER07–323–002	Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc.
E–28	ER08–229–001	PJM Interconnection, L.L.C.
E–29	EL00–66–005	Louisiana Public Service Commission and the *City of New Orleans* v. *Entergy Corporation.*
	ER00–2854–006	*Entergy Services, Inc.*
	EL95–33–007	Louisiana Public Service Commission v. Entergy Services, Inc.
E–30	ER96–2495–030	AEP Power Marketing, Inc., AEP Service Corporation, AEP Energy Partners, Inc., CSW Energy Services, Inc. and Central and South West Services, Inc.
	ER97–4143–018	American Electric Power Service Corporation.
	ER98–542–020	Central and South West Services, Inc.
	ER98–2075–024	CSW Energy Services, Inc.
	ER07–1130–001	AEP Energy Partners, Inc.
E–31	EL008–39–000	New York Regional Interconnect, Inc.
	Miscellaneous	
M–1	RM01–5–000	Electronic Tariff Filings.

REGULAR MEETING—Continued

[September 18, 2008, 10 a.m.]

Item No.	Docket No.	Company
M–2	OMITTED.	
	Gas	
G–1	RM07–10–001	Transparency Provisions of Section 23 of the Natural Gas Act.
G–2	RM96–1–029	Standards for Business Practices of Interstate Natural Gas Pipelines.
G–3	RP08–272–001	Transcontinental Gas Pipe Line Corporation.
	Hydro	
H–1	P–2145–089	Public Utility District No. 1 of Chelan County, Washington.
H–2	P–1490–046	Brazos River Authority.
H–3	P–2192–028, P–2192–030	Consolidated Water Power Company.
H–4	P–1490–047	Brazos River Authority.
H–5	P–2602–023	Duke Energy Carolinas, LLC.
H–6	P–9300–018	James Lichoulas Jr.
H–7	P–1417–227	Central Nebraska Public Power and Irrigation District.
	Certificates	
C–1	CP06–365–000	Bradwood Landing LLC.
	CP06–366–000, CP06–376–000, CP06–377–000.	NorthernStar Energy LLC.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E8–21639 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–637–000; ER08–637–001; ER08–637–004; ER08–637–005]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

September 9, 2008.

Take notice that on November 12, 2008, a technical conference will be convened to consider issues related to the Midwest Independent Transmission System Operator, Inc.'s proposal to offer Market Coordination Service (Market Service), as discussed in the order issued June 13, 2008 in Docket Nos. ER08–637–000 and ER08–637–001.[1] The technical conference will be held in the Commission Meeting Room at the headquarters of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, 20426 from 9 a.m. to 4:30 p.m. (ET).

The technical conference will be divided into two sessions. The morning session will be led by the Commissioners and will address broad policy issues associated with Market Service. The afternoon session will be led by Commission staff and will address certain technical aspects of Market Service. Subsequent notices will be issued regarding the details of this technical conference.

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265, at P 155 (2008).

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 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21540 Filed 9–15–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0629; FRL–8716–5]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical review of human subjects research.

DATES: The public meeting will be held from October 21–22, 2008, from 8:30 a.m. to approximately 5:30 p.m., Eastern Standard Time (EST).

Location: Environmental Protection Agency, Conference Center—Lobby

Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

Addresses: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2008–0629, by any of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

USPS Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand or Courier Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m., EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0629. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. 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 FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–7189; *fax:* (202) 564–2070; *e-mail addresses: kleibacker.lu-ann@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA and to persons who may sponsor or conduct research with human subjects with the intention to submit it to EPA for consideration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or section 408 under the Federal Food, Drug, and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of This Document and Other Related Information?

You may access this **Federal Register** document electronically either through *http://www.regulations.gov* or through the EPA Web site under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index under the docket number. Even though it will be listed by title in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Copyright 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 ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*). EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda are anticipated to be available by late September 2008, if not earlier. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the HSRB Web site at *http://www.epa.gov/osa/hsrb/.* For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support our views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2008–0629 in the subject line on the first page of your request.

a. *Oral comments*. Requests to present oral comments will be accepted up to October 14, 2008. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern time, October 14, 2008 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having multiple individuals sign up separately to speak on their behalf. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting. At the discretion of the Board Chair and DFO, public commenters, if present during the Board's discussion, may be asked to provide clarification of their comments to assist the Board in their discussion.

b. *Written comments*. Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, EST, October 14, 2008. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

A. Human Studies Review Board

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: a. Research proposals and protocols; b. reports of completed research with human subjects; and c. how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

The EPA will present for HSRB review scientific and ethical issues surrounding:

- The scenario design document and three associated protocols from the Agricultural Handlers Exposure Task Force (AHETF) for research to monitor the exposure of subjects in closed cabs who apply an agricultural pesticide using airblast equipment. The scenario design document is identical to the one that was reviewed by the HSRB in June 2008, except that chlorothalonil has been added to the list of test chemicals.
- The scenario design document and three associated protocols from the AHETF for research to monitor exposure of subjects in open cabs who apply an agricultural pesticide using airblast equipment.
- The report from a completed field study (LNX–001) by Carroll-Loye Biological Research of the mosquito repellent efficacy of two pesticide products containing picaridin. The HSRB previously reviewed the proposed study at its June 2007 meeting.

The Agency will brief the HSRB on its draft document, *Guideline for Efficacy Testing of Skin-Applied Repellents*. The guideline provides recommendations for the design and execution of studies to evaluate the performance of pesticide products intended to repel insects and other arthropods. In addition, the Board may be reviewing its draft meeting report from the June 24–25, 2008 HSRB meeting for subsequent Board approval. Finally, the HSRB may also discuss planning for future HSRB meetings.

B. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov*. In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION**.

Dated: September 4, 2008.

George Gray,

Science Advisor.

[FR Doc. E8–21590 Filed 9–15–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

September 9, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and

clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before *October 16, 2008*. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167; and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov*. Include in the comments the OMB control number of the collection as shown in the ''**SUPPLEMENTARY INFORMATION**'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov*, and/or *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions.

Number of Respondents and Responses: 49,397 respondents; 135,607,383 responses.

Estimated Time per Response: .004 hours (15 seconds) to 1 hour.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third-party disclosure requirement.

Total Annual Burden: 625,406 hours.

Total Annual Cost: $4,590,000.

Obligation to Respond: Required to obtain or retain benefits; the statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934 [47 U.S.C. 227], Restrictions on the Use of Telephone Equipment.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC published a notice in the **Federal Register** describing the system. *See* 68 FR 37494, June 24, 2003.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of the Do-Not-Call Implementation Act (Do-Not-Call Act). If the information collection was not conducted, the Commission would be unable to track and enforce violations of the Do-Not-Call Act. The Do-Not-Call rules provide consumers with several options for avoiding most unwanted telephone solicitations.

This national do-not-call registry supplements the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

However, a provision of the Commission's rules allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' registry requirements.

On September 21, 2004, the Commission released the *Safe Harbor Order* establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing national do-not-call registry safe harbor to require telemarketers to scrub their lists against the do-not-call database every 31 days.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, the Commission released a *Report and Order* in CG Docket No. 02–278, FCC 08–147, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five-year registration period. Specifically, the Commission modifies § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

In accordance with the Do-Not-Call Improvement Act of 2007, the Commission revises its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–21603 Filed 9–15–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 2008.

A. Federal Reserve Bank of New York (Anne MacEwen, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. EuroBancshares, Inc., to engage *de novo* through its subsidiary, EUBK Securities, Inc. (in formation), both of San Juan, Puerto Rico, in securities brokerage, riskless principal transactions, and other transactional services, pursuant to sections 225.28(b)(7)(i), (ii) and (v) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Commerce Bancshares Inc., Franklin, Tennessee, to engage *de novo* in management consulting activities, pursuant to section 225.28(b)(9)(ii) of Regulation Y.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. CLC Enterprises, Inc., Nelson, Nebraska, to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–21593 Filed 9–15–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of Charter for the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the U.S. Department of Health and Human Services is hereby announcing renewal of the charter for the Chronic Fatigue Syndrome Advisory Committee (CFSAC).

FOR FURTHER INFORMATION CONTACT: Dr. Anand K. Parekh, Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, 200 Independence Avenue, SW., Room 727H, Washington, DC 20201; (202) 401–7605.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

Since CFSAC was established, renewal of the Committee charter has been carried out at the appropriate intervals as stipulated by FACA. The previous Committee charter was scheduled to expire on September 5, 2008. On August 27, 2008, the Secretary of Health and Human Services approved for the Committee charter to be renewed. Renewal of the CFSAC charter provides authorization for the Committee to operate until September 5, 2010. A copy of the Committee charter is available on the CFSAC Web site at *http://www.hhs.gov/advcomcfs.* A copy of the Committee charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The Web site address for the FACA database is *http://fido.gov/facadatabase.*

Dated: September 10, 2008.

Anand K. Parekh,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. E8–21516 Filed 9–15–08; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS); Notice of Meeting

Classifications and Public Health Data Standards Staff, announces the following meeting:

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Times and Dates: 8:30 a.m.–6 p.m.., September 24, 2008. 8:30 a.m.–6 p.m., September 25, 2008.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2008 calendar year cycle on Wednesday and Thursday September 24–25, 2008. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to be Discussed: Tentative agenda items include:

Activity codes
Acute Life Threatening Event (ALTE)
Colic
Congestive heart failure
Dysphonia
Endometrial intraepithelial neoplasia
Epilepsy
Failed sedation
Fitting/adjustment, gastric band
Fluency disorders
Gout
Merkel cell carcinoma
Pouchitis
Sleep maintenance
Traumatic brain injury
Tumor lysis syndrome
Venous thrombosis embolism
Addenda (diagnoses)
Cardiac contractility modulation
Endoscopic insertion of colonic stent
Endoscopic valve insertion
Infrared vascular imaging
Intraoperative Anesthetic Effect Monitoring and Titration
Intravitreal injectables

Thermal therapy for brain tumors

Addenda (procedures)

ICD–10 update and effect on MS–DRGs

Cooperating Parties Update

FOR FURTHER INFORMATION CONTACT: Amy Blum, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, e-mail *alb8@cdc.gov*, telephone 301–458–4106 (diagnosis), Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Baltimore, Maryland, 21244, e-mail *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

Notice: Because of increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a drivers license), and sign-in at the security desk upon entering the building. Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the September 24–25, 2008 meeting must submit their name and organization by September 12, 2008 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend.

Register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, no additional attendees will be accepted into the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 5, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–21599 Filed 9–15–08; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Joint Meeting of the Antiviral Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Antiviral Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 29, 2008, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 1750 Rockville Pike, Rockville, MD. The hotel telephone number is 301–468–1100.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512531 and 3014512541. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will provide advice on types of studies and trial designs needed for an influenza antiviral MedKit for the treatment or prophylaxis of pandemic influenza and discuss publicly the proposed development program that would support an application for such a MedKit. Issues such as the role of personal MedKits, home stockpiling, non-prescription availability of influenza medications, and interfaces of home readiness with public health systems, will be raised in the course of the discussions.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 15, 2008. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 6, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 7, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 10, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–21574 Filed 9–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0484]

Preparation for International Conference on Harmonization Meetings in Brussels, Belgium; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH meetings in Brussels, Belgium'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Brussels, Belgium. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Groups meetings in Brussels, Belgium, November 10 to 13, 2008, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on Tuesday, October 21, 2008, from 3 p.m. to 5:30 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3rd floor, Conference Rooms D and E, Rockville, MD 20857. For security reasons, all attendees are asked to arrive no later than 2:45 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to Conference Rooms D and E.

Contact Person: All participants must register with Tammie Jo Bell, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, by email: *tammie.bell@fda.hhs.gov* or fax: 301–827–0003.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), written material and requests to make oral presentation, to the contact person by October 14, 2008.

If you need special accommodations due to a disability, please contact Tammie Jo Bell at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–66, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Background: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States, without compromising the regulatory obligations of safety and effectiveness.

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 medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization 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, Labor and Welfare; the Japanese Pharmaceutical Manufactures 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 Health Canada, the European Free Trade Area and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org*.

Dated: September 9, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21573 Filed 9–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Razoxane for the Treatment of Alzheimer's Disease

Description of Technology: Abnormalities in the metabolism of the transition metals, iron and copper, have been demonstrated to play a crucial role in the pathogenesis of various neurodegenerative diseases, including Alzheimer's disease (AD) and Parkinson's disease (PD). Excessive iron accumulation in the brain occurs in both AD and PD. High levels of reactive iron can increase oxidative stress-induced neuronal vulnerability, increase the toxicity of environmental or endogenous toxins, and accelerate hallmark pathologies of these diseases.

As an example among many, the expression level of amyloid-β precursor protein (APP) that generates the AD neurotoxic peptide, amyloid-β (Aβ), is

regulated in large part by iron levels. APP mRNA has an iron response element (IRE) in its 5′-untranslated region, and cleavage of APP to release different amyloidogenic and non-amyloidogenic peptide forms involves metalloproteases.

Elevated Aβ levels as well as plaques formed by aggregation of Aβ involve iron, and play a significant role in degeneration of the brain seen in AD. Chelators can reduce both the generation and aggregation of Aβ. Razoxane, a bisdioxopiperazine, is an orally active metal chelator approved for the treatment of cancer, where it and dexrazoxane have been effectively used for decades. In neuronal cell culture models, razoxane induced dose-dependent reductions in APP and Aβ levels without toxicity. In animal experiments (transgenic mice expressing human Aβ), razoxane substantially reduced Aβ 1–40 and 1–42 in brain by up to 46% without toxicity following once daily, 21 day administration.

The claimed invention is the novel use of razoxane and other bisdioxopiperazines to reduce amyloid-beta peptide levels, reduce aggregation of alpha-synuclein and tau protein, and reduce abnormal protein folding or aggregation for the treatment of AD and related diseases with protein aggregation pathology. Since razoxane has been approved for humans use, it could be more quickly developed as a treatment for AD, PD and other diseases.

Market:

• Up to 4.5 million Americans are estimated to suffer from AD, which usually strikes after the age of 60.

• Population longevity is increasing so AD is expected to be a growing health problem.

• Currently marketed drugs only delay the severity of AD so better solutions are needed.

Development Status: Clinical safety data and pre-clinical efficacy data for treatment of Alzheimer's disease.

Inventors: Nigel H. Greig (NIA).

Patent Status:

• U.S. Provisional Application No. 60/811,836 filed 08 Jun 2006 (HHS Reference No. E–216–2007/0–US–01).

• PCT Application No. PCT/US2007/013607 filed 08 Jun 2007, which published as WO 2007/146178 on 21 Dec 2007 (HHS Reference No. E–216–2007/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Norbert Pontzer, J.D., PhD; 301–435–5502; *pontzern@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Neurosciences, Section on Drug Design & Development, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize razoxane and analogues for the treatment of neurodegenerative disorders, such as Alzheimer's and Parkinson's diseases. Please contact Nigel H. Greig (*Greign@grc.nia.nih.gov*) for more information.

Prevention and Treatment of Multiple Sclerosis (MS) by Administering E–Selectin

Description of Technology: The invention is a method and composition for inhibiting or treating symptoms of inflammatory demyelination or inflammation associated with autoimmune disorders. This is accomplished by administering recombinant E-selectin protein intranasally and resulting in E selectin-specific regulatory T-cells. These regulatory T-cells suppress activation of blood vessels where E-selectin is normally expressed by the localized production of immunosuppressive cytokines, modulating the actions of otherwise pro-inflammatory T-cells that can aberrantly cause demyelination of neurons, which leads to diseases like MS.

Applications: In addition to MS, potentially effective in treating other autoimmune disorders such as rheumatoid arthritis, type 1 diabetes, psoriasis, and those that affect blood vessels.

Market: MS may affect more than 2.5 million people worldwide. Currently, it is estimated that approximately 400,000 Americans are afflicted with MS and 200 more are diagnosed weekly.

Development Status: In vitro and *in vivo* data are available.

Inventors: Jacqueline Shukaliak-Quandt *et al.* (NINDS).

Patent Status:

• U.S. Provisional Application No. 60/828,735 filed 09 Oct 2006 (HHS Reference No. E–153–2005/0–US–01).

• PCT Application No. PCT/2007/021682 filed 09 Oct 2007 (HHS Reference No. E–153–2005/2–PCT–02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Norbert Pontzer, J.D., PhD; 301–435–5502; *pontzern@mail.nih.gov*.

Use of Pentosan Polysulfate To Treat Certain Conditions of the Prostate

Description of Technology: Benign prostatic hyperplasia (BPH), involving a proliferation of smooth muscle cells and increased deposition of extracellular matrix, is a common development: 50% of men over age 60 (about 12.5 million men), and as much as 80% of all men over age 80 (about 3.2 million men), have some enlargement of the prostate gland.

This technology is a method for treating BHP using the oral medication, pentosan polysulfate. Pentosan polysulfate is a well known semi-synthetic polysaccharide extracted from beech wood cellulose that is FDA approved for the treatment of interstitial fibrosis. The current technology builds on the surprising discovery that pentosan polysulfate can cause regression of scarring and lesions in prostatic tissue. Pentosan polysulfate reduces or eliminates both smooth muscle cell proliferation and extracellular matrix deposition, and thus reduces the size of the prostate gland and associated obstructive symptoms.

Applications and Advantages:

• A method of treating benign prostatic hyperplasia using pentosan polysulfate.

• The method treats the underlying pathology of BHP non-invasively.

• The method addresses associated conditions, such as chronic prostatitis, prostadynia, and irritative bladder conditions (other than interstitial cystitis).

• Pentosan polysulfate has been FDA approved for another use.

Development Status: In vitro studies on BPH biopsy samples that demonstrate the drug slows the growth of prostate cells and extracellular matrix have been completed.

Patent Status: U.S. Patent No. 6,828,309 issued 07 Dec 2004 (HHS Reference No. E–104–1997/0–US–03).

Inventor: Gary E. Striker (NIDDK).

Publication: SJ Elliot et al. Pentosan polysulfate decreases prostate smooth muscle proliferation and extracellular matrix turnover. Prostate Cancer Prostatic Dis. 2003;6(2):138–142.

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

Dated: September 9, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–21504 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibodies Against Bordetella pertussis Filamentous Hemagglutinin (FHA) Protein

Description of Technology: Filamentous hemagglutinin (FHA) is one of the major adhesion molecules of *Bordetella pertussis*, a bacterial infection that causes whopping cough. Once thought to be primarily a childhood disease, *B. pertussis* infection shows an increasing incidence among adults as well as infants. Recent CDC reports show an almost 19-fold increase in the number of cases among 10–19 year olds and an almost 16-fold increase among those 20 and older. These data underscore the need for a new generation of vaccines and detailed studies focused on the pathways of *B. pertussis* infectivity.

Available for licensing are three hybridoma cell lines capable of expressing monoclonal antibodies against FHA. ELISA and Western blot analyses have shown that these antibodies, map to specific epitopes, can successfully bind to FHA as well as prevent binding of the purified FHA to various cells. The additional studies showed that one antibody was able to prevent the adhesion of *B. pertussis* to epithelial cell monolayers. These findings show that monoclonal antibodies expressed in featured hybridoma cell lines can be successfully used for studies of infectivity mechanisms as well as development of new diagnostics and acellular vaccines against *B. pertussis*.

Applications:

- New generation of diagnostics.
- Acellular vaccine development.

Inventor: Michael Brennan (CBER/FDA).

Relevant Publications:

1. Leininger E, Probst PG, Brennan MJ, Kenimer JG. Inhibition of Bordetella pertussis filamentous hemagglutinin-mediated cell adherence with monoclonal antibodies. FEMS Microbiol Lett. 1993 Jan 1;106(1):31–38.
2. Leininger E, Bowen S, Renauld-Mongénie G, Rouse JH, Menozzi FD, Locht C, Heron I, Brennan MJ. Immunodominant domains present on the Bordetella pertussis vaccine component filamentous hemagglutinin. J Infect Dis. 1997 Jun;175(6):1423–1431.

Patent Status: HHS Reference No. E–044–2008/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov.*

Automated Method for Rapid Detection of Sickle Cell Disease Inhibitors

Description of Technology: Available for licensing is a rapid and automated method for discovering potential drugs for the treatment of sickle cell anemia by determining the sickling times for a large population of red blood cells. The method uses a combination of laser photolysis and statistical processing of digital images. Sickle cell disease is an inherited disorder that affects over 70,000 Americans. The disease is characterized by presence of mutant hemoglobin S in red blood cells, which polymerizes to form fibers when deoxygenated. Such fibers lead to distortion of red blood cells into the shape of a sickle and alter the mechanical properties of these cells. Studies demonstrate that the time to polymerization involves a delay time and rapid growth phase and is particularly sensitive to hemoglobin concentration. As a result, identification of drugs that inhibit sickle cell disease is accomplished using an assay for delay times for populations of red blood cells. The invention creates a uniform time at which polymerization is initiated for all red blood cells in the sample region and accurately determines the time at which cellular distortion begins for each cell. Potential drugs are those compounds that significantly increase the delay time of sickling time, *i.e.* the time at which the cell changes shape due to intracellular polymerization.

Applications:

- Rapid automated detection of compounds that inhibit sickling and are therefore potential drugs for sickle cell disease.
- Objective assay for monitoring disease severity.

Development Status: The technology is capable of determining the distribution of cellular delay times in a large number of samples in series in a 48 well plate format

Inventors: Jeffrey F. Smith, H. James Hofrichter, and William A. Eaton (NIDDK).

Patent Status:

- U.S. Patent Application No. 11/652,843, filed 11 Jan 2007 (HHS Reference No. E–021–2007/0–US–01).
- PCT Application No. PCT/US2008/000427 filed 11 Jan 2008 (HHS Reference No. E–021–2007/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Cristina Thalhammer-Reyero, PhD, M.B.A.; 301–435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The NIDDK Laboratory of Chemical Physics is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Rochelle S. Blaustein, J.D. at 301–451–3636 or *rochelle.blaustein@nih.gov* for more information.

Dated: September 9, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–21505 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of

federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Bifunctional Compounds That Bind to Hormone Receptors

Description of Technology: The development and progression of prostate cancer is dependent on the androgen receptor (AR), a ligand-dependent transcription factor. In the inactive form AR resides in the cytosolic region of the cell and when activated, AR is imported into the nucleus. Initial hormonal therapy for prostate cancer involves lowering serum levels of testosterone to shut down AR activity. Despite initial patient responses to testosterone-depleting therapies, prostate cancer becomes refractory to hormonal therapy. Notably, AR is reactivated in hormone-refractory prostate cancer and reinstates its proliferative and survival activity.

Available for licensing is a novel chemical compound which is bifunctional and binds to AR. This compound is comprised of tubulin-binding and steroid receptor-binding moieties. This compound is designed to antagonize AR function in a nonclassical manner by several mechanisms and kills hormone-refractory prostate cells better than both functional moieties. This compound is a first-in-class of bifunctional steroid receptor binding agents that can antagonize steroid receptors in a variety of hormone-dependent diseases, such as breast and prostate cancer.

Applications:

• Therapeutic compounds that selectively target steroid receptor-expressing cancer cells resulting in minimal patient toxicity.

• Method to treat hormone resistant prostate cancer and potentially other steroid receptor dependent diseases such as breast cancer.

Market:

• Prostate cancer is the second most common type of cancer among men, wherein one in six men will be diagnosed.

• An estimated 186,320 new diagnosed cases and 28,660 deaths due to prostate cancer in the U.S. will occur in 2008.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Nima Sharifi *et al.* (NCI).

Publication: N Sharifi *et al.* A bifunctional colchicinoid that binds to the androgen receptor. Mol Can Ther. 2007 Aug;6(8):2328–2336.

Patent Status: PCT Application No. PCT/US2008/008299 filed 02 Jul 2008, claiming priority to 03 Jul 2007 (HHS Reference No. E–163–2007/0–PCT–02).

Availability: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov.*

Vitamin D Receptor Antagonists for Treating Breast Cancer

Description of Technology: Vitamin D receptor (VDR) is a nuclear receptor that is activated by calcitriol, the active form of vitamin D. It is best known for regulating dietary calcium uptake necessary for bone growth, but it also affects cell proliferation and differentiation. Therefore, it was thought that treatment with calcitriol or its derivatives could be useful to treat the uncontrolled proliferation typical of cancer cells. However, this approach has been unsuccessful to date because it leads to toxic levels of calcium in the blood.

This invention relates to derivatives of calcitriol that can block cell growth without harmfully raising calcium levels. Specifically, these compounds act as antagonists of VDR blocking its ability to stimulate cell proliferation. This technology can be useful in treating breast cancer or other malignancies.

Applications:

• Potential drugs for treating breast cancer and possibly also prostate cancer, colorectal cancer, leukemia, melanoma, or glioma.

• Prevention of cancer in high-risk population.

• Research on vitamin D receptor functions and cancer.

Market: About 182,460 American women will be diagnosed with invasive breast cancer in 2008.

Development Status: Pre-clinical data available.

Inventors: Julianna Barsony (NIDDK).

Publication: J Barsony *et al.* Development of a biologically active fluorescent-labeled calcitriol and its use to study hormone binding to the vitamin D receptor. Anal Biochem. 1995 Jul 20;229(1):68–79.

Patent Status: U.S. Patent No. 7,361,664 issued 22 Apr 2008 (HHS Reference No. E–213–2001/2–US–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

A Novel Recombinant Immunotoxin SS1P (anti-mesothelin dsFv-PE38): A Therapeutic Treatment for Lung Cancer and Other Mesothelin Expressing Cancers

Description of Technology: Mesothelin is a cell surface glycoprotein whose expression is largely restricted to mesothelial cells in normal tissues. Significantly, mesothelin is also highly expressed in many cancers (including malignant mesothelioma, ovarian cancer, lung cancer, pancreatic carcinomas, gastric carcinomas, etc.). As a result, mesothelin is an excellent target for immunotherapy.

NIH inventors have generated high affinity antibodies to mesothelin (SS1) and fused them to various functional fragments of *Pseudomonas* Exotoxin A (PE) to produce the immunotoxin SSIP. New SS1P constructs include PE fragments and mutants with reduced immunogenicity, resulting in immunotoxins with greater efficacy. SS1P activity was previously shown in patients suffering from mesothelioma and ovarian cancer; laboratory studies now demonstrate cytotoxicity against lung carcinoma cells. Additionally, SS1P has shown synergy with front line cancer therapeutics in a mouse model, making SS1P an excellent candidate both a stand-alone therapeutic and a combination therapeutic.

Applications:

• SS1P can be used as a therapy for mesothelin expressing cancers, including mesothelioma, ovarian cancer and lung adenocarcinoma.

• The immunotoxin can be used in combination with standard chemotherapy.

Advantages:

• Immunotoxins are highly selective for cancer cells, reducing side-effects due to the non-specific killing of normal cells.

• Strong synergy has been shown between SS1P and standard front line cancer therapies in the treatment on lung adenocarcinoma.

• Less immunogenic PE variants increase the efficacy of the immunotoxin.

Inventors: Ira Pastan (NCI) *et al.*

Patent Status: U.S. Patent 7,081,518, entitled ''Anti-mesothelin antibodies having high binding affinity'' issued on 25 July 2006 [HHS Ref. E–139–1999/0].

Related Technologies:

• U.S. Patents 6,051,405, 5,863,745, and 5,696,237 ''Recombinant Antibody-Toxin Fusion Protein'' [HHS Ref. E–135–1989/0];

• U.S. Patents 5,747,654, 6,147,203, and 6,558,672 entitled ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity'' [HHS Ref. E–163–1993/0];

• U.S. Patent 6,153,430, and U.S. Patent Application 09/684,599 ''Nucleic Acid Encoding Mesothelin, a Differentiation Antigen Present on Mesothelium, Mesotheliomas and Ovarian Cancers'' [HHS Ref. E–002–1996/0];

• U.S. Patent 6,083,502 entitled ''Mesothelium Antigen and Methods and Kits for Targeting It'' [HHS Ref. E–002–1996/1];

• U.S. Patent Application 09/581,345: ''Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use'' [HHS Ref. E–021–1998/0];

• U.S. Patent Application 10/297,337, ''Pegylation of Linkers Improves Antitumor Activity and Reduces Toxicity of Immunoconjugates'' [HHS Ref. E–216–2000/2];

• U.S. Patent Application 11/920,222 entitled ''Anti-Mesothelin Antibodies Useful For Immunological Assays'' [HHS Ref. E–015–2005/0];

• U.S. Patent Application 11/997,202 ''Mutated Pseudomonas Exotoxins with Reduced Antigenicity'' [HHS Ref E–262–2005/0]; and

• U.S. Patent Application 60/969,929 ''Deletions in Domain II of Pseudomonas Exotoxin A that Remove Immunogenic Epitopes without Affecting Cytotoxic Activity'' [HHS Ref. E–292–2007/0].

Licensing Status: The technology is available for exclusive and non-exclusive licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop immunotoxin SS1P. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: September 9, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–21506 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Compositions and Methods for Increasing Recombinant Protein Yields Through the Modification of Cellular Properties

Description of Technology: This technology relates to compositions and methods for improving the growth characteristics of cells engineered to produce biologically active products such as antibodies or glycosylated proteins. Featured is a method that uses gene candidates (e.g., cdkl3, siat7e, or lama4), or their expressed or inhibited products in cell lines, such as Human Embryonic Kidney (including HEK–293), HeLa, or Chinese Hamster Ovary (CHO). The gene expression modulates growth characteristics, such as adhesion properties, of the cell lines thereby increasing recombinant protein yields and reducing product production costs.

Applications: This technology may be used to improve production of therapeutic and/or diagnostic compounds, including therapeutic proteins or monoclonal antibodies from mammalian cells. Optimization of mammalian cells for use as expression systems in the production of biologically active products is very difficult. For certain applications, anchorage-independent cell lines may be preferred, whereas for other applications, a cell line that adheres to a surface, e.g., is anchorage-dependent, may be preferable. This technology provides a method for identifying a gene whose expression modulates such cellular adhesion characteristics. This method thus leads to an increase in the expression or yield of polypeptides, including therapeutic biologicals, such as antibodies, cytokines, growth factors, enzymes, immunomodulators, thrombolytics, glycosylated proteins, secreted proteins, and DNA sequences encoding such polypeptides and a reduction in the associated costs of such biological products.

Advantages: This technology offers the ability to improve yields and reduce the cost associated with the production of recombinant protein products through the selection of cell lines having:

• Altered growth characteristics.
• Altered adhesion characteristics.
• Altered rate of proliferation.
• Improvement in cell density growth.
• Improvement in recombinant protein expression level.

Market: Biopharmaceuticals, including recombinant therapeutic proteins and monoclonal antibody-based products used for in vivo medical purposes and nucleic acid based medicinal products now represent approximately one in every four new pharmaceuticals on the market. The market size has been estimated at $33 billion in 2004 and is projected to reach $70 billion by the end of the decade. The list of approved biopharmaceuticals includes recombinant hormones and growth factors, mAB-based products and therapeutic enzymes as well as recombinant vaccines and nucleic acid based products.

Mammalian cells are widely used expression systems for the production of biopharmaceuticals. Human embryo kidney (including HEK–293) and Chinese hamster ovary (CHO) are host cells of choice. The genes identified in this technology (e.g., cdkl3, sia7e, or lama4) can be used to modify these important cell based systems.

This technology is ready for use in drug/vaccine discovery, production and development. The technology provides methods for identification of specific gene targets useful for altering the production properties of either existing cell lines to improve yields or with new cell lines for the production of therapeutic and/or diagnostic compounds from mammalian cells.

Companies that are actively seeking production platforms based on mammalian cell lines that offer high

efficiency, high throughput systems for protein production or analysis at lower cost and ease of scale-up would be potential licensors of this technology.

Development Status: Late Stage—Ready for Production.

Inventors: Joseph Shiloach (NIDDK), Pratik Jaluria (NIDDK).

Related Publication: P. Jaluria *et al.* Application of microarrays to identify and characterize genes involved in attachment dependence in HeLa cells. *Metab Eng.* 2007 May;9(3):241–251.

Patent Status: PCT Application No. PCT/US2007/018699 filed 24 Aug 2007, which published as WO 2008/024459 on 28 Feb 2008; claiming priority to 24 Aug 2006 (HHS Reference No. E–149–2006/2–PCT–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Biotechnology Core Laboratory, is seeking parties interested in collaborative research projects directed toward the use of this technology with cells for drug and vaccine production and development, including growth optimization, production and product recovery processes. For more information, please contact Dr. Joseph Shiloach, *josephs@intra.niddk.nih.gov*, or Rochelle S. Blaustein at *Rochelle.Blaustein@nih.gov.*

In Vitro Model for Hepatitis C Virion Production

Description of Technology: This invention provides an in vitro hepatitis C virus (HCV) replication system that is capable of producing viral particles in a culture medium. Hepatitis C is a major public health problem, the development of therapeutics for which has been hampered by a lack of a robust model system to study the complete viral life cycle. This invention provides a new model system for the complete replication cycle of hepatitis C virus and virion production, assembly and release. The model is useful for screening antiviral agents against HCV.

A full length HCV construct, CG1b of genotype 1b which is known to be infectious, was placed between two ribozymes designed to generate the exact 5′ and 3′ ends of HCV when cleaved. Using this system, HCV proteins and positive and negative RNA strands have been shown to reproduce intracellularly, and viral particles that resemble authentic HCV virions are produced and secreted into the culture medium.

The patent application includes claims directed toward the following: A construct comprising specific nucleic acid sequences including HCV genotype 1b, genotype 1a, genotype 2a or potentially other genotypes; a method for identifying a cell line that is permissive for infection with HCV; a method for propagating HCV in vitro; a method for screening agents capable of modulating HCV replication or activity; a method for testing the level of HCV replication or activity; a HCV vaccine comprising HCV virus particles.

Applications: The model offers a novel method for investigating the entire HCV life cycle including replication and pathogenesis and is useful for high-throughput antiviral screening. This technique may also be useful for making infectious particles that are useful in the production of HCV vaccines.

Advantages: This system provides a new, stable and efficient cell culture model to further study the life cycle and biology of HCV, and to test potential therapeutic targets for hepatitis C. This model has also been used to generate in cell culture HCV strains infectious for chimpanzees, the only experimental animal susceptible to infection with the hepatitis C virus, a critical step in the development of new vaccines for Hepatitis C.

Market: Hepatitis C virus (HCV) chronically infects approximately 200 million people worldwide and increases the risk of developing cirrhosis and hepatocellular carcinoma. This technology would be useful for studying the HCV life cycle, screening for therapeutic agents against multiple HCV strains, including Genotype 1a, 1b and 2a, and the development of HCV vaccines. HCV genotypes 1 and 2 are the major genotypes with worldwide distribution; they are known to be associated with different clinical profiles and therapeutic responses. Hence, the model may be used to screen for varying levels of effectiveness of therapeutics against the major HCV genotypes.

Development Status: This technology is available for use in diagnostics, drug/vaccine discovery, production and development. Current work is directed toward studies into the HCV life cycle and replication and the pathogenesis of HCV screening for antiviral agents against multiple HCV strains. This model has been used to generate in cell culture HCV strains infectious for chimpanzees, the only experimental animal susceptible to infection with the hepatitis C virus, a critical step in the development of new vaccines for Hepatitis C. Future work may be directed toward the use of this system for development of vaccine candidates against HCV.

Inventors: T. Jake Liang and Theo Heller (NIDDK).

Related Publications:

1. Z. Hu *et al.* Altered proteolysis and global gene expression in hepatitis B virus X transgenic mouse liver. J Virol. 2006 Feb;80(3):1405–1413.
2. T. Heller *et al.* An in vitro model of hepatitis C virion production. Proc Natl Acad Sci USA. 2005 Feb 15;102(7):2579–2583.

Patent Status: U.S. Patent Application No. 11/664,375 filed 30 Mar 2007, claiming priority to 30 Sep 2004 (HHS Reference No. E–324–2004/3–US–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases, Liver Diseases Branch, is seeking parties interested in collaborative research directed toward molecular strategies for vaccine and antiviral development, and animal models of viral hepatitis C. For more information, please contact Dr. T. Jake Liang at 301–496–1721 or *jliang@nih.gov* or Rochelle S. Blaustein at *Rochelle.Blaustein@nih.gov.*

Dated: September 9, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–21507 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Cyclized NGR Peptide for Tumor Targeting

Description of Technology: Available for licensing and commercial development are patent rights and materials related to NGR peptides for targeting therapeutic and diagnostic agents to cancer cells. Specifically targeted are tumors that express aminopeptidase N isoform CD13. NGR peptides include the Asn-Gly-Arg peptide motif, a ligand for APN/CD13. NGR-containing peptides have been proven useful for delivering cytotoxic drugs, apoptotic peptides, and cytokines (such as tumor necrosis factor (TNF)) to tumor vasculature. In some embodiments of the invention, the NGR peptide is conjugated with a diagnostic moiety such as a fluorophore, nonmetallic isotope, an optical reporter, a boron neutron absorber, a paramagnetic metal ion, a ferromagnetic metal, a gamma-emitting radioisotope, a positron-emitting radioisotope, or an x-ray absorber. In another embodiment, the peptide can be conjugated with a therapeutic such as daunorubicin, doxorubicin, epirubicin, idarubicin, mitoxantrone, or a combination of these. The therapeutic agent, such as an anti-tumor or anti-neoplastic agent of choice, can be entrapped within a liposome; the liposomes are formulated to be of a size known to penetrate the endothelial and basement membrane barriers. The resulting liposomal formulation can be administered parenterally to a subject in need of such treatment, preferably by intravenous administration. Tumors characterized by an acute increase in permeability of the vasculature in the region of tumor growth are particularly suited for treatment by the present invention.

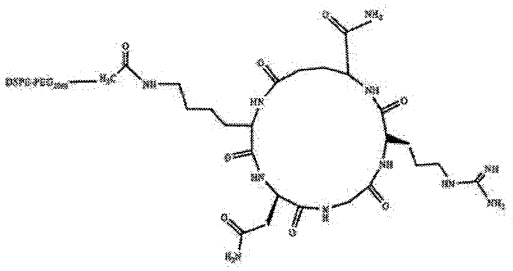

Figure 1. Illustration of exemplary molecule: Conjugated fluorophore

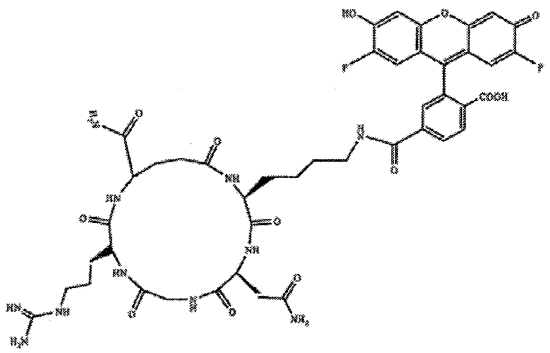

Figure 2. Illustration of exemplary molecule: Phospholipid

Applications:

- Cancer diagnostics
- Cancer therapeutics
- Anti-angiogenesis
- Imaging

Inventors: Bradford Wood, Matthew Dreher, Ayele Negussie (CC).

Relevant Publications:

1. W Arap *et al.* Cancer treatment by targeted drug delivery to tumor vasculature in a mouse model. Science. 1998 Jan 16;279(5349):377–380.

2. H Ellerby *et al.* Anti-cancer activity of targeted pro-apoptotic peptides. Nat Med. 1999 Sep;5(9):1032–1038.

3. F Curnis *et al.* Enhancement of tumor necrosis factor alpha antitumor immunotherapeutic properties by targeted delivery to aminopeptidase N (CD13). Nat Biotechnol. 2000 Nov;18(11):1185–1190.

4. G Colombo *et al.* Structure-activity relationships of linear and cyclic peptides containing the NGR tumor-homing motif. J Biol Chem. 2002 Dec 6;277(49):47891–47897.

5. F Pastorino *et al.* Vascular damage and anti-angiogenic effects of tumor vessel-targeted liposomal chemotherapy. Cancer Res. 2003 Nov 1;63(21):7400–7409.

6. F Pastorino *et al.* Targeting liposomal chemotherapy via both tumor cell-specific and tumor vasculature-specific ligands potentiates therapeutic efficacy. Cancer Res. 2006 Oct 15;66(20):10073–10082.

7. SV Garde *et al.* Binding and internalization of NGR-peptide-targeted liposomal doxorubicin (TVT–DOX) in CD13-expressing cells and its antitumor effects. Anti-Cancer Drugs. 2007 Nov;18(10):1189–1200.

Patent Status: U.S. Provisional Application No. 61/074,864 filed 23 Jun 2008 (HHS Reference No. E–147–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*.

Microfabricated Particles Useful as MRI Contrast Agents

Description of Technology: MRI contrast agents are versatile yet lack the sensitivity and multiplexing capabilities of optical agents. Available for licensing is an invention pertaining to microfabricated structures that can be used as MRI contrast agents with enhanced functionality or as micro-RFID (radio-frequency identification) tags. The microstructures can be engineered to appear as different effective colors when resolved using MRI as opposed to strictly grey-scale contrast of existing MRI agents. In this way they can be thought as radio-frequency analogs to quantum dots. A set of agents could be produced that would enable in vivo labeling and tracking of multiple different types of cells simultaneously. The agents can also act as radio-frequency probes of various physiological conditions. The invention can include a plurality of microstructures dispersed a liquid. The structures can have magnetic portions that vary in size, thickness and shape that are arranged to provide a substantially uniform Larmor precession frequency or a characteristic substantially uniform shift in Larmor precession frequency experienced by nuclear magnetic moments of a material when it is located in the substantially uniform field region created by the magnetic portions. In some embodiments, each of the nuclear magnetic resonance microstructures has a maximum dimension less than about 1 mm. The magnetic portions of the microstructure can be arranged proximate to each other, in contact with each other or be partially, substantially or totally coincident.

Applications:

- Magnetic Resonance Imaging
- Cancer
- Cardiovascular diseases imaging
- Drug development
- Drug candidate distribution tracking
- Diagnostics
- Microfluidics

Inventors: Gary Zabow, Stephen Dodd (NINDS), Alan Koretsky (NINDS), John Moreland (NIST).

Publications:

1. G Zabow *et al.* Micro-engineered local field control for high-sensitivity multispectral MRI. Nature 2008 Jun 19;453(7198):1058–1063.

2. KA Hinds *et al.* Highly efficient endosomal labeling of progenitor and stem cells with large magnetic particles allows magnetic resonance imaging of single cells. Blood 2003 Aug 1;102(3):867–872.

Patent Status: U.S. Provisional Application No. 61/071,263 filed 18 Apr 2008 (HHS Reference No. E–081–2008/0-US–01).

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: NINDS Laboratory of Functional and Molecular Imaging is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of microfabricated devices as MRI contrast agents. Please contact Dr. Melissa Maderia at 301–451–3943 or *maderiam@mail.nih.gov* for more information.

Active Guidewire Visualization Device and System for MRI Guided Interventions

Description of Technology: Available for licensing and commercial development is a guidewire device and system for MRI guidance of vascular interventions. The guidewire design, and its coupled system, enables interventionalists to visualize the location of the tip and distal shaft of an MRI compatible guidewire relative to the vascular system and surrounding anatomy. Visualization of both the shaft and tip enables interventionalists to advance the guidewire through tortuous vessels reducing the risk of puncturing vessel walls and also steering it through labyrinthine vasculature. The guidewire provided by the present invention includes distal and proximal ends with a space therein, a dipole antenna disposed in the space reserved within the guidewire body, the dipole antenna being adapted to be electrically connected to a signal processing system through a first signal channel through the proximal end of the guidewire body, and a loop antenna disposed in the space reserved within the guidewire body toward the distal end of the guidewire body, the loop antenna being adapted to be electrically connected to the signal processing system through a second signal channel through the proximal end of the guidewire body. The dipole antenna and the loop antenna are each constructed to receive magnetic resonance imaging signals independently of each other and to transmit received signals through the first and second signal channels, respectively, to be received by the signal processing system. More specifically, both loop and dipole antenna are tuned to resonate at the same Larmour frequency as produced by the magnet.

Applications:

- Interventional cardiology
- MRI guided surgery

Inventors: Ozgur Kocaturk (NHLBI).

Publications:

1. McKinnon GC, *et al.* Towards active guidewire visualization in interventional magnetic resonance imaging. MAGMA. 1996 Mar;4(1):13–18.

2. Ladd ME, *et al.* Active MR visualization of a vascular guidewire in vivo. J Magn Reson Imaging. 1998 Jan-Feb;8(1):220–225.

Patent Status: U.S. Provisional Application No. 61/006,265 filed 03 Jan 2008 (HHS Reference No. E–209–2007/0-US–01)

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The National Institutes of Health / Cardiac Catheter Core Lab is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Active two channel 0.035″ guidewire. Please contact Ozgur Kocaturk at 301–402–9430 or *kocaturko@nhlbi.nih.gov.*

Respiratory Syncytial Virus (RSV) Vaccines Based on Promoter-Proximate Attenuation

Description of Technology: Available for licensing and commercial development is a patent estate and related biological materials for producing therapeutic or prophylactic vaccines against Respiratory Syncytial Virus (RSV). The claimed vaccine strategy relates to the engineering and creation of live-attenuated RSV vaccine candidates by shifting the position of one or more viral genes relative to the viral promoter (aka promoter-proximal

attenuation). The gene shifts can be constructed by insertion, deletion or rearrangement of genes or genome segments within the recombinant genome or antigenome. Viral replication can increase or decrease depending on the position of expressed viral gene and depending on the nature and degree of the positional shift. Viral gene rearrangements are selected to maintain sufficient non-infectious replication of RSV while eliciting host anti-RSV immune responses. Viral genes targeted for such rearrangement include any of the NS1, NS2, N, P, M, SH, M2(ORF1), M2(ORF2), L, F or G genes or genome segment.

One modification of particular interest is the placement of the G and F protective antigen genes in a promoter-proximal position for increased expression. The gene position-shifted RSV can be further manipulated by the addition of specific nucleotide and amino acid point mutations or host range restriction determinants to yield desired phenotypic and structural effects.

Applications:

- Infectious Disease—Respiratory Syncytial Virus
- Vaccines
- Therapeutics
- Prophylactics
- Childhood Vaccines

Inventors: Christine D. Krempl, Peter L. Collins, *Brian R. Murphy,* Ursula Buchholz, Stephen S. Whitehead (NIAID)

Publications:

1. C Krempl *et al.* Recombinant respiratory syncytial virus with the G and F genes shifted to the promoter-proximal positions. J Virol. 2002 Dec;76(23):11931–11942.
2. Y Aloni, N Hay. Attenuation may regulate gene expression in animal viruses and cells. CRC Crit Rev Biochem. 1985;18(4):327–383.

Patent Status:

HHS Reference No. E–225–2000/0—

- U.S. Patent No. 6,923,971 issued 02 Aug 2005
- U.S. Patent Application No. 11/033,055 filed 10 Jan 2005
- U.S. Patent Application No. 11/054,343 filed 08 Feb 2005
- International Patent Application PCT/US2001/20107, which published as WO 2002/00693 on 03 Jan 2002 (expired)
- Australian Patent 2001268709
- Brazilian Patent Application PI0112276–2
- Canadian Patent Application 2413786
- Chinese Patent Application 01814362.8
- European Patent Application 01946696.0
- Israeli Patent Application 153530
- Japanese Patent Application 10–2002–505815
- Korean Patent Application 10–2002–7017577 and
- Mexican Patent Application 2002–012818.

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize live attenuated vaccines. Please contact Michael Piziali at 301–451–3527 for more information.

Quantitative Assessment of Changes in Tissue Status in Disease, Development, Aging, or Degeneration Using Diffusion Tensor Magnetic Resonance Imaging

Description of Technology: This invention significantly enhances the quality and utility of diffusion tensor magnetic resonance imaging (DT-MRI) data. The patent application for the invention describes quantitative statistical methodology to extract novel clinical and biological information from DT-MRI data. These parametric and non-parametric statistical methods help distinguish changes in tissue state from background noise inherent in all MRI measurements. The invention also includes hypothesis tests to determine the statistical significance of changes observed in MRI ''stains'' (e.g., the Trace of the diffusion tensor, Trace(D), and the mean apparent diffusion coefficient, ADC), which are widely used in the diagnosis of stroke. Further, this invention describes how to detect systematic artifacts in each pixel of a diffusion weighted image (e.g., artifacts caused by patient motion). Indeed, this new statistical methodology for analyzing and interpreting diffusion tensor MRI data should improve the efficacy of drug screening studies, as well as streamline multi-site and longitudinal studies designed to assess the safety and efficacy of drugs undergoing clinical evaluation.

Inventors: Peter J. Basser (NICHD), Sinisa Pajevic (CIT).

Patent Status: U.S. Patent No. 6,845,324 issued 15 Jan 2005 (HHS Reference No. E–192–1999/0-US–07)

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Human-Bovine Chimeric Respiratory Syncytial Virus (RSV) Vaccines

Description of Technology: Available for licensing and commercial development is a patent estate and related biological materials for making human-bovine chimeric virus particles for formulating live attenuated vaccines against human respiratory syncytial virus (RSV). Chimeric human-bovine RSVs are recombinantly engineered to incorporate nucleotide sequences from both human and bovine RSV strains and produce infectious, chimeric viruses that elicit anti-RSV immunological responses in humans and non-human primates. The chimeras incorporate partial or complete human or bovine RSV background genomes with one or more recombinantly integrated heterologous genes or genome segments of a different RSV strain.

Heterologous genes of interest for making chimeric recombinants include NS1, NS2, N, P, M, SH glycoprotein (or an immunogenic domain or epitope thereof), M2(ORF1), M2(ORF2), L, F or G genes or a genome segment including a protein or portion thereof or alternatively a leader, trailer or intergenic region of the RSV genome, or a segment thereof. A variety of additional mutations and nucleotide modifications are provided within the human-bovine chimeric RSV of the invention to yield desired phenotypic and structural effects. Exemplary human-bovine chimeric RSV of the invention incorporate a chimeric RSV genome or antigenome comprising both human and bovine polynucleotide sequences, as well as a major nucleocapsid (N) protein, a nucleocapsid phosphoprotein (P), a large polymerase protein (L), and an RNA polymerase elongation factor. Additional RSV proteins may be included in various combinations to provide a range of infectious subviral particles up to a complete viral particle or a viral particle containing supernumerary proteins, antigenic determinants or other additional components.

Applications:

- Infectious Disease—Respiratory Syncytial Virus
- Vaccines
- Therapeutics
- Prophylactics
- Childhood Vaccines

Inventors: Ursula Buchholz, Peter L. Collins, Brian R. Murphy, Stephen S. Whitehead, Christine D. Krempl (NIAID).

Publications:

1. UJ Buchholz *et al.* Chimeric bovine respiratory syncytial virus with glycoprotein gene substitutions from human respiratory syncytial virus (HRSV): effects on host range and evaluation as a live-attenuated HRSV vaccine. J Virol. 2000 Feb;74(3):1187–1199.

2. A Karger *et al.* Recombinant bovine respiratory syncytial virus with deletions of the G or SH genes: G and F proteins bind heparin. J Gen Virol. 2001 Mar;82(Pt 3):631–640.

3. UJ Buchholz *et al.* Generation of bovine respiratory syncytial virus (BRSV) from cDNA: BRSV NS2 is not essential for virus replication in tissue culture, and the human RSV leader region acts as a functional BRSV genome promoter. J Virol. 1999 Jan;73(1):251–259.

Patent Status:

HHS Reference No. E–178–1999/0—

- International Patent Application PCT/US00/17755, which published as WO 2001/04335 on 09 Jan 2001 (expired)
- Australian Patent 784216
- Chinese Patent 00810119.1
- Canadian Patent Application 2378552
- European Patent Application 00941756.9
- Israeli Patent Application 147447
- Japanese Patent Application 2001–509539
- Korean Patent Application 10–2002–7000318
- Mexican Patent Application 2002–000220
- Brazilian Patent Application PI0013195–4 and
- Chinese Patent Application 200710167112.6

HHS Reference No. E–178–1999/1—

- U.S. Patent Application No. 11/097,946 filed 31 Mar 2005

HHS Reference No. E–178–1999/2—

- U.S. Patent Application No. 10/704,116 filed 07 Nov 2003

Licensing Status: Available for licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Office of Technology Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize attenuated live vaccines against respiratory syncytial virus (RSV). Please contact Barry Buchbinder at 301–594–1696 for more information.

Dated: September 9, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–21519 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: October 14–15, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: (1) Approval of Minutes; (2) Report from Dr. John Niederhuber, NCI Director; (3) Report on the OAR; (4) Report from Planning & Office of Governmental & Congressional Relations OD/NCI; (5) Indian Health Service & Cancer Issues of Native Americans; (6) Cancer Health Communications; (7) Update-NCI Community Cancer Clinics Program; (8) Reports from DCLG Working Groups & Member Updates; (9) Public Comment; (10) Action Items/Conclusion.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Shannon K. Bell, MSW, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 10A30D, Bethesda, MD 20892, 301–451–3393.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21499 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: November 6–7, 2008.

Time: November 6, 2008, 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Time: November 7, 2008, 8:30 a.m. to 12 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21503 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 Center for Complementary and Alternative Medicine Special Emphasis Panel; Review of Training and Education Grant Applications.

Date: October 29–30, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov*.

Dated: September 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21502 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of 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 a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 17–27, 2008.

Open: October 17, 2008, 7:30 a.m. to 8 a.m.

Agenda: Reports from Institute staff.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Closed: October 17, 2008, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 5 Research Court, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21500 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; Chemical Senses.

Date: October 8, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Susan Sullivan, PhD, Scientific Review Officer, Scientific Review

Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–496–8683, *sullivas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21501 Filed 9–15–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2008–N0186; 60138–1261–0000–S3]

Wetland Management Districts, South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare a Comprehensive Conservation Plan and Environmental Assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and associated environmental documents for three Wetland Management Districts (WMDs) located in the State of South Dakota. The three WMDs are Huron, Madison and Sand Lake. The Service is furnishing this notice in compliance with Service CCP Policy to advise other agencies and the public of its intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: To ensure consideration, we must receive your written comments by October 16, 2008.

ADDRESSES: Please send your comments or requests for more information to Bernardo Garza, Planning Team Leader, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, 303–236–4377, or John Esperance, Chief, Branch of Refuge Planning at 303–236–4369.

SUPPLEMENTARY INFORMATION: With this Notice, the Service initiates a CCP for three WMDs in eastern South Dakota. These three WMDs were established for the protection of critical migratory waterfowl habitat within the State of South Dakota. Through these WMDs, the Service manages a complex of wetlands in 27 counties within South Dakota. The wetlands range from seasonal shallow basins to deeper, more permanent ponds that provide resting and feeding areas for millions of birds during spring and fall migration. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a CCP for each unit of the National Wildlife Refuge System. The purpose in developing a CCP is to provide project leaders with a 15-year strategy for achieving refuge and wetland management district purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The Service established each unit of the National Wildlife Refuge System, including these three WMDs, with specific purposes. The Service uses these purposes to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission and to guide which public uses will occur on these WMDs. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while providing for wildlife-dependent recreation. The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issue scoping and public comment. The Service requests input on issues, concerns, ideas, and suggestions for the future management of these WMDs in South Dakota. Anyone interested in providing input is invited to respond to the following two questions.

(1) What problems or issues do you want to see addressed in the CCP?

(2) What improvements would you recommend for these three (3) WMDs?

The Service has provided the above questions for your optional use; you are not required to provide information to the Service. The planning team developed these questions to gather information about individual issues and ideas concerning these WMDs. Comments received by the planning team will be used as part of the planning process; individual comments will not be referenced in our reports or responded to directly. An opportunity will be given to the public to provide input at an open house to scope issues and concerns (schedules can be obtained from the planning team leader at the above address). Comments may also be submitted any time during the planning process by writing to the above address. All information provided voluntarily by mail, phone, or at public meetings becomes part of our official public record (*i.e.*, names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide informational copies.

The Service will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and Service policies and procedures for compliance with those regulations. All comments received from individuals on Service Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, NEPA (40 CFR 1506.6(f)), and other Departmental and Service policies and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law.

Dated: July 18, 2008.

Sharon R. Rose,

Acting Deputy Regional Director.

[FR Doc. E8–21548 Filed 9–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0205; 20124–1113–0000–F2]

Williamson County Regional Habitat Conservation Plan, Williamson County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final Environmental Impact Statement and Final Regional Habitat Conservation Plan.

SUMMARY: Williamson County (Applicant) submitted an application (TE–181840–0) for an incidental take permit (ITP) to cover four species currently listed under the Endangered Species Act of 1973, as amended (Act). The proposed take would occur as a result of proposed road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing within western Williamson County, Texas. We, the U.S. Fish and Wildlife Service (Service), have issued a final Environmental Impact Statement (FEIS) to evaluate the impacts of and alternatives for the possible issuance of an ITP. The Applicant completed a final Regional Habitat Conservation Plan (RHCP), as required by the Act, which provides measures to minimize and mitigate the effects of the proposed taking of covered species and effects to the habitats upon which they depend.

DATES: A final decision on ITP issuance will be made October 16, 2008 or later.

ADDRESSES: Persons wishing to review the FEIS and RHCP may obtain a copy by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; (512) 490–0057. See also ''Public Review.''

FOR FURTHER INFORMATION CONTACT: Mr. Bill Seawell at the address and phone in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Section 9 of the Act and Federal regulations prohibit the taking of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). Under limited circumstances, the Service may issue permits to authorize incidental take of listed fish or wildlife that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Public Review

Copies of the RHCP and FEIS are available for public review, by appointment, during regular business hours, at the Austin Ecological Services Field Office. The documents may be viewed on the World Wide Web at *www.wilcogov.org/wccf*.

These documents may also be viewed during regular hours in the reference section of the following Williamson County libraries:

- *Cedar Park Public Library*—550 Discovery Blvd., Cedar Park, TX 78613
- *Florence Public Library*—207 E. Main St., Florence, TX 76527
- *Georgetown Public Library*—408 W. 8th St., Georgetown, TX 78626
- *Leander Public Library*—1011 S. Bagdad Rd., Leander, TX 78641
- *Liberty Hill Public Library*—355 Loop 332, Liberty Hill, TX 78642
- *Round Rock Public Library*—216 E. Main St., Round Rock, TX 78664
- *Taylor Public Library*—801 Vance St., Taylor, TX 76574
- *Teinert Memorial Public Library*—337 N. Hwy 95, Bartlett, TX 76511
- *Frank Smith, Jr. Library Center,* Southwestern University—1001 E. University Ave., Georgetown, TX 78626
- *Albert B. Alkek Library*, Texas State University—1555 University Blvd., Round Rock, TX 78665
- *Cypress Creek Campus*, Austin Community College—1555 Cypress Creek Rd., Cedar Park, TX 78613

Copies may also be viewed during normal business hours at the following Williamson County offices:

- *County Judge*, Williamson County Courthouse, 710 Austin Ave., Georgetown, TX 78626
- *Commissioner Pct. 1*—401 West Main St., Suite 216, Round Rock, TX 78664
- *Parks Department*—350 Discovery Blvd., #207, Cedar Park, TX 78613
- *Commissioner Pct. 3*—3010 Williams Dr., Suite 153, Georgetown, TX 78628
- *Commissioner Pct. 4*—350 Exchange Blvd., Suite 100, Hutto, TX 78634

Background Information

We received an application for an incidental take permit, which would be for a term of 30 years, from Williamson County and the Williamson County Conservation Foundation. The application included a draft RHCP to satisfy the application requirements for a section 10(a)(1)(B) permit under the Act. The Applicant seeks an ITP for activities described in the RHCP and will implement conservation measures to minimize and mitigate for incidental take of golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), Bone Cave harvestman (*Texella reyesi*), and Coffin Cave mold beetle (*Batrisodes texanus*) to the maximum extent practicable, and ensure that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

On May 16, 2008, the Service published a notice in the **Federal Register** (73 FR 28498) announcing receipt of an application for an ITP from Williamson County and the availability of a draft EIS (dEIS) and a draft RHCP for the application. The dEIS analyzed the potential environmental impacts that may result from the Federal action of authorizing incidental take anticipated to occur with implementation of the RHCP, and identified various alternatives. We received a total of 6 comments on the dEIS and draft RHCP. A response to each comment received in these letters has been included in the FEIS.

Alternatives

The dEIS considered two alternatives in addition to the proposed project described above: (1) A No Action Alternative, under which no permit would be issued. This alternative would require individuals (rather than the Applicant) to seek authorization through section 10(a)(1)(B) of the Act to address incidental take resulting from their actions in Williamson County or to avoid taking actions that would result in incidental take; (2) A Modified (Reduced Take and Mitigation) RHCP, which would only cover take of the golden-cheeked warbler and Bone Cave harvestman. The amount of authorized take and mitigation would be reduced for both species.

We will evaluate the application, associated documents, and comments submitted to them to prepare a Record of Decision. A permit decision will be made no sooner than 30 days after the publication of the FEIS and completion of the Record of Decision.

Thomas L. Baur,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E8–21547 Filed 9–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

American Indian Population and Labor Force Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of a current information collection; comment request.

SUMMARY: The Assistant Secretary—Indian Affairs (AS–IA) is seeking comments on the American Indian Population and Labor Force Report as we prepare to reinstate the collection as required by the Paperwork Reduction Act of 1995. The Indian Employment, Training and Related Services Demonstration Act (Act) of 1992 requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population by gender, income level, age, and availability for work.

DATES: Submit comments on or before November 17, 2008.

ADDRESSES: Your comments and suggestions on the requirements should be made directly to Lynn Forcia, Division Chief, Division of Workforce Development, Office of Indian Energy and Economic Development, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, 1951 Constitution Avenue, Mail Stop 20-SIB, NW., Washington, DC 20245; Telephone (202) 219–0740, Facsimile (202) 208–4564, E-mail *Lynn.Forcia@BIA.GOV.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Lynn Forcia, as identified in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The collection of this information is mandated by Congress by Public Law 102–477 Indian Employment, Training and Related Services Demonstration Act (Act) of 1992, Section 17a. The Assistant Secretary—Indian Affairs (AS–IA) is submitting the information collection for reinstatement. The information is used by interested parties such as tribal governments for the purpose of designing, planning and developing programs, for American Indians. This information is used to predict and identify the level of need for American Indians and Alaska Natives. This survey is the only accumulation of data on tribal enrollments, service population, workforce, and unemployment of tribal entities in the U.S.

Request for Comments: AS–IA requests your comments on this collection concerning:

(a) The validity of the methodology used;

(b) The validity of the assumptions used, including but not limited to, the definition of ''service population'' with its inclusions and exclusion, population not available for work exclusions, and inclusion of short term, part time or season employment characteristics.

(c) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information;

(d) The use of a computerized, automated collection technique by means of the Office of Indian Energy and Economic Development's Web site.

Please note that an agency may not sponsor or request and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 20–SIB, during the hours of 8 a.m. to 4 p.m., e.s.t., Monday through Friday, except for legal holidays. Please note that all comments received will be available for public review for two weeks after the comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from organizations or representatives will be available for review. We may withhold comment from review for other reasons.

OMB Control Number: 1076–0147.

Type of Review: Reinstatement.

Title: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, American Indian Population and Labor Force Report.

Brief Description of Collection: Public Law 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, mandates the Secretary to publish, not less than biennially, a report on the American Indian and Alaska Native population eligible for services by gender, income level, age, and availability for work. The process for collecting data has included the use of a paper data submission form with written instructions to be filled out by tribes and then certified at the tribal, agency, and regional level. The BIA believes that many of the reporting issues may be the result of misunderstanding of how to fill out this data submission form. The Office of Indian Energy and Economic Development has examined the data collection process and is hoping to address a truer depiction of tribal enrollment and BIA service population in Indian Country.

The Office of Indian Energy and Economic Development consulted with 5 of the 562 federally recognized tribal entities, ranging in membership less than 5,000 members to more than 250,000 members. The estimated time it took each tribe to respond to the biennial report was between one hour and four days, depending on the resources of the tribal government. It will take tribal representatives an estimated eight hours to complete the survey.

Number of Respondents: 562.

Estimated Time per Response: 8 hours.

Frequency of Reponses: Biennially.

Total Annual Burden to Respondents: 5,000 hours biennially.

Total Annual Cost to Respondents: N/A.

Dated: September 5, 2008.

Sanjeev Bhagowalia.

Chief Information Officer—Indian Affairs.

[FR Doc. E8–21644 Filed 9–15–08; 8:45 am]

BILLING CODE 4310–XN–P

INTERNATIONAL TRADE COMMISSION

In the Matter of: Certain Cast Steel Railway Wheels, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 14, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Amsted Industries Incorporated of Chicago, Illinois. A letter supplementing the complaint was filed on September 2, 2008. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cast steel railway wheels and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of

which is to substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 10, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cast steel railway wheels or certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Amsted Industries Incorporated, Two Prudential Plaza, 180 North Stetson Street, Suite 1800, Chicago, Illinois 60601.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Tianrui Group Company Limited, 63 East Guangcheng Road, Ruzhou, Henan, 467500, China.

Tianrui Group Foundry Company Limited, Bus Station South, Linru Town, Ruzhou, Henan, 467541, China.

Standard Car Truck Company, Inc., 865 Busse Highway, Park Ridge, Illinois 60068–2359.

Barber Tianrui Railway Supply, LLC, 865 Busse Highway, Park Ridge, Illinois 60068–2359.

(c) The Commission investigative attorney, party to this investigation, is Jeffrey T. Hsu, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–21588 Filed 9–15–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–638]

In the Matter of: Certain Intermediate Bulk Containers; Notice of Commission Issuance of a Limited Exclusion Order Against Infringing Products of Respondent Found in Default; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against infringing products of Shanghai Kingtainer Packaging Container Co., Ltd., which was previously found in default, and has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337).

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 10, 2008, based on a complaint filed by Schütz Container Systems Inc. of North Branch, New Jersey and Protechna, S.A. of Switzerland (collectively, ''Schütz''), alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States,

the sale for importation, and the sale within the United States after importation of certain intermediate bulk containers by reason of infringement of certain claims of United States Patent Nos. 4,909,387; 5,253,777; and 5,673,630. 73 FR 13919 (March 14, 2008). The complaint named Shanghai Kingtainer Packaging Container Co., Ltd. of China (''Kingtainer'') and Novus International, Inc. of St. Louis, Missouri (''Novus'') as respondents.

Novus was terminated from the investigation on the basis of a settlement.

Schütz moved, pursuant to Commission Rule 210.16(b), for an order to show cause why Kingtainer should not be found in default, and for a finding of default upon the failure to show cause. The ALJ ordered Kingtainer to show cause, no later than the close of business on May 16, 2008, why it should not be found in default for failure to respond to the Complaint and Notice of Investigation (Order No. 4). No response to Order No. 4 was filed, and Kingtainer was found in default. On June 21, 2007, Kingtainer filed with the Commission (but did not serve) a letter that failed to comply with the order to show cause or the requirements of 19 CFR 210.13(b) (response to complaint and notice of investigation), and that did not demonstrate any intention by Kingtainer to participate as a respondent in this investigation. Having adjudged Kingtainer in default, the Commission requested briefing from interested parties and the public on remedy, the public interest, and bonding. 73 FR 36356 (June 26, 2008).

Schütz and the Commission investigative attorney submitted briefing responsive to the Commission's request on July 11, 2008. Each proposed a limited exclusion order directed to Kingtainer's accused products, and recommended allowing entry under bond of 100 percent of entered value during the period of Presidential review.

The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to the defaulting respondent. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain intermediate bulk containers by reason of infringement of claims 13, 14, 16, 17, and 31 of U.S. Patent No. 4,909,387; claims 1, 6, 12, and 15 of U.S. Patent No. 5,253,777; and claim 1 of U.S. Patent No. 5,673,630; and that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondent Kingtainer. The Commission further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: September 11, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–21579 Filed 9–15–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1014, 1016, and 1017 (Review)]

Polyvinyl Alcohol From China, Japan, and Korea

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on polyvinyl alcohol from China, Japan, and Korea.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on polyvinyl alcohol from China, Japan, and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 5, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On September 5, 2008, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (72 FR 31507, June 2, 2008) was adequate and that the respondent interested party group response with respect to Korea was adequate and decided to conduct a full review with respect to the antidumping duty order concerning polyvinyl alcohol from Korea. The Commission found that the respondent interested party group responses with respect to China and Japan were inadequate.[1] However, the Commission determined to conduct full reviews concerning the antidumping duty orders on polyvinyl alcohol from China and Japan to promote administrative efficiency in light of its decision to conduct a full review with respect to the order concerning polyvinyl alcohol from Korea. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

[1] Commissioner Lane dissenting with respect to China and Japan. Commissioner Pinkert dissenting with respect to Japan.

pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: September 10, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–21537 Filed 9–15–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Review)]

Saccharin From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on saccharin from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on saccharin from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 5, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On September 5, 2008, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (72 FR 31504, June 2, 2008) was adequate and that the respondent interested party group response was inadequate.[1] The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Dated: September 10, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–21536 Filed 9–15–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs, Office for Victims of Crime

[OMB Number 1121–0142]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Victim of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 17, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact DeLano Foster (202) 616–3612, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State government. Other: None. The VOCA, Crime Victim Assistance Grant Program, Subgrant Award Report is a required submission by state grantees, within 90 days of their awarding a subgrant for the provision of crime victim services. VOCA and the Program Guidelines require each state victim assistance office to report to OVC on the impact of the Federal funds, to certify compliance with the eligibility requirements of VOCA, and to provide a summary of proposed activities. This information will be aggregated and serve as supporting documentation for the Director's biennial report to the President and to the Congress on the

[1] Vice Chairman Pearson dissenting with respect to the respondent interested party group response.

effectiveness of the activities supported by these grants. This request is for an extension of a currently approved reporting instrument, with no revisions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The number of VOCA-funded victim assistance programs varies widely from State to State. A review of information currently available to this Office on the number of active victim assistance programs in 15 States selected for variance in size and population revealed that a State would be responsible for entering subgrant data for as many as 436 programs (California) to as few as 12 programs (District of Columbia).

The estimated time to enter a record via the Grants Management System is three minutes (.05 hour). Therefore, the estimated clerical time can range from 36 minutes to 22 hours, based on the number of records that are entered. It would take 295 hours to enter 5,900 responses electronically [5,900 x .05 hour].

(6) *An estimate of the total public burden (in hours) associated with the collection:* The current estimated burden is 295 (5,900 responses × .05 hour per response = 295 hours). There is no increase in the annual recordkeeping and reporting burden.

FOR FURTHER INFORMATION CONTACT: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 10, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–21558 Filed 9–15–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 10, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number) / e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Revision of an existing OMB Control Number.

Title of Collection: Applications for Authority to Employ Full-Time Students at Subminimum Wages in Retail/Service Establishments/Agriculture/Institutions of Higher Education.

OMB Control Number: 1215–0032.

Affected Public: Private Sector—Business or other for-profits, Not for-profit institutions, and Farms.

Total Estimated Number of Respondents: 389.

Total Estimated Annual Burden Hours: 97.

Total Estimated Annual Costs Burden: $175.

Description: The information is used to determine (1) whether a retail or service or agriculture employer should be authorized to pay subminimum wages to full-time students pursuant to the provisions of section 14(b) of the Fair Labor Standards Act (FLSA) and (2) whether an Institution of Higher Education should be authorized to pay subminimum wages to its own full-time students pursuant to the provisions of FLSA section 14(b). For additional information, see related notice published at Volume 73 FR 30980 on May 29, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–21546 Filed 9–15–08; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–064)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, October 6, 2008, 9 a.m. to 5 p.m. and Tuesday, October 7, 2008, 9 a.m. to 2:30 p.m. Eastern Daylight Time.

ADDRESSES: Courtyard by Marriott and Conference Center, Saturn Conference Room, 3435 North Atlantic Avenue, Cocoa Beach, FL 32931.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Astrophysics Division Update.
—Joint Dark Energy Mission Update.
—Astrophysics Goals Overview.
—Astrophysics on the Moon Discussion.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register. For further information, contact Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–21606 Filed 9–15–08; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–3035.

FOR FURTHER INFORMATION CONTACT: Breeda Reilly, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 492–3110 or e-mail to *Breeda.Reilly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''General Fire Protection Guide for Plutonium Processing and Fuel Fabrication Plants,'' is temporarily identified by its task number, DG–3035, which should be mentioned in all related correspondence. DG–3035 is the proposed Revision 1 of Regulatory Guide 3.16, dated January 1974.

DG–3035 identifies NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' issued August 2000 (SRP), as the method that the staff of the NRC considers acceptable for use in complying with Title 10, Section 70.23(a)(3) and (a)(4), of the Code of Federal Regulations (10 CFR 70.23(a)(3) and (a)(4)) with respect to fire protection, and with 10 CFR 70.61, ''Performance Requirements,'' with respect to potential radiological consequences from fires, for a mixed oxide (MOX) facility.

The NRC regulations in 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' establish procedures and criteria for the licensing of special nuclear material (SNM). In 10 CFR Part 70, Subpart D, ''License Applications,'' the regulations specify the contents of license applications and the requirements for approving applications. As stipulated in 10 CFR 70.23(a) and (b), the requirements for approval include that the applicant's proposed equipment, facilities, and procedures be adequate to protect health and minimize danger to life or property.

II. Further Information

The NRC staff is soliciting comments on DG–3035. Comments may be accompanied by relevant information or supporting data, and should mention DG–3035 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from the comments. Comments may be submitted by any of the following methods:

1. *Mail to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
2. *E-mail to: NRCREP@nrc.gov.*
3. *Hand-deliver to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.
4. *Fax to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–3035 may be directed to Breeda Reilly at (301) 492–3110 or e-mail to *Breeda.Reilly@nrc.gov.*

Comments would be most helpful if received by November 13, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–3035 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML081910233.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

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Dated at Rockville, Maryland, this 9th day of September 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–21566 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026]

Southern Nuclear Operating Company, et al.; Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the Vogtle Electric Generating Plant Units 3 and 4

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the Code of Federal Regulations (10 CFR) Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' notice is hereby given that a hearing will be held, at a

time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the combined license (COL) application dated March 28, 2008, filed pursuant to Subpart C of 10 CFR Part 52 by Southern Nuclear Operating Company (SNC), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners (Dalton Utilities). The application was accepted for docketing on May 30, 2008. The docket numbers established for this application are 52–025 and 52–026.

The application requests approval of a COL for Vogtle Electric Generating Plant (Vogtle) Units 3 and 4, located in Burke County, Georgia. The Vogtle COL application incorporates by reference the AP1000 design certified in Appendix D to 10 CFR Part 52, and the application to amend that certified design. The AP1000 amendment application is the subject of an ongoing rulemaking under docket number 52–006. The Vogtle COL application also references an Early Site Permit application that is the subject of an ongoing adjudicatory proceeding under docket number 52–011. The Final Environment Impact Statement for the ESP was published on August 22, 2008.

The hearing on the COL application will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, ''Referral to the ACRS,'' and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and who desires to participate as a party in this proceeding must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A petition for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission or presiding officer designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(i)–(viii).

All documents filed in NRC adjudicatory proceedings including intervention petitions, request by interested governmental entities to participate under 10 CFR 2.315(c), and any other pleadings, must be filed in accordance with the NRC E–Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E–Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at *HearingDocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the petitioner (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each participant will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a participant has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must submit an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or

the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below.

Counsel for the applicant are M. Stanford Blanton, *sblanton@balch.com* (205–226–3417), or Moanica M. Caston, *mcaston@southernco.com* (205–992–5316), or Kathryn M. Sutton, *ksutton@morganlewis.com* (202–739–5738). Counsel for the NRC staff in this proceeding are Ann Hodgdon, *Ann.Hodgdon@nrc.gov* (301–415–1587) and Michael Spencer, *Michael.Spencer@nrc.gov* (301–415–4073).

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his position on the issues, which need not be submitted using the E-filing process, at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col/vogtle.html*. The ADAMS accession number for the application cover letter is ML081050133.

To search for documents in ADAMS using the Vogtle Units 3 and 4 COL application docket numbers, 52–025 and 52–026, enter the terms ''05200025'' and ''05200026'' in the ''Docket Number'' field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix. The Vogtle ESP can be found in ADAMS using the accession number ML070660266 or by going to *http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html*. To search for documents on the Vogtle ESP docket, enter ''05200011'' in the ''Docket Number'' field in the Web-based search (advanced search) engine or the ADAMS find tool.

The AP1000 DCD through Revision 15, which is incorporated by reference into Appendix D of Part 52, can be found by going to *http://www.nrc.gov/reactors/new-licensing/design-cert/ap1000.html*. The AP1000 DCD Revision 16 can be found using ADAMS accession number ML071580939 or by going to *http://www.nrc.gov/reactors/new-licensing/col/vogtle.html*. To search for documents in ADAMS using the AP1000 DCD Revision 16 docket number 52–006, enter the term ''05200006'' in the ADAMS ''Docket Number'' field. The Final Environmental Impact Statement for the Vogtle ESP can be found on the NRC Web site at *http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html*, or under ADAMS accession numbers ML0822440145, ML0822440165 and ML082260203.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)).

2. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than 10 days after the publication of the notice of hearing will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov*, respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of hearing and opportunity to petition for leave to intervene;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

[1] See footnote #6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of [$191.00] to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the U.S. Nuclear Regulatory Commission, Office of Administration, Security Processing Unit, Mail Stop T–6E46, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check.

Note: Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within 10 days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (i.e., indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within 5 days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within 15 days of receipt of that determination.

In the same manner, a party other than the requester may challenge an

[2] The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

[FR Doc. E8–21565 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 10.8, Revision 3.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 10.8, ''Guide for the Preparation of Applications for Medical Use Programs,'' was previously issued with a temporary identification as Draft Regulatory Guide, DG–0018 and an opportunity for public comments. This regulatory guide directs the reader to the type of information acceptable to the NRC staff for review of an application for a medical use license. Title 10, Part 35, ''Medical Use of Byproduct Material,'' of the Code of Federal Regulations (10 CFR Part 35) regulates the medical use of byproduct material. In addition to the requirements of 10 CFR Part 35, medical use licensees may be subject to those portions of 10 CFR Part 20, ''Standards for Protection Against Radiation,'' that relate to radiation safety and the sections of 10 CFR Part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' that relate to licensing and the noncommercial transfer of specific radioactive drugs to medical use licensees within a consortium.

This regulatory guide endorses the methods and procedures for medical licensing applications contained in the current revision of NUREG–1556, Volume 9, ''Consolidated Guidance about Material Licenses: Program-Specific Guidance about Medical Use Licenses,'' as a process that the NRC staff finds acceptable for meeting the regulatory requirements.

II. Further Information

In April 2008, DG–0018 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on June 30, 2008. Electronic copies of Regulatory Guide 10.8, Revision 3 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–21564 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–243

Oregon State University Research Reactor; Notice of Issuance of Renewed Facility License No. R–106

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued renewed Facility License No. R–106, held by Oregon State University (the licensee), which authorizes continued operation of the Oregon State University TRIGA reactor (OSTR), located in Corvallis, Benton County, Oregon. The OSTR is a pool-type, light-water-moderated-and-cooled research reactor licensed to operate at a steady-state thermal power level of 1.1 megawatts. Renewed Facility License No. R–106 will expire at midnight 20 years from its date of issuance.

The renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in Title 10, Chapter 1, ''Nuclear Regulatory Commission,'' of the Code of Federal Regulations (CFR), and sets forth those findings in the renewed license. The agency afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the **Federal Register** on June 14, 2007, at 72 FR 32922. The NRC received no request for a hearing or petition for leave to intervene following this notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility License No. R–106 and concluded, based on that evaluation, that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an environmental assessment for license renewal, noticed in the **Federal Register** on September 8, 2008, at 73 FR 52072, and concluded, based on that assessment, that renewal of the license will not have a significant impact on the quality of the human environment.

The NRC maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For details with respect to the application for renewal, see the licensee's letter dated October 5, 2004 (ADAMS Accession Nos. ML043270077 and ML07430452), as supplemented by letters dated August 8, 2005 (ADAMS Accession No. ML052290051), May 24, 2006 (ADAMS Accession No. ML061510355), November 10, 2006 (ADAMS Accession No. ML063210182), November 21, 2006 (ADAMS Accession No. ML063320500), July 10, 2007 (ADAMS Accession Nos. ML072150361 and ML072150362), July 27, 2007 (ADAMS Accession No. ML072150363), July 31, 2007 (ADAMS Accession No. ML072190043), August 6, 2007 (ADAMS Accession No. ML072340580), April 14, 2008 (ADAMS Accession No. ML081150194), August 6, 2008 (ML082261409), and August 11, 2008 (ML082270383). The dates and associated ADAMS accession numbers of NRC requests for additional information are May 15, 2006 (ADAMS Accession No. ML061310209), October 3, 2006 (ADAMS Accession No. ML062060026), May 21, 2007 (ADAMS

Accession No. ML071300010), February 4, 2007 (ADAMS Accession No. ML072890036), and March 19, 2008 (ADAMS Accession No. ML080710139). For details with respect to the issuance of the renewed facility license, see renewed Facility License No. R–106 (ADAMS Accession No. ML082520502), the related safety evaluation report (ADAMS Accession No. ML071430452), and the related environmental assessment dated September 8, 2008 (ADAMS Accession No. ML061650197). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E8–21556 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 15, 22, 29, October 6, 13, 20, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 15, 2008

There are no meetings scheduled for the week of September 15, 2008.

Week of September 22, 2008—Tentative

There are no meetings scheduled for the week of September 22, 2008.

Week of September 29, 2008—Tentative

There are no meetings scheduled for the week of September 29, 2008.

Week of October 6, 2008—Tentative

There are no meetings scheduled for the week of October 6, 2008.

Week of October 13, 2008—Tentative

There are no meetings scheduled for the week of October 13, 2008.

Week of October 20, 2008—Tentative

Wednesday, October 22, 2008

9:30 a.m. Briefing on New Reactor Issues—Construction Readiness, Part 1 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

1:30 p.m. Briefing on New Reactor Issues—Construction Readiness, Part 2 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 11, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–21652 Filed 9–12–08; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0505]

''Project Plan—Fire-Induced Failure Modes and Effects Testing of Direct Current Driven Control Cables,'' Draft for Public Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of ''Project Plan—Fire-Induced Failure Modes and Effects Testing of Direct Current Driven Control Cables,'' and request for public comment.

SUMMARY: The NRC is making the proposed draft test plan, ''Project Plan—Fire-Induced Failure Modes and Effects Testing of Direct Current Driven Control Cables,'' available for public comment.

DATES: Comments on this document should be submitted by Friday, October 24, 2008. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc. will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search on the Docket ID for this action: [NRC–2008–0505].

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop: T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays.

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

Federal e-Rulemaking Portal: Documents related to this notice, including public comments, are accessible at *http://www.regulations.gov*, by searching on docket ID: [NRC–2008–0505].

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The proposed draft test plan ''Project Plan—Fire-Induced Failure Modes and Effects Testing of Direct Current Driven Control Cables,'' is available electronically under ADAMS Accession Number ML082520518.

FOR FURTHER INFORMATION CONTACT: Gabriel Taylor, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research, telephone (301) 415–3166, e-mail *gabriel.taylor@nrc.gov*.

SUPPLEMENTARY INFORMATION: There are several characteristics associated with DC control circuits that are unique as compared to AC control circuits. It is because of these unique characteristics that the extrapolation of the AC circuit test results to DC circuits introduces significant uncertainty. Cable failure modes and effects for DC control circuits may differ significantly from the corresponding behaviors in AC circuits. In order to assess behavioral differences and reduce analysis uncertainty, it is necessary to conduct tests using DC circuits.

Previous fire-induced testing has focused on determining the failure characteristics of alternating current circuits, with only a limited amount of data on direct current (DC) circuits. The purpose of the Draft Test Plan entitled ''Draft Project Plan for Fire-Induced Failure Modes and Effects Testing of Direct Current Driven Control Circuit Cables,'' is to provide a structured plan for conducting a large number of circuit integrity tests to meet the objective of providing data on spurious actuations related to risk-significant DC circuits typically encountered in nuclear power plants.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the documents, incorporate suggested changes as necessary, and make the final test plan available to the public through ADAMS.

Dated at Rockville, MD, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Mark Henry Salley,

Chief, Fire Research Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. E8–21562 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (c) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

Requests for a hearing or intervention must be filed in accordance with the procedures set forth in 10 CFR Part 110, Subpart H and be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty days after publication of this notice in the **Federal Register** to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this import license application follows.

NRC Import License Application

DESCRIPTION OF MATERIAL

Name of applicant, date of application, date received, application No., docket No.	Material type	End use	Country of origin
UniTech Services Group, Inc., August 19, 2008, August 21, 2008, IW026, 11005790.	Class A radioactive waste consisting of Polyvinyl alcohol (PVA) based protective clothing and related products contaminated with activation and mixed fission products (predominantly Co-60, Mn-54, Fe-55, Ni-63, and Cs-137). The physical and chemical form of most contaminants is solid particulate metal oxides.	Dissolving by way of laundering in accordance with applicant's domestic license.	Laguna Verde Nuclear Power Plant, Mexico.

Dated this 4th day of September 2008 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. E8–21571 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 8.1.

FOR FURTHER INFORMATION CONTACT: Mark P. Orr, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–6373 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide 8.1, ''Radiation Symbol,'' published February 2, 1973. The NRC is withdrawing this regulatory guide because it is no longer required.

Regulatory Guide 8.1 references Title 10 of the *Code of Federal Regulations,* Subsection 20.203 (10 CFR 20.203), which has been deleted from the CFR. The current regulations for the radiation symbol are found in 10 CFR 20.1901, ''Caution Signs.'' The guide is no longer required because the current regulations in 10 CFR 20.1901(a) provide a specific description for the design of the approved trefoil radiation symbol. The instructions in 10 CFR 20.1901(a) are sufficient and no additional guidance is needed.

Regulatory Guide 8.1 is a one-page guide that endorses American National Standards Institute (ANSI) Standard N2.1–1969, ''Radiation Symbol,'' dated October 27, 1969. This standard was revised in 1989 and issued as ANSI N2.1–1989. It was later withdrawn in accordance with the ANSI policy not to extend a standard's period of endorsement beyond 10 years and it has not been replaced.

II. Further Information

The withdrawal of Regulatory Guide 8.1 does not, in and of itself, alter any prior or existing licensing commitments based on its use. The guidance provided in this regulatory guide is no longer necessary. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under ''Regulatory Guides'' in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR's mailing address is U.S. NRC PDR, Washington, DC 20555–0001. The PDR staff can be reached by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of September 2008.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–21567 Filed 9–15–08; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 15, 2008 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 73, Number 173, Page 51861) on September 5, 2008. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., September 15, 2008 in conjunction with OPIC's September 18, 2008 Board of Directors meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: September 12, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–21732 Filed 9–12–08; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension: Rule 10b–17, OMB Control No. 3235–0476, SEC File No. 270–427

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

- **Rule 10b–17 (17 CFR 240.10b–17)—Untimely Announcements of Record Dates**

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering.

There are approximately 4,052 respondents per year. These respondents make approximately 17,262 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is 2,877 burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21527 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 10A–1 (17 CFR 240.10A–1) implements the reporting requirements in Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67, 109 Stat 737. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*).

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

There are no recordkeeping retention periods in Rule 10A–1. Because of the one business day reporting periods, recordkeeping retention periods should not be significant.

Filing the notice or report under Rule 10A–1 is mandatory once the conditions noted above have been satisfied. Because these notices and reports discuss potential illegal acts, they are considered to be investigative records and are kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21528 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17a–10, OMB Control No. 3235–0122, SEC File No. 270–154

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17a–10 (17 CFR 240.17a–10) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Paragraph (a)(1) of Rule 17a–10 generally requires brokers and dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5 [1] (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker or dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry.

As originally adopted in 1968, Rule 17a–10 required brokers and dealers to provide their revenue and expense data on a special form. The Rule was amended in 1977 to eliminate the form. The data previously reported on the form is now reported using Form X–17A–5 and its supplementary schedules.

The Commission estimates that approximately 500 broker-dealers will spend an average of approximately 12 hours per year complying with Rule 17a-10. Thus, the total compliance burden is estimated to be approximately 6,000 burden-hours per year.

[1] Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which is used by brokers and dealers to provide certain required information to the Commission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21529 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17a–5(c), OMB Control No. 3235–0199, SEC File No. 270–199

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17a–5(c) (17 CFR 240.17a–5(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–5(c) generally requires broker-dealers who carry customer accounts to provide statements of the broker-dealer's financial condition to their customers. Paragraph (5) of Rule 17a–5(c) provides a conditional exemption from this requirement. A broker-dealer that elects to take advantage of the exemption must publish its statements on its Web site in a prescribed manner, and must maintain a toll-free number that customers can call to request a copy of the statements.

The purpose of the Rule is to ensure that customers of broker-dealers are provided with information concerning the financial condition of the firm that may be holding the customers' cash and securities. The Commission, when adopting the Rule in 1972, stated that the goal was to ''directly'' send a customer essential information so that the customer could ''judge whether his broker or dealer is financially sound.'' The Commission adopted the Rule in response to the failure of several broker-dealers holding customer funds and securities in the period between 1968 and 1971.

The Commission estimates that approximately 275 broker-dealer respondents carrying approximately 110 million public customer accounts incur an average burden of 138,000 hours per year to comply with the Rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to *PRA_Mailbox@sec.gov*.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21530 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 17f–2(c), SEC File No. 270–35, OMB Control No. 3235–0029

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of Rule 17f–2(c).

- Rule 17f–2(c) (17 CFR 240.17f–2(c))

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a registered securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The Commission has approved such plans for several exchanges and for the Financial Industry Regulatory Authority, Inc. (''FINRA'').

It is estimated that 5,984 respondents submit approximately 368,000 fingerprint cards to exchanges or a national securities association on an annual basis. The Commission estimates that it would take approximately 15 minutes to create and submit each fingerprint card. The total reporting burden is therefore estimated to be 92,000 hours, or approximately 15 hours per respondent, annually. In addition, the exchanges and FINRA charge an estimated $30 fee for processing fingerprint cards, resulting in a total annual cost to all 5,984 respondents of $11,040,000, or $1,845 per respondent per year.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Submission of fingerprint plans under Rule 17f–2(c) is mandatory for self-regulatory 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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21531 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:
Rule 17f–2(d), SEC File No. 270–36, OMB Control No. 3235–0028

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information discussed below.

- Rule 17f–2(d) (17 CFR 240.17f–2(d))

Rule 17f–2(d) was adopted on March 16, 1976, and was last amended on November 18, 1982. Paragraph (d) of the rule (i) requires that records produced pursuant to the fingerprinting requirements of Section 17(f)(2) of the Securities Exchange Act of 1934 (''Exchange Act'') be maintained, (ii) permits the designated examining authorities of broker-dealers or members of exchanges, under certain circumstances, to store and maintain records required to be kept by this rule, and (iii) permits the required records to be maintained on microfilm.

The general purpose of Rule 17f–2 is: (i) To identify security risk personnel; (ii) to provide criminal record information so that employers can make fully informed employment decisions; and (iii) to deter persons with criminal records from seeking employment or association with covered entities.

Retention of fingerprint records, as required under paragraph (d) of the Rule, enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprint are being followed. Retention of these records for the term of employment of all personnel plus three years ensures that law enforcement officials will have easy access to fingerprint cards on timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 5,984 respondents are subject to the recordkeeping requirements of the rule. Each respondent keeps approximately 62 new records per year, which takes approximately 2 minutes per record for the respondent to maintain, for an annual burden of approximately 2 hours per respondent or a total annual burden of approximately 11,968 hours on all respondents, collectively. All records subject to the rule must be retained for the term of employment plus 3 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21532 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:
Rule 17f–5, SEC File No. 270–259, OMB Control No. 3235–0269

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17f–5 under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States.[1] Under rule 17f–5, the fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of

[1] 17 CFR 270.17f–5. All references to rules 17f–5, 17f–7, 17d–1, or 19b–1 in this notice are to 17 CFR 270.17f–5, 17 CFR 270.17f–7, 17 CFR 270.17d–1, and 17 CFR 270.19b–1, respectively.

continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[2] and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 159 registrants[3] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 318 hours (159 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[4] would be required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response would take approximately 262 hours, requiring approximately 1048 total hours annually per custodian. The total annual burden associated with these requirements of the rule would be approximately 15,720 hours (15 global custodians x 1048 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 16,038 hours (318 + 15,720). The total annual cost of burden hours is estimated to be $3,214,080 (318 hours × $2000/hour for board of director's time, plus 15,720 hours × $164/hour for a trust administrator's time).[5] Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21533 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[2] See section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[3] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2007 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[4] This estimate is based on staff research.

[5] The $164/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $2000/hr board of director time is from industry sources.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–7; SEC File No. 270–470; OMB Control No. 3235–0529.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17f–7 (17 CFR 270.17f–7) permits funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[1] Rule 17f–7 contains some ''collection of information'' requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians

[1] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) (64 FR 24489 (May 6, 1999)).

also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the funds obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that each of approximately 828 investment advisers [2] would make an average of 7 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response would take 5.5 hours, requiring a total of approximately 38.5 hours for each adviser. The total annual burden associated with these requirements of the rule would be approximately 31,878 hours (828 advisers × 38.5 hours per adviser). The staff further estimates that during each year, each of approximately 15 global custodians would make an average of 4 responses to analyze custody risks and provide notice of any material changes to custody risk under the rule. The staff estimates that each response would take 250.25 hours, requiring approximately 1001 hours annually per custodian.[3] The total annual burden associated with these requirements of the new rule would be approximately 15,015 hours (15 custodians × 1001 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 46,893 hours (31,878 + 15,015). The total annual cost of burden hours is estimated to be $10,081,302 (31,878 × $239 for a portfolio manager, plus 15,015 hours × $164/hour for a trust administrator's time).[4] The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21534 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[2] At the start of 2008, there were more than 9,300 open-end (including ETFs) portfolios and closed-end funds. These entities were managed or sponsored by more than 828 investment advisers.

[3] These estimates are based on conversations with representatives of the fund industry and global custodians.

[4] The salaries for a portfolio manager and a trust administrator are from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 19b–1; SEC File No. 270–312; OMB Control No. 3235–0354.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 19(b) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered investment company (''fund'') distributions of long-term capital gains made more frequently than once every twelve months. Rule 19b–1 under the Act [1] prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) (17 CFR 270.19b–1(c)) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) The capital gains distribution falls within one of several categories specified in the rule [2] and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the ''notice requirement'').[3] Rule 19b-1(e) (17 CFR 270.19b–1(e)) permits a fund to apply to the Commission for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.[4] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that, on average, each year five funds file an application under rule 19b–1(e). The staff understands that funds that file an application generally use outside counsel to prepare the application. The cost burden of using outside counsel is

[1] 17 CFR 270.19b–1.

[2] 17 CFR 270.19b–1(c)(1).

[3] The notice requirement in rule 19b–1(c)(2) (17 CFR 270.19b–1(c)(2)) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)] and rule 19a–1 [17 CFR 270.19a–1], which requires any distribution in the nature of a dividend payment made by a fund to its investors to be accompanied by a notice disclosing the source of the distribution.

[4] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02], which sets forth the general requirements for papers and applications filed with the Commission.

discussed below. The staff estimates that, on average, the fund's investment adviser spends approximately four hours to review an application, including 3.5 hours by an assistant general counsel, at a cost of $371 per hour, and 0.5 hours by an administrative assistant, at a cost of $65 per hour.[5] Thus, the Commission staff estimates that the annual hour burden of the collection of information imposed by rule 19b–1 is approximately four hours per fund, at a cost of $1331, for a total burden of 20 hours at a cost of $6655.[6]

The Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b–1(c).

As noted above, the Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application.[7] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors. Based on conversations with outside counsel and average billing rates of outside counsel the staff estimates that the average cost of outside counsel preparation of the 19b–(e) exemptive application is $5,000. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is $25,000.[8]

The Commission staff estimates that there are approximately 6030 UITs,[9] which may rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[10] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practices, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $301,500.[11] The staff therefore estimates that the total cost imposed by rule 19b–1 is $326,500 ($301,500 plus $25,000 equals $326,500).

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 6035 (6030 UIT portfolios + 5 funds filing an application under rule 19b–1(e)), the total annual hour burden is estimated to be 20 hours, and the total annual cost burden is estimated to be $326,500. These estimates of average annual burden hours and costs are made solely for purposes of the Paperwork Reduction Act. The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or email to: *Kimberly_P._Nelson@omb.eop.gov* ; and (ii) Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21535 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[5] These hourly rate estimates are derived from annual salaries reported in: Securities Industry and Financial Markets Association, Management and Professional Earnings in the Securities Industry (2007) and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry (2007).

[6] This estimate is based on the following calculations: $1298.50 (3.5 hours × $371 = $1298.5) plus $32.50 (0.5 hours × $65 = $32.50) equals $1331.00 (cost of one application); $1331 × 5 applications = $6655 total cost.

[7] This understanding is based on conversations with representatives from the fund industry.

[8] This estimate is based on the following calculation: $5,000 multiplied by 5 (funds) equals $25,000.

[9] The Investment Company Institute, Unit Investment Trust Data, (April, 2008).

[10] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

[11] This estimate is based on the following calculation: 6030 UITs multiplied by $50 equals $301,500.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28378; 812–13517]

Global X Funds and Global X Management Company LLC; Notice of Application

September 10, 2008.

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), 22(e), 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) certain open-end management investment companies and their series, 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 series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (e) 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 (f) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Global X Funds and Global X Management Company LLC (''Adviser'').

FILING DATES: The application was filed on April 14, 2008 and amended on May 23, 2008, August 8, 2008 and August 20, 2008.

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 October 2, 2008 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 220 Fifth Avenue, 20th Floor, New York, NY 10001.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel at (202) 551–6990, or Michael W. Mount, Assistant Director, at (202) 551–6820 (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 Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1520, telephone (202) 551–5850.

Applicants' Representations

1. Global X Funds is registered as an open-end management investment company and is organized as a Delaware statutory trust that will offer multiple series. Global X Funds will initially offer one series (''Initial Fund''), which will track a foreign equity securities index (''Underlying Index'').[1] Applicants may offer additional registered open-end investment companies in the future, as well as any series of any existing or future open-end investment company registered under the Act (''Future Funds'' and together with the Initial Funds, the ''Funds'').[2]

2. 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 the Initial Fund. In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers to particular Funds (''Sub-Advisers''). Each Sub-Adviser will be registered under the Advisers Act. SEI Investments Distribution Company (''Distributor'') is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Creation Units of Shares. The Distributor is not affiliated with the Adviser or any Sub-Adviser.

3. Each Fund will hold certain equity securities (''Portfolio Securities'') selected to correspond, before fees and expenses, generally to the price and yield performance of an Underlying Index. Certain of the Underlying Indices may be composed of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indices''). Other Underlying Indices may be composed of foreign equity securities (''Foreign Indices''). Funds which track Domestic Indices are referred to as ''Domestic Funds'' and Funds which track Foreign Indices are referred to as ''Foreign Funds.'' No entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') 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 Global X Funds or a Fund, the Adviser, any Sub-Adviser to or promoter of a Fund, or the Distributor.

4. The investment objective of each Fund will be to provide investment results that correspond, before fees and expenses, generally to the price and yield performance of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a replication or representative sampling strategy which will be disclosed with regard to each Fund in its prospectus.[3] A Fund using a replication strategy will invest in the Component Securities in its Underlying Index in approximately the same proportions 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 less liquid, illiquid or unavailable, a Fund may use a representative sampling strategy pursuant to which it will invest in some, but not all of the Component Securities of its Underlying Index.[4] Applicants anticipate that a 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 with the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Creation Units are expected to range between 25,000 to 100,000 Shares as will be clearly stated in the relevant Fund's prospectus (''Prospectus''). Applicants expect that the initial price of a Creation Unit will fall in the range of $1,000,000 to $10,000,000. 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 Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. 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, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC'', and such participant, ''DTC Participant''). Shares of the 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 or Sub-Adviser to correspond generally to the price and yield performance of the relevant Underlying Index (the ''Deposit

[1] The Initial Fund is Global X FTSE Nordic 30 ETF.

[2] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. Any Future Fund will be advised by the Adviser or an entity controlled by or under common control with the Adviser.

[3] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, in the case of Foreign Funds, Component Securities and depositary receipts representing such securities. ''Depositary Receipts'' will typically be American Depositary Receipts, but may include Global Depositary Receipts and Euro Depositary Receipts. Each Fund also may invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser or Sub-Adviser believes will help the Fund track its Underlying Index.

[4] Under the representative sampling strategy, the Adviser will seek to construct a 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.

Securities''), together with the deposit of a specified cash payment (''Balancing Amount''). The Balancing Amount is an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit) of a Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.[5] Each Fund may permit a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities if the Adviser or Sub-Adviser believes such method would reduce the Fund's transaction costs or enhance the Fund's operating efficiency.[6]

6. An investor purchasing or redeeming a Creation Unit from a 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 or redemption of Creation Units.[7] The maximum Transaction Fees relevant to each Fund and the method of calculating such Transaction Fees will be fully disclosed in the Prospectus of such Fund or statement of additional information (''SAI''). The Distributor also will be responsible for delivering the Fund's Prospectus to those persons purchasing Shares in 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 applicable Fund to implement the delivery of its Shares.

7. 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 an Exchange. It is expected that one or more member firms of a Listing Exchange will be designated to act as a specialist (''Specialist'') or a market maker (''Market Maker'') and maintain a market for Shares trading on the Listing Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). A 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.[8] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

9. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the 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) Portfolio Securities designated to be delivered for Creation Unit redemptions (''Fund Securities'') on the date that the request for redemption is submitted[9] and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ 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.

10. No Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''ETF,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units or Shares traded on an Exchange, 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 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 shareholders.

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), 22(e), and 24(d) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act 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

[5] Each Fund will sell and redeem Creation Units only on a ''Business Day'' which is defined as any day that the New York Stock Exchange, the Listing Exchange (defined below), and the custodian of a Fund are open for business, and includes any day that a Fund is required to be open under section 22(e) of the Act. Each Business Day, prior to the opening of trading on the Listing Exchange (defined below), the list of names and amount of each security constituting the current Deposit Securities and the Balancing Amount will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed (''Listing Exchange'') will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per individual Share representing the sum of the estimated Balancing Amount and the current value of the Deposit Securities.

[6] Applicants state that in some circumstances or in certain countries, it may not be practicable or convenient, or permissible under the laws of certain countries or the regulations of certain foreign stock exchanges, for a Foreign Fund to operate exclusively on an ''in-kind'' basis. Applicants also note that when a substantial rebalancing of a Fund's portfolio is required, the Adviser or Sub-Adviser might prefer to receive cash rather than stocks so that the Fund may avoid transaction costs involved in liquidating part of its portfolio to achieve the rebalancing.

[7] Where a 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 operational processing and 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.

[8] 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.

[9] As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the Portfolio Securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

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 Funds to register as open-end management investment companies 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 state that because Creation Units may always be purchased and redeemed at NAV, the market price of the Shares should 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 a Fund's 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 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 a Fund as a party and will not 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 competitive forces 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 in the secondary markets to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[10]

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 closing price and volume information for Shares will be published daily in the financial section of newspapers. In addition, a Web site will be maintained that will include each Fund's Prospectus and SAI, the Portfolio Securities and relevant Underlying Index for each Fund, and additional quantitative information that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''),[11] the NAV for each Fund, and information about the premiums and discounts at which the 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 Fund and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus.

[10] 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 Fucghnds or an underwriter. Applicants further state that each Fund's 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 a Fund, breaks them down into the constituent individual 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 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 Fund's Prospectus will caution dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market 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.

[11] The Bid-Ask Price per individual Share of a Fund is determined using the highest bid and the lowest offer on the Listing Exchange.

Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

Section 22(e)

10. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for the Foreign Fund is contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by the Foreign Fund. Applicants state that delivery cycles for transferring Fund Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process longer than seven calendar days for the Foreign Fund. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Fund to pay redemption proceeds up to 14 calendar days after the tender of any Creation Units for redemption. Except as disclosed in the relevant Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[12] With respect to future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

11. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

[12] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Section 12(d)(1)

12. Section 12(d)(1)(A) of the Act, in relevant part, 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.

13. Applicants request an exemption to permit management investment companies (''Purchasing Management Companies'') and unit investment trusts (''Purchasing Trusts'') registered under the Act that are not sponsored or advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as Global X Funds (collectively, ''Purchasing Funds'') to acquire shares of a Fund beyond the limits of section 12(d)(1)(A). Purchasing Funds do not include the Funds. In addition, applicants seek relief to permit a Fund or broker-dealer (''Broker'') that is registered under the Exchange Act to sell Shares to a Purchasing Fund in excess of the limits of section 12(d)(1)(B).

14. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Purchasing Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Purchasing Fund Sub-Adviser''). Any investment adviser to a Purchasing Fund will be registered under the Advisers Act. Each Purchasing Trust will be sponsored by a sponsor (''Sponsor'').

15. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

16. Applicants believe that neither the Purchasing Funds nor a Purchasing Fund Affiliate would be able to exert undue influence over the Funds.[13] To limit the control that a Purchasing Fund may have over a Fund, applicants propose a condition prohibiting a Purchasing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with a Purchasing Fund Adviser 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 a Purchasing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor (''Purchasing Fund Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Purchasing Fund Sub-Adviser, any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser, 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 Purchasing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Purchasing Fund Sub-Adviser (''Purchasing Fund Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a 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

[13] A ''Purchasing Fund Affiliate'' is a Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, Sponsor, promoter, and principal underwriter of a Purchasing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee or Sponsor of a Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Purchasing Fund Adviser, Purchasing Fund Sub-Adviser, employee, or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

17. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Purchasing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged to the Purchasing 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 Fund in which the Purchasing Management Company may invest. In addition, except as provided in condition 13, a Purchasing Fund Adviser or a trustee (''Trustee'') or Sponsor of a Purchasing Trust will, as applicable, waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Purchasing Fund Adviser or Trustee or Sponsor or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Purchasing Fund in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.

18. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no 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. To ensure that Purchasing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Purchasing Fund that intends to invest in a Fund in reliance on the requested order will enter into an agreement (''Purchasing Fund Agreement'') between the Fund and the Purchasing Fund requiring the Purchasing Fund to adhere to the terms and conditions of the requested order. The Purchasing Fund Agreement also will include an acknowledgment from the Purchasing Fund that it may rely on the requested order only to invest in the Funds and not in any other investment company. The Purchasing Fund Agreement will further require any Purchasing 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 the Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Purchasing Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds.

19. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Purchasing Fund. To the extent that a Purchasing Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Purchasing Fund Agreement prior to any investment by a Purchasing Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

20. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''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 the 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.

21. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

22. 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 specified affiliated persons, or Second-Tier Affiliates, of a Fund 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 Fund.

23. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of a Purchasing Fund because the Purchasing Fund holds 5% or more of the Shares of the Fund to sell its Shares to and redeem its Shares from a Purchasing Fund, and to engage in the accompanying in-kind transactions with the Purchasing Fund.[14] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Purchasing Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[15] Applicants believe that any proposed transactions directly between the Funds and Purchasing Funds will be consistent with the policies of each Purchasing Fund. The purchase of Creation Units

[14] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Purchasing Fund, or an affiliated person of such person, for the purchase by the Purchasing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Purchasing Fund may be prohibited by section 17(e)(1) of the Act. The Purchasing Fund Agreement also will include this acknowledgment.

[15] Applicants believe that a Purchasing Fund will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. Nonetheless, a Purchasing Fund that owns 5% or more of a Fund could seek to transact in Creation Units directly with a Fund pursuant to the section 17(a) relief requested.

by a Purchasing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement. The Purchasing Fund Agreement will require any Purchasing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by a Purchasing Fund will be accomplished in compliance with the investment restrictions of the Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order of granting the requested relief will be subject to the following conditions:

ETF Relief

1. As long as the Funds operate in reliance on the requested order, the Shares will be listed on an Exchange.

2. Neither Global X Funds nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each 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 Fund and tender those Shares for redemption to the 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 acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site maintained for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per individual Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which the Shares have traded.

4. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 3(b), (i) in the case of the Fund's 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 individual Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

5. Before a 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.

6. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, 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 a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Fund regarding the terms of the investment.

7. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

8. The members of a Purchasing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Purchasing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If as a result of a decrease in the outstanding Shares of a Fund, a Purchasing Fund's Advisory Group or a Purchasing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Shares of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Purchasing Fund's Sub-Advisory Group with respect to a Fund for which the Purchasing Fund's Sub-Adviser or a person controlling, controlled by, or under common control with the Purchasing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

9. No Purchasing Fund or Purchasing Fund Affiliate will cause any existing or potential investment by the Purchasing Fund in a Fund to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Fund or a Fund Affiliate.

10. The board of directors or trustees of a Purchasing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Purchasing Fund Adviser and Purchasing Fund Sub-Adviser are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a Purchasing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

11. No Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

12. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and the Fund will execute a Purchasing Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers or Sponsors or Trustees, 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 a Fund in excess of the limit in section 12(d)(1)(A)(i), a Purchasing Fund will notify such Fund of the investment. At such time, the Purchasing Fund will also transmit to the Fund a list of names of each Purchasing Fund Affiliate and Underwriting Affiliate. The Purchasing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The relevant Fund and the Purchasing Fund will maintain and preserve a copy of the order, the Purchasing Fund 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.

13. The Purchasing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received under any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Purchasing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Purchasing Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Purchasing Fund in the Fund. Any Purchasing Fund Sub-Adviser will waive fees otherwise payable to the Purchasing Fund Sub-Adviser, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received from a Fund by the Purchasing Fund Sub-Adviser, or an affiliated person of the Purchasing Fund Sub-Adviser, other than any advisory fees paid to the Purchasing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Purchasing Management Company in a Fund made at the direction of the Purchasing Fund Sub-Adviser. In the event that the Purchasing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

14. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

15. Once an investment by a Purchasing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested Board members''), will determine that any consideration paid by the Fund to a Purchasing Fund or Purchasing 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 Fund; (b) is within the range of consideration that the 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 a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

16. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting once an investment by the Purchasing Fund in the securities of the 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 Purchasing Fund in a Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance 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 a 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 interest of shareholders of the Fund.

17. Each 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 a Purchasing Fund in the Shares of the Fund exceeds the limit 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.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such 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 Fund in which the Purchasing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Purchasing Management Company.

19. No Fund will acquire securities of any investment company or companies 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.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21545 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, September 10, 2008, at 5 p.m.

Commissioners and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion as set forth in 5 U.S.C. 552b(c)(8) and (9) and 17 CFR 200.402(a)(8) and (9), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, September 10, 2008, will be: A matter related to a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 10, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21607 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 18, 2008 at 1 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 18, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: September 11, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21643 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58485; File No. 4–568]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

September 8, 2008.

Pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on August 29, 2008, the BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') copies of proposed minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with paragraph (c)(2) of Rule 19d–1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS Exchange proposes to include in its proposed MRVP the policies and procedures currently included in BATS Exchange Rule 8.15 (''Imposition of Fines for Minor Violation(s) of Rules'').[5]

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under BATS Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; and Rule 11.16, requirement to comply with locked and crossed market rules.

BATS Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[6]

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning BATS Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan is consistent with the Act. Comments may

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations (''SROs'') to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] On August 18, 2008, the Commission approved BATS Exchange's application for registration as a national securities exchange, including the rules governing the BATS Exchange. *See* Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of the BATS Exchange, the Exchange must file a minor rule violation plan with the Commission.

[6] BATS Exchange attached a sample form of the quarterly report with its submission to the Commission.

be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. 4–568 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File No. 4–568. 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/other.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 changes 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, 100 F Street, NE., Washington, DC 20549–1090. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–568 and should be submitted on or before October 16, 2008.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to section 19d–1 of the Act and Rule 19d–1(c)(2) thereunder,[7] after October 16, 2008, the Commission may, by order, declare BATS Exchange's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan, File No. 4–568, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21616 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d–1(c)(2).

[8] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58445A; File No. SR–BSE–2008–43]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Transfer of Ownership of MX US 2, Inc.; Correction

September 10, 2008.

In FR Doc. No. E8–20869, for Tuesday, September 9, 2008, beginning on page 52434, make the following correction. On page 52436, first column, the first full paragraph is revised to read as follows:

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[18] The Exchange has requested that the Commission waive the 30-day operative delay.[19] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because BSE has represented that the Instruments of Accession will be executed on August 29, 2008, and there is no reason to delay implementation of the changes to the BOX LLC Agreement pursuant to the Instruments of Accession. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[20]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21485 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day prefiling period in this case.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See* E-mail from Lisa J. Fall, General Counsel and Corporate Secretary, BOX, to Molly Kim, Special Counsel, Division of Trading and Markets, Commission, on August 29, 2008.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58499; File No. SR–NYSE–2008–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Make Permanent a Pilot Program Under Which the Exchange Excludes From Its Earnings Standard Gains or Losses From Extinguishment of Debt Prior to Maturity

September 9, 2008.

I. Introduction

On July 22, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable the Exchange to adjust the earnings of companies for purposes of the Exchange's pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The proposed rule change was published for comment in the **Federal Register** on August 5, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend the earnings standard of section 102.01C(I) of the Exchange's Listed Company Manual (''Manual'') to enable the Exchange to adjust the earnings of companies for purposes of its pre-tax earnings standard by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity. The adjustment would relate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58254 (July 30, 2008), 73 FR 45511.

only to gains or losses incurred in the three-year period under examination for purposes of the earnings standard. The proposed amendment was originally implemented for a six-month period as a Pilot Program.[4] The Pilot Program expired and was subsequently renewed for an additional three months, expiring on September 2, 2008.[5]

Prior to the promulgation of Statement of Financial Accounting Standards No. 145 (''SFAS No. 145'') in 2002, Financial Accounting Standards Board Statement No. 4 (''FASB No. 4'') required that gains and losses from the extinguishment of debt prior to its maturity that were included in the determination of net income be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. SFAS No. 145 rescinded FASB No. 4 and, as a result, gains or losses in connection with the extinguishment of debt prior to its maturity are now generally included in the calculation of operating earnings under generally accepted accounting principles (''GAAP''). As a result, the Exchange has stated that some companies that would not otherwise be qualified to list may qualify as a result of the inclusion in pre-tax income of gains from the extinguishment of debt prior to its maturity. In addition, according to the Exchange, some prospective listed companies whose operating earnings would have met the requirements of the Exchange's pre-tax earnings test prior to 2002 are now not qualified to list as they are required to include losses from the extinguishment of debt prior to its maturity in pre-tax income. In its proposal, the Exchange stated that in its experience, these gains and losses are primarily noncash in nature and that the gains generally represent the accelerated accrual of original issue discount, while the losses generally represent the remaining unamortized portion of costs incurred at the time of initial borrowing.

The Exchange believes that it is appropriate to return to its pre-2002 approach of excluding gains and losses from debt extinguishment from pre-tax earnings as calculated for purposes of its earnings standard. In its proposal, the Exchange stated that the purpose of the earnings standard is to determine the suitability for listing of companies on a forward-looking basis in light of a sustained demonstration of strong earnings. The Exchange does not believe that it is relevant to include in pre-tax earnings gains and losses from the extinguishment of debt prior to its maturity that are principally nonrecurring in nature. Additionally, the Exchange believes that the analyst community routinely excludes these gains and losses from their analyses in making recommendations as to the desirability of investing in companies' publicly-traded equity securities. The Exchange believes that adjusting company earnings for gains and losses from the extinguishment of debt prior to its maturity is consistent with the adjustments that are currently permitted under section 102.01C for a number of other nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange also believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

The Exchange has stated that, as with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation, Inc. will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. The Exchange represents that such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

In its proposal, the Exchange stated that as it gains experience in listing companies in reliance upon the proposed amendment, it will continue to carefully reevaluate the appropriateness of the amendment. If the Exchange becomes aware that companies listed pursuant to the proposed amendment have difficulty complying with the Exchange's continued listing standards, it will inform the Commission and discuss with the Commission the desirability of the continued use of the provision.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.[7]

The Commission believes that the proposed rule change is consistent with other adjustments the Exchange makes when evaluating applicants on a forward-looking, post-IPO basis under the existing earnings standard in section 102.01C(I) of the Manual and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis. The Commission notes that these changes to the earnings standards will allow the Exchange to adjust the earnings of companies for purposes of satisfying the Exchange's pre-tax earnings standard, by excluding gains or losses recognized in connection with the extinguishment of debt prior to its maturity, and will not impact the preparation of financial statements by the company listing on the Exchange. In addition, the Commission notes that the Exchange will monitor companies listing using this new adjustment and notes that the Exchange has agreed to discuss the standard with the Commission should it prove difficult for such companies to comply with the Exchange's continued listing standards.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2008–58) be, *and hereby is, approved.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21543 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Exchange Act Release No. 56195 (August 2, 2007), 72 FR 44904 (August 9, 2007) (SR–NYSE–2007–71).

[5] *See* Exchange Act Release No. 57903 (June 2, 2008), 73 FR 32610 (June 9, 2008) (SR–NYSE–2008–43).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58500; File No. SR–NYSE–2008–57)

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Adopt on a Permanent Basis a Pilot Program Which Allows the Exchange To Adjust the Earnings of Companies for Purposes of Its Earnings Standard by Reversing the Income Statement Effects of Changes in Fair Value of Financial Instruments Extinguished at the Time of Listing

September 9, 2008.

I. Introduction

On July 23, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable the Exchange to adjust the earnings of companies by reversing the income statement effects for all periods of any changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing. The proposed rule change was published for comment in the **Federal Register** on August 5, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (''Manual'') to enable the Exchange to adjust the earnings of companies listing in conjunction with an initial public offering (''IPO'') by reversing the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock of the company at the time of listing. The proposed amendment was originally implemented for a six-month period as a Pilot Program.[4] The Pilot Program expired and was subsequently renewed for an additional three months, expiring on September 2, 2008.[5]

The Exchange believes that it is appropriate to exclude the effects of changes in fair value of a financial instrument classified as a liability from a company's earnings where the financial instrument is being retired at the time of a company's listing either out of the proceeds of a concurrent offering or by conversion into common stock at the time of listing. The Exchange believes that adjusting company earnings for charges arising out of the changes in fair value of financial instruments that are retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock at the time of listing is consistent with the adjustments that are currently permitted under Section 102.01C. Section 102.01C currently provides for adjustments to earnings for certain nonrecurring charges to earnings that are included in net income as recorded under GAAP, such as the exclusion of impairment charges on long-lived assets, the exclusion of gains and losses on sales of a subsidiary's or investee's stock and the exclusion of in-process purchased research and development charges. The Exchange believes that this adjustment is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis.

The Exchange has stated that, as with all companies listed on the Exchange, the Financial Compliance staff of NYSE Regulation will monitor on an ongoing basis the compliance with the Exchange's continued listing standards of any companies listed in reliance upon the proposed amendment. The Exchange represents that such companies will be subject to delisting if they are found at any time to be below the Exchange's continued listing standards.

In its proposal, the Exchange stated that as it gains experience in listing companies in reliance upon the proposed amendment, it will continue to carefully reevaluate its appropriateness. If the Exchange becomes aware that companies listed pursuant to the proposed amendment have difficulty complying with the Exchange's continued listing standards, it will inform the Commission and discuss with the Commission the desirability of the continued use of the provision.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.[7]

The Commission believes that the proposed rule change is consistent with other adjustments the Exchange currently makes for certain nonrecurring charges to earnings when evaluating applicants on a forward-looking, post-IPO basis under the existing earnings standard in Section 102.01C(I) of the Manual and is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis. The Commission notes that in determining a company's eligibility for listing, these changes will allow the Exchange to reverse the income statement effects for all periods of changes in fair value of financial instruments classified as a liability recorded by the company in earnings, provided such financial instrument is either being redeemed with the proceeds of an offering occurring in conjunction with the listing or converted into or exercised for common stock at the time of listing and will not impact the preparation of financial statements by the company listing on the Exchange. In addition, the Commission notes that the Exchange will monitor companies listing using this new adjustment and notes that the Exchange has agreed to discuss the standard with the Commission should it prove difficult for such companies to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58253 (July 30, 2008), 73 FR 45509.

[4] *See* Securities Exchange Act Release No. 56290 (August 20, 2007), 72 FR 49033 (August 27, 2007) (SR–NYSE–2007–75).

[5] *See* Securities Exchange Act Release No. 57905 (June 2, 2008), 73 FR 32613 (June 9, 2008) (SR–NYSE–2008–44).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

comply with the Exchange's continued listing standards.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2008–57) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21544 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58484; File No. SR–NYSEArca–2008–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 5.2(j)(3) in Connection With Generic Listing Standards for Multiple Fund Shares and Inverse Fund Shares

September 8, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities. The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(3), the Exchange's initial listing standards for Investment Company Units (''ICUs''), to include generic listing standards for series of ICUs that seek to provide investment results that either exceed the performance of a specified index by a specified multiple (''Multiple Fund Shares'') or that correspond to the inverse (opposite) of the performance of a specified index by a specified multiple (''Inverse Fund Shares'') (collectively, ''Fund Shares''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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. NYSE Arca 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 NYSE Arca Equities Rule 5.2(j)(3), the Exchange's initial listing standards for ICUs, to include generic listing standards for series of Multiple Fund Shares and Inverse Fund Shares.[4] The Exchange notes that the Commission has previously approved the listing and trading of various Multiple Fund Shares and Inverse Fund Shares.[5] Multiple Fund Shares and Inverse Fund Shares currently trading on the Exchange include the Short Funds and UltraShort Funds of the ProShares Trust and the Inverse Funds and Leveraged Inverse Funds of the Rydex ETF Trust, which trade on the Exchange pursuant to unlisted trading privileges (''UTP'') under NYSE Arca Equities Rule 5.2(j)(3).[6]

This rule proposal is similar to a proposed rule change by American Stock Exchange LLC (''Amex'') in which the Commission approved generic listing standards for Multiple Fund Shares and Inverse Fund Shares.[7] In addition, the Exchange notes that the Commission has approved generic listing standards in NYSE Arca Equities Rule 5.2(j)(6), the Exchange's initial listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and MultiFactor Index-Linked Securities,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] E-mail from Tim Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated September 3, 2008.

[4] Fund Shares differ from traditional exchange-traded fund (''ETF'') shares in that they do not merely correspond to the performance of a given securities index, but rather attempt to match a multiple or inverse of such underlying index performance. Multiple Fund Shares seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic equities index or Fixed Income Securities (as described below) index or a combination thereof. Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic equities index or Fixed Income Securities index or a combination thereof, by a specified multiple. Fixed Income Securities are described in NYSE Arca Equities Rule 5.2(j)(3) as debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities, government-sponsored entity securities, municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

[5] *See* Securities Exchange Act Release Nos. 56713 (October 29, 2007), 72 FR 61915 (November 1, 2007) (SR–Amex–2007–74) (approving the listing and trading of Rydex Leveraged Funds, Inverse Funds and Leveraged Inverse Funds); 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of the ProShares Ultra Funds and Short Funds); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of the ProShares UltraShort Funds); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of Ultra, Short and UltraShort Funds based on various indexes); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on various international indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR–Amex–2007–104) (approving the listing and trading of ProShares Ultra, Short and UltraShort Funds based on several fixed income indexes, among others).

[6] The Short Funds and Inverse Funds seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the underlying indexes, and the Ultra Short Funds and Leveraged Inverse Funds seek daily investment results, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (−200%) of the underlying indexes. See Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 64103 (November 14, 2007) (SR–NYSEArca–2007–81) (approving UTP trading of shares of funds of Rydex ETF Trust); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR–NYSEArca–2007–79) (approving UTP trading of shares of eight funds of the ProShares Trust); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87) (approving UTP trading of shares of 81 funds of the ProShares Trust); 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115) (approving UTP trading of shares of funds of the ProShares Trust).

[7] *See* Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR–Amex–2007–131) (order approving generic listing standards for Multiple Fund Shares and Inverse Fund Shares) (''Amex Proposal'').

permitting the loss or negative payment at maturity with respect to such securities to be accelerated by up to twice the performance of the underlying Reference Asset (as defined in Rule 5.2(j)(6)).[8]

The Exchange proposes to amend Commentaries .01, .02 and .03 and add new Commentary .04 to Rule 5.2(j)(3) to permit the listing and trading of Multiple Fund Shares and certain Inverse Fund Shares pursuant to the Exchange's generic listing standards for ICUs. Specifically, the investment objective associated with the Fund Shares must be expected to achieve investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day (Multiple Fund Shares) or inversely up to minus or negative 300% (−300%) (Inverse Fund Shares) of the percentage performance of the underlying benchmark domestic, international or global equity and/or Fixed Income Securities index or a combination thereof, as applicable. Specifically, the Exchange is proposing to remove the current limitation to listing Multiple Fund Shares and Inverse Fund Shares. The Exchange proposes to add to Commentary .01, .02. and .03 of NYSE Arca Equities Rule 5.2(j)(3) to provide initial listing standards for ICUs to prohibit listing on the Exchange of a series of ICUs issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds −300% of the percentage performance on a given day of a particular domestic, international or global equity, or Fixed Income Securities index or combination thereof.

Accordingly, the proposed rule change will enable the Exchange to list and trade Multiple Fund Shares and Inverse Fund Shares pursuant to Rule 19b–4(e)[9] of the Act if each of the conditions set forth in Commentaries .01 or .02, or .03, as applicable, and Commentary .04 are satisfied.

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(ii) to make a grammatical correction, replacing the words ''are satisfied'' with ''satisfy''.

Limitation on Leverage

In connection with Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the percentage performance of the underlying benchmark index, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[10] In particular, Commentary .01, .02 and .03 of NYSE Arca Equities Rule 5.2(j)(3) would expressly prohibit Inverse Fund Shares that seek to provide investment results, before fees and expenses, in an amount that exceeds −300% of the percentage performance of the underlying benchmark index, from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[11]

In connection with Multiple Fund Shares, proposed Commentary .01, .02 and .03 of NYSE Arca Equities Rule 5.2(j)(3) does not provide a similar limitation on leverage. Instead, the proposal would permit the fund to seek to provide investment results, before fees and expenses, that correspond to any multiple, without limitation, of the percentage performance on a given day of a particular domestic, international or global equity, or Fixed Income Securities index or a combination thereof.

The Exchange believes that a −300% limitation is appropriate for funds listed pursuant to the proposed criteria. Daily public Web site disclosure of portfolio holdings as required by proposed new Commentary .04 to Rule 5.2(j)(3), as discussed below, will ensure that investors are aware of the equity securities, Fixed Income Securities, Financial Instruments (as described below) and any cash and cash equivalents in a fund's portfolio that a fund utilizes to seek to provide investment results corresponding to up to −300% of the underlying benchmark index. As noted above, the Commission has previously approved the listing of Inverse Fund Shares with a −200% limitation, as well as generic listing standards to accommodate such listings.[12] The Exchange believes that a −300% limitation will permit funds to provide investors with an incremental additional degree of leverage similar to instruments available to professional investors to manage risk, but with the additional transparency associated with portfolio disclosure, last sale reporting, and Intraday Indicative Value (''IIV'') dissemination, as discussed below. In addition, recommendations to investors of transactions in Fund Shares are subject to the customer suitability requirements of NYSE Arca Equities Rule 9.2, as discussed below.

Availability of Information About Fund Shares and Underlying Indexes

Proposed new Commentary .04 to Rule 5.2(j)(3) provides that the portfolio composition of a fund will be disclosed on its Web site. Web site disclosure of portfolio holdings will be made daily and will include, as applicable: (1) The identity and number of shares held of each specific equity security; (2) the identity and amount held of each specific fixed income security; (3) the specific types of financial instruments, which include, but are not limited to: Stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars, and floors; swap agreements; forward contracts; and repurchase agreements (''Financial Instruments''), as well as the characteristics of such Financial Instruments; and (4) the cash equivalents and amount of cash held in the portfolio of a fund. This public Web site disclosure of the portfolio composition of a fund will coincide with the disclosure of the ''IIV File''[13] and the ''PCF File''.[14] Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to ''Authorized Participants''.[15] The format of the public Web site disclosure and the IIV File and PCF File may differ because the public Web site will list all portfolio holdings while the IIV File and PCF File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact

[8] *See* NYSE Arca Equities Rule 5.2(j)(6)(A)(d); *see also* Securities Exchange Act Release No. 56907 (December 5, 2007), 72 FR 70640 (December 12, 2007) (SR–NYSEArca–2007–122) (order approving generic listing standards under NYSE Arca Equities Rule 5.2(j)(6)).

[9] 17 CFR 240.19b–4(e).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 240.19b–4(e).

[12] *See* notes 5 and 6, *supra*.

[13] Because the National Securities Clearing Corporation's (''NSCC'') system for the receipt and dissemination to its participants of the portfolio composition file (''PCF File'') is not currently capable of processing information with respect to Financial Instruments, an ''IIV File'' has been developed which is used to disclose a fund's holdings of Financial Instruments. The IIV File is posted to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange have access to a password and the Web site containing the IIV File.

[14] The PCF File for a fund includes the list of names and the required number of shares of each deposit security, as well as any cash information to be included in the next trading day's Creation Unit (the minimum aggregation size of shares required to effect a creation or redemption of shares). The information in the PCF File will be available to all participating in the NSCC system.

[15] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are exempt from registration as broker-dealers to engage in securities transactions, who are Depository Trust Company participants.

components of a Creation Unit. Accordingly, investors will have access to the current portfolio composition of a fund through the fund's Web site.

Specifically, proposed new Commentary .04 to NYSE Arca Equities Rule 5.2(j)(3) would provide that the provisions of Commentary .04 would apply only to series of ICUs that are issued by an open-end management investment company that (i) seeks to provide investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day of a particular domestic equity, international or global equity securities index, or Fixed Income Securities index, or a combination thereof (''Multiple Fund Shares''), or (ii) seeks to provide investment results, before fees and expenses, that correspond inversely up to −300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index, or Fixed Income Securities index, or a combination thereof (''Inverse Fund Shares''). For the initial and continued listing of Multiple Fund Shares and/or Inverse Fund Shares, the following requirements must be adhered to: Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares, including, as applicable, the following instruments: (i) The identity and number of shares held of each specific equity security; (ii) the identity and amount held of each specific Fixed Income Security; (iii) the specific types of Financial Instruments and characteristics of such Financial Instruments; and (iv) cash equivalents and the amount of cash held in the portfolio.

Trading Halts

Existing trading halt requirements for ICUs will apply to Multiple Fund Shares and Inverse Fund Shares. In particular, Commentary .01(c) and .02(c) of NYSE Arca Equities Rule 5.2(j)(3) provides that, if the IIV or the index value applicable to that series of ICUs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16]

In addition, proposed Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) requires the Exchange to halt trading of Fund Shares if the Exchange becomes aware that the open-end management investment company fails to properly disseminate the appropriate net asset value (''NAV'') to market participants at the same time and/or fails to provide daily public Web site disclosure of its portfolio holdings. Commentary .04(b) to NYSE Arca Equities Rule 5.2(j)(3) further provides that the Exchange may resume trading in such Fund Shares only when the NAV is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

In addition to other factors that may be relevant, the Exchange may consider factors in exercising its discretion to halt or suspend trading in Multiple and/or Inverse Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments relating to Fund Shares, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Multiple or Inverse Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the investment adviser of such Multiple or Inverse Fund is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the investment adviser will be made by phone, facsimile or e-mail. The Exchange will then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Multiple and/or Inverse Fund Shares. Trading in Multiple and/or Inverse Fund Shares will also be halted if the circuit breaker parameters pursuant to NYSE Arca Equities 7.12 are reached.

The Exchange believes that adopting generic listing standards for Multiple Fund Shares and Inverse Fund Shares based on domestic equity, international equity, and Fixed Income Securities indexes, or a combination thereof, and applying Rule 19b–4(e)[17] should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for separate Commission approval. The proposed rules have the potential to reduce the timeframe for bringing Multiple Fund Shares and Inverse Fund Shares to market, thereby reducing the burdens on issuers and other market participants. The Exchange submits that the failure of a particular Multiple Fund Share or Inverse Fund Share portfolio to comply with the proposed generic listing standards under Rule 19b–4(e)[18] would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) of the Act[19] requesting Commission approval to list and trade a particular series of Multiple Fund Shares or Inverse Fund Shares.

Continued Listing and Trading Criteria

The continued listing and trading requirements for existing ICUs included in NYSE Arca Equities Rule 5.5(g)(2) will similarly apply to Multiple Fund Shares and Inverse Fund Shares.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence As to Accounts) provides that an ETP Holder, before recommending a transaction in ICUs, must have reasonable grounds to believe that the recommendation is suitable for their customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the suitability requirement of NYSE Arca Equities Rule 9.2(a) (Diligence As to Accounts). Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that the customer can evaluate the special characteristics of Multiple Fund Shares and Inverse Fund Shares and is able to bear the financial risks of such investment.

[16] If an ICU is traded on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading if the primary listing market halts trading in such ICU. *See* NYSE Arca Equities Rule 7.34(a).

[17] 17 CFR 240.19b–4(e).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2).

This Information Bulletin will set forth the requirements relating to NYSE Arca Equities Rule 9.2(a)(2). Specifically, the Information Bulletin will remind ETP Holders of their obligations in recommending transactions in the Fund Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [20] of the Act, in general, and furthers the objectives of Section 6(b)(5),[21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 5.2(j)(3) as proposed to be amended are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the Exchange consents, the Commission will:

(A) By order approve the 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–NYSEArca–2008–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–89. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–89 and should be submitted on or before October 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21526 Filed 9–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

American Environmental Corp.; (n/k/a TrackBets International, Inc.), BAM! Entertainment, Inc., Entertainment Technologies & Programs, Inc., Inter Con PC, Inc., Rudy Nutrition, Trans Global Services, Inc., XCL Ltd., and ZymeTx, Inc.; Order of Suspension of Trading

September 12, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Environmental Corp. (n/k/a TrackBets International, Inc.) because it has not filed any periodic reports since it filed a Form 10–SB–12G with the Commission on June 24, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BAM! Entertainment, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Entertainment Technologies & Programs, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

It appears to the Securities and Exchange Commission that there is a

[22] 17 CFR 200.30–3(a)(12).

lack of current and accurate information concerning the securities of Inter Con PC, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rudy Nutrition because it has not filed any periodic reports since the period ended September 30, 2005, except for the periodic report filed for the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trans Global Services, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of XCL Ltd. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ZymeTx, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 12, 2008, through 11:59 p.m. EDT on September 25, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–21649 Filed 9–12–08; 11:15 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Export Express Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Pilot Program extension.

SUMMARY: This notice announces the extension of SBA's Export Express Pilot Program until December 31, 2009. This extension will allow time for the Agency to continue its evaluation of this loan program for exporters, including the possible delivery of export express loans by lenders in SBA's Preferred Lenders-Export Working Capital Program (PLP–EWCP), consultation with lenders to solicit feedback on future program enhancements, and analysis of the Program's performance over the next 15 months.

DATES: The Export Express Pilot Program is extended under this notice until December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Tunison, Office of International Trade, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–7429; *Patrick.Tunison@sba.gov.*

SUPPLEMENTARY INFORMATION: The Export Express Pilot Program was established in 1998 to assist current and prospective small exporters, particularly those needing revolving lines of credit. Export Express is an SBA Pilot Program under the agency's 7(a) lending program that extends streamlined program requirements to small business exporters and lenders. The maximum loan amount under this Program is currently limited to $250,000. The pilot was scheduled to end on September 30, 2008.

This notice announces the extension of SBA's Export Express Pilot Program until December 31, 2009.

Exports attributed to small businesses have grown from $300 billion in 2002 to $477 billion in 2007. During this time period, the number of small business exporters grew from 215,000 to 237,000, representing 97% of all U.S. exporters. In order for the Export Express loan product to reach maximum potential and serve the special capital needs of U.S. small business exporters, SBA is refocusing its efforts on Export Express and developing a strategic marketing plan to the U.S. small business community and to the Agency's lending partners, including its Preferred Lenders for both the domestic 7(a) loan programs as well as the Export Working Capital Loan Program (PLP–EWCP).

The further extension of this pilot program through December 31, 2009 will enable the Agency to analyze the program's existing performance and to obtain input from international lenders regarding the current structure of the Export Express Program, so that any future changes to the program are based on lender input and performance analysis.

Authority: 13 CFR 120.3.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. E8–21553 Filed 9–15–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Notice of Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meeting will be held on Tuesday, October 21, 2008 at 1 p.m. EST.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:

—Follow-up on ASBDC Conference.

—SBA Update from AA/OSBDC.

—Board Planning.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Board must contact Alanna Falcone by Friday, October 17, 2008, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax, 202–481–0134, e-mail, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Cherylyn H. Lebon,

Committee Management Officer.

[FR Doc. E8–21552 Filed 9–15–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Auction Procedures for Allocating Slots at LaGuardia, John F. Kennedy International, and Newark Liberty International Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: In accordance with rulemaking activity that is not yet complete, the FAA may use an auction to allocate leases for a certain number of slots at New York's three main airports: John F. Kennedy (JFK), Newark (EWR), and LaGuardia (LGA). If the FAA decides to conduct auctions, the number of slots to be allocated via auction will be specified in the final rule and may be supplemented by additional capacity and/or slots returned to the FAA. As specified in the proposed *Congestion Management Rule for LaGuardia Airport* and the proposed *Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport,* FAA anticipates, if the rule is adopted, conducting an auction of slot leases at these airports once a year over a five year period.[1] The FAA expects to conduct the first auction, if any, on January 12, 2009. This auction will be for slots at LGA, JFK, and EWR. Only certificated U.S. aircraft operators or foreign airlines may participate in these auctions.[2]

If you are interested in commenting on the planned auction procedures you will be able to find additional information and procedures for providing comments at *http://faaco.faa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey C. Wharff, Federal Aviation Administration, Office of Aviation Policy and Plans, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* 202–267–3274; His e-mail is *Jeffrey.Wharff@FAA.gov.*

[1] See Docket No. FAA–2006–25709; Notice No. 08–04 and Docket No. FAA–2008–0517; Notice No. 08–05.

[2] For the purpose of this document an aircraft operator is eligible if it is either: (1) A U.S. operator that holds a Certificate issued under Part 119 of the Federal Aviation Regulations (FAR), 14 CFR part 119, and conducts operations under either Part 121 or Part 135 of the FAR, 14 CFR parts 121 or 135; or (2) a foreign air carrier that either holds a foreign air carrier permit issued by the U.S. Department of Transportation under 49 U.S.C. Section 41302 or has exemption authority pursuant to 49 U.S.C. 40109.

Issued in Washington, DC, on September 11, 2008.

Nan Shellabarger,

Acting Deputy Assistant Administrator for Policy, Planning, and Environment.

[FR Doc. E8–21592 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 30, 2008, starting at 8 a.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC, in the Bessie Coleman Conference Center, located on the 2nd Floor. This will be the forty-eighth meeting of the COMSTAC.

The proposed agenda for the meeting will include discussions of the latest international commercial launch developments and their impact on the U.S. industry and ways that the FAA can help the industry internationally; a report on program activities of the FAA Office of Commercial Space Transportation; and COMSTAC working group reports.

An agenda will be posted on the FAA Web site at *http://ast.faa.gov.* Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Space Transportation Operations) will be held on Wednesday, October 29, 2008. For specific information concerning the times and locations of the working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION, CONTACT: Brenda Parker (AST–100), Office of Commercial Space Transportation, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674; E-mail *brenda.parker@faa.gov.*

Issued in Washington, DC, September 5, 2008.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E8–21521 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Highway 199 Expressway Upgrade Project: Josephine County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Highway 199 Expressway Upgrade, in Josephine County, Oregon. Those actions grant approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 16, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301, *Telephone:* (503) 587–4716. The Environmental Assessment, Supplemental Environmental Assessment, Revised Environmental Assessment, Finding of No Significant Impact (FONSI) and other project records are available upon written request from the Federal Highway Administration at the address shown above. Comments or questions concerning this proposed action and the FONSI should be directed to the FHWA at the address provided above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(l)(1) by issuing a decision for the following highway project in the State

of Oregon: Highway 199 Expressway Upgrade. This project will improve U.S. 199 from two lanes in each direction to three lanes in each direction from Tussey Lane to Dowell Road. Redwood Avenue at Allen Creek Road will be realigned to the north to accommodate future traffic volumes and queues. Median barrier and/or raised curb median will be constructed from Dowell Road to Midway Avenue to improve safety and eliminate crossing turn movements. The intersections of U.S. 199 at Midway Avenue and U.S. 199 at Hubbard Lane will be improved to allow U-turns. The existing signals on U.S. 199 at Redwood Avenue and Fairgrounds Road will be removed. A new signal will be installed on U.S. 199 at Hubbard Lane. The actions by the Federal agency and the laws under which such actions were taken are described in the Environmental Assessment, Supplemental Environmental Assessment, Revised Environmental Assessment and FONSI issued on August 6, 2008, and in other documents in the FHWA project records. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667 (d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued On: September 4, 2008.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. E8–21357 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Value Pricing Pilot Program Participation, Fiscal Year 2009

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation for participation.

SUMMARY: This notice invites State and local governments and other public authorities to apply to participate in the Value Pricing Pilot (VPP) program and presents guidelines for program applications. This notice supersedes three previous notices about the VPP program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) published in the **Federal Register** on January 6, 2006 (71 FR 970), July 17, 2006 (71 FR 40578), and December 22, 2006 (71 FR 77084). A January 6, 2006, notice covering non-grant tolling programs, which was a companion to the original January 6, 2006, VPP program notice, remains in effect. That notice was entitled ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Opportunities for States and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds'' (71 FR 965). Today's new notice and the previous companion notice covering non-grant tolling programs are together intended to cover all of the opportunities for States and other qualifying transportation agencies to obtain approval to toll their respective facilities.

DATES: Applications for tolling authority only may be submitted at any time. Formal grant applications, however, must be submitted no later than November 7, 2008, for FY 2009 funds.

Application Submission: All Federal agencies, including FHWA, are required to use *http://www.grants.gov*, an electronic format for receiving applications. Grants.gov was developed as part of the President's Management Agenda and related E-Government Strategy, which charged Federal grant-making agencies with developing a single electronic system to help prospective applicants find and apply for Federal grant opportunities. Therefore, applicants requesting funding under the VPP program must file their applications online at *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Wayne Berman, FHWA Office of Operations, (202) 366–4069, *wayne.berman@dot.gov*. For technical questions related to project development, please contact Mr. Patrick DeCorla-Souza, FHWA Office of Operations, at (202) 366–4076, *patrick.decorla-souza@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1012(b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102–240; 105 Stat. 1914), as amended by section 1216(a) of the Transportation Equity Act (TEA–21) (Pub. L. 105–178; 112 Stat. 107), and section 1604(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144), authorizes the Secretary of Transportation (the Secretary) to create a Value Pricing Pilot program. Value pricing encompasses a variety of strategies to manage congestion on highways, including tolling of highway facilities, as well as other strategies that do not involve tolls, such as congestion pricing at port facilities, mileage-based vehicle taxes and leasing fees, parking pricing, and car sharing. The value pricing concept of assessing relatively higher prices for travel during peak periods is the same as that used in many other sectors of the economy to respond to peak-use demands. For example, airlines, hotels, and theaters often charge more at peak periods than at non-peak periods.

The FHWA is seeking applications for the FY 2009 VPP program that are consistent with the objectives of the DOT's National Strategy to Reduce

Congestion, announced on May 16, 2006, which seeks to dedicate substantial Departmental resources toward addressing the growing problem of urban congestion. This national strategy, and its linkage to the VPP program applications that are being solicited by this notice, are discussed in greater detail later in this notice. Consistent with this national strategy, the primary objective of the VPP program for fiscal year 2009 will be to facilitate cities in systematically progressing toward implementation of broad congestion (variable) pricing in the relatively near term.

According to the statutory requirements of the VPP program, FHWA may enter into cooperative agreements with up to 15 State or local governments or other public authorities (henceforth referred to only as ''States'') to establish, maintain, and monitor value pricing pilot programs, each including an unlimited number of projects. The FHWA invites interested States to apply to participate in the VPP program for FY 2009. As of the date of this notice, there are already 13 State-led programs and 1 city-led program currently in the VPP program: California, Colorado, Florida, Georgia, Illinois, Maryland, Minnesota, New Jersey, North Carolina, Oregon, Texas, Virginia, Washington State, and New York City. Therefore, at this time, only one additional State or other public authority is eligible to participate. Any value pricing project included under these programs may involve the use of tolls on the Interstate system. This is an exception to the general provisions prohibiting tolls on the Interstate system as contained in 23 U.S.C. 129 and 301.

To comply with the statutory cap on the number of partnering States and other public authorities in a manner that maximizes program participation, FHWA will only consider an ''active'' cooperative agreement sufficient to hold one of the 15 available value pricing slots. An agreement will be considered ''active'' by FHWA under either of the following two conditions: (1) During the period encompassing the time between when a cooperative funding agreement for a project or projects has been signed and when the project or projects has or have been completed, and (2) if VPP program tolling authority has been granted and is still needed to toll a new or existing highway. Absent one or both of these conditions being met, an agreement will not be considered active for the purposes of the VPP program. If the State's progress in moving forward to use its VPP tolling authority is unsatisfactory, FHWA reserves the right to withdraw that State's authority in favor of other applicants seeking to obtain VPP tolling authority. A State that does not maintain an active agreement with FHWA risks being denied the opportunity to participate in the program in the future if no participation slots are left.

A maximum of $12 million is authorized for fiscal year 2009 to be made available to carry out the VPP program. Of this $12 million, $3 million per fiscal year must be set-aside for value pricing pilot projects that do not involve highway tolls. The Federal share payable under the program is 80 percent of the cost of the project. Funds allocated by the Secretary to a State under this section shall remain available for obligation by the State for a period of 3 years after the last day of the fiscal year for which funds are authorized. If, on September 30 of any year, the amount of funds made available for the VPP program, but not allocated, exceeds $8 million, the excess amount will, to comply with the statutory requirements of the VPP program, be apportioned to all States as Surface Transportation Program funds.

Funds available for the VPP program can be used to support pre-implementation study activities as well as to pay for pricing-specific implementation costs of value pricing projects. Pursuant to section 1012(b)(2) of ISTEA, FHWA may not fund pre-implementation or implementation costs for more than 3 years. Also, section 1012(b)(6) of ISTEA provides that a State may permit vehicles with fewer than two occupants to operate in high occupancy vehicle (HOV) lanes if the vehicles are part of a local value pricing pilot program under this section. In addition to this authority under the VPP program, 23 U.S.C. 166 authorizes States to convert HOV lanes into high occupancy toll (HOT) lanes in which vehicles without the number of occupants required for HOV status are permitted to use a HOV lane if such vehicles are charged a toll. Since the authority to establish and operate a HOT lane (including HOT lanes on the Interstate System) is no longer experimental and has been ''mainstreamed'' in 23 U.S.C. 166, the provisions of 23 U.S.C. 166 will generally be used for HOT projects in order to more effectively allocate VPP funds and program slots.

Pursuant to section 1012(b)(7), the potential financial effects of value pricing projects on low-income drivers shall be considered. Where such effects are expected to be significant, possible mitigation measures should be identified, such as providing new or expanded transit service as an integral part of the value pricing project, toll discounts or credits for low-income motorists who do not have viable transit options, or fare or toll credits earned by motorists by use of regular lanes which can be used to pay for tolls on priced lanes. Mitigation measures can be included as part of the value pricing project implementation costs.

Also, section 1012(b)(6) of ISTEA requires the Secretary to monitor the effect of value pricing programs for a period of at least 10 years and report to Congress every 2 years on the effects such programs are having on driver behavior, traffic volume, transit ridership, air quality, and availability of funds for transportation programs. Project partners will be expected to assist FHWA by providing data on their programs for use in these reports throughout the length of the monitoring and reporting period.

In addition to the VPP program, other authorities are available that permit States to use tolling to finance highway construction and reconstruction, promote efficiency in the use of highways, and support congestion reduction by providing expanded flexibility under the following programs: HOV facilities; Interstate System Reconstruction and Rehabilitation Pilot; Interstate System Construction Toll Pilot; Express Lanes Demonstration Program; and Section 129 toll agreements. For more information on these programs, please refer to the notice in the January 6, 2006, **Federal Register** entitled, ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds'' (71 FR 965).

Applicable Terms

''Value pricing,'' ''congestion pricing,'' ''peak-period pricing,'' ''variable pricing,'' and ''variable tolling'' are all terms used to refer to direct non-constant charges for road use, possibly varying by location, time of day, severity of congestion, vehicle occupancy, or type of facility. By shifting some trips to off-peak periods, to mass transit or other higher-occupancy vehicles, to non-motorized modes, or to routes away from congested facilities, or by encouraging consolidation of trips, value pricing charges are intended to promote economic efficiency both generally and within the commercial freight sector. They also achieve congestion reduction, improved air quality, energy

conservation, and transit productivity goals.

A ''value pricing project'' means any pre-implementation activities or implementation of value pricing concepts or techniques discussed in the ''Potential Project Types'' section of this notice and included under a State or local ''value pricing pilot program.'' A State is considered to have a value pricing pilot program if it has one or more approved value pricing projects. While the distinction between ''project'' and ''program'' may appear to be merely a technical one, it is significant in that, as described in the ''Background'' section of this notice, the number of total VPP programs is statutorily limited to 15, while there is no limit to the number of VPP projects allowed under each VPP program.

A ''value pricing program'' means the combination of all value pricing projects within a State or local government or public authority. Any State or local government or public authority with a cooperative agreement for a value pricing program is deemed to have a value pricing program.

''Cooperative agreement'' means the agreement signed between the FHWA and a State to establish and implement value pricing pilot projects.

''Toll agreement'' means the agreement signed between the FHWA and a State and/or local government or public authority to provide for the statutorily authorized uses of toll revenues.

Program Objective

The overall objective of the VPP program is to support efforts by State and local governments or other public authorities to establish local value pricing pilot programs, to provide for the monitoring and evaluation of value pricing projects included in such programs, and to report on these effects. The VPP program's primary focus is on value pricing with road tolls, with a secondary focus on other market-based approaches for congestion relief that do not involve road tolls, such as congestion pricing at port facilities, mileage-based vehicle taxes and leasing fees, parking pricing, and car sharing.

The FHWA is seeking applications for funding and/or tolling authority to use value pricing to reduce congestion, improve system performance, and promote mobility in a manner consistent with the DOT's National Strategy to Reduce Congestion on America's Transportation Network, announced in May 2006. This strategy consists of a six-point plan, designed to both reduce congestion in the short-term and to build the foundation for successful longer-term congestion reduction efforts. One of the six elements of the plan is to ''relieve urban congestion,'' under which ''[t]he Department will seek to enter * * * [a]greements with model cities, pursuant to which the cities and Department will commit to * * * implementing a broad congestion pricing or variable toll demonstration * * *'' Consistent with this objective, all proposals should incorporate significant pricing mechanisms intended to reduce the level of congestion.

With successful examples of facility-specific pricing projects in operation in the U.S., the next step under the Value Pricing Pilot Program will focus on developing broader regionwide approaches. Metropolitan areas will be encouraged to develop pricing concepts and to collaborate with stakeholders to refine them and plan the process to deploy them in a phased manner. Some metropolitan areas, e.g., Los Angeles, San Francisco, Seattle, and Washington, DC, have begun the process for adoption of congestion pricing as a long-term strategy to finance and manage their transportation systems. An objective of this solicitation is to expand the number of metropolitan areas that are developing regionwide approaches to congestion pricing by providing incentive grants to a limited number of Metropolitan Planning Organizations on a competitive basis.

Potential Project Types

To help meet the objectives of DOT's National Strategy to Reduce Congestion on America's Transportation Network, FHWA is interested in funding projects that have the greatest potential to lead to significant, broad, and relatively near-term congestion relief. The FHWA will consider applications for funds that show that a project will achieve at least one of the following: (1) Build public support and a technical foundation for relatively near-term implementation of congestion pricing; (2) develop a pricing program with detailed plans and specifications leading to near-term implementation of congestion pricing; (3) perform a rigorous regional congestion pricing scenario study around a scenario that is both comprehensive and realistic, and/or; (4) implement broad-based pricing and evaluate its effectiveness. For pre-implementation projects, applicants should demonstrate that there is already sufficient political support for their implementation, or that the project is well designed to bring about such support.

Value pricing charges need to be targeted at a sizable number of vehicles that are causing congestion, and prices should be set at levels significantly variable to encourage drivers to use alternative times, routes, modes, or trip patterns, or to telecommute during congested periods.

The FHWA is seeking VPP program applications from public entities to study or implement pricing that is broad and/or regional in nature and will no longer entertain applications for studying or implementing smaller projects. Applications should cover a significantly-sized geographical area and include multiple roadway facilities that are priced, an interconnected managed lane network, or cordon pricing, where, as in London and Stockholm, cars are charged a substantial fee to drive in a congested area on weekdays. Variable pricing of currently free and tolled facilities, pricing of multiple facilities or corridors, and/or combinations of road pricing and parking pricing will generally be required. Area-wide pricing applications that use technologies that provide travelers (including drivers and transit riders) with pre-trip and real-time congestion and pricing information on alternative travel modes and routes are especially encouraged to assist travelers in making efficient travel destination, mode and route choices. Cashless tolling (i.e., no toll booths) is required and dynamic pricing regimes based on real-time traffic conditions are preferred.

As part of broad, regional pricing projects, the inclusion of new, innovative value pricing approaches is encouraged. Such approaches might entail pricing at major traffic bottlenecks, shifting from fixed to variable toll schedules on existing toll facilities (i.e., combinations of peak-period surcharges and off-peak discounts), and pricing of queue jumps, where paying motorists can bypass motorists who choose not to pay, typically by using special lanes with priority signals at freeway entrance ramps.

Projects should be designed to reflect the needs of low-income or other transportation-disadvantaged groups. Mitigation strategies to address equity concerns may include bus rapid transit or other enhancements of transportation alternatives for peak-period travelers, special reduced toll rates for low-income travelers, limited monetary credits to all or just to low-income travelers that can be used to pay for tolls or transit fares (thereby allowing a limited amount of free travel before having to pay full fees), and credit-based

tolling programs such as toll credits earned by motorists in regular lanes or by transit users in the corridor which can later be used to pay tolls on priced lanes or for free transit trips.

The FHWA is also interested in grant applications for projects that do not involve highway tolls. As discussed earlier, SAFETEA–LU sets aside at least $3 million per fiscal year for such projects. The FHWA encourages applicants to design such projects, to the extent possible, to complement or offer the potential for ''broad'' pricing as called for in the DOT's National Strategy to Reduce Congestion on America's Transportation Network. The FHWA in particular seeks tests of innovative port facility congestion pricing projects, such as the PierPass project currently operational at ports in the Los Angeles metropolitan area, and parking pricing strategies, including time-of-day pricing and charges reflective of congested conditions, provided the level and coverage of proposed parking charges is sufficient to reduce congestion. Among the parking pricing strategies that could be considered innovative include: surcharges for entering or exiting parking facilities during or near peak periods; citywide, on-street parking pricing that varies by demand; and a range of parking cash-out policies, where cash is offered to employees in lieu of subsidized parking, parking operators reimburse monthly patrons for unused parking days, or renters or purchasers in multifamily housing developments are provided direct financial saving for not availing of car parking spaces.

It is the intent of FHWA to additionally set aside approximately $5 million to be made available to up to 10 Metropolitan Planning Organizations to develop comprehensive multimodal regional transportation packages that include congestion pricing as a key component, for eventual incorporation in the region's transportation plan. Studies are encouraged to include evaluation of benefits, costs, revenues, environmental impacts, distributional impacts, and financial feasibility of each alternative package of transportation improvements, in comparison with the region's currently adopted long range transportation plan. Development of alternative packages may involve stakeholder groups, including (among others) business groups, environmental groups, and advocates for social equity. Examples of the types of regional transportation studies already conducted include the Traffic Choices Study conducted by the Puget Sound Regional Council for the Seattle Metropolitan Area, and the Value Pricing Study conducted by the Metropolitan Washington Council of Governments.

Pre-Implementation Studies

States are encouraged to carry out pre-implementation study activities designed to lead to implementation of a regional value pricing project in the relatively near-term, consistent with the objectives of the DOT's National Strategy to Reduce Congestion on America's Transportation Network. The intent of the pre-implementation study phase is to support efforts to identify and evaluate value pricing project alternatives, and to prepare the necessary groundwork for relatively near-term regional implementation. As indicated above, FHWA intends to set aside approximately $5 million to fund region-wide studies by Metropolitan Planning Organizations. So as to focus VPP program resources in a manner consistent with the DOT Congestion Initiative, FHWA will not fund purely academic studies of value pricing or studies that involve major expansions of existing facilities or area-wide planning studies covering many topics besides pricing and incorporating value pricing only as one of a number of options. Such studies may be funded with regular Federal-aid highway or transit planning funds. Applications for pre-implementation studies will be evaluated based on the likelihood that they will lead to relatively near-term implementation of broad value pricing conforming to the objectives described in the previous section.

Project Costs Eligible for Grant Funding

The FHWA will provide up to the statutorily allowable 80 percent share of the estimated costs of an approved project. Funds available for the VPP program can be used to support pre-implementation study activities and also to pay for implementation costs of value pricing projects. Costs of planning for, setting up, managing, operating, monitoring, evaluating, and reporting on local value pricing pilot projects are eligible for reimbursement, but neither pre-implementation study costs nor implementation costs may be reimbursed for longer than 3 years. The 3-year funding limitation will begin on the date of the first disbursement of Federal funds for project activities. Examples of specific pre-implementation and implementation costs eligible for reimbursement include the following:

1. *Pre-Implementation Study Costs*—Covered activities include those undertaken to advance two key priority focus areas: foundation building and regional program development.

a. Foundation building activities may be reimbursed, such as public participation, consensus building, marketing, modeling, and technology assessments; and

b. Regional program development activities are also eligible for reimbursement, including project and financial planning, project design, creating project specifications, and activities required to meet Federal or State environmental or other planning requirements.

2. *Implementation Costs*—Allowable costs for reimbursement under this priority focus area include those for setting up, managing, operating, evaluating, and reporting on a value pricing project, including:

a. Necessary salaries and expenses, or other administrative and operational costs, such as installation of equipment for operation of a pilot project (*e.g.*, Electronic Toll Collection (ETC) technology, video equipment for traffic monitoring, and other instrumentation), enforcement costs, costs of monitoring and evaluating project operations, and costs of continuing public relations activities during the period of implementation;

b. ''[M]itigation measures to deal with any potential adverse financial effects on low-income drivers[,]'' per section 1012(b)(7) of ISTEA as amended, including costs of providing transportation alternatives, such as new or expanded transit or ridesharing services provided as an integral part of the value pricing project. Funds are not available to replace existing sources of support for these services.

Project implementation costs can be supported until such time that sufficient revenues are being generated by the project to fund such activities without Federal support, but in no case for longer than 3 years. Each implementation project included in a value pricing pilot program will be considered separately for this purpose.

Funds may not be used to pay for activities conducted prior to approval for VPP program participation. Also, funds made available through the VPP program may not be used to construct new highway lanes or bridges, even if those facilities are to be priced, but toll ramps or minor pavement additions needed to facilitate toll collection or enforcement are eligible. Complementary actions, such as lane construction, the implementation of traffic control systems, or transit projects can be funded through other highway and transit programs under SAFETEA–LU and from new revenues

raised as a result of a pilot. VPP program applicants are encouraged to explore opportunities for combining VPP program funds with other funds. Federal funds may not, however, be used to match VPP program funds unless there is specific statutory authority to do so.

Eligible Uses of Revenues

Section 1012(b)(2) of ISTEA provides that revenues generated by any value pricing pilot project must be applied first to pay for pilot project operating costs. Any project revenues in excess of pilot project operating costs may, according to section 1012(b)(3) of ISTEA, be used for any projects eligible under Title 23, United States Code. A project's operating costs include, but are not limited to, any costs necessary for a project's execution; mitigation measures to deal with adverse financial effects on low-income drivers; the proper maintenance of the facility; any construction (including reconstruction, rehabilitation, restoration, or resurfacing) of the facility; any debt service incurred in implementing the project; and a reasonable return on investment by any private entity financing the project. States are encouraged to consider using excess revenue for projects designed to provide benefits to those traveling in the corridor where the project is being implemented.

For VPP toll projects, FHWA and the public authority (including the State transportation department) having jurisdiction over a facility must enter into a toll agreement concerning the use of toll revenue to be generated under a value pricing project. The toll agreement will provide that the public authority use the revenues in accordance with the applicable statutory requirements. The execution of a toll agreement will facilitate oversight of a State's compliance with revenue use requirements of the VPP program.

Who Is Eligible To Apply?

Qualified applicants for either tolling authority or grants (or both) include State or local governments or public authorities, such as tolling agencies. Although project agreements must be with the aforementioned public entities, and preferably with State departments of transportation in order to preserve participation slots, a VPP program partnership may also include private tolling authorities, for-profit companies, and non-profit organizations.

The Value Pricing Pilot Program Applications

Formal applications should be submitted online directly by the State department of transportation to *http://www.grants.gov*.

There is no particular format that is required for tolling authority applications or grant applications, although specific information is requested. Applications should include the following background information:

a. The name, title, e-mail address, and phone number of the person who will act as the point of contact on behalf of the requesting agency, authority, or authorities;

b. A description of the agency, authority, or authorities requesting funding and/or tolling authority;

c. A statement as to whether only funding, both funding and tolling authority, or only tolling authority via the VPP program is being sought to support either pre-implementation or implementation activities as permitted; and

d. A description of the public agency or agencies that will be responsible for operating, maintaining, and enforcing the tolling program, if applicable.

The core of the application should include the following:

1. A description of the congestion problem being addressed (current and projected);

2. A description of the proposed pricing program and its goals;

3. An identification of the facilities that will be covered, including whether any of the subject facilities is an Interstate facility, whether any HOV lanes currently exist on any of the facilities, and whether any construction related activities would be needed to implement the project and, if so, whether this is new construction, expansion, rehabilitation, reconstruction, or other;

4. Where applicable, a plan for implementing or modifying tolls, and a related timetable. Where known, the range of anticipated tolls and the strategies to vary toll rates (i.e., the formulas for variable pricing), the technology to be used, enforcement programs, and operating details;

5. Anticipated effects of the pricing program on reducing congestion, altering travel behavior, and encouraging the use of other transportation modes;

6. Preliminary estimates of the social and economic effects of the pricing program, including potential equity impacts, and a plan or methodology for further refining such estimates;

7. The role of alternative transportation modes in the project;

8. A description of the tasks to be carried out as part of each phase of the project;

9. A detailed project timeline broken down by tasks and phases;

10. An itemized budget broken down by task and funding year (i.e., Year 1, Year 2, etc.), which is only required for grant applications;

11. Plans for monitoring and evaluating implementation projects, including plans for data collection and analysis, before and after assessment, and long-term monitoring and documenting of project effects;

12. A detailed finance and revenue plan, including (for implementation projects) a budget for capital and operating costs; a description of all funding sources, planned expenditures, and proposed uses of revenues; and a plan for projects to become financially self-sustaining (without Federal support) within 3 years of implementation, all of which is only required for grant applications;

13. A discussion of previous public involvement, including public meetings, in the development of the proposed pricing program; any expressions or declarations of support from State or local government officials or the public; future plans for involving key affected parties, coalition building, and media relations, and more broadly for ensuring adequate public involvement prior to implementation;

14. Plans for meeting all Federal, State and local legal and administrative requirements for project implementation, including relevant Federal-aid planning and environmental requirements;

15. A description of how, if at all, any private entities are involved in the project either in the up-front costs to enact tolling, or the cost sharing or debt retirement associated with revenues; and

16. An explanation about how electronic toll collection project components will be compatible with other ETC systems in the region.

If some of these items are not available or fully developed at the time the formal application is submitted, applications will still be considered for grant funding support if they meet the interests of FHWA, as described earlier in the section entitled ''Potential Project Types,'' and if there is a strong indication that these items will be completed within a short time.

VPP Program Process

A. Requests for Funding

To ensure that all projects receive fair and equal consideration for the limited available funds, FHWA requires formal grant applications to be submitted no later than November 7, 2008, for FY 2009 funds to *http://www.grants.gov*.

B. Projects for Which No Funds Are Requested

Although most projects under the VPP program involve program funds, some projects do not, and instead only seek tolling authority under the program. In such cases, and especially where a State is not already part of the VPP program, FHWA recommends that the public authority investigate the other opportunities to gain authority to toll that are listed in the notice in the January 6, 2006, **Federal Register**, entitled ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Opportunities for State and Other Qualifying Agencies to Gain Authority to Toll Facilities Constructed Using Federal Funds'' (71 FR 965).

Post-Selection Process

If approved, a formal cooperative agreement will be prepared between the FHWA and the State. The cooperative agreement will include a refined scope of work developed from the original funding application and subsequent discussions with FHWA. Federal statutes will govern the cooperative agreement. Regulations cited in the agreement, and 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, will also apply. As a practical matter, each value pricing project must have a separate cooperative agreement. Although, in the past, the FHWA has allowed some States to have a master cooperative agreement that is subsequently amended for each approved project, in the future the FHWA will execute a separate agreement for each project. For value pricing projects that involve only toll authority and that do not involve requests for Federal funds, a cooperative agreement must still be executed.

Where the implementation of tolling is part of the VPP project, Federal tolling authority is required. To secure such authority for a VPP project, a cooperative agreement will be executed, regardless of whether VPP program funding is being provided. The cooperative agreement must include all of the information normally required as part of a tolling agreement (stipulating the terms of the tolling, providing details on the dispensation of revenues, etc.). A separate tolling agreement will not be required. As discussed previously, revenues must generally first be used to cover debt service, provide reasonable return on private party investments, and operate and maintain the facility. Any remaining revenues may then be used for other Title 23, United States Code eligible purposes.

Where tolling authority is secured through a VPP program cooperative agreement, such an agreement, like tolling agreements providing the authority to toll under other Federal provisions and programs, will be signed by the Executive Director of FHWA. If tolling authority is not required, the cooperative agreement will be signed by the FHWA Division Administrator of the State Division Office. All cooperative agreements will be administered jointly by FHWA's Office of Operations and FHWA's State Division Office.

Other Requirements

Prior to FHWA approval of pricing project implementation, value pricing programs must be shown to be consistent with Federal metropolitan and statewide planning requirements (23 U.S.C. 134 and 135; and, if applicable, 49 U.S.C. 5303 and 5304).

Implementation projects involving tolls outside metropolitan areas must be included in the approved statewide transportation improvement program and be selected in accordance with the requirements set forth in section 1204(f)(3) of the TEA–21.

Implementation projects involving tolls in metropolitan areas must be: (a) Included in, or consistent with, the approved metropolitan transportation plan (if the area is in nonattainment for a transportation related pollutant, the metropolitan plan must be in conformance with the State air quality implementation plan); (b) included in the approved metropolitan and statewide transportation improvement programs (if the metropolitan area is in a nonattainment area for a transportation related pollutant, the metropolitan transportation improvement program must be in conformance with the State air quality implementation plan); (c) selected in accordance with the requirements in section 1203(h)(5) or (i)(2) of TEA–21; and (d) consistent with any existing congestion management system in Transportation Management Areas, developed pursuant to 23 U.S.C. 134(i)(3).

Authority: 23 U.S.C. 315; sec. 1216(a), Pub. L. 105–178, 112 Stat. 107; Pub. L. 109–59; 117 Stat. 1144.

Issued on: September 9, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

[FR Doc. E8–21517 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898]

Comprehensive Safety Analysis 2010 Initiative

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of public listening session.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces a public listening session to obtain feedback from interested parties on the Agency's Comprehensive Safety Analysis 2010 (CSA 2010) initiative, a comprehensive review, analysis, and restructuring of FMCSA's current safety fitness determination process and enforcement programs. FMCSA will use the listening session to brief participants on the direction and progress of CSA 2010 and obtain feedback from its partners and stakeholders. FMCSA also requests comments on the CSA 2010 operational model described in this notice.

DATES: The Public Listening Session will be held on October 16, 2008, from 8 a.m. to 2:45 p.m. Participant registration will be from 8 a.m. to 9 a.m. Written comments must be received by January 31, 2009.

ADDRESSES: The Public Listening Session will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209. You may submit comments identified by FDMS Docket ID Number FMCSA–2004–18898 and by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted 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 19476). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy McNair, Program Manager Assistant, CSA 2010, (202) 366–0790.

SUPPLEMENTARY INFORMATION:

Format of Listening Session: During the Public Listening Session, FMCSA will describe its progress on CSA 2010 to date and address specific aspects of the CSA 2010 operational model. FMCSA will accept comments on the CSA 2010 operational model and any additional information that commenters believe FMCSA should consider for the success of the CSA 2010 initiative. The session will include a one and one-half hour morning plenary session (9 a.m.), and two facilitated breakout sessions. Each breakout session will be run two consecutive times so that all attendees will have the opportunity to participate in both sessions. Each session will run for one and one-half hours, beginning at 11 am and 1:15 pm.

The plenary and breakout sessions listed below will address specific aspects of the CSA 2010 initiative. Later sections of this notice provide supporting information for each of these areas.

(1) Plenary Session—Overview of CSA 2010 and the Operational Model Test
(2) Breakout Session—Safety Measurement System (SMS) and Safety Fitness Determination (SFD)
(3) Breakout Session—Safety Data Quality

The agenda for the listening session is as follows:

Morning

8–9 Registration
9–10:45 Welcome and Agenda Overview/CSA 2010 Overview and Operational Model Test Panelist Q & A (Plenary Session)
10:45–11 Break
11–12:30 Breakout 1 (Participants attend SMS/SFD or Data Quality session)

Afternoon

12:30–1:15 Lunch
1:15–2:45 Breakout 2 (Participants attend SMS/SFD or Data Quality session)

Registration information and instructions: To attend the listening session, attendees can register online at *http://www.fmcsa.dot.gov/csa2010-register*. In addition to registration information, the registration Web site provides additional details about the agenda. If there are any questions, or if an attendee prefers to register via telephone, please contact the registration help desk at 206–284–7850.

Background

In August 2004, FMCSA embarked on CSA 2010—a comprehensive review and analysis of the FMCSA motor vehicle safety compliance and enforcement programs (69 FR 51748, August 20, 2004). The goal of CSA 2010 is to increase the efficiency and effectiveness of FMCSA's compliance and enforcement program with the ultimate goal of achieving a significant reduction in large truck and bus crashes, injuries, and fatalities. Under the CSA 2010 initiative, FMCSA is developing and deploying a new approach to using agency resources to identify drivers and motor carriers that pose safety risks based on their crash experience and violations of safety regulations and to intervene to reduce those risks as soon as they become apparent. FMCSA understands how important it is to obtain feedback on this approach from partners, stakeholders, and other interested parties.

The Agency held the first series of public listening sessions on CSA 2010 in September and October of 2004. These sessions were designed to collect public input regarding ways FMCSA could improve its process of monitoring and assessing the safety performance of the motor carrier industry. The majority of participants supported the Agency's goal of improving the current safety fitness determination process through the CSA 2010 initiative. For further information on the public listening sessions held in 2004, visit the FMCSA Web site at *http://www.fmcsa.dot.gov/* (click on the CSA2010 link) and see the final report, ''Comprehensive Safety Analysis Listening Sessions.''

On November 16, 2006, FMCSA held another listening session to gather information and feedback on CSA 2010 (71 FR 61131, October 17, 2006). The session was held in Washington, DC, with close to 100 attendees that included a cross-section of Federal, State, and local government agencies, motor carriers, industry associations, insurance and consulting firms, and safety advocacy groups. *The event focused on four major aspects of CSA 2010:* (1) Measurement; (2) Safety Fitness Determination; (3) Intervention Selection and Entity Characteristics; and (4) Safety Data and Tracking, Evaluation and Data Validation. Participants provided valuable information on these topics, which FMCSA has taken into account during its continued development of the CSA 2010 operational model. For further information on the public listening session held in 2006, visit FDMS Docket Identification Number FMCSA–2004–18898 at *http://www.regulations.gov* and see the final report, ''Comprehensive Safety Analysis 2010, 2006 Listening Session.''

On December 4, 2007, FMCSA held a listening session to brief stakeholders and partners on the progress that had been made since 2006 (72 FR 62293, November 2, 2007). FMCSA provided detailed information in three breakout sessions on specific aspects of the CSA 2010 initiative: (1) Safety Measurement System; (2) Safety Fitness Determination (SFD); and (3) Operational Model Test. Participants in the 2007 listening session focused their comments and questions most frequently on issues relating to the CSA 2010 intervention process, concerns about the quality of safety data, and the proposed SFD methodology. For further information on the public listening session held in 2007, visit FDMS Docket Identification Number FMCSA–2004–18898 at *http://www.regulations.gov* and see the final report, ''Comprehensive Safety Analysis 2010, 2007 Public Listening Session.''

The purpose of the October 2008 listening session is for FMCSA to brief stakeholders, partners, and other interested parties on the progress that has been made since the listening session in December 2007. FMCSA plans to hold additional listening sessions to continue the process of updating the public and to receive feedback.

Current Operational Model and Its Limitations

FMCSA's current operational model employs SafeStat to analyze the safety status of individual motor carriers and to prioritize them for a compliance review (CR). SafeStat uses data from a variety of State and Federal sources to measure the relative safety of motor carriers in four Safety Evaluation Areas (SEAs): Accident, Driver, Vehicle, and Safety Management. (For a full description of the SafeStat methodology, visit the FMCSA Web site at: *http://ai.fmcsa.dot.gov*.) A CR is an on-site examination of a carrier's operations, such as drivers' hours of service, to determine whether the carrier meets the safety fitness standard found at 49 CFR 385.5. Currently, a CR can result in one of three safety ratings: Satisfactory, Conditional, or Unsatisfactory.

The current FMCSA enforcement intervention is very labor-intensive, allowing the Agency and its State partners to assess the safety performance of only a small fraction of the motor carrier industry. Because each CR may take one safety investigator an average of 3 to 4 days to complete, depending on the location and size of the carrier, FMCSA can perform CRs at present staffing levels on only a small portion of the approximately 700,000 interstate carriers listed in the agency's census. Further compounding this limitation is the fact that the full CR is generally deployed at a carrier's place of business as a one-size-fits-all tool to address what may not be a comprehensive safety problem. Although FMCSA's current approach has contributed to a reduction in the rate of large truck and bus fatalities, the factors described above will make it increasingly challenging to sustain and further these improvements to large truck and bus safety over the coming years.

For these reasons, along with improvements in the quality of data available to FMCSA and improved ways to measure the safety of motor carriers, FMCSA is exploring ways through CSA 2010 to improve its current process for monitoring, assessing, and enforcing the safety performance of motor carriers and drivers.

Comprehensive Safety Analysis 2010

CSA 2010 is a major FMCSA initiative to improve the effectiveness of the Agency's compliance and enforcement programs. CSA 2010 will help the Agency assess the safety performance of a greater segment of the motor carrier industry and intervene with more carriers to change unsafe behavior earlier. The ultimate goal is to achieve a significant reduction in large truck and bus crashes, injuries, and fatalities, while making efficient use of the resources of FMCSA and its State partners. In contrast to the Agency's current operational model, CSA 2010 is characterized by (1) a more comprehensive safety measurement system; (2) a broader array of progressive interventions; (3) a safety fitness determination (SFD) methodology that is based on performance data and not necessarily tied to an on-site compliance review; and (4) supporting information technology systems that will help FMCSA and its State partners implement and continuously evaluate each of these elements. To date, FMCSA has made significant progress in its development of the CSA 2010 operational model, launching a field test in February 2008.

Safety Measurement System

The role of the Safety Measurement System (SMS) within the CSA 2010 operational model is to monitor and quantify the safety performance of commercial motor carriers and drivers through data available in the Motor Carrier Management Information System (MCMIS), FMCSA's database for carrier census information, roadside inspection data, crash data, etc. Under CSA 2010, these data would include violations found during roadside inspections, traffic enforcement, and the intervention process (discussed below) as well as violations associated with crashes. SMS would group these data into seven Behavioral Analysis Safety Improvement Categories (BASICs), each of which includes regulatory requirements for both motor carriers and drivers: Unsafe Driving, Fatigued Driving, Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Improper Loading/Cargo Securement, and Crash History. FMCSA developed the BASICs under the premise that commercial motor vehicle (CMV) crashes can ultimately be traced to the behavior of motor carriers and drivers. There are six important ways that the SMS is different than the Agency's current measurement system, SafeStat:

1. SMS is organized by specific behaviors (BASICs) while SafeStat is organized into four broad SEAs.
2. SMS identifies safety risks in the same structure in which CSA 2010 addresses those risks, while SafeStat prioritizes carriers for a one-size-fits-all compliance review.
3. SMS uses all safety-based inspection violations while SafeStat uses only out-of-service violations and selected moving violations.
4. SMS uses risk-based violation weightings while SafeStat does not.
5. SMS impacts the safety fitness determination of an entity, while SafeStat has no impact on an entity's safety rating.
6. SMS assesses individual drivers and carriers, while SafeStat assesses only carriers.

The SMS methodology is described in more detail in the sections below headed ''Safety Measurement System'' and ''Safety Fitness Determination.''

Interventions

The use of targeted interventions to improve unsafe behavior is a cornerstone of the CSA 2010 operational model. Interventions are actions taken by FMCSA or its State partners to address safety deficiencies that cause an entity to receive an unfavorable score in the SMS. Currently, FMCSA relies on the CR, a one-size-fits-all comprehensive audit of regulatory compliance, to determine enforcement actions and assess safety fitness. In contrast, CSA 2010 interventions respond to specific safety risks and are designed to be progressive. The goal is to reach a larger segment of the industry and to change unsafe behavior early on.

The interventions developed for implementation in CSA 2010 can be grouped into one of two categories:

Investigative interventions are an attempt to find the causal factors of a safety performance issue that is identified by the measurement system.[1] FMCSA believes that such identification will, in many cases, help motor carriers and drivers to apply the most effective corrective actions. These interventions include targeted roadside inspections, offsite investigations, and on-site investigations (focused and comprehensive).

Corrective interventions are aimed at encouraging a change in safety behavior by correcting causal factors identified by investigative interventions with actions that range from educational to punitive. These interventions include Warning Letters, Cooperative Safety Plans, Notices of Violation, Notices of Claim, and Settlement Agreements. Under FMCSA's planned SFD process, corrective interventions could result in FMCSA determining a carrier unfit

[1] Although FMCSA believes that identifying causal factors through redesigned investigations will prove beneficial to safety, the Agency recognizes that it is ultimately the responsibility of motor carriers and drivers to know, understand, and comply with all applicable Federal safety regulations.

through the safety fitness determination process.

Safety Fitness Determination

Under 49 U.S.C. 31144, FMCSA is required to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' Under the Agency's current operational model, FMCSA uses the CR process to determine motor carrier safety fitness and issue safety ratings, which can be Satisfactory, Conditional, or Unsatisfactory and are defined under 49 CFR part 385.

The development of an alternative SFD methodology is guided by concerns about FMCSA's current SFD process both from within and outside the Agency. In particular, National Transportation Safety Board (NTSB) recommendation H–99–06 urges FMCSA to ''Change the safety fitness rating methodology so that adverse vehicle and driver performance-based data alone are sufficient to result in an overall unsatisfactory rating for the carrier.''

In response to these concerns, FMCSA is developing an SFD methodology that would (1) allow it to assess the safety performance of a larger segment of the motor carrier industry; (2) not be tied to an onsite compliance review; and (3) take into account virtually all FMCSA safety regulations. This methodology is described in more detail in the sections below headed ''Safety Measurement System'' and ''Safety Fitness Determination.''

Information Technology Systems

Information technology (IT) systems is the fourth major component of CSA 2010. New information resources and modified, existing information systems have been made available to FMCSA, State partners, and operational model test carriers to track and update the safety performance data from regulated entities as they are received, link relevant data to the correct entity, validate the data, and provide the mechanisms for correcting data. These systems will also allow FMCSA to provide important data to a third-party evaluator who will render an opinion of the relative effectiveness and efficiency of the CSA 2010 processes relative to existing processes.

COMPASS is the Agency's major IT modernization initiative. CSA 2010 is coordinating closely with the COMPASS program so that the timelines of both programs are synchronized as much as possible. CSA 2010 full deployment will rely on modernized, flexible IT systems that COMPASS provides.

Current CSA 2010 Priorities

Operational Model Test

In February 2008, FMCSA began testing the new CSA 2010 operational model. The purpose of the operational model test is to determine both the feasibility and effectiveness of the new CSA 2010 interventions and SMS. The test is scheduled to run in two Phases for 30 months into mid-2010, at which time FMCSA is targeting full CSA 2010 implementation. The 30-month timeframe is designed to provide sufficient data for statistical purposes to support third-party evaluation of the operational model test results.

During the operational model test, FMCSA is not providing any regulatory relief. Motor carriers are not rated under the CSA 2010 SFD methodology, because that methodology must yet be implemented through rulemaking. Instead, a motor carrier with poor safety performance, and found to be unresponsive to the new CSA 2010 interventions, undergoes a CR and is rated in accordance with the Agency's current compliance and enforcement process, and is subject to fines, penalties, and other actions to bring about compliance.

The test is taking place in four States: Colorado, Georgia, Missouri, and New Jersey, which provides one test State for each of the four FMCSA Service Centers. FMCSA randomly divided motor carriers domiciled in the test States into two equal sized groups: A test group and a control group.

The test group carriers receive CSA 2010 interventions based on information provided by the SMS. The control group is addressed through the Agency's current operational model, which involves the use of SafeStat to identify motor carriers for compliance reviews and any required enforcement actions. Again, motor carriers in the test group with poor safety performance, and found to be unresponsive to the new CSA 2010 interventions, undergo a compliance review and are rated in accordance with the Agency's current compliance and enforcement process.

Phase I: In January 2008, FMCSA trained approximately 26 Federal and State investigators to carry out the new CSA 2010 interventions on the test group carriers during the operational model test. In February 2008, the Agency initiated the first phase of the operational model test: This startup phase included only three BASICs: Unsafe Driving, Fatigued Driving, and Vehicle Maintenance.

Phase II: Phase two of the operational model test is scheduled to begin in late-September, at which point the remaining BASICs will be added: Driver Fitness, Controlled Substances and Alcohol, Improper Loading/Cargo Securement, and Crash History. As the test progresses into phase two, FMCSA intends to add currently excluded SafeStat category A/B motor carriers to the test. Including A/B carriers will help demonstrate the effectiveness of the new interventions on the group of carriers that FMCSA traditionally targets.

Implementation: As the test progresses and more data are gathered, the Agency anticipates being able to make ongoing quantitative and qualitative evaluations of the effectiveness of CSA 2010, which will guide broader implementation.

Safety Measurement System

Implementation of CSA 2010 will rely on accurate, objective measurement of the safety performance of individual motor carriers and drivers. The CSA 2010 SMS is designed to monitor and quantify the performance of motor carriers and drivers through data available in the Motor Carrier Management Information System (MCMIS). Under CSA 2010, the data would include violations found during roadside inspections, traffic enforcement, and the intervention process (discussed below) as well as violations associated with crashes.

As mentioned above, the SMS is organized into seven BASICs, each of which includes regulatory requirements for both motor carriers and drivers. These categories are derived from the existing FMCSA regulatory structure, the Large Truck Crash Causation Study, and other analyses and studies conducted by the Agency:

Unsafe Driving. Operation of a CMV in a dangerous or careless manner. Examples of violations are speeding, reckless driving, improper lane change, and inattention.

Fatigued Driving. Operation of a CMV by a driver who is in noncompliance with hours-of-service regulations. This BASIC includes violations of driving and on-duty time limits as well as failure to maintain complete, accurate logbooks.

Driver Fitness. Operation of a CMV by a driver who is unfit due to lack of training or required qualifications. Examples of violations include failure to have a valid, appropriate commercial driver's license or being medically unqualified to operate a CMV.

Controlled Substances and Alcohol. Operation of a CMV by a driver who is in possession of alcohol or illegal drugs or is impaired due to alcohol, illegal drugs, or misuse of prescription or over-the-counter medications. Examples of

violations include use or possession of controlled substances or alcohol.

Vehicle Maintenance. CMV failure due to improper or inadequate maintenance. Examples of violations include faulty brakes or lights and other mechanical defects as well as failure to make required repairs.

Improper Loading/Cargo Securement. CMV incidents resulting from shifting loads, spilled or dropped cargo, and unsafe handling of hazardous materials. Examples of violations include improper load securement, cargo retention, and unsafe handling of hazardous materials.

Crash History. A history or pattern of crash involvement, including frequency and severity, based on information from State-reported crashes.

The SMS measures the performance of an entity (motor carrier or driver) in each BASIC, employing a four-step process: (1) Relevant inspection, violation, and crash data from MCMIS are attributed to an entity to create a safety-event history; (2) the entity's violations and crashes are classified into BASICs; (3) time- and severity-weighting, normalization, peer-grouping, and data-sufficiency criteria are applied to the data to form a quantifiable measure for the entity in each BASIC; and (4) on the basis of comparison of the entity's BASIC measure with those of its peers, a rank and percentile are assigned. A carrier's score in each BASIC is based on data from the past 24 months.

FMCSA is designing one SMS consisting of the Carrier Safety Measurement System (CSMS) for carriers, and the Driver Safety Measurement System (DSMS) for drivers. The Agency is implementing both systems in their prototype stages to support the CSA 2010 operational model test.

During the CSA 2010 operational model test, FMCSA is using SMS results to identify and monitor entities with safety problems for inclusion in the intervention process. Ultimately, in cases where measurement results indicate a strong crash risk to the public, FMCSA will apply those results, along with other factors, to the determination of a carrier's safety fitness.

Safety Fitness Determination

In the November 2, 2007 **Federal Register** notice announcing last year's listening session, FMCSA laid out a preliminary SFD methodology (72 FR 62298—62299, November 2, 2007). This methodology is designed to meet the intent of the NTSB recommendation H–99–06 in the context of the new BASICs, while acknowledging the latest research that indicates that driver behavior is a major contributing factor in causing crashes.

The methodology is based strongly on performance data, and does not require a comprehensive on-site review for a safety fitness determination, which would be issued regularly on all carriers for which the Agency has sufficient data. As shown in Table 1, under this methodology there would be three major factors that could impact a motor carrier's safety fitness determination: (1) Roadside inspection and crash data; (2) violations in the areas of essential motor carrier safety management found during the intervention process (see Table 2); and (3) 15 violations which FMCSA believes are so fundamental to ensuring safety that no motor carrier should be allowed to operate if any of these violations are found and not immediately corrected (see Table 3). As shown in Table 1, data obtained under factors (1) and (2) would align with the seven BASICs in the CSA 2010 SMS.

Overall, the response to this proposed methodology was favorable from stakeholders attending the December 2007 listening session. In June 2008, after considering the potential safety benefits and operational feasibility, FMCSA's Motor Carrier Safety Advisory Committee recommended that the agency continue to work on CSA 2010 to address the NTSB's recommendation rather than making amendments to the cucrrent SFD to address the NTSB concerns prior to the implementation of CSA 2010. Accordingly, FMCSA is proceeding with the development of a notice of proposed rulemaking (NPRM) to address safety fitness determination under CSA 2010. The developmental basis for the rulemaking is the preliminary safety fitness methodology referenced above and summarized in Table 1. FMCSA is targeting publication of the NPRM in 2008.

TABLE 1—PROPOSED PRELIMINARY CSA 2010 SAFETY FITNESS DETERMINATION METHODOLOGY

Stand alone BASICs: Unsafe driving, fatigued driving	*Non-stand alone BASICs: Driver fitness, drug/alcohol,cargo securement, vehicle maintenance, verifiable crash rate*	Fifteen fundamental violations	Safety fitness determination
Number of BASICs: (1) With SMS measure above Unfit threshold, or (2) Where essential safety management violations are 10 percent or more of records checked	*Number of BASICs:* (1) With SMS measure or verifiable crash rate above Unfit threshold, or (2) Where essential safety management violations are 10 percent or more of records checked.	See Table 3 below	Continue Operation, Marginal Unfit.
1			Unfit.
0	Greater Than 1		Unfit.
0	0	1	Unfit.
0	1	0	Marginal.
0	0	0	Continue Operation.

The methodology in Table 1 makes a distinction between ''stand alone'' and ''non-stand alone'' BASICs. For the ''stand alone'' BASICs a failure in only one of them would result in a proposed Unfit status, whereas for the ''non-stand alone'' BASICs a failure in more than one of them would be required for the proposed Unfit status. The rationale for this distinction is that, although each of the BASICs applies to both carriers and drivers, the ''stand alone'' BASICs are more directly related to driver behavior. Recent research indicates that driver behavior is a major contributing factor in causing crashes. In particular, an effectiveness study on the SMS, ''Incorporating the Carrier Safety Measurement System Results into the Proposed Safety Fitness Determination Process,'' November 2007, FMCSA and

John Volpe National Transportation Systems Center, has shown that carriers with past poor performance in the Unsafe Driving or Fatigue Driving BASICs were subsequently involved in crashes at a considerably higher rate than the overall crash rate of the motor carrier population.

Safety Data Quality

Both the SMS and SFD methodologies depend on high quality roadside inspection and crash data to be collected and attributed to motor carriers' safety performance records. Because of this reliance on high quality data, FMCSA would like to share some details of its ongoing safety data quality improvement efforts.

Through the State partnership in the Motor Carrier Safety Assistance Program (MCSAP), FMCSA shares a safety goal with the States to reduce the number and severity of crashes involving large trucks and buses on our Nation's highways. To meet this common goal, inspection and crash data that are collected and reported to FMCSA must meet high standards of uniformity, completeness, accuracy and timeliness. The FMCSA has made significant strides to improve the data quality of crash and inspection data by the development of a comprehensive program that includes: Raising the awareness of the these standards, developing a means to measure State safety data quality, and working directly with States through either a State on-site review process or direct technical assistance to improve the quality of State safety data.

This comprehensive data quality program supports the Department of Transportation (DOT) data quality guidelines and addresses specific recommendations put forth in the DOT Inspector General's report, ''Improvements Needed in the Motor Carrier Safety Status Measurement System'' (SafeStat) report, February 2004, available at the following url: *http://www.oig.dot.gov/StreamFile?file=/data/pdfdocs/mh2004034.pdf*.

High quality data are the underpinning of effective safety programs at the State and Federal levels, including CSA 2010. The data quality programs include the following key areas that promote improvements to data quality:

- DataQs is an online system accessible on the Analysis and Information (A&I) Online *http://ai.fmcsa.dot.gov* Web site that was developed to facilitate data challenges by motor carriers and to track corrective actions.
- The State Safety Data Quality Map (SSDQ) is an evaluation tool for State-reported crash and inspection data that is released to the public on a quarterly basis on the A&I Online Web site. This evaluation measures States on the completeness, timeliness, accuracy, and consistency of State-reported crash and inspection data in FMCSA's Motor Carrier Management Information System (MCMIS).
- Monthly monitoring provides information accessible to States and Federal personnel on the completeness, timeliness, accuracy, and consistency of State-reported crash and inspection data. This reporting summarizes the evaluation results and tracks the States' progress on a monthly basis.
- On-site and off-site reviews of State-reported crash and inspection data provide support to States to identify areas for potential process improvement and provide the technical assistance to implement recommendations.
- Crash data collection training provides State-specific crash investigation training on the crash data needed by FMCSA.
- Additionally, FMCSA provides technical and analytical assistance to States to help them use good quality safety data and analysis in developing their Commercial Vehicle Safety Plans (CVSPs).

The quality of data submitted by States has shown marked improvement since the inception of the program. The federal oversight agency, Government Accountability Office (GAO), has taken notice as FMCSA has made efforts to improve the quality of CMV data. In 2005, GAO found that, while challenges remain, FMCSA's efforts have contributed to CMV data quality improvements. In particular, they reported that FMCSA's Safety Data Quality Improvement Program (SaDIP) supported state efforts to improve data quality. GAO concluded in that report, ''* * * FMCSA's collaborative efforts with states have had a positive impact on improving the quality of states' crash data, therefore ultimately enhancing the ability of both federal and state governments to make highway planning and safety enforcement decisions (GAO–06–102, Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles, p. 30). In 2007, GAO reported that FMCSA ''* * * acted to improve the quality of SafeStat data by completing a comprehensive plan for data quality improvement, implementing an approach to correct inaccurate data, and providing grants to states for improving data quality, among other things'' (GAO–07–585, Identifying High Risk Motor Carriers, p. 5).

The FMCSA is committed to evaluating States' data, developing improvement tools for States, and assisting individual States as they work toward improving their data collection processes. This approach will result in an effective and comprehensive approach to improving the quality of State safety data.

Comments Requested

FMCSA requests comments from all interested parties on the CSA 2010 program elements described in this notice. FMCSA is particularly interested in comments related to the Safety Measurement System, interventions, preliminary safety fitness determination methodology, and operational model test. Commenters are requested to provide supporting data and rationale wherever possible.

TABLE 2—AREAS OF ESSENTIAL MOTOR CARRIER SAFETY MANAGEMENT

1. Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed (§ 392.6).
2. Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated (§ 392.2)(Safety related violations only).
3. No operating authority (392.9a(a).
4. False reports of records of duty status (§ 395.8(e)).
5. Requiring or permitting driver to drive more than 11 hours (§ 395.3(a)(1)).
6. Requiring or permitting passenger CMV driver to drive more than 10 hours (§ 395.5(a)(1)).
7. Requiring or permitting driver to drive after 14 hours on duty (§ 395.3(a)(2)).
8. Requiring or permitting passenger CMV driver to drive after 15 hours on duty (§ 395.5(a)(2)).
9. Requiring or permitting driver to drive after 60 hours on duty in 7 days (§ 395.3(b)(1)).
10. Requiring or permitting driver to drive after 70 hours on duty in 8 days (§ 395.3(b)(2)).
11. Requiring or permitting passenger CMV driver to drive after 60 hours on duty in 7 days (§ 395.5(b)(1)).

TABLE 2—AREAS OF ESSENTIAL MOTOR CARRIER SAFETY MANAGEMENT—Continued

12. Requiring or permitting passenger CMV driver to drive after 70 hours on duty in 8 days (§ 395.5(b)(2)).
13. Requiring or permitting short-haul property CMV driver to drive after 16 hours on duty (§ 395.1(o)).
14. No records of duty status (§ 395.8(a)).
15. Failing to submit record of duty status within 13 days (§ 395.8(i)).
16. Failing to preserve records of duty status for 6 months (§ 395.8(k)).
17. Failing to preserve supporting documents (§ 395.8(k)).
18. Fraudulent or intentional alteration of a supporting document (§ 395.8(k)).
19. Requiring or permitting driver to drive after 70 hours in 7 days (Alaska)(§ 395.1(h)(1)(iii)).
20. Requiring or permitting driver to drive after 80 hours on duty in 8 days (Alaska)(395.1(h)(1)(iv)).
21. Requiring or permitting driver to drive more than 15 hours (Alaska)(§ 395.1(h)(1)(i)).
22. Requiring or permitting driver to drive after being on duty 20 hours (Alaska)(§ 395.1(h)(1)(ii)).
23. Requiring or permitting passenger CMV driver to drive more than 15 hours (Alaska) (§ 395.1(h)(2)(i)).
24. Requiring or permitting passenger CMV driver to drive after 20 hours on duty (Alaska)(§ 395.1(h)(2)(ii)).
25. Requiring or permitting passenger CMV driver to drive after 80 hours on duty in 8 days (Alaska)(§ 395.1(h)(2)(iv)).
26. Requiring or permitting passenger CMV driver to drive after 70 hours on duty in 7 days (Alaska)(395.1(h)(2)(iii)).
27. Failing to investigate driver's background (§ 391.23(a)).
28. Failing to maintain driver qualification file on each driver employed (§ 391.51(a))(Use current guidance of no element of DQ file requirements found).
29. Operating a CMV without a valid CDL (§ 383.23(a))(Safety related loss only).
30. Failing to train hazardous material employees as required (§ 172.704(a) & § 177.800(c)).
31. Using a driver not medically re-examined each 24 months (§ 391.45(b)(1)).
32. Using a driver not medically examined and certified (§ 391.45(a)).
33. Using a driver before receiving a negative pre-employment result (§ 382.301(a)).
34. Failing to perform random alcohol tests at the applicable rate (§ 382.305(b)(1)).
35. Failing to perform random controlled substance tests at the applicable rate (§ 382.305(b)(2)).
36. Using a driver without a return to duty test (§ 382.309).
37. Failing to keep minimum records of inspection and maintenance (§ 396.3(b)).
38. Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured (§ 392.9(a)(1)).
39. Transporting a HM without preparing a shipping paper (§ 172.200(a) & § 177.817(a))(no shipping paper at all).
40. Transporting HM in a package with an identifiable release of HM (§ 173.24).
41. Loading a cargo tank with an HM which exceeds the maximum weight of lading marked on the specification plate (§ 173.24b(d)(2)).
42. Loading HM not in accordance with the separation and segregation table (§ 173.30/177.848(d)).
43. Transporting HM in an unauthorized cargo tank (§ 173.33(a)).
44. Transporting or loading two or more materials in a cargo tank motor vehicle which resulted in an unsafe condition (§ 173.33(a)(2)).
45. Transporting a hazardous material in a cargo tank motor vehicle which has a dangerous reaction when in contact with the tank (§ 173.33(b)(1)).
46. Transporting an unacceptable HM shipment (§ 177.801).
47. Failing to attend a cargo tank during loading/unloading (§ 177.834(i)).
48. Offering a cargo tank which has not successfully completed a test or inspection which has become due (§ 180.407(a)).
49. Failing to test and inspect a cargo tank which has been in an accident and has been damaged (§ 180.407(b)(2)).
50. Failing to conduct a pressure test on a cargo tank which has been out of HM service for one year or more (§ 180.407(b)(3)).
51. Failing to test and inspect a cargo tank which has been modified (§ 180.407(b)(4)).
52. Failing to conduct a test or inspection on a cargo tank when required by DOT (§ 180.407(b)(5)).
53. Failing to periodically test and inspect a cargo tank (§ 180.407(c)).

TABLE 3—FUNDAMENTAL VIOLATIONS

1. Failing to implement an alcohol and/or controlled substance testing program (§ 382.115(a) or (b)).
2. Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382 (§ 382.211).
3. Using a driver known to have tested positive for a controlled substance (§ 382.215).
4. Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver's license which is suspended, revoked, or canceled by a State or who is disqualified to operate a commercial motor vehicle as defined in Part 383 (§ 383.37(a)).
5. Knowingly allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle (§ 383.51(a)).
6. Operating a motor vehicle transporting property without having in effect the required minimum levels of financial responsibility coverage (§ 387.7(a)).
7. Using a disqualified driver (§ 391.15(a)).
8. Using a physically unqualified driver (§ 391.11(b)(4)).
9. Failing to require a driver to make a record of duty status (§ 395.8(a)) (Complete lack of any records of duty status).
10. Requiring or permitting the operation of a motor vehicle declared "out-of-service" before repairs are made (§ 396.9(c)(2)).
11. Using a commercial motor vehicle not periodically inspected (§ 396.17(a)). (Complete lack of any periodic inspections).
12. Operating a passenger carrying vehicle without having in effect the required minimum levels of financial responsibility (§ 387.31(a)).
13. Failing to implement a random controlled substances and/or an alcohol testing program (§ 382.305).
14. Failing to correct out-of-service defects listed by a driver in a driver vehicle inspection report before the vehicle is operated again (§ 396.11(c)).
15. Transporting a forbidden material (§ 177.801).

Issued on: September 10, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–21561 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Clarissa Potter, Deputy Chief Counsel (Technical)
2. Roland Barral, Area Counsel (Large and Mid-Size Business)
3. Ellen T. Friberg, Area Counsel (Small Business/Self Employed)
4. Steve Larson, Associate Chief Counsel (Financial Institutions and Products)
5. Edward Cronin (Ted), Division Counsel/Associate Chief Counsel (Criminal Tax)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 15, 2008.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. E8–21576 Filed 9–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Karen Gilbreath-Sowell, Deputy Assistant Secretary for Tax Policy (Department of Treasury)
2. Steve T. Miller, Commissioner (Tax Exempt and Government Entities)
3. Stephen Albrecht, Acting Deputy General Counsel (Department of Treasury)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 15, 2008.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. E8–21577 Filed 9–15–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt; Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Certificates of Indebtedness—State and Local Government Series.

DATES: Written comments should be received on or before November 17, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *judi.owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, Unites States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535–0091.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 542.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 9, 2008.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. E8–21550 Filed 9–15–08; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Tuesday,
September 16, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the California Red-Legged Frog (Rana aurora draytonii); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0089; 92210–1117–0000–B4]

RIN 1018–AV90

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the California Red-Legged Frog (Rana aurora draytonii)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise designated critical habitat for the California red-legged frog (*Rana aurora draytonii*), pursuant to the Endangered Species Act of 1973, as amended (Act). The previous final rule designated 450,288 acres (ac) (182,225 hectares (ha)) of critical habitat. We herein propose to revise those critical habitat boundaries to better reflect lands containing essential features for the California red-legged frog, and we now propose to designate approximately 1,804,865 ac (730,402 ha) of critical habitat in 28 California counties, an increase of approximately 1,354,577 ac) (548,177 ha).

DATES: We will accept comments from all interested parties until November 17, 2008. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 31, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0089; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: For general information on the proposed designation and information about the proposed revised designation in Alameda, Butte, Calaveras, Contra Costa, El Dorado, Kern, Kings, Marin, Mendocino, Merced, Napa, Nevada, Placer, San Joaquin, San Mateo, Santa Clara, Solano, Sonoma, Stanislaus, and Yuba Counties, contact Susan Moore, Field Supervisor or Arnold Roessler, Listing Program Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; telephone 916/414–6600; or facsimile 916/414–6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339.

For information about the proposed designation in Los Angeles, Monterey, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, CA 93003; telephone 805/644–1766; facsimile 805/644–3958.

For information about the proposed designation in Riverside County, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 6010 Hidden Valley Road, Carlsbad, CA 92009; telephone 760/431–9440; facsimile 760/431–9624.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent;

(2) Specific information on:

- The amount and distribution of California red-legged frog habitat,
- What areas containing features essential to the conservation of the species we should include in the designation and why, and
- What areas are not essential for the conservation of the species and why;

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

(4) Comments or information that may assist us in identifying or clarifying the primary constituent elements;

(5) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential;

(6) Whether the lands proposed as critical habitat on Department of Defense land at Vandenberg Air Force Base in Santa Barbara County and Camp San Luis Obispo in San Luis Obispo County should be exempted under section 4(a)(3) or excluded under section 4(b)(2) of the Act;

(7) Whether the U.S. Forest Service lands managed under the Sierra Nevada Forest Plan Amendment within the units being proposed as critical habitat should be excluded under section 4(b)(2) of the Act;

(8) Whether Unit CAL–1 (Young's Creek) in Calaveras County should be excluded under section 4(b)(2) of the Act;

(9) Any foreseeable economic, national-security, or other potential impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(10) Information on any quantifiable economic costs or benefits of the revised designation of critical habitat; and

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during the comment period. On the basis of public comments, we may, during the development of our final designation, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Background

It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat in this proposed rule. For more information on the California red-legged frog, refer to the listing rule and previous determination of critical habitat published in the **Federal Register** on May 23, 1996 (61 FR 25813), and April 13, 2006 (71 FR 19243), respectively.

Subspecies Description

The California red-legged frog is the largest native frog in the western United States. It is endemic (native and restricted) to California and Baja California, Mexico, at elevations ranging from sea level to approximately 5,000 feet (ft) (1,500 meters (m)). The California red-legged frog gains its name from the typically red or pink color of its posterior abdomen and hind legs. The California red-legged frog is one of two subspecies of the red-legged frog (*Rana aurora*). For a detailed description of the subspecies, see the Recovery Plan for the California Red-legged Frog (Service 2002, pp. 1–173) and references identified within the plan as well as information in previous **Federal Register** notices (69 FR 19620; 66 FR 14626; 61 FR 25813).

Life History

During breeding season, which typically runs from November through April, males call to females from the margins of ponds and slow streams (Jennings *et al.* 1992, p. 3). Actual mating most commonly occurs in March, but can vary depending on seasonal climatic patterns. The female lays a jellylike mass of 2,000 to 5,000 reddish brown eggs in the water attached to some brace such as emergent vegetation, twigs, or other structure. The resulting tadpoles, which likely feed on algae (Dickman, 1968, pp. 1189–1190), typically require about 3 weeks to hatch, and another 11 to 20 weeks to metamorphose into juvenile frogs. Metamorphosis, therefore, typically occurs from July to September, although some tadpoles have been observed to delay metamorphosis until the following March or April (Bobzien *et al.* 2000, p. 13; Fellers *et al.* 2001, pp. 156–157). Adults tend to be nocturnal, while juveniles can be active at any time of day (Hayes and Tennant 1985, p. 604).

Geographic Range

The historical range of the California red-legged frog was thought to extend from Sonoma County, California, south along the coast to northwestern Baja California, Mexico, and inland as far as the vicinity of Redding in Shasta County, CA, south along the Sierra Nevada and the Central Valley (Storer 1925, pp. 235–236; Jennings and Hayes 1985, pp. 94–95; Hayes and Krempels 1986, pp. 930, 933–935). The range of the California red-legged frog has declined since being described by Storer (1925, pp. 235–236). Through comparison of historical museum records (1890 to 1980) and field surveys (1990 to 1992), Fisher and Shaffer (1996, pp. 1391–1392) present evidence of the extirpation (local extermination) of California red-legged frogs from 24 of 28 counties in a limited portion of its historical range. 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) 2008). 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 Bernardino, Santa Ynez, and Santa Monica Mountains) and Peninsular Ranges (San Jacinto, Santa Rosa, Agua Tibia, Laguna, Santa Ana Mountains). Since listing, two additional occurrences have been discovered south of the Tehachapi Mountains (CNDDB 2008) but may no longer be extant. Recent genetic studies have identified that the subspecies extends north along the coast into Mendocino County, California (Shaffer *et al.* 2004, pp. 2676–2677). Five additional occurrences have been recorded in the Sierra Nevada foothills, bringing the total to six known populations, compared to approximately 26 historical records for the Sierra Nevada foothills (Berkeley Museum of Vertebrate Zoology 2004, pp. 3, 5, 6, 9; CNDDB 2008; California Academy of Sciences 2004, p. 12; Barry 2005, p. 1). Currently, California red-legged frogs are only known from 3 disjunct regions in 28 California counties (Sierra Nevada, North and Central Coast Range, and Southern California); and are also still present in Baja California, Mexico (Grismer 2002 p. 79; Fidenci 2004, pp. 27–29; Smith and Krofta 2005, pp. 4, 6).

Habitat

California red-legged frogs live in a Mediterranean climate, which is characterized by temporal and spatial changes in habitat quality. During a period of abundant rainfall, almost the entire landscape, including breeding ponds and streams, may become suitable habitat for the adults. Conversely, habitat use may be drastically confined during periods of prolonged drought. Due to this variability, population sizes can vary widely from year to year. During favorable years, California red-legged frogs can produce large numbers of dispersing young, resulting in an increase in the number of occupied sites. In contrast, California red-legged frogs may temporarily disappear from an area during periods of extended drought. Therefore, it is essential to provide for sites that can be recolonized by dispersing individuals (Semlitsch 2000, pp. 623, 624).

The habitats used by this subspecies typically change in extent and suitability in response to the dynamic nature of floodplain and fluvial processes (i.e., natural water flow and sedimentation regimes that, in flux, create, modify, and eliminate deep pools, backwater areas, ponds, marshes, and other aquatic habitats). Rangewide, and even within local populations, the California red-legged frog uses a variety of areas, including various aquatic, riparian, and upland habitats. In some cases, they may complete their entire life cycle in a particular habitat (i.e., a pond is suitable for all life stages), and in other cases, they may seek multiple habitat types depending on climatic conditions or distance between and availability of wetland and other suitably moist environments.

Despite the California red-legged frog's ability to utilize multiple habitat types, there are certain habitat features they require. Most important is a breeding pond or slow-flowing stream reach or deep pool within a stream with some type of vegetative or other material to attach their egg masses, that holds water long enough for tadpoles to complete their metamorphoses into juvenile frogs able to survive outside of water. California red-legged frogs often disperse from their breeding habitat to utilize various aquatic, riparian, and upland summer habitats during their migrations from one area to another. However, it is also common for individuals to remain in the breeding area on a year-round basis.

In Northern California, many California red-legged frog populations occupy artificial or created wetland environments. Historically, as natural wetlands and streams were converted for agriculture, flood control, and urban development, California red-legged frogs colonized small artificial impoundments, or stock ponds, created by cattle ranchers for the purpose of providing water for their cattle. Our understanding of the role of stock ponds in the conservation of the California red-legged frog has evolved since listing. Without these stock ponds, the range of

the California red-legged frog would be limited further in this region.

Riparian and upland habitats adjacent to wetland features used by the California red-legged frog are essential in maintaining frog populations and biodiversity, hydrology and water quality of the aquatic feature. Riparian habitat includes vegetation dependent on nearby wetted areas for water. Typically such vegetation grows along the banks and in the floodplains of streams and ponds. Adjacent uplands are marked by vegetation that is not dependent on a nearby supply of surface water. Both riparian and upland habitats are used by the California red-legged frog for foraging, shelter, cover, and non-dispersal movement (Service 2002, pp. 14–15; Bulger *et al.* 2003, p. 87; Fellers and Kleeman 2007, p. 276). Bulger *et al.* (2003, pp. 85–95) studied California red-legged frog terrestrial activity in coastal forest and grassland habitats and recommended at least a 328 ft (100 m) distance for protection of aquatic and upland habitat be provided as well as impose seasonal restrictions for activities within this zone. In a recent study also specific to the California red-legged frog, Fellers and Kleeman (2007, pp. 278–280) recommended establishing zones around breeding habitat, non-breeding habitat, and migration corridors along with a buffer of these areas that is sufficient to protect function of the amphibian habitat. However, Fellers and Kleeman (2007, p. 279) discouraged setting specific distances due to differences in biological or site-specific requirements and that any distances set for avoidance of upland habitat should be made on a case-by-case basis taking into account the need to protect the breeding and non-breeding habitat as well as any migration corridors.

Tatarian (2004, p. 33) 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, pp. 87–89) 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, p. 15) observed a California red-legged frog inhabiting upland riparian habitat at distances of up to 85 ft (26 m) for 65 days. California red-legged frogs often disperse from their breeding habitat to forage and seek suitable upland and riparian habitat if aquatic habitat is not available. Such 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 (areas whose climate remains habitable when that of the surrounding areas has changed) (Rathbun *et al.* 1993, p. 15; Jennings and Hayes 1994, p. 64; Fellers and Kleeman 2005, p. 12).

Dispersal

Adult California red-legged frogs may disperse from breeding sites at any time of year. Dispersing adult California red-legged frogs in northern Santa Cruz County traveled distances from 0.25 miles (mi) (0.4 kilometers (km)) to more than 2.0 mi (3.2 km) without apparent regard to topography, vegetation type, or riparian corridors (Bulger *et al.* 2003, p. 90). California red-legged frogs have also been tracked using radio telemetry in East Las Virgenes Creek, Ventura County, which is characterized by highly variable rainfall (Smith 2005, p. 1). Habitat includes a well-defined creek and riparian zone with permanent deep pools. The maximum distance moved in this study was 48 ft (15 m) (Smith 2005, p. 1). In contrast, California red-legged frog movements in Santa Cruz County were found to be substantially less, with typical movements of 9 to 16 ft (3 to 5 m) from the water's edge. Many newly metamorphosed juveniles tend to disperse short distances initially from July through September, and then move farther away from the breeding habitat during warm rain events (Jennings 2000, p. 1). Bobzien *et al.* (2000, p. 12) observed juveniles inhabiting a wide variety of habitats while adults primarily inhabited deep pools. They postulated that juveniles might segregate themselves away from adults to escape predation and competition. In a study in Marin County, California, 123 frogs were tracked using radio telemetry between 1997 and 2003 at 8 different sites within the Point Reyes National Seashore and Golden Gate National Recreation Area (Fellers and Kleeman 2007, p. 277). The habitat at the sites included permanent ponds, seasonal ponds, permanent marsh, and a seasonal seep. The majority of movement was small scale (less than 98 ft (30 m)) and considered non-dispersal. Movements of greater than 98 ft (30 m) occurred mostly during winter rain events; however, some movements did occur when the ponded habitat was almost dry (Fellers and Kleeman 2007, p. 279). The majority of frogs dispersed less than 1,640 ft (500 m) away from breeding habitat, and the maximum dispersal distance recorded was 1.7 mi (2.8 km) (Fellers and Kleeman 2007, pp. 279–280). The study concluded that most frogs move away from breeding sites, but only a few disperse farther than the nearest non-breeding habitat; and that the distance moved is highly dependent on site conditions and local landscapes (Fellers and Kleeman 2007, p. 284). The study also recommended that average dispersal or migration distances not be used, and to let site conditions dictate the amount of area needed for the species. The study also concluded that, by establishing a generic dispersal distance, we may be selecting for sedentary frogs; losing those individuals that disperse farthest and reach other distant breeding sites would decrease genetic exchange and diversity (Fellers and Kleeman 2007, p. 285).

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 because juveniles disperse in more directions, and for longer distances than do migrating adults (Wright 1999, p. 2; Bulger *et al.* 2003, p. 94). Dispersal habitat for juveniles can be almost anything that provides sheltering vegetation or scattered wetlands or streams. This includes forested areas, nonnative grasslands, and even croplands or pasture, but is not known to include 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, pp. 247, 248; Fahrig *et al.* 1995, 179–181). Passable roadways that are heavily used by vehicles may also result in a high rate of mortality for frogs and other amphibians, thereby limiting dispersal capabilities (Glista *et al.* 2008, pp. 81–82). Juveniles dispersing along riparian corridors may have higher survivorship, as sheltering vegetation and suitable aquatic habitat are both more common in such corridors (Jennings 2000, p. 1). 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 1988, p. 147; Bobzien 2000, p. 1; M. Jennings 2000, p. 1).

The long-term probability of the survival and recovery of California red-legged frogs is dependent upon the protection of existing breeding habitat

and associated uplands (Fellers and Kleeman 2005, pp. 1, 17–18), the movements of individuals between aquatic patches, and the ability to recolonize newly created or vacated habitats. Recolonization, which is vital to the recovery of this subspecies, is dependent upon landscape characteristics, including appropriate distances between suitable breeding and non-breeding aquatic habitat, and limited fragmentation of interconnecting habitat (Vos and Chardon 1998, pp. 44, 53–56).

Previous Federal Action

On April 13, 2006 (71 FR 19243), we published our final designation of critical habitat for the California red-legged frog. On July 20, 2007 (Service 2007a, pp. 1–2), we announced that we would review the April 13, 2006, final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined it was necessary to revise critical habitat and this rule proposes those revisions. On December 12, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Northern District of California challenging our designation of critical habitat for the California red-legged frog (*Center for Biological Diversity* v. *Kempthorne, et al.*, Case No. C–07–6404–WHA). On April 2, 2008, the court entered a consent decree requiring a proposed revised critical habitat rule to be submitted to the **Federal Register** by August 29, 2008, and a final revised critical habitat designation to be submitted to the **Federal Register** by August 31, 2009.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) 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

(a) essential to the conservation of the species and

(b) that may require special management considerations or protection; and

(2) 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 the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where the landowner requests Federal agency funding or authorization of an activity that may affect a listed species or critical habitat, the consultation requirements of section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)) and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas to propose as revised critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

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 habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations of the California red-legged frog, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject 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 agency 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 (HCPs), section 7 consultations, or other species conservation planning efforts if new information calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the California red-legged frog. We have reviewed the approach to the conservation of the California red-legged frog provided in its recovery outline (Service 2002, pp. 1–173) and information from State, Federal, and Tribal agencies, and from academia and private organizations that have collected scientific data on the California red-legged frog. This includes information used to prepare the 2006 designation of critical habitat (71 FR 19243), the Recovery Plan for California red-legged frog (Service 2002, pp. 1–173), the CNDDB, published and unpublished papers, reports, academic theses, surveys, Geographic Information System (GIS) data (such as species occurrence, soil data, land use, topography, and ownership maps), correspondence to the Service from recognized experts, and other information as available.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to propose as revised critical habitat, we consider the physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

We derive the PCEs required for California red-legged frog from its biological needs. The area proposed for designation as revised critical habitat provides aquatic habitat for breeding and non-breeding activities and upland habitat for shelter, foraging, predator avoidance, and dispersal across the California red-legged frog's range. The primary constituent elements and, therefore, the resulting physical and biological features essential for the conservation of the species were determined from studies of California red-legged frog ecology as described in the Background sections of this proposal and in the final listing rule published in the **Federal Register** on May 23, 1996 (61 FR 25813).

Aquatic Breeding Habitat

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).

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 and tadpole development and metamorphosis so that juveniles can become capable of surviving in upland habitats. Drying of the aquatic habitat after that time can be beneficial because it helps prevent the establishment of predatory fish or bullfrogs (Hayes and Jennings 1988, p. 152; Cook 1997, pp. ii, iii, 17–19; Scott 1998, p. 3; Cook and Jennings 2007, p. 438). Water quality requirements for eggs and tadpoles include low salinity (below 4.5 parts per thousand (ppt) for eggs, up to 7.0 ppt for tadpoles) (Jennings and Hayes 1990, pp. 18, 19; Jennings 1994, p. 1), and temperatures below about 73° Fahrenheit (23° Celsius) (Cook 1997, p. 16; Nussbaum *et al.* 1983, p. 160). Water bodies free of bullfrogs and nonnative predatory fish are optimal, but California red-legged frog populations can persist in the presence of one or the other of these predators (Kiesecker and Blaustein 1998, pp. 776, 782; Lawler *et al.* 1999, pp. 613, 619–621; Cook and Jennings 2007, p. 438).

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. 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 and Riparian Habitat

Non-breeding aquatic and riparian habitat is essential for providing the space, food, and cover necessary to sustain California red-legged frogs. Non-breeding aquatic habitat consists of any typically shallow (non-lacustrine) freshwater features not suitable as breeding habitat, such as streams, small seeps, and ponds that dry too quickly to support breeding. Riparian habitat consists of vegetation growing nearby, but not typically in, a body of water on which it depends. Typically riparian habitat extends from the bank of a pond or stream to the margins of the associated floodplain.

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, p. 162). Fellers and Kleeman (2007, p. 279) found that most California red-legged frogs leave their breeding habitat once breeding is completed and disperse to other non-breeding habitat locations. 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 habitats associated with riparian and aquatic habitat are essential to maintain California red-legged frog populations. This habitat type provides food and shelter sites for California red-legged frogs and assists 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* spp.), poison oak (*Toxicodendron diversilobum*), coyote brush (*Baccharis pilularis*), and other upland perennial species that provide for foraging habitat and shelter from predatory species (Service 2002, pp. 12–14; Fellers and Kleeman 2007, pp. 276–277).

Upland habitat that contains the features essential to the conservation of the subspecies consists of natural areas near the edge of the riparian vegetation or the edge of the watershed boundary, and includes the dispersal corridor between breeding and non-breeding aquatic habitat. 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, pp. 15, 16; Bulger *et al.* 2003, pp. 93, 94; Tatarian 2004, pp. 24, 25; Fellers and Kleeman 2007, p. 279). Tatarian (2004, p. 22) 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, pp. 87, 88) 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, pp. 15, 16) 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.

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, p. 90). 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-mile (3.2-km) distance is toward the maximum dispersal distance for the subspecies during a single season, and that the 1-mile (1.6-km) distance is more reflective of the average dispersal distance for the California red-legged frog (Rathbun *et al.* 1993, pp. 15, 16; Wright 1999, pp. 1, 2; Bulger *et al.* 2003, p. 90; Tatarian 2004, table 9; Fellers and Kleeman 2005, pp. 14–16; Fellers and Kleeman 2007, pp. 276–286). 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 and as a result the amount of upland habitat surrounding the aquatic breeding and non-breeding habitat (PCEs 1 and 2) would be limited to 1 mile (1.6 km) in most cases depending on surrounding landscape and dispersal barriers.

Upland habitat used by the California red-legged frog includes structures that provide shade, moisture, and cooler temperatures. These structures 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, p. 64; Fellers and Kleeman 2005, p. 12).

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 connects two or more patches of aquatic breeding habitat within 1 mi (1.6 km) of one another. Dispersal barriers include heavily traveled roads (Vos and Chardon 1998, pp. 44, 54; Glista *et al.* 2008, pp. 81–82) 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, p. 90). These long-distance movements are most likely migrations rather than use of corridors for moving between habitats (Scott and Rathbun 1998, pp. 2, 3). These movements have also been found to be with apparent disregard to topography, vegetation type, or riparian corridors (Bulger *et al.* 2003, pp. 93, 94; Fellers and Kleeman 2005, pp. 15, 16). We conclude that 2.2 mi (3.6 km) is likely near the upward limit of dispersal capability for the California red-legged frog within a single season and that a 1-mile (1.6-km) dispersal distance will, in most instances, provide for connectivity between breeding aquatic habitats, non-breeding aquatic habitats, and areas of non-aquatic (i.e., upland) habitat and can be used as a general guide for habitat use. However, we also concur with Fellers and Kleeman (2007, p. 279) in that the exact extent of habitat use by the California red-legged frog should be determined on a site-by-site basis.

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) recruitment into breeding habitat or recolonization of 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 physical and biological features within the geographical area occupied by the California red-legged frog at the time of listing that are essential to the conservation of the species and which may require special management considerations or protections. The physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the species. All areas designated as critical habitat for California red-legged frogs are occupied, are within the subspecies' historical geographic range, and contain sufficient PCEs to support at least one life-history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the PCEs essential to the conservation of the California red-legged frog are:

(1) *Aquatic Breeding Habitat.* Standing bodies of fresh water (with salinities less than 7.0 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.* Freshwater and wetted riparian habitats, as described above, that 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 adjacent to or surrounding breeding and non-breeding aquatic and riparian habitat up to a distance of 1 mi (1.6 km) in most cases and comprised of various vegetational series such as grasslands, woodlands, wetland, or 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 should 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 a minimum of 1 mi (1.6 km) of each other and 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 (e.g., heavily traveled road without bridges or culverts) to dispersal. 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.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features that are essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life-history functions of the species. 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.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the occupied areas contain the physical and biological features that are essential to the conservation of the species, and whether these features may require special management considerations or protections.

The area proposed for designation as revised critical habitat will require some level of management to address the current and future threats to the California red-legged frog and to maintain the physical and biological features essential to the conservation of the species. In all units, special management will be required to ensure that aquatic and upland habitat are able to provide abundant breeding and non-breeding habitat, prey habitat, shelter, and connectivity within the landscape. 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 that may affect areas outside of critical habitat, such as development, agricultural activities, and road construction, are still subject to review under section 7 of the Act if they may affect the California red-legged frog because Federal agencies must consider both effects to the frog and effects to critical habitat independently. The prohibitions of section 9 of the Act (e.g., harm, harass, capture, kill) 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, Service 2002, pp. 1–173). Threats that may warrant special management of those features that define essential habitat (appropriate quantity and distribution of PCEs) 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.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in areas that we have determined were occupied by the species at the time of listing, and that contain the PCEs in the quantity and spatial arrangement to support life-history functions essential for the conservation of the species. We are also proposing to designate critical habitat in areas that were not occupied by the species at the time of listing, but were subsequently occupied. We have determined that these areas, which are currently occupied, are essential to the conservation of the species.

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 the Recovery Plan developed for the California red-legged frog (Service 2002, pp. 1–173); 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 GIS coverages. We are not proposing to designate any 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 examined the core areas identified in the Recovery Plan, and used these to focus our analysis of which areas to include as critical habitat. We attempted to include a distribution of critical habitat within each core area. 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 the appropriate quantity and distribution of PCEs to support the behaviors or life-cycle stages we have determined are

essential to the conservation of the subspecies.

After working through the criteria used to identify critical habitat, we then made an effort to avoid developed areas, such as housing and commercial developments which do not contain the PCE's for the California red-legged frog, and 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 proposed designation. Federal actions limited to these areas would not trigger a section 7 consultation, unless such actions affect the subspecies or the PCEs in adjacent critical habitat. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the California red-legged frog.

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 geographical, 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 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 then compared areas meeting these requirements to the core areas identified in the recovery plan for the species (Service 2002, pp. 1–173) and adjusted the number and distribution of units so that all core areas were represented in the proposed revised designation. For more information see ''Summary of Changes from Previously Designated Critical Habitat'' section below.

We first determined the occupancy status of areas on the basis of report data compiled by the CDFG (CNDDB 2008). We used the final listing rule to establish those areas occupied at the time of listing. All other area 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, pp. 85, 92) 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, California red-legged frogs are considered long lived with a minimum longevity of male and female California red-legged frogs between 8 and 10 years respectively (Jennings *et al.* 1992, p. 3), 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 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 which 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 a 1-mile (1.6-km) radius around locations with occurrence records. We then used this distance 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, p. 90). 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-mile (3.2-km) distance is toward the maximum dispersal distance for the subspecies during a single season, and that the 1-mile (1.6-km) distance is more reflective of the average dispersal distance for the California red-legged frog (Rathbun *et al.* 1993, pp. 15, 16; Wright 1999, pp. 1, 2; Bulger *et al.* 2003, p. 90; Tatarian 2004, table 9; Fellers and Kleeman 2005, pp. 14–16; Fellers and Kleeman 2007, pp. 276–286). 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 1 mi (1.6 km) distance where appropriate to aggregate clumps of occurrences and provide connectivity between occurrences. In some other instances, we removed areas not containing the PCEs from this revised proposed designation including agricultural, developed, disturbed, or fragmented lands. Due to the conversion of GIS data from two different geographic projection zones (zone 10 and zone 11) and conversion of the data to acres and hectares, some rounding adjustments may be reflected in the total acreage of the units designated as critical habitat and are shown in the acreage tables and unit descriptions.

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 (2) 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.

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 proposed 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 with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the subspecies or PCEs in adjacent critical habitat.

We further refined the preliminary areas described above based on the boundaries of the watershed and stream reach, as well as on the extent of aquatic habitat and the upland dispersal distance. We focused on areas of high California red-legged frog abundance, areas needed to maintain connectivity between aquatic breeding habitat, and areas of unique ecological significance. We used the core areas identified in the Recovery Plan (Service 2002, pp.1–173) to assist in focusing the areas and extent of the critical habitat boundaries. We refined unit boundaries by 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 or had been significantly altered hydrologically, we used alternative structural, political, or topographic boundaries (e.g., roads, county boundaries, ridgeline features, elevation contour lines) based on habitat characteristics 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 unknown conservation value for the California red-legged frog. We made every attempt to connect localized California red-legged frog populations into single critical habitat units if sufficient PCEs were present to do so.

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 an 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 may 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 should a determination be made that the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We propose to exclude lands covered by the Bonny Doon HCP, the East Contra Costa HCP, and the Western Riverside Multiple Species HCP (see section Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act below).

We propose to designate critical habitat units based on our established criteria (discussed above), and on the presence at the location of sufficient PCEs to support California red-legged frog life processes. A brief discussion of each area proposed for designation 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.

Summary of Changes From Previously Designated Critical Habitat

In this revised proposal for designating critical habitat for the California red-legged frog, we determined that it would be appropriate to begin our analysis of critical habitat without using the previous final designation as a base from which to make changes due to the involvement of Department of the Interior personnel which may have inappropriately influenced the extent and locations of critical habitat designated in our previous final determination. As a result of this unrestricted analysis, the amount and distribution of proposed critical habitat has increased and better represents those areas essential for the conservation of the subspecies or which contain the features essential to the conservation of the subspecies.

In this revised proposed designation, we used the Recovery Plan for the California red-legged frog (Service 2002, pp. 1–173) as part of our criteria. Specifically, we used the 34 core areas described in the Recovery Plan to focus our efforts on where to designate critical habitat. We attempted to include areas within those core areas that we determined contained those features essential to the conservation of the subspecies, were unique habitat types for the subspecies, were a representation of the subspecies' geographic range within each core area, and were most appropriate for conservation of the subspecies across its current range. After working through the criteria used to identify critical habitat, we then avoided areas where potential for conflict with development may occur if other areas were available that would meet the definition of critical habitat and maximize the potential for the conservation and recovery of the species. As a result, we included several new areas within the subspecies' current range as proposed critical habitat.

In the previous final critical habitat designation, we interpreted the ''occupied at time of listing'' standard to include only those specific records mentioned in the final listing rule (61 FR 25813, May 23, 1996). In this proposed designation, we interpreted occupancy ''at time of listing'' based on the dates of occurrence records and life history of the frog. For example, if an occurrence were recorded after the 1996 listing, but we could determine, based on population size, demographics, and biological factors, that the population was most likely present at time of listing, we would consider these areas as occupied at the time of listing for this revised proposed designation.

In the previous designation, we focused on designating only those areas that contained large numbers of occurrence records. In this revised proposal, we focused not only on occurrence records, but also on habitat areas adjacent to the occurrence records with similar characteristics that we determined are essential to the conservation of the subspecies or contain the features essential to the conservation of the subspecies.

We revised the primary constituent element that described the upland habitat surrounding water features (PCE 3). The existing PCE limits the upland areas to 200 ft (60 m) from the water feature. Based on new biological information on protecting breeding and non-breeding aquatic features for the frog and movements of the frog between breeding and non-breeding habitat (Fellers and Kleeman 2007, pp. 276–286), we removed the specific distance

and determined that such determinations be made on a case-by-case basis. In general, the upland habitat surrounding the aquatic breeding and non-breeding habitat (PCEs 1 and 2) would be limited to 1 mile (1.6 km) in most cases, depending on surrounding landscape and dispersal barriers.

We also included a new area in Mendocino County (Unit MEN–1) as a result of genetic information on the northern coastal range of the subspecies (Shaffer *et al.* 2004, pp. 2667–2677). A new area was also included in the Sierra Nevada (Unit PLA–1); bringing the total number of units proposed for designation to six in the Sierra Nevada Region.

In the previous designation, we also exempted two Department of Defense facilities (Vandenberg Air Force Base and Camp San Luis Obispo) under section 4(a)(3) of the Act, despite these two facilities not having approved integrated natural resource management plans in place. We are currently proposing critical habitat on portions of these two facilities and are seeking public comment as to whether or not we should exclude these areas under section 4(b)(2) of the Act.

Proposed Revised Critical Habitat Designation

We are proposing to designate 49 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 that meet the definition of critical habitat for the California red-legged frog. The areas designated as critical habitat are identified in Tables 1, 2, and 3 below. Table 1 shows a summary of areas that meet the definition of critical habitat for the California red-legged frog. Table 2 shows the areas proposed as critical that also include areas proposed for exclusion. Table 3 identifies the approximate area designated as critical habitat for the California red-legged frog by land ownership.

TABLE 1—SUMMARY OF AREAS THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR THE CALIFORNIA RED-LEGGED FROG

Unit	Known to be occupied at time of listing?	Known to be currently occupied?
BUT–1	No	Yes.
YUB–1	No	Yes.
NEV–1	No	Yes.
PLA–1	No	Yes.
ELD–1	Yes	Yes.
CAL–1	No	Yes.
MEN–1	No	Yes.
SON–1	Yes	Yes.
SON–2	No	Yes.
SON–3	No	Yes.
NAP–1	Yes	Yes.
MRN–1	Yes	Yes.
MRN–2	No	Yes.
MRN–3	Yes	Yes.
SOL–1	Yes	Yes.
SOL–2	No	Yes.
SOL–3	Yes	Yes.
CCS–1	Yes	Yes.

TABLE 1—SUMMARY OF AREAS THAT MEET THE DEFINITION OF CRITICAL HABITAT FOR THE CALIFORNIA RED-LEGGED FROG—Continued

Unit	Known to be occupied at time of listing?	Known to be currently occupied?
CCS–2	Yes	Yes.
ALA–1A	Yes	Yes.
ALA–1B	Yes	Yes.
ALA–2	Yes	Yes.
SNM–1	Yes	Yes.
SNM–2	Yes	Yes.
STC–1	Yes	Yes.
STC–2	Yes	Yes.
SCZ–1	Yes	Yes.
SCZ–2	Yes	Yes.
MNT–1	Yes	Yes.
MNT–2	Yes	Yes.
MNT–3	No	Yes.
SNB–1	No	Yes.
SNB–2	No	Yes.
SNB–3	Yes	Yes.
SLO–1	Yes	Yes.
SLO–2	Yes	Yes.
SLO–3	Yes	Yes.
SLO–4	No	Yes.
STB–1	Yes	Yes.
STB–2	No	Yes.
STB–3	Yes	Yes.
STB–4	No	Yes.
STB–5	Yes	Yes.
STB–6	Yes	Yes.
STB–7	Yes	Yes.
VEN–1	Yes	Yes.
VEN–2	Yes	Yes.
VEN–3	No	Yes.
LOS–1	Yes	Yes.
RIV–1	Yes	Yes.

TABLE 2—APPROXIMATE AREA (AC, (HA)) OF LOCATIONS SUPPORTING FEATURES ESSENTIAL TO CONSERVATION OF THE CALIFORNIA RED-LEGGED FROG FITTING THE SELECTION CRITERIA FOR CRITICAL HABITAT THAT INCLUDE PROPOSED EXCLUSIONS FROM CRITICAL HABITAT PURSUANT TO SECTION 4(B)(2) OF THE ACT

Unit	Proposed critical habitat		Proposed exclusions	
	ac	ha	ac	ha
ELD–1	5,525	2,236	54	22
CCS–2	138,859	56,194	100,884	40,786
SCZ–1	72,255	29,241	6	3
RIV–1	4,069	1,647	4,069	1,647
Total			105,013	42,458

TABLE 3—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		Local Gov		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
BUT–1	3,222	1,304	250	101			1,821	737	5,293	2,142
YUB–1	2,486	1,006					3,836	1,552	6,322	2,558
NEV–1	3,165	1,281	15	6			5,106	2,066	8,286	3,353
PLA–1	820	332					424	171	1,244	503
ELD–1	5,483	2,219					42	17	5,525	2,236
CAL–1	7	3					4,442	1,798	4,449	1,801
MEN–1							23,905	9,674	23,905	9,674
SON–1			1,157	468			407	165	1,564	633

TABLE 3—CRITICAL HABITAT UNITS DESIGNATED FOR THE CALIFORNIA RED-LEGGED FROG—Continued

[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		Local Gov		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
SON–2	.....	.....	.....	.....	.....	.....	4,932	1,996	4,932	1,996
SON–3	.....	.....	.....	.....	105	42	2,125	860	2,230	902
NAP–1	.....	.....	.....	.....	.....	.....	2,524	1,022	2,524	1,022
MRN–1	.....	.....	.....	.....	.....	.....	7,840	3,173	7,840	3,173
MRN–2	.....	.....	.....	.....	.....	.....	22,559	9,129	22,559	9,129
MRN–3	31,666	12,815	164	66	.....	.....	2,098	849	33,928	13,730
SOL–1	.....	.....	.....	.....	.....	.....	11,971	4,845	11,971	4,845
SOL–2	.....	.....	.....	.....	.....	.....	3,360	1,360	3,360	1,360
SOL–3	.....	.....	.....	.....	.....	.....	4,597	1,861	4,597	1,861
CCS–1	.....	.....	.....	.....	3,379	1,368	10,479	4,241	13,858	5,609
CCS–2	.....	.....	9,869	3,994	4,186	1,694	124,803	50,506	138,858	56,194
ALA–1A	.....	.....	.....	.....	.....	.....	3,650	1,477	3,650	1,477
ALA–1B	.....	.....	.....	.....	451	182	9,717	3,932	10,168	4,114
ALA–2	6,892	2,789	.....	.....	2,329	943	144,403	58,437	153,624	62,169
SNM–1	887	359	17,102	6,921	206	84	16,757	6,781	34,952	14,145
SNM–2	406	164	3,977	1,609	6,332	2,563	85,424	34,570	96,139	38,906
STC–1	37	15	.....	.....	8,450	3,420	43,796	17,723	52,283	21,158
STC–2	352	142	53,267	21,556	74	30	151,025	61,118	204,718	82,846
SCZ–1	226	92	20,532	8,309	.....	.....	51,497	20,840	72,255	29,241
SCZ–2	115	46	.....	.....	.....	.....	3,942	1,595	4,057	1,641
MNT–1	.....	.....	.....	.....	.....	.....	519	210	519	210
MNT–2	26,104	10,564	827	335	1373	556	91,188	36,902	119,492	48,357
MNT–3	9,936	4,021	6,025	2,438	.....	.....	11,581	4,687	27,542	11,146
SNB–1	13	5	3,109	1,258	.....	.....	33,172	13,424	36,294	14,687
SNB–2	.....	.....	.....	.....	.....	.....	17,356	7,024	17,356	7,024
SNB–3	20,221	8,183	.....	.....	.....	.....	43,533	17,617	63,754	25,800
SLO–1	159	64	.....	.....	.....	.....	17,859	7,228	18,018	7,292
SLO–2	497	201	691	280	.....	.....	116,261	47,049	117,449	47,530
SLO–3	34,854	14,104	6,316	2,556	.....	.....	81,250	32,881	122,420	49,541
SLO–4	23,970	9,700	.....	.....	.....	.....	10,493	4,247	34,463	13,947
STB–1	20,896	8,456	.....	.....	.....	.....	4,269	1,727	25,165	10,183
STB–2	23,912	9,677	.....	.....	.....	12,092	4,893	36,004	14,570	
STB–3	40,115	16,234	.....	.....	.....	.....	7,444	3,012	47,559	19,246
STB–4	1,012	410	.....	.....	.....	7,681	3,108	8,693	3,518	
STB–5	1,547	626	2,074	839	.....	.....	9,267	3,750	12,888	5,215
STB–6	1,881	761	28	11	.....	.....	10,076	4,078	11,985	4,850
STB–7	124,905	50,547	.....	.....	.....	20,216	8,181	145,121	58,728	
VEN–1	.....	.....	.....	.....	.....	2,915	1,180	2,915	1,180	
VEN–2	8,363	3,384	.....	.....	.....	.....	474	192	8,837	3,576
VEN–3	56	23	.....	.....	.....	.....	4,944	2,001	5,000	2,024
LOS–1	3,906	1,581	.....	.....	.....	.....	325	132	4,231	1,713
RIV–1	.....	.....	.....	3997	1618	72	29	4,069	1,647	
Total	398,111	161,108	125,403	50,747	30,882	12,500	1,250,469	506,047	1,804,865	730,402

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 (5,293 ac (2,142 ha))

This unit is located in east-central Butte County, east of State Highway 70 and west of Oroville-Quincy Highway. BUT–1 is mapped entirely from occurrences recorded subsequent to the time of listing and 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 currently occupied by the subspecies. This unit also encompasses one of six known extant Sierra Foothill populations identified since the time of listing and is located in the easternmost portion of the subspecies' historical 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, and contains high-quality habitat. The unit consists of Federal (3,222 ac (1,304 ha)), State (250 ac (101 ha)), and private (1,821 ac (737 ha)) land. The essential features in this unit may require special management considerations or protection due to 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. We are currently considering whether to exclude, but have not proposed for exclusion from the final designation of critical habitat, the Federal land managed by the Plumas National Forest under the U.S. Forest Service's Sierra Nevada Forest Plan. We are currently asking for information as to whether the Sierra Nevada Forest Plan Amendment is an appropriate mechanism for exclusion and are requesting comments. For further discussion, see ''Application of Section 4(b)(2) of the Act'' below.

YUB–1, Little Oregon Creek (6,322 ac (2,558 ha))

This unit is located in northeastern Yuba County, north of Marysville Road and south of La Porte Road. YUB–1 is mapped from records identified since the time of listing and 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 currently occupied by the subspecies. YUB–1 is the second of six known extant Sierra Foothill populations and is located in the easternmost portion of the subspecies' historical 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, and contains high-quality habitat. This unit consists of Federal (2,486 ac (1,006 ha)) and private (3,836 ac (1,552 ha)) land and is mapped entirely from occurrences recorded subsequent to the time of listing. The essential features in this unit may require special management considerations or protection due to 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. We are currently considering whether to exclude, but have not proposed for exclusion from the final designation of critical habitat, the Federal land managed by the Plumas National Forest under the U.S. Forest Service's Sierra Nevada Forest Plan. We are currently asking for information as to whether the Sierra Nevada Forest Plan Amendment is an appropriate mechanism for exclusion and are requesting comments. For further discussion, see ''Application of Section 4(b)(2) of the Act'' below.

NEV–1, Sailor Flat (8,286 ac (3,353 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 mapped entirely from occurrences recorded subsequent to the time of listing and 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 six known extant Sierra Foothill populations and is located in the easternmost portion of the subspecies' historical range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is currently known to be occupied, and contains high-quality habitat. This unit consists of Federal (3,165 ac (1,281 ha)), State (15 ac (6 ha)) and private (5,106 ac (2,066 ha)) land. The essential features in this unit may require special management considerations or protection due to 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. We are currently considering whether to exclude, but have not proposed for exclusion from the final designation of critical habitat, the Federal land managed by the Tahoe National Forest under the U.S. Forest Service's Sierra Nevada Forest Plan. We are currently asking for information as to whether the Sierra Nevada Forest Plan Amendment is an appropriate mechanism for exclusion and are requesting comments. For further discussion, see ''Application of Section 4(b)(2) of the Act'' below.

PLA–1, Michigan Bluff (1,244 ac (503 ha))

This unit is located in central Placer County, approximately 4 mi (6 km) east northeast of Foresthill. Unit PLA–1 is mapped from occurrences recorded subsequent to listing and 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. PLA–1 is the fourth of six known extant Sierra Foothill populations and is located in the easternmost portion of the subspecies' historical range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is currently known to be occupied, and contains high quality habitat. This unit consists of Federal (820 ac (332 ha)) and private (424 ac (171 ha)) land and is mapped entirely from occurrences recorded subsequent to the time of listing. The essential features in this unit may require special management considerations or protection due to 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. We are currently considering whether to exclude, but have not proposed for exclusion from the final designation of critical habitat, the Federal land managed by the Tahoe National Forest under the U.S. Forest Service's Sierra Nevada Forest Plan. We are currently asking for information as to whether the Sierra Nevada Forest Plan Amendment is an appropriate mechanism for exclusion and are requesting comments. For further discussion, see ''Application of Section 4(b)(2) of the Act'' below.

ELD–1, Spivey Pond (5,525 ac (2,236 ha))

This unit is located in central El Dorado County, south of State Highway 50 and east of Newton Road. ELD–1 is mapped from occurrences recorded subsequent to listing. However, records at this location were first reported one year after listing (1997). Based on the number of mature, reproducing adults and non-reproducing juveniles, we have determined that this site was occupied at the time of listing. Therefore, this unit contains the features essential for the conservation of the subspecies. The unit 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 fifth of six known extant Sierra Nevada populations and is located in the easternmost portion of the subspecies' historical range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is currently known to be occupied, and contains high-quality habitat. The unit consists entirely of Federal (5,483 ac (2,219 ha)) and private land (42 ac (17 ha)) and is mapped entirely from occurrences recorded subsequent to the time of listing. The essential features in this unit may require special management considerations or protection due to 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 proposed 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 are currently considering whether to exclude, but have not proposed for exclusion from the final designation of critical habitat, the Federal land

managed by the Plumas National Forest under the U.S. Forest Service's Sierra Nevada Forest Plan. We are currently asking for information as to whether the Sierra Nevada Forest Plan Amendment is an appropriate mechanism for exclusion and are requesting comments. For further discussion, see ''Application of Section 4(b)(2) of the Act'' below.

CAL–1, Young's Creek (4,449 ac (1,801 ha))

This unit is located in northwestern Calaveras County, north of State Highway 26 and south of Paloma Road. CAL–1 is mapped entirely from occurrences recorded subsequent to the time of listing and is essential for the conservation of the subspecies because it 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) and is occupied by the species. This unit encompasses one of six known extant Sierra Foothill populations identified since the time of listing and is located in the easternmost portion of the subspecies historical range. This unit represents the California red-legged frog's adaptation to a wide range of habitat and ecological variability, is currently known to be occupied, and contains high-quality habitat. The unit consists of 7 ac (3 ha) of Federal land and 4,442 ac (1,798 ha) of private land. We are currently considering whether to exclude but have not proposed for exclusion the private land from the designation of critical habitat. The essential features in this unit may require special management considerations or protection due to grazing and other land management activities, which may alter aquatic and upland habitats and thereby result in the predation and desiccation of egg masses or direct death of adults. We are currently asking for information as to whether the private lands within the proposed designation should be excluded and are requesting comments. For further discussion see ''Application of Section 4(b)(2) of the Act'' below.

MEN–1, Greenwood Creek (23,905 ac (9,674 ha))

This unit is located along the coast north of Manchester, CA, in Mendocino County. MEN–1 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). The records within the unit were identified subsequent to listing as northern Mendocino County was thought to be outside the known range of the species. Subsequent genetic research has identified the subspecies into Mendocino County (Shaffer *et al.* 2004, p. 2676). This unit is currently occupied and is essential to the conservation of the subspecies because it contains permanent and ephemeral aquatic habitats consisting of natural and man-made ponds surrounded by emergent vegetation and marshland with upland comprised of forested timber that provides for breeding and upland areas for dispersal, shelter, and foraging. Additionally, the unit represents the northernmost extent of the species range along the coast of California and may be genetically significant to the subspecies (Shaffer *et al.* 2004, p. 2676). The essential features in this unit may require special management considerations or protection due to grazing and other land management activities, which may alter aquatic and upland habitats and thereby result in the predation and desiccation of egg masses or direct death of adults. The unit consists entirely of private land.

SON–1, Annadel (1,564 ac (633 ha))

This unit is located in Annadel State Park southeast of Santa Rosa, CA, in Sonoma County and contains features that are essential for the conservation of the subspecies. SON–1 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). SOM–1 was known to be occupied at the time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitat consisting of marshland ponds with emergent vegetation surrounded by bulrush (*Scirpus* spp.) and cattail (*Typha* spp.), annual and perennial grasslands, oak forest, and Douglas fir forests, which allow for breeding and non-breeding pond activities; and upland areas for dispersal, shelter, and foraging. The unit provides for connectivity between populations farther south in the northbay (area north of San Francisco Bay), and contains high-quality protected habitat. The unit consists of State (1,157 ac (468 ha)) and private (407 ac (165 ha)) land and is mapped from occurrences recorded at the time of listing and subsequent to the time of listing. The essential features in this unit may require special management considerations or protection due to predation by nonnative species, habitat alteration from invasive plant species, and recreational use.

SON–2, Sonoma Mountain (4,932 ac (1,996 ha))

This unit is located east of Petaluma, California, in the Sonoma Mountains in Sonoma County. SON–2 is mapped from occurrences recorded subsequent to the time of listing and is currently occupied. This unit is essential to the conservation of the subspecies because it contains permanent and ephemeral aquatic habitats consisting of natural and man-made ponds surrounded by emergent vegetation and marshland with appropriate upland areas for dispersal, shelter, and foraging. The unit also contains habitat for breeding and non-breeding activities (PCE 1 and PCE 2), and upland habitat for foraging and dispersal activities, shelter, and food (PCE 3 and PCE 4). The unit also provides for connectivity between populations farther north and south in the northbay, and contains high-quality habitat. The essential features in this unit may require special management considerations or protection due to predation by nonnative species, and habitat alteration from invasive plant species. The unit consists entirely of private land.

SON–3, Petaluma (2,230 ac (902 ha))

This unit is located southwest of Petaluma, CA, near West Petaluma Regional Park in Sonoma County. SON–3 is mapped from occurrences recorded subsequent to the time of listing and is essential for the conservation of the subspecies because it 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). SON–3 is currently occupied and contains permanent and ephemeral aquatic habitats comprised of man-made ponds and connecting streams surrounded by riparian and grassland habitat that provide for breeding, and upland areas for dispersal, shelter, and foraging. The unit provides for connectivity between populations farther west in the northbay, and contains high-quality habitat. The unit consists of local government lands (105 ac (42 ha)) and private lands (2,125 ac (860 ha)). The essential features in this unit may require special management considerations or protection due to predation by nonnative species, and habitat alteration from invasive plant species.

NAP–1, Wragg Creek (2,524 ac (1,022 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 was known to be occupied at the time of listing and is currently occupied and contains the features that are essential for the conservation of the subspecies.

The unit 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). 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 northwest of the northbay; represents the northern extent of the subspecies' range in the interior coast range; and contains high-quality habitat. The unit consists entirely of private land and is mapped from occurrences recorded 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 and habitat disturbance.

MRN–1, Estero (7,840 ac (3,173 ha))

This unit is located in northwestern Marin County, west of State Highway 1 along the Estero de San Antonio. MRN–1 is occupied and contains occurrences recorded at the time of listing and subsequent to the time of listing. The area is occupied by the subspecies, and 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), and contains upland habitat for foraging and dispersal activities (PCE 3 and PCE 4). MRN–1 provides for connectivity between populations in the northbay region. The unit contains permanent and ephemeral aquatic habitats such as shallow and deep pools as well as ephemeral and permanent drainages surrounded by grasslands, emergent and other riparian vegetation that provide for aquatic breeding and non-breeding; and upland areas for dispersal, shelter, and foraging. The unit consists entirely of private land. Threats that may require special management in this unit include overgrazing of aquatic and riparian habitats, introduction of exotic vegetation, and urban development.

MRN–2, 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–2 is occupied and contains occurrences recorded subsequent to the time of listing. The area is 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–2 provides for connectivity between populations in the northbay region 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 land. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

MRN–3, Point Reyes Peninsula (33,928 ac (13,730 ha))

This unit is located in western Marin County, west of State Highway 1. MRN–3 contains the features that are essential for the conservation of the subspecies. The unit 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). MRN–3 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 farther north and inland and represents the southern portion of the geographic range within the northbay. The unit consists of Federal land (National Park Service) (31,666 ac (12,815 ha)), State land (164 ac (66 ha)), and private land (2,098 ac (849 ha)) and is mapped from occurrences recorded 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 predation by non-native species.

SOL–1, Sky Valley (11,971 ac (4,845 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 features that are essential for the conservation of the subspecies. The unit 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). 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 entirely of private land and is mapped from occurrences recorded 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.

SOL–2, Jameson Canyon (3,360 ac (1,360 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–2 is essential for the conservation of the subspecies because it 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). SOL–2 contains records found subsequent to the time of listing and is currently occupied. The unit contains high-quality permanent and ephemeral aquatic habitats consisting of stream and plunge pools as well as large freshwater marsh surrounded by open grassland, willow (*Salix* spp.), and oak (*Quercus agrifolia*) that provide for breeding, upland areas for dispersal, shelter, and foraging. The designation of this unit is expected to prevent further fragmentation of habitat in this portion of the subspecies' range and provides connectivity to adjacent units to the south in the interior coast range north of the Suisun Bay. The unit consists entirely of private land and is mapped from occurrence records and habitat identified subsequent to the time of listing. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

SOL–3, American Canyon (4,597 ac (1,861 ha))

This unit is located in southwestern Solano County and a portion of extreme southeastern Napa County, north of Interstate 80 and south of Highway 12. SOL–3 contains the features that are essential for the conservation of the subspecies. The unit 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). SOL–3 was known to be occupied at the time of listing and is currently occupied. The unit contains high-quality permanent and ephemeral aquatic habitats consisting of pools, stream, and spring habitat surrounded by riparian tree species and annual grasslands that provide for breeding, upland areas for dispersal, shelter, and foraging. The designation of this unit is expected to

prevent further fragmentation of habitat in this portion of the subspecies' range and provides connectivity to other units farther north and south in the interior coast range north of the Suisun Bay. The unit consists entirely of private land and is mapped from occurrences recorded 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 loss and alteration of habitat due to urbanization.

CCS–1, Berkeley Hills (13,858 ac (5,609 ha))

This unit is located in western Contra Costa County, south of Alhambra Valley Road and north of Bear Creek Road. CCS-1 contains the features that are essential for the conservation of the subspecies. The unit also 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). CCS-1 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. The unit consists of private (10,479 ac (4,241 ha)) and local government (3,379 ac (1,368 ha)) land. Threats that may require special management in this unit include removal and alteration of habitat due to urbanization, overgrazing and aquatic and riparian habitats, and predation by nonnative species.

CCS–2, Mount Diablo (138,858 ac (56,194 ha))

This unit is located in eastern Contra Costa County and northeastern Alameda County, north of Highway 580. Unit CCS–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). CCS–2 was known to be occupied at time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitats suitable for breeding, upland areas for dispersal, shelter and food, and provides for connectivity between populations farther south in the interior Coast Range. The unit consists of State (9,869 ac (3,994 ha)), local government (4,186 ac (1,694 ha)), and private (124,803 ac (50,506 ha)) land and is mapped from occurrences recorded at 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, erosion and siltation due to flooding, and predation by nonnative species. We are proposing to exclude portions of this unit from the final designation of critical habitat because it falls within the East Contra Costa County Natural Communities Conservation Plan/Habitat Conservation Plan (ECCHCP) and East Bay Regional Park lands. For further discussion of this proposed exclusion see ''Application of Section 4(b)(2) of the Act'' below.

ALA–1A, Dublin Canyon (3,650 ac (1,477 ha))

This unit is located in northwestern Alameda County and southern Contra Costa County, north of Highway 580 and west of Dublin, California. Unit ALA–1A contains the features that are essential for the conservation of the subspecies. The unit also 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). ALA–1A was known to be occupied at time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitats comprised of man-made stock ponds and natural streams with emergent vegetation, willows (Salix spp.) surrounded by riparian vegetation, grasslands and oak forest that provide for breeding, upland areas for dispersal, shelter, and foraging opportunities. The unit provides for connectivity between populations farther south in the Eastbay foothills. The unit consists entirely of private land and is mapped from occurrences recorded at 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, alteration of aquatic and riparian habitats, dumping, and erosion and siltation of ponded habitat.

ALA–1B, Cook Canyon (10,168 ac (4,114 ha))

This unit is located in northwestern Alameda County, south of Highway 580. Unit ALA–1B contains the features that are essential for the conservation of the subspecies. The unit also 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). ALA–1A was known to be occupied at time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitats comprised of man-made stock ponds and natural streams with emergent vegetation, willows (Salix spp.) surrounded by riparian vegetation, grasslands and oak forest that provide for breeding, upland areas for dispersal, shelter, and foraging opportunities. The unit provides for connectivity between populations farther north in the Eastbay foothills. The unit consists of local government land (451 ac (182 ha)) and private (9,717 ac (3,932 ha)) land and is mapped from occurrences recorded at 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, alteration of aquatic and riparian habitats, and erosion and siltation of ponded habitat.

ALA–2, Arroyo Valle (153,624 ac (62,169 ha))

This unit is located in southwestern Alameda County, south of Highway 580 at Altamont Pass southeast into San Joaquin County and southwest into Santa Clara County near Arroyo Hondo and Calaveras Reservoir. Unit ALA–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). ALA–1A was known to be occupied at time of listing and is currently occupied. The unit contains permanent and ephemeral aquatic habitats comprised of natural ponds and streams and man-made stock ponds with emergent vegetation, willows (Salix spp.) surrounded by riparian vegetation, grasslands and oak forest that provide for breeding, upland areas for dispersal, shelter, and foraging opportunities. The unit provides for connectivity between populations farther north and south in the interior Coast Range. The unit consists of Federal (6,892 ac (2,789 ha)), local government (2,329 ac (943 ha)), and private (144,307 ac (58,399 ha)) land and is mapped from occurrences recorded at 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, alteration of aquatic and riparian habitats, and erosion and siltation of ponded habitat.

SNM–1, Cahill Ridge (34,952 ac (14,145 ha))

This unit is located in north central San Mateo County, west of Interstate

280 and south of Pacifica, California. SNM–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). SNM–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 consisting of ponds and streams surrounded by riparian and emergent vegetation that provides 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 distribution of California red-legged frog population within the San Francisco area and provide connectivity to units farther south into Santa Cruz County. The unit consists of Federal (887 ac (359 ha)), State (17,102 ac (6,921 ha)), private (16,757 ac (6,781 ha)), and local government (206 ac (84 ha)) land and is mapped from occurrences recorded at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include habitat alteration and destruction from development and non-native invasive plants.

SNM–2, Pescadero (96,138 ac (38,906))

This unit is located in southwestern San Mateo County, south of Tunitas Creek, west of State Route 35 south into Santa Cruz County near Big Basin Redwoods State Park. Unit SNM–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). SNM–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 consisting of ponds and streams surrounded by riparian and emergent vegetation that provides for breeding and upland areas for dispersal, shelter, and food. The unit provides connectivity to units farther north toward San Francisco and south into Santa Cruz County. The unit consists of Federal (406 ac (164 ha)), State (3,977 ac (1,609 ha)), local government (6,332 ac (2,563 ha)), and private (85,424 ac (34,570 ha)) land and is mapped from occurrences recorded at the time of listing and subsequent to the time of listing. Threats that may require special management in this unit include habitat alteration and destruction from development and non-native invasive plants.

STC–1, Cañada de Pala (52,283 ac (21,158 ha))

This unit is located in north central Santa Clara County, south of Calaveras Reservoir near Los Buellis Hills south along the ridgeline east of Santa Clara Valley to Anderson Lake and Henry Coe State Park. Unit STC–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). STC–1 was known to be occupied at the time of listing, is currently occupied, and contains high-quality permanent and ephemeral aquatic habitats consisting of artificial and natural ponds and streams surrounded by emergent vegetation, grasslands and oak woodlands that provide 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 a connectivity corridor between units farther north into Contra Costa County and south into Merced and San Benito Counties. This unit consists of Federal (37 ac (15 ha)), local government (8,450 ac (3,420 ha)), and private (43,796 ac (17,723 ha)) land and is mapped from occurrences recorded 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 and exotic species, siltation and erosion of ponded habitat, overgrazing of aquatic and riparian habitats, and predation by nonnative species.

STC–2, Wilson Peak (204,718 ac (82,846 ha))

This unit is located in southeastern Santa Clara County to western Stanislaus County down to northern San Benito County from Henry Coe State Park south to Mount Ararat (Merced County) and Mariposa Peak (San Benito County) to San Felipe (Santa Clara County). Unit STC–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). STC–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 designation of this unit is expected to prevent further habitat fragmentation, provide connectivity to units farther north in Santa Clara, Alameda, and Contra Costa Counties, and represent the southern portion of the areas designated within Santa Clara County and Eastbay Region. The unit consists of Federal (352 ac (142 ha)), State (53,267 ac (21,556 ha)), local government (74 ac (30 ha)), and private (151,025 ac (61,118 ha)) land and is mapped from occurrences recorded 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.

SCZ–1, North Coastal Santa Cruz County (72,255 ac (29,241 ha))

This unit is located along the coastline of northern Santa Cruz County, plus a small area in southern San Mateo County, from approximately Green Oaks Creek to Wilder Creek. The unit includes the following watersheds: Green Oaks Creek, Waddell Creek, East Waddell Creek, Scott Creek, Big Creek, Little Creek, San Vicente Creek, Laguna Creek, and Majors Creek. The unit is mapped from occurrences recorded at the time of listing and subsequent to the time of listing and is currently occupied. SCZ–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). SCZ–1 provides connectivity between occupied sites along the coast and farther 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 two areas proposed for critical habitat in Santa Cruz County and is the northern extent of the central coast recovery unit. The unit consists of Federal (226 ac (92 ha)), State (20,532 ac (8,309 ha)), and private (51,497 ac (20,840 ha)) 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.

SCZ–2, Watsonville Slough (4,057 ac (1,641 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 includes portions of the Corralitos Lagoon and Mouth of the Pajaro River watersheds. The unit is mapped from occurrences recorded at the time of listing and subsequent to the time of listing. SCZ–2 contains the features that are essential for the conservation of the subspecies. This unit is currently occupied and also contains permanent and ephemeral aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging, dispersal activities, and shelter (PCE 3 and PCE 4). SCZ–2 also provides connectivity between occupied sites along the coast and farther inland. The unit consists of Federal land (115 ac (46 ha)) and private (3,942 ac (1,595 ha)). 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.

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 occurrences recorded at the time of listing and subsequent to the time of listing and is currently occupied. The unit includes the eastern edge of the Elkhorn Slough watershed and the western edge of the Strawberry Canyon watershed. MNT–1 contains the features that are essential for the conservation of the subspecies. This unit also 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). 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 entirely of private 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 (119,492 ac (48,357 ha))

This unit is located south and southeast of the city of Monterey and includes locations in the Carmel River drainage and nearby San Jose Creek. The unit includes the following watersheds and portions of watersheds: the southern portion of Carmel Bay, Carmel Valley, Robinson Canyon, San Jose Creek, Las Garces Creek, Hitchcock Canyon, the western portion of Lower Tularcitos Creek, Klondike Canyon, Black Rock Creek, Pine Creek, Danish Creek, Cachagua Creek, Lower Finch Creek, Bear Canyon, Bruce Fork, and Miller Canyon. It is mapped from occurrences recorded at the time of listing and subsequent to the time of listing. MNT–2 contains the features that are essential for the conservation of the subspecies. The unit is currently occupied and also contains permanent and ephemeral aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging, dispersal activities, and shelter (PCE 3 and PCE 4). The unit is the largest proposed within Monterey County. The unit consists of Federal (26,104 ac (10,564 ha)), State (827 ac (335 ha)), local government (1,373 ac (556 ha)), and private (91,188 ac (36,902 ha)) land. 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.

MNT–3, Big Sur Coast (27,542 ac (11,146 ha))

This unit is located along the Big Sur coastline in Monterey County, approximately from the mouth of the Little Sur River south to McWay Canyon and includes locations in and around the Big Sur River drainage. The unit includes the following watersheds: Point Sur, Big Sur River, Ventana Creek, Sycamore Canyon, and Partington Creek. This unit was not known to be occupied at the time of listing, but surveys conducted subsequent to the time of listing show that this unit is currently occupied. MNT–3 is essential for the conservation of the subspecies because it contains permanent and ephemeral aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging, dispersal activities, and shelter (PCE 3 and PCE 4). MNT–3 is occupied by the subspecies. The unit consists of Federal (9,936 ac (4,021 ha)), State (6,025 ac (2,438 ha)), and private (11,581 ac (4,687 ha)) land. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

SNB–1, Hollister Hills/San Benito River (36,294 ac (14,687 ha))

This unit is located in northwestern San Benito County in the San Benito River drainage. The unit includes the following watersheds and portions of watersheds: the southern portions of San Justo Reservoir, Northeast Hollister Hills, and Upper Bird Creek; Left Fork Bird Creek; Sulfur Canyon; and the western portions of Arroyo Hondo, Willow Grove School, Paicines Ranch, and Lower Pescadero Creek. It is mapped from occurrences recorded at the time of listing and subsequent to the time of listing near Saint Frances Retreat, San Juan Oaks, Azalea Canyon, Bird Creek, Hollister Hills State Vehicle Recreation Area, Paicines Reservoir, and Tres Pinos Creek. SNB–1 contains the features that are essential for the conservation of the subspecies. The unit also 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–1 also provides essential connectivity between sites on the coast plain and inner Coast Range. 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 Federal (13 ac (5 ha)) (Bureau of Land Management (BLM), State (3,109 ac (1,258 ha)), and private (33,172 ac (13,424 ha)) land. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

SNB–2, Antelope Creek/Upper Tres Pinos Creek (17,356 ac (7,024 ha))

This unit is located in central San Benito County in the Tres Pinos Creek drainage. The unit consists of the Antelope Creek watershed. This unit was not known to be occupied at the time of listing, but surveys conducted subsequent to the time of listing show that this unit is currently occupied. It is mapped from occurrence records in and along Tres Pinos Creek between the confluences of Boulder and Willow Springs Creeks. SNB–2 is essential for the conservation of the subspecies because it provides 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 occupied by the subspecies, is expected to prevent 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 entirely of private land.

SNB–3, Pinnacles National Monument (63,754 ac (25,800 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 occurrences recorded at the time of listing and subsequent to the time of listing. The unit includes the following watersheds: Gloria Lake, Bickmore Canyon, Sulfur Creek, and George Hansen Canyon. SNB–3 contains the features that are essential for the conservation of the subspecies. The unit also 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–3 is expected to prevent further fragmentation of habitat in this portion of the subspecies' range; contains permanent and ephemeral aquatic habitat suitable for breeding; contains accessible upland areas for dispersal, shelter, and food; and is occupied by the subspecies. The unit consists of Federal (20,221 ac (8,183 ha)) (National Park Service, BLM) and private (43,533 ac (17,617 ha)) land. 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–1, Cholame (18,018 ac (7,292 ha))

This unit is located in northeastern San Luis Obispo, northwestern Kern, and southwestern Kings Counties and includes locations in the Cholame Creek drainage, and is mapped from occurrences recorded at time of listing and subsequent to the time of listing. The unit includes portions of the following watersheds: the southern portion of Blue Point, the western portion of Jack Canyon, and the eastern portion of Palo Prieto Canyon. SLO–1 contains the features that are essential for the conservation of the subspecies. The unit 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). SLO–1 contains permanent and ephemeral aquatic habitats suitable for breeding, and contains accessible upland areas for dispersal, shelter and food, and is occupied by the species. SLO–1 consists of Federal (159 ac (64 ha)) and private (17,859 ac (7,228 ha)) land. 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 to Cayucos Creek (117,449 ac (47,530 ha))

This unit is located along the coast in northwestern San Luis Obispo County from approximately Arroyo de los Chinos southward to just before but not including Whale Rock Reservoir. The unit includes the following watersheds: Arroyo de los Chinos, Lower Arroyo de la Cruz, Arroyo del Corral, Oak Knoll Creek, Broken Bridge Creek, Pico Creek, Upper San Simeon Creek, Lower San Simeon Creek, Steiner Creek, Upper Santa Rosa Creek, Lower Santa Rosa Creek, and Lower Green Valley Creek. The unit is mapped from occurrences recorded at time of listing and subsequent to the time of listing. SLO–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). SLO–2 provides connectivity within the Santa Lucia Range, and between this range and the inner Coast Ranges in San Luis Obispo County, and is occupied by the species. The unit 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. Threats that may require special management in this unit include dewatering of aquatic habitats due to water diversion, overgrazing of aquatic and riparian habitats, removal and alteration of aquatic and upland habitat due to urbanization, and predation by nonnative species. The unit consists of Federal (497 ac (201 ha)), State (691 ac (280 ha)), and private (116,261 ac (47,049 ha)) land.

SLO–3, Willow and Toro Creeks to San Luis Obispo (122,420 ac (49,541 ha))

This unit is located near the coast in central San Luis Obispo County and extends about 1.9 mi (3 km) north of the town of Morro Bay southward to just north and east of the city of San Luis Obispo. The unit includes the following watersheds: Old Creek, Whale Rock Reservoir, the southern portion of Hale Creek, Morro Bay, San Luisito Creek, the western and southern portions of Santa Margarita Creek, Choro Reservoir, Stenner Lake, Reservoir Canyon, Trout Creek, and Big Falls Canyon. The unit is mapped from occurrences recorded at time of listing and subsequent to the time of listing. SLO–3 contains the features that are essential for the conservation of the subspecies. The unit is currently occupied and also contains permanent and ephemeral aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging, dispersal activities, and shelter (PCE 3 and PCE 4). SLO–3 provides connectivity within the Santa Lucia Range, and between this range and the inner Coast Ranges in San Luis Obispo County. This unit consists of Federal (34,854 ac (14,104 ha)), State (6,316 ac (2,556 ha)) and private (81,250 ac (32,881 ha)) land, which includes approximately 5,902 ac (2,388 ha) of Department of Defense lands at Camp San Luis Obispo (see ''Relationship of Critical Habitat to Section 4(a)(3)(B)(i) of the Act'' below). Threats that may require special management in this unit include removal and alteration of aquatic and upland habitat due to urbanization, dewatering of aquatic habitats due to water diversion, overgrazing of aquatic and riparian habitats, and predation by nonnative species.

SLO–4, Upper Salinas River (34,463 ac (13,947 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 occurrences recorded subsequent to time of listing. The unit includes the following watersheds: Horse Mesa, Douglas Canyon, American Canyon, and Coyote Hole. This unit is essential to the conservation of the subspecies because it contains permanent and ephemeral aquatic habitats consisting of natural and man-made ponds surrounded by emergent vegetation and marshland with upland comprised of riparian and ponded habitat for breeding and upland areas for dispersal, shelter, and foraging. The unit also contains aquatic habitat for breeding and non-breeding activities (PCE 1 and PCE 2) and upland habitat for foraging, dispersal activities, and shelter (PCE 3 and PCE 4). SLO–4 provides connectivity between populations in the outer Coast Ranges and populations farther inland, and is occupied by the species. 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 Federal (23,970 ac (9,700 ha)) and private (10,493 ac (4,247 ha)) land. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

STB–1, La Brea Creek (25,164 ac (10,183 ha))

This unit is located in Los Padres National Forest in northern Santa Barbara County, and is mapped from occurrences recorded at time of listing and subsequent to the time of listing. The unit includes the following watersheds: Bear Canyon, the southern portion of Smith Canyon, Rattlesnake Canyon, Lower South Fork La Brea Creek, and the eastern portion of Lower La Brea Creek. STB–1 contains the features that are essential for the conservation of the subspecies. The unit 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). STB–1 provides connectivity between coastal populations and populations in the Transverse Ranges, and 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 accessible upland areas for dispersal, shelter, and food, and is occupied by the species. The unit consists of Federal (20,896 ac (8,456 ha)) and private (4,269 ac (1,727 ha)) land. Threats that may require special management in this unit include alteration of aquatic and upland habitat by recreational activities.

STB–2, San Antonio Terrace (36,004 ac (14,570 ha))

This unit is located in northwestern Santa Barbara County near the coast, and extends from about Casmalia south to the Santa Lucia Canyon near the Purisima Hills and is mapped from occurrences recorded subsequent to time of listing. The unit includes the following watersheds: Graciosa Canyon and Lions Head. STB–2 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), and is occupied by the species. STB–2 provides connectivity between coastal populations and populations in the Transverse Ranges, and contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit consists of Federal (23,912 ac (9,677 ha)) and private (12,092 ac (4,893 ha)) land as well as 4,922 ac (1,992 ha) of Department of Defense lands at Vandenberg Air Force Base (see ''Relationship of Critical Habitat to Section 4(a)(3)(B)(i) of the Act'' below). Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

STB–3, Sisquoc River (47,559 ac (19,246 ha))

This unit occurs in northern Santa Barbara County and includes locations in the Sisquoc River drainage and is mapped from occurrences recorded at time of listing and subsequent to the time of listing. The unit contains the following watersheds: the southern portion of Tunnel Canyon, Burro Canyon, Sulphur Creek, Lower Manzano Creek, Middle Manzano Creek, Fir Canyon, Upper Cachuma Creek, and the northern portion of Happy Canyon. STB–3 contains the features that are essential for the conservation of the subspecies. The unit 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). STB–3 is occupied by the species and provides connectivity between locations along the coast and the Transverse Ranges; 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 Federal (40,115 ac (16,234 ha)) and private (7,444 ac (3,012 ha)) land. 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 (8,693 ac (3,518 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 occurrences recorded at the time of listing and subsequent to the time of listing. The unit includes the Casper Creek watershed. STB–4 contains the features that are essential for the conservation of the subspecies. The unit also includes 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 species and provides connectivity between locations along the coast and the Santa Ynez River watershed, and contains permanent and ephemeral aquatic habitats suitable for breeding, and upland areas for dispersal, shelter, and food. This unit consists of Federal (1,012 ac (410 ha)) and private (7,681 ac (3,108 ha)) land. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

STB–5, Gaviota Creek (12,888 ac (5,215 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 occurrences recorded at time of listing and subsequent to the time of listing. The unit includes the following watersheds: Cañada de las Cruces and Cañada de la Gavota. STB–5 contains the features that are essential for the conservation of the subspecies. The unit 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). STB–5 is occupied by the species and provides connectivity between locations along the coast and the Santa Ynez River watershed, and contains upland areas for dispersal, shelter and food. The unit consists of Federal (1,547 ac (626 ha)), State (2,074 ac (839 ha)), and private (9,267 ac (3,750 ha) 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 California red-legged frog populations in tributaries to the Santa Ynez River.

STB–6, Arroyo Quemado to Refugio Creek (11,985 ac (4,850 ha))

This unit occurs along the coast in southern Santa Barbara County about 5 mi (8 km) south of the town of Solvang, and is mapped from occurrences recorded at time of listing and subsequent to the time of listing. The unit includes the Tajiguas Creek watershed. STB–6 contains the features that are essential for the conservation of the subspecies. The unit 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). STB–6 is occupied by the species and provides connectivity between locations

along the coast and the Santa Ynez River watershed, and contains permanent and ephemeral aquatic habitats suitable for breeding, and upland areas for dispersal, shelter, and food. The unit consists of Federal (1,881 ac (761 ha)), State (28 ac (11 ha)), and private (10,076 ac (4,078 ha)) land. 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 California red-legged frog populations in tributaries to the Santa Ynez River.

STB–7, Upper Santa Ynez River and Matilija Creek (145,121 ac (58,728 ha))

This unit is located in southeastern Santa Barbara County about 5 mi (8 km) north of the City of Santa Barbara and extends into western Ventura County at Matilija Creek. It is mapped from occurrences recorded at time of listing and subsequent to the time of listing. The unit includes the following watersheds: Los Lauveles Canyon, Redrock Canyon, Oso Canyon, Buckhorn Creek, Camuesa Creek, Devils Canyon, Indian Creek Campground, Upper Mono Creek, Lower Mono Creek, Blue Canyon Upper Agua Caliente Canyon, Diablo Canyon, Lower Agua Caliente Canyon, Juncal Canyon, Lower Matilija Creek, North Fork Matilija Creek, and Cozy Dell Canyon. STB–7 contains the features that are essential for the conservation of the subspecies. This unit also 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). STB–7 is occupied by the species and provides connectivity between locations along the coast, in the Sierra Madre Mountains, and in the Ventura River watershed. It is important to species conservation and the persistence of the species in the Matilija watershed because it contains permanent and ephemeral aquatic habitats suitable for breeding, upland areas for dispersal, and shelter and food in that portion of the unit, which will provide connectivity between populations within the Transverse Ranges and will prevent further isolation of breeding locations near the limit of the geographic range of the subspecies. The unit as a whole 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 Federal (124,905 ac (50,547 ha)) and private (20,216 ac (8,181 ha)) land. 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 alteration of aquatic and upland habitat by recreational activities and predation by nonnative species.

VEN–1, 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 occurrences recorded at time of listing and subsequent to the time of listing. The unit includes portions of the following watersheds: a small southern portion of Upper San Antonio Creek, a small western portion of Lion Creek, and the eastern portion of Lower San Antonio Creek. VEN–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). VEN–1 is occupied by the species. Persistence of the species in this area will prevent further isolation of breeding locations near the limit of the geographic range of the subspecies. The unit contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food, and provides connectivity between populations within the Transverse Ranges. The unit consists entirely 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–2, 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 occurrences recorded at time of listing at Piru Creek. The unit includes the Michael Creek watershed. VEN–2 contains the features that are essential for the conservation of the subspecies. The unit also 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). VEN–2 is occupied by the species. Persistence of the species in this area is important to prevent further isolation of breeding locations near the limit of the geographic range of the subspecies, and the unit contains permanent and ephemeral aquatic habitats suitable for breeding, upland areas for dispersal, shelter, and food. The unit consists of Federal (8,363 ac (3,384 ha)) and private (474 ac (192 ha)) land. Threats that may require special management in this unit include alteration of aquatic and upland habitat by off-road vehicle use, conversion of native habitat by introduced invasive plant species, and predation by nonnative species.

VEN–3, Upper Las Virgenes Canyon (5,000 ac (2,024 ha))

This unit is located in southeastern Ventura County and is mapped from occurrences recorded subsequent to the time of listing. The unit includes the upper portion of Las Virgenes Creek watershed that is north of the Ventura County line. VEN–3 is considered an area that is essential for the conservation of the subspecies because it is currently occupied by the species and 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). Further, VEN–3 provides connectivity between coastal populations and populations in the Transverse Ranges, and contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit consists of Federal (56 ac (23 ha)) and private (4,944 ac (2,001 ha)) land. Approximately 2,048 ac (975 ha) of land within the unit is managed by the Santa Monica Mountains Conservancy. Threats that may require special management in this unit include predation by nonnative species and habitat disturbance.

LOS–1, San Francisquito Creek (4,231 ac (1,713 ha))

This unit is located in northwestern Los Angeles County and is mapped from occurrences recorded at the time of listing and is currently occupied. LOS–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). LOS–1 contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food. The unit consists of Federal (3,906 ac (1,581 ha)) (U.S. Forest Service) and private (325 ac (132 ha)) land. Threats that may require special

management in this unit include predation by nonnative species and habitat disturbance.

RIV–1, Cole Creek (4,069 ac (1,647 ha))

This unit is located in southwestern Riverside County along Cole Creek, partially within the Santa Rosa Plateau Ecological Reserve. RIV–1 contains the features that are essential for the conservation of the subspecies. The unit also 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). The unit was known to be occupied at time of listing and is currently occupied. It contains permanent and ephemeral aquatic habitats suitable for breeding and accessible upland areas for dispersal, shelter, and food, provides for connectivity between populations, provides representation of the southernmost extent of the geographic range of the subspecies in the United States, and contains high-quality habitat. Further, based on recent genetics work (Shaffer *et al.* 2004, p. 2673), it is believed that this population represents a unique genetic lineage of the subspecies that is closely related to the populations found in Baja California, Mexico, and may be representative of the genetic lineage that once occupied the southern California basin in Riverside, Orange, and San Diego Counties. The unit includes 3,997 ac (1618 ha) of local government land and 72 ac (29 ha) of private land. Threats that may require special management in this unit include removal and alteration of habitat due to introduction and predation by nonnative species. We are proposing to exclude this entire unit from the final designation of critical habitat because it is covered under the Western Riverside Multiple Species Habitat Conservation Plan. For a further discussion of this proposed exclusion see ''Application of Section 4(b)(2) of the Act'' below.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) 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. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species (Service 2004, p. 3).

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. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when 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)). The conservation recommendations in a conference report or opinion are 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 in most cases. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the U.S. Forest Service and the BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the U.S. Forest Service and the BLM the opportunity to make ''not likely to adversely affect'' (NLAA) determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The U.S. Forest Service and the BLM will insure staff are properly trained and both agencies will submit monitoring reports to the Service to determine if the procedures are being implemented properly and affects on endangered species and their habitats are being properly evaluated. As a result we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' 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,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

When we issue a biological opinion concluding that a project is not likely to jeopardize a listed species or adversely modify critical habitat, but may result in incidental take of listed animals, we provide an incidental take statement that specifies the impact of such incidental taking on the species. We

then define ''Reasonable and Prudent Measures'' considered necessary or appropriate to minimize the impact of such taking. Reasonable and prudent measures are binding measures the action agency must implement to receive an exemption to the prohibition against take contained in section 9 of the Act. These reasonable and prudent measures are implemented through specific ''Terms and Conditions'' that must be followed by the action agency or passed along by the action agency as binding conditions to an applicant. Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action under consultation and may involve only minor changes (50 CFR 402.14). The Service may provide the action agency with additional conservation recommendations, which are advisory and not intended to carry binding legal force.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

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 ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent element(s) to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for California red-legged frog. Generally, the conservation role of the proposed revised California red-legged frog critical habitat units is to support viable populations.

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, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and therefore should result in consultation for the California red-legged frog include, but are not limited to, the following:

(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 alter water conditions beyond the tolerances of the California red-legged frog and result in direct or cumulative adverse effects 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; nonnative aquatic plant species for aesthetics; 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 or limit the amount of habitat available for the subspecies, which would adversely affect the California red-legged frog's ability to complete its life cycle.

Note that the scale of these activities would be a crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat for the survival and recovery of California red-legged frog would be appreciably diminished.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor of the appropriate Ecological Services Field Office (see **ADDRESSES** section).

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas

eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

The Sikes Improvement Act of 1997 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) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. INRMPs developed by military installations located within the range of the California red-legged frog and which contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

Camp San Luis Obispo (Unit SLO–2)

In the previous final critical habitat designation for the California red-legged frog, we exempted Camp San Luis Obispo (CSLO) in San Luis Obispo County, CA, from the designation of critical habitat (71 FR 19275). We based this decision on the conservation benefits to the frog identified in the INRMP developed by CSLO in November 2001. The INRMP developed in 2001, and used by us as the basis for the previous exemption, has not been approved by the Service. We have attempted to work with CSLO regarding our concerns and we met with CSLO in 2006 to discuss the status of the INRMP. Currently CSLO still does not have a signed INRMP in place. Section 4(a)(3)(B)(i) requires that an approved INRMP be in place in order to qualify for an exemption. As a result of CSLO not having an approved INRMP, we have reevaluated our previous decision and are not exempting Camp San Luis Obispo from portions of Unit SLO–2 under section 4(a)(3)(B)(i) of the Act and are soliciting information and comments as to whether to designate critical habitat for the California red-legged frog on CLSO lands or to exclude these areas under section 4(b)(2) of the Act from the designation (see the ''Public Comments'' section above).

Vandenberg Air Force Base (Unit STB–2; Unit STB–4)

In the previous final critical habitat designation for the California red-legged frog, we also exempted Vandenberg Air Force Base (Vandenberg AFB) from the designation (71 FR 19275). We based this decision on the conservation benefits to the frog provided in a draft INRMP developed in 1997 and Vandenberg AFB's commitment to continuing these benefits expressed in an updated version of the 1997 INRMP that Vandenberg AFB prepared in 2003. However, no INRMP has been approved. We provided comments to Vandenberg AFB on the updated 2003 INRMP on August 2, 2003 (Service 2003, pp. 1–6). We have attempted to work with Vandenberg AFB on our comments, but to date Vandenberg AFB has not responded. Therefore, because Vandenberg AFB does not have an approved INRMP, we are not exempting Vandenberg AFB from portions of Unit STB–2 and STB–4 under section 4(a)(3)(B)(i) of the Act and are soliciting information and comments as to whether to designate critical habitat for the California red-legged frog on Vandenberg AFB or to exclude these areas under section 4(b)(2) of the Act (see the ''Public Comments'' section above).

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following sections, we address a number of general issues that are relevant to the exclusions we are considering. In addition, we are conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment when it is complete. Based on public comment on that document and the proposed designation itself, as well as the information in the final economic analysis, the Secretary may exclude from critical habitat areas different from those identified for possible exclusion in this proposed rule under the provisions of section 4(b)(2) of the Act, up to and including all areas proposed for designation. This is also addressed in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species and can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of

the species. The designation process includes peer review and public comment on the identified physical and biological features and essential areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on discretionary actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on discretionary actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: The jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake affirmative actions to promote the recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

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 the physical and biological features essential to the conservation of the species, but it would not suggest the implementation of any reasonable and prudent alternative. We work with the Federal agency proposing the action to identify prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans may institute proactive actions over the lands they encompass and are often put in place to remove or reduce known threats to a species or its habitat; therefore, implementing recovery actions. We believe that in many instances the benefit to a species and/or its habitat realized through the designation of critical habitat is low when compared to the conservation benefit that can be achieved through conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that 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 affected species. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

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, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (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, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7(a)(2) consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests 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, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). 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. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

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, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation.

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(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus, the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

Benefits of Excluding Lands With HCPs

The benefits of excluding lands with approved HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many conservation plans also 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 designed to proactively protect species to ensure that listing under the Act will not be necessary. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. 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 an additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us 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. We have found that potential participants are not inclined to participate in such management plans when we designate critical habitat within the area that would be covered by such a management plan, thus having 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 excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review the effects of all HCP-covered activities that 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, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

When performing the required analysis under section 4(b)(2) of the Act, the existence of a management plan (HCPs as well as other types) that considers enhancement or recovery of listed species as its management standard is relevant to our weighing of

the benefits of inclusion of a particular area in the critical habitat designation. The following factors are considered when we evaluate the management and protection provided by such plans:

(1) Whether the plan is complete and provides for the conservation and protection of the physical and biological features essential to the conservation of the species;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) Whether the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

After consideration under section 4(b)(2) of the Act, the following areas of habitat are being proposed for exclusion from critical habitat for the California red-legged frog: Bonnie Doon Quarries Settlement Ponds HCP Santa Cruz County (6 ac (3 ha)) (Unit SCZ–1); East Contra Costa HCP Contra Costa County (82,017 ac (33,191 ha)) (Unit CCS–2); Western Riverside Multi-species HCP Riverside County (4,069 ac (1,647 ha)) (Unit RIV–1); East Bay Regional Park District lands Contra Costa County (18,867 ac (7,595 ha)) (Unit CCS–2); and Spivey Pond Management Area (BLM) El Dorado County (54 ac (22 ha)) (Unit ELD–1).

Bonny Doon Quarries Settlement Ponds Habitat Conservation Plan (Bonny Doon HCP) (Unit SCZ–1)

The Bonny Doon HCP encompasses approximately 6 ac (3 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 authorizes only 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. In total, we are proposing to exclude approximately 6 ac (3 ha) of land from unit SCZ–1 in Santa Cruz County.

We expect the Bonny Doon HCP to provide substantial protection of the essential biological 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.

Benefits of Exclusion Outweigh the Benefits of Inclusion

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 and propose to exclude these lands from the final designation of critical habitat.

Exclusion Will Not Result in Extinction of the Species

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. The amount of habitat being excluded is minimal (approximately 6 ac (3 ha)) compared to the amount of habitat proposed as critical habitat and even less than the total amount of land occupied by the subspecies. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) (Unit—RIV–1)

The Western Riverside MSHCP is a large-scale, multijurisdictional HCP encompassing 1.26 million ac (510,000 ha) in western Riverside County. The MSHCP addresses 146 listed and unlisted ''covered species,'' including the California red-legged frog. Participants in the MSHCP include 14 cities in western Riverside County; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District

(County Parks), and Riverside County Waste Department; California Department of Parks and Recreation (State Parks); and the California Department of Transportation (Caltrans).

The MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and associated incidental take of covered species. On June 22, 2004, the Service issued an incidental take permit (TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the MSHCP for a period of 75 years. The MSHCP requires establishment of approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximately 347,000 ac (140,426 ha) of pre-existing natural and open-space areas defined by the MSHCP as Public/Quasi-Public (PQP) lands. These PQP lands include those under Federal ownership, primarily managed by the U.S. Forest Service and BLM, and also permittee-owned open-space areas, primarily managed by State and County Parks. Collectively, the Additional Reserve Lands and PQP lands form the overall MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified in the MSHCP, but rather is based on textual descriptions within the bounds of a 310,000 ac (125,453 ha) Criteria Area interpreted as implementation of the MSHCP takes place. Lands in Unit RIV–1 of the proposed revised critical habitat for the California red-legged frog are located within the MSHCP Plan Area.

The California red-legged frog is threatened primarily by habitat destruction and alteration (61 FR 25813, May 23, 1996). The MSHCP provides enhancement of habitat by removing or reducing threats to this subspecies and the features essential to its conservation. Conservation objectives specific to the California red-legged frog in the MSHCP include the conservation of occupied and historical breeding habitat, the conservation of intervening lands that provide for movement between core areas and upland habitat adjacent to occupied or suitable breeding habitat (Dudek and Associates, Inc. 2003, pp. A–19–A–20).

The only known population of California red-legged frog in the boundaries of the Western Riverside MSCHP occurs along Cole Creek on the Santa Rosa Plateau. The occupied area along Cole Creek is entirely within the Santa Rosa Plateau Ecological Reserve, which is owned and managed by the California Department of Fish and Game. The management of the Santa Rosa Ecological Reserve includes measures that protect the habitat of the California red-legged frog and focus on restoration activities that benefit this subspecies (Service 2004, p. 54). This area is included in the proposed Unit RIV–1. Unit RIV–1 consists of 4,069 ac (1,647 ha), all of which are within the boundaries of the Western Riverside MSHCP; 3,997 ac (1,618 ha) of which are currently conserved and referred to in the analysis of the Western Riverside MSHCP as PQP lands, and 72 ac (29 ha) are privately owned. The provisions of the Western Riverside MSHCP strengthen the management for the California red-legged frog and ensure that any projects that take place on the private land will not reduce the viability of the population within Unit RIV–1.

Specifically, in the area proposed as critical habitat, the MSHCP directs reserve managers of the PQP lands to maintain ecological processes within occupied habitat and appropriate new areas for the California red-legged frog (Dudek and Associates, Inc. 2003, p. 5–13). Private lands included in Unit RIV–1 are in the Survey Area for California red-legged frog, where 90 percent of areas that provide long-term conservation value for the subspecies will be avoided until the conservation objectives for the California red-legged frog are met (Dudek and Associates, Inc. 2003, pp. 6–65–6–71). The MSHCP indicates that the PQP reserve lands within proposed Unit RIV–1 will be monitored to determine if successful reproduction is occurring (Dudek and Associates, Inc. 2003, p. 5–13). These lands will be managed to ensure that the threats to this subspecies from altered hydrology, flood control, nonnative plant species, mining, human collecting, and predation will not negatively impact the population and that ecological processes necessary for the California red-legged frog and breeding populations will be maintained (Dudek and Associates, Inc. 2003, p. 5–13). The MSHCP preserves the habitat that supports identified core population(s) of this subspecies and therefore provides for recovery of this subspecies in the MSHCP area. The conservation objectives, required surveys, and adaptive management program for the California red-legged frog (and its PCEs) provided by the Western Riverside County MSHCP may exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation. We are proposing to exclude approximately 4,097 ac (1,658 ha) of permittee-owned PQP and private lands from revised critical habitat designation within proposed Unit RIV–1 (Cole Creek) under section 4(b)(2) of the Act. Lands within these areas proposed for exclusion are owned by or fall within the jurisdiction of MSHCP permittees. Projects in these areas conducted or approved by MSHCP permittees are subject to the conservation requirements of the MSHCP.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe that the regulatory benefit of designating critical habitat on private lands covered by the Western Riverside County MSHCP would be low and may hinder the effective implementation of the plan. The Western Riverside County MSHCP addresses conservation issues from a coordinated, integrated perspective and will achieve better California red-legged frog conservation than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. The Western Riverside County MSHCP provides for the proactive monitoring and management of conserved lands (as previously described), reducing known threats to California red-legged frog and its habitat.

Conservation and management of California red-legged frog habitat is essential to the survival and recovery of this species. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The Western Riverside County MSHCP provides as much or more conservation benefit to the species than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the Gifford Pinchot decision. Furthermore, educational benefits that may be derived from a critical habitat designation are low in this case and largely redundant to the educational benefits achieved through the significant public, State, and local government input solicited and received during the development of the Western Riverside County MSHCP.

We have developed close partnerships with the 22 MSHCP permittees through the development of this regional HCP that incorporates appropriate protections and management of the physical and biological features essential to the conservation of this subspecies. Those protections are consistent with the mandates under section 7 of the Act to avoid adverse modification or destruction of critical habitat and go beyond that prohibition by including active management and

protection of essential habitat areas. By excluding these lands from designation, we are eliminating a largely redundant layer of regulatory review for a limited set of projects on non-Federal lands that are addressed by the MSHCP, and we are helping to preserve our ongoing partnerships with the permittees and encouraging new partnerships with other landowners and jurisdictions. Those partnerships, and the landscape-level, multiple-species conservation planning efforts they promote, are critical for the conservation of the California red-legged frog. Designating critical habitat on non-Federal lands within the Western Riverside County MSHCP could have a detrimental effect to our partnerships with the 22 MSHCP permittees and could be a significant disincentive to the establishment of future partnerships and HCPs with other partners.

Exclusion Will Not Result in Extinction of the Species

In keeping with our analysis and conclusion detailed in our biological opinion for the Western Riverside County MSHCP (Service 2004, p. 334), we do not believe that the exclusion of non-Federal lands that meet the definition of critical habitat within the Western Riverside County MSHCP plan area from the final designation of critical habitat for the California red-legged frog will result in the extinction of the species. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

East Contra Costa County Habitat Conservation Plan (ECCHCP) (Unit CCS–2)

The ECCHCP was finalized on July 25, 2007 (Service 2007b, pp. 1–6). 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 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 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 ECCHCP has identified areas where urban growth and development are expected to occur and has identified the California red-legged frog as a covered subspecies and identifies 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 ECCHCP will provide substantial protection of the biological features for the California red-legged frog, and that protected lands will receive the special management they require through funding mechanisms that will be implemented under the ECCHCP. In total, we are proposing to exclude approximately 82,017 ac (33,191 ha) of land in Contra Costa County.

We expect the ECCHCP to provide substantial protection of the biological features 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.

Benefits of Exclusion Outweigh the Benefits of Inclusion

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 ECCHCP. The 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.

For these reasons, we believe that designating critical habitat has little benefit in areas covered by the ECCHCP and propose to exclude these lands from the final designation of critical habitat.

Exclusion Will Not Result in Extinction of the Species

In keeping with our analysis and conclusion detailed in our biological opinion for the ECCHCP (Service 2007c, pp. 1–189), we do not believe that the exclusion of non-Federal lands that meet the definition of critical habitat within the ECCHCP plan area from the final designation of critical habitat for the California red-legged frog will result in the extinction of the species. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

East Bay Regional Park District Lands (Unit CCS–2)

The East Bay Regional Park District (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 (EBRPD 1997, pp. 1–87). The EBRPD

Plan provides for monitoring and conservation of rare, threatened, and endangered taxa, including the California red-legged frog. East Bay Regional Park District 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. In 1996, 2000, 2004, and most recently in 2007 (Bobzien and DiDonato 2007, pp. 1–87), EBRPD staff 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. The majority of the EBRPD land holdings are protected and managed as natural parklands, thereby providing protection for the features essential to the conservation of 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, p. 20).

We expect the EBRPD to provide substantial protection of the biological features and special management of essential habitat for the California red-legged frog on EBRPD lands within unit CCS–2. 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.

Benefits of Exclusion Outweigh the Benefits of Inclusion

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 Web site 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 has little benefit in areas covered by the EBRPD and propose to exclude these lands from the final designation of critical habitat.

Exclusion Will Not Result in Extinction of the Species

The exclusion of East Bay Regional Park lands within Unit CCS–2, 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. 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 1997, a population of 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 U.S. Bureau of Reclamation (USBR), ARC succeeded in purchasing the 54 ac (22 ha) 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 (Service File 1–1–03–F–0289). In July 2004, a management plan for the California red-legged frog was approved and signed by the Service, BLM, 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.

Benefits of Exclusion Outweigh the 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. We have worked cooperatively with the BLM and other agencies and assisted in development of the Spivey Pond Management Plan. We believe that utilizing the Secretary's discretion in excluding the portions of this unit managed under the SPMP 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.

Exclusion Will Not Result in Extinction of the Species

We 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. The SPMP consists of six management objectives specifically designed for the conservation of the California red-legged frog. In addition, the jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct.

National Forest Lands Within the Sierra Nevada (Units BUT–1; YUB–1; NEV–1; PLA–1; ELD–1)

In the previous final critical habitat designation for the California red-legged frog, we excluded all U.S. Forest Service lands managed under the Sierra Nevada Forest Plan Amendment (SNFPA) under section 4(b)(2) of the Act (71 FR 19281). We based this decision on the conservation benefits to the frog outlined in the SNFPA. Of the six 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 (NEV–1, PLA–1, and CAL–1) or other Federally (BLM) owned land (ELD–1). However, portions of two of the three (NEV–1, PLA–1 and ELD–1) critical habitat units are on U.S. Forest Service lands. Approximately 7,644 ac (3,094 ha) of U.S. Forest Service land occurs within the boundary of this revised proposed critical habitat. We are now asking for public comment on whether the SNFPA is an appropriate mechanism for exclusion under section 4(b)(2) of the Act (see the ''Public Comments'' section above).

Relationship of Critical Habitat to Conservation Partnerships—Exclusions Under Section 4(b)(2) of the Act

Unit CAL–1, Young's Creek

In the previous final critical habitat designation for the California red-legged frog, we excluded the entire critical habitat from Calaveras County, CA, under section 4(b)(2) of the Act (71 FR 19281–19282). We based this decision on the actions of a single private landowner who has been managing for the frog on the landowner's property and on encouraging potential additional landowners to join efforts to conserve the frog should critical habitat not be designated. Since the designation of critical habitat in 2006 (71 FR 19243), we have not been approached by any other private landowners within the unit to work with us on potentially developing conservation efforts for the frog. We are now asking for public comment on whether Unit CAL–1 should be excluded under section 4(b)(2) of the Act (see the ''Public Comments'' section above).

Economics

An analysis of the economic impacts of the previous proposed critical habitat designation was made available to the public on November 3, 2005 (70 FR 66906), and finalized in the final rule to designate critical habitat published in the **Federal Register** on April 13, 2006 (71 FR 19243). The total revised cost of designation before economic exclusions was estimated to be $498,334,833, or $24,916,741 annualized over 20 years. Of the 23 counties that were part of the 2006 proposed rule, more than 80 percent of the costs were projected to occur in 19 census tracts in five counties: San Luis Obispo ($166 million), Alameda ($91 million), Contra Costa ($88 million), Santa Barbara ($41 million), and San Mateo ($19 million). By excluding those 19 census tracts from the 2006 final critical habitat designation for the California red-legged frog, the total estimated cost was reduced to $102,526,338 (or $5,126,317 annualized over 20 years).

We are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for the California red-legged frog. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section). We may exclude areas from the final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat. We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication. Send your request to the person named in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Special Rule Under Section 4(d) of the Act

In the November 3, 2005, **Federal Register** (70 FR 66936) we proposed issuing a special rule for the California red-legged frog as defined under section 4(d) of the Act to ease the general take prohibitions for routine ranching activities by non-Federal entities on private and Tribal lands. Under section 4(d) of the Act, 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 that are determined to be necessary and advisable. The special rule was finalized in the April 13, 2006, **Federal Register** (71 FR 19285), which finalized the designation of critical habitat and implemented the special rule in the Service's regulations at 50 CFR 17.43. We are not changing any conditions of the April 13, 2006, special rule, and it shall remain in effect as identified in our regulations.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

At this time, we lack the available economic information necessary to determine whether the revised rule would have an annual effect on the economy of $100 million or more or affect the economy in a material way. To determine the economic consequences of designating the specific area as critical habitat, we are preparing a draft economic analysis of this proposed action, which will be available for public comment. This economic analysis also will be used to determine compliance with E.O. 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, E.O. 12630, and E.O. 13211.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must 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 under 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 species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations.

We will announce the availability of the draft economic analysis in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis will also be available on the Internet at *http://www.regulations.gov* or at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended 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.

As stated above, an analysis of the economic impacts of the previous proposed critical habitat designation was made available to the public on November 3, 2005 (70 FR 66906), and finalized in the final rule to designate critical habitat published in the **Federal Register** on April 13, 2006 (71 FR 19243). After excluding 19 census tracts from the 2006 final critical habitat designation for the California red-legged frog, the total estimated cost was $102,526,338 (or $5,126,317 annualized over 20 years). In that economic analysis, the designation of critical habitat was 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 were expected to be negligible, and the estimated annual number of affected small firms was fewer than two for all counties examined. Counties not examined were expected to have even smaller small business losses. Consequently, fewer than three small firms were projected to have annual revenue losses equal to their expected annual revenues as a consequence of the 2006 critical habitat designation.

At this time, we lack the available economic information necessary for the new areas being proposed in this revision to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. The draft economic analysis will provide the

required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal 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 [T]ribal 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 onto State governments.

(2) Based in part on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the revised rule, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating revised critical habitat for the California red-legged frog in a takings implications assessment. The takings implications assessment concludes that this designation of revised critical habitat for the California red-legged frog does not pose significant takings implications for lands within or affected by the revised designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), the proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because 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. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been 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 have proposed to revise critical habitat in accordance with the provisions of the Act. This proposed 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 of 1995. 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 (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We 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 is not being proposed on Tribal lands. We will continue to coordinate with Tribal governments during the designation process.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we have determined that this proposed 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. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on *http://wwww.regulations.gov* and upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this notice are staff from the Sacramento, Ventura, and Carlsbad Fish and Wildlife Offices (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[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 § 17.95(d) revise the entry for ''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, Calaveras, Contra Costa, El Dorado, Kern, Kings, Los Angeles, Marin, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Riverside, San Benito, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, 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 adjacent to or surrounding breeding and

non-breeding aquatic and riparian habitat up to a distance of 1 mile (1.6 km) in most cases and comprised of various vegetational series such as grasslands, woodlands, wetland, or riparian plant species that provide 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.

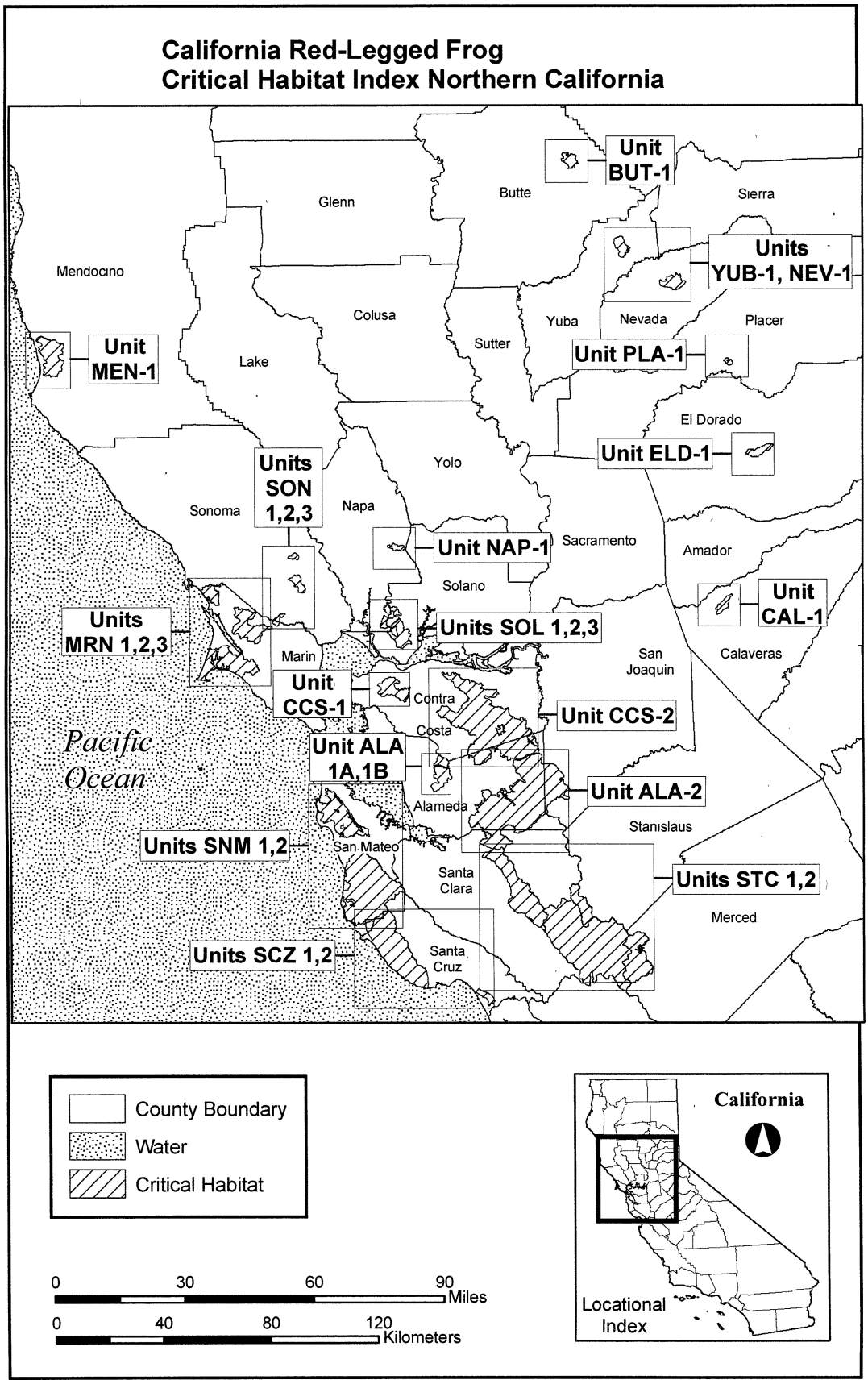
(iv) *Dispersal habitat.* Accessible upland or riparian dispersal habitat within designated units and between occupied locations within a minimum of 1 mi (1.6 km) of each other that allow for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats such as 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) of this entry as essential to the conservation of the subspecies.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule 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.

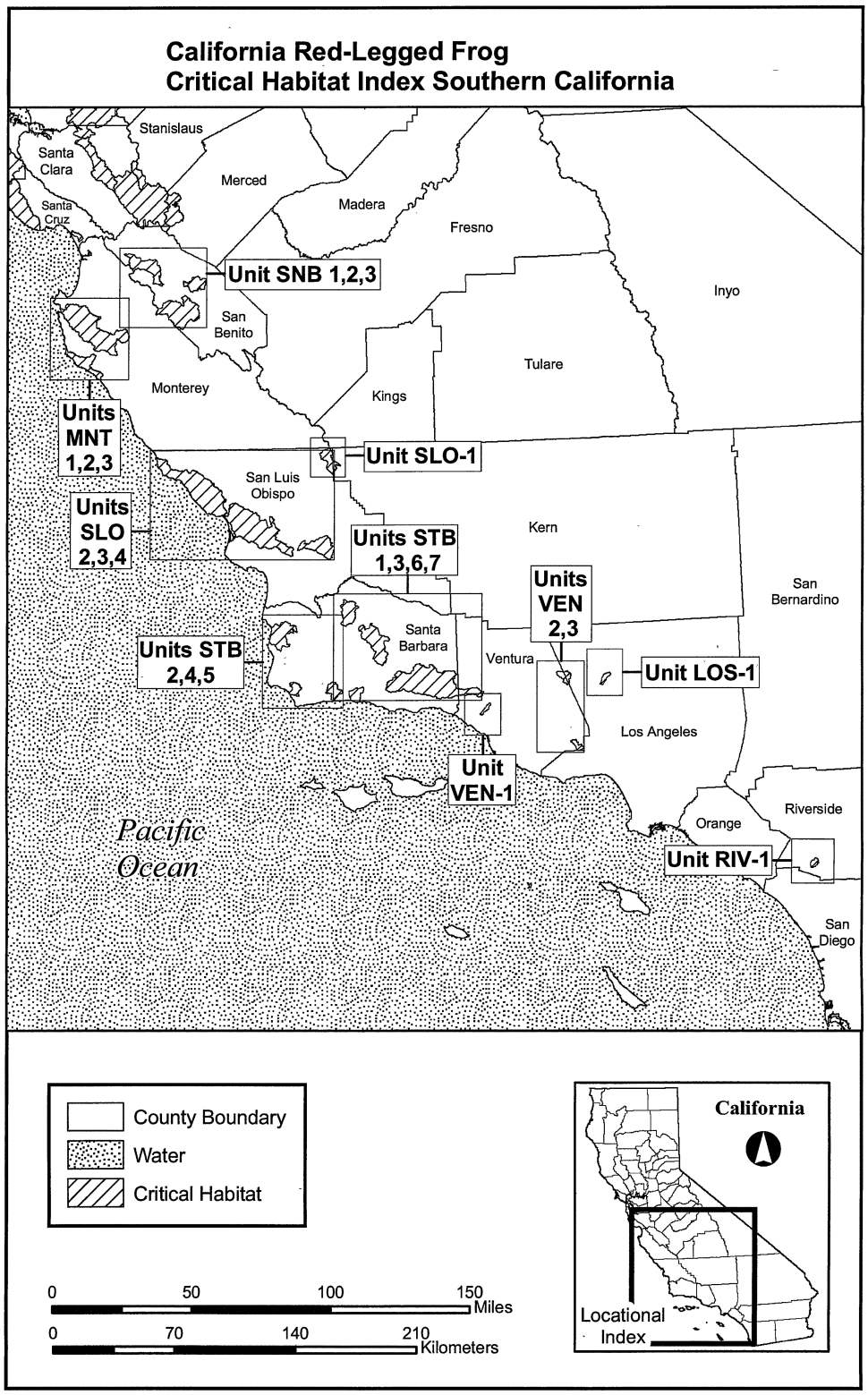
(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5′ quadrangles using USDA National Agricultural Imagery Program (NAIP) county-wide MrSID compressed mosaics of 1 meter resolution and natural color aerial photography from summer 2005. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983 coordinates.

(5) Note: Index map for California red-legged frog critical habitat units in northern California follows:

BILLING CODE 4310–55–P


California Red-Legged Frog
Critical Habitat Index Northern California
Unit BUT-1
Butte
Glenn
Sierra
Units YUB-1, NEV-1
Mendocino
Colusa
Yuba
Nevada
Placer
Unit MEN-1
Lake
Sutter
Unit PLA-1
El Dorado
Unit ELD-1
Units SON 1,2,3
Yolo
Sonoma
Napa
Unit NAP-1
Sacramento
Amador
Solano
Unit CAL-1
Units MRN 1,2,3
Units SOL 1,2,3
Marin
San Joaquin
Calaveras
Unit CCS-1
Contra Costa
Unit CCS-2
Pacific Ocean
Unit ALA 1A,1B
Unit ALA-2
Alameda
Stanislaus
Units SNM 1,2
San Mateo
Santa Clara
Units STC 1,2
Merced
Units SCZ 1,2
Santa Cruz
County Boundary
Water
Critical Habitat
0 30 60 90 Miles
0 40 80 120 Kilometers
California
Locational Index

(6) Note: Index map for California red-legged frog critical habitat units in southern California follows:



BILLING CODE 4310–55–C

(7) Unit BUT–1: Butte County, California. From USGS 1:24,000 scale quadrangles Pulga, Berry Creek and Brush Creek.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 635284, 4400926; 635318, 4400907; 635359, 4400907; 635415, 4400907; 635453,4400907; 635502, 4400892; 635539, 4400870; 635588, 4400900; 635603, 4400930; 635666, 4400930; 635726, 4400934; 635749, 4400956; 635749, 4400994; 635767, 4401009; 635820, 4401042; 635868, 4401042; 635906, 4401042; 635940, 4401031; 635992, 4400997; 636033, 4401012; 636074, 4401012; 636100, 4401009; 636164, 4400994; 636228, 4401012; 636299, 4401020; 636377, 4401020; 636414, 4401012; 636415, 4400967; 636824, 4400972; 636836, 4400961; 636840, 4400584; 636819, 4400561; 636453, 4400557; 636453, 4400557; 636442, 4400546; 636442, 4400546; 636032, 4400541; 636024, 4400532; 636010, 4400518; 636011, 4400485; 636009, 4400483; 636000, 4400474; 636004, 4400185; 635993, 4400174; 635993, 4400141; 635993, 4400141; 636403, 4400145; 636414, 4400157; 636790, 4400161; 636801, 4400172; 637156, 4400177; 637156, 4400177; 637167, 4400188; 637477, 4400191; 637488, 4400203; 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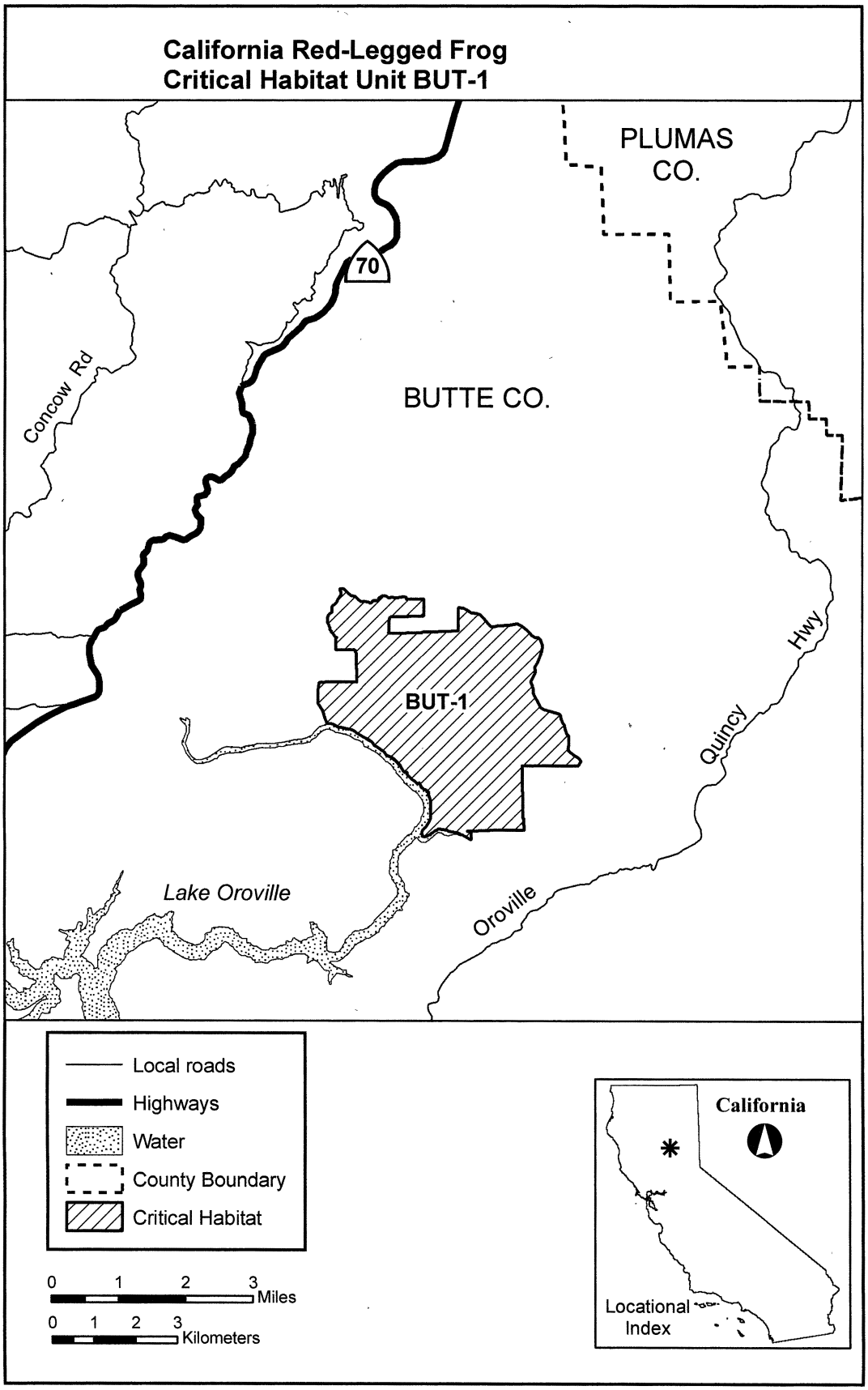
(ii) Note: Map of Unit BUT–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



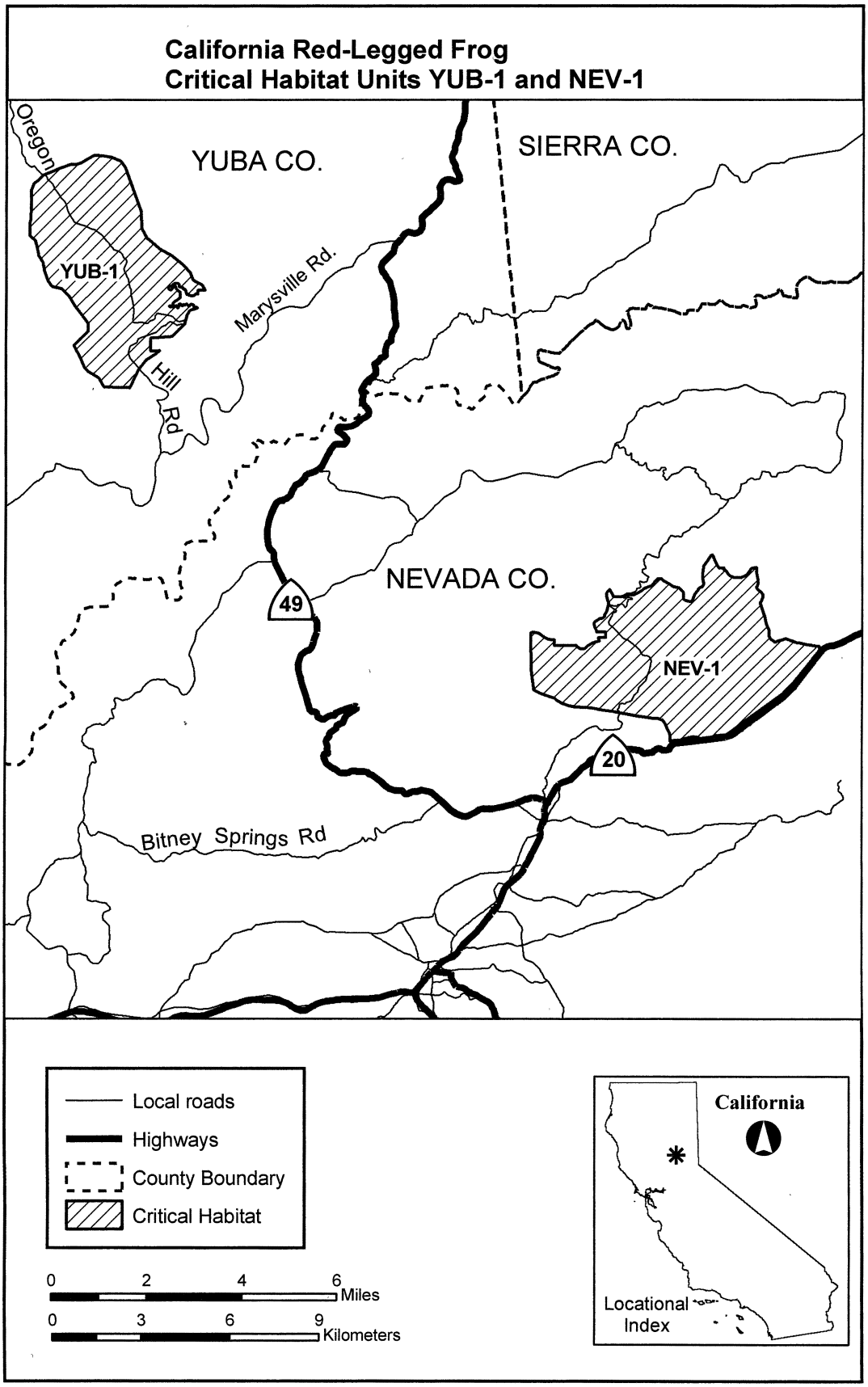
BILLING CODE 4310–55–C

(8) Unit YUB–1: Yuba County, California. From USGS 1:24,000 scale quadrangle Challenge.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 656776, 4370030; 656932, 4369825; 657033, 4369527; 657462, 4368370; 657472, 4368056; 657481, 4367769; 657672, 4367445; 657691, 4367430; 657890, 4367270; 658105, 4367098; 658503, 4366871; 658905, 4366554; 659124, 4366290; 659222, 4366053; 659369, 4365971; 659528, 4365883; 659624, 4365706; 659586, 4365706; 659383, 4365704; 659383, 4365704; 659383, 4365691; 659384, 4365583; 659354, 4365585; 659340, 4365600; 659305, 4365588; 659286, 4365572; 659261, 4365537; 659224, 4365531; 659182, 4365526; 659125, 4365527; 659101, 4365527; 659082, 4365536; 659075, 4365559; 659061, 4365567; 659044, 4365567; 659027, 4365567; 659017, 4365574; 658998, 4365584; 658996, 4365603; 658996, 4365620; 658991, 4365643; 658989, 4365668; 658985, 4365687; 658982, 4365690; 658974, 4365700; 658960, 4365723; 658939, 4365742; 658916, 4365757; 658894, 4365767; 658888, 4365790; 658871, 4365805; 658852, 4365805; 658827, 4365805; 658791, 4365820; 658764, 4365830; 658751, 4365849; 658751, 4365877; 658751, 4365900; 658745, 4365908; 658730, 4365919; 658726, 4365936; 658707, 4365940; 658678, 4365940; 658650, 4365940; 658627, 4365940; 658596, 4365929; 658579, 4365929; 658564, 4365921; 658551, 4365908; 658537, 4365891; 658533, 4365885; 658516, 4365868; 658490, 4365853; 658467, 4365845; 658446, 4365845; 658440, 4365847; 658419, 4365847; 658400, 4365837; 658398, 4365824; 658396, 4365801; 658396, 4365782; 658408, 4365757; 658421, 4365733; 658438, 4365721; 658465, 4365719; 658474, 4365736; 658499, 4365744; 658520, 4365769; 658538, 4365791; 658541, 4365795; 658550, 4365802; 658581, 4365826; 658606, 4365836; 658634, 4365834; 658640, 4365806; 658652, 4365775; 658664, 4365752; 658674, 4365736; 658695, 4365712; 658714, 4365694; 658741, 4365677; 658760, 4365666; 658794, 4365641; 658794, 4365568; 658794, 4365469; 658740, 4365433; 658695, 4365384; 658628, 4365353; 658552, 4365295; 658539, 4365237; 658551, 4365237; 658545, 4365228; 658543, 4365216; 658524, 4365193; 658497, 4365191; 658488, 4365186; 658465, 4365184; 658446, 4365184; 658427, 4365180; 658425, 4365167; 658431, 4365157; 658453, 4365151; 658465, 4365151; 658493, 4365144; 658520, 4365142; 658564, 4365144; 658606, 4365163; 658625, 4365178; 658642, 4365193; 658659, 4365199; 658678, 4365182; 658680, 4365161; 658688, 4365136; 658701, 4365123; 658707, 4365123; 658720, 4365127; 658730, 4365136; 658732, 4365153; 658737, 4365174; 658741, 4365201; 658743, 4365224; 658747, 4365240; 658809, 4365247; 658812, 4365243; 658817, 4365231; 658825, 4365212; 658836, 4365197; 658850, 4365176; 658867, 4365191; 658876, 4365207; 658882, 4365226; 658901, 4365233; 658920, 4365226; 658932, 4365218; 658947, 4365220; 658968, 4365226; 658974, 4365239; 658983, 4365252; 658998, 4365252; 659017, 4365245; 659040, 4365228; 659050, 4365205; 659057, 4365184; 659078, 4365182; 659103, 4365186; 659115, 4365201; 659124, 4365222; 659147, 4365239; 659164, 4365239; 659181, 4365235; 659214, 4365222; 659238, 4365207; 659248, 4365186; 659248, 4365167; 659256, 4365148; 659273, 4365132; 659290, 4365127; 659305, 4365140; 659332, 4365140; 659351, 4365125; 659368, 4365118; 659105, 4365028; 659020, 4364875; 658939, 4364572; 658735, 4364385; 658531, 4364168; 658412, 4364134; 658410, 4364131; 658410, 4364131; 658254, 4364129; 658243, 4364118; 658054, 4364117; 658043, 4364105; 657788, 4364103; 657788, 4364103; 657792, 4363648; 657826, 4363648; 657826, 4363648; 657837, 4363659; 657837, 4363659; 658070, 4363661; 658081, 4363672; 658106, 4363673; 657950, 4363548; 657655, 4363358; 657395, 4363049; 657282, 4362805; 657113, 4362469; 657087, 4362405; 657087, 4362405; 657083, 4362409; 656805, 4362407; 656794, 4362418; 656528, 4362416; 656516, 4362427; 656272, 4362425; 656261, 4362436; 656227, 4362436; 656227, 4362436; 656171, 4362531; 656051, 4362735; 655836, 4362878; 655683, 4362963; 655558, 4363109; 655427, 4363405; 655202, 4363849; 655406, 4364066; 655669, 4364315; 655690, 4364586; 655438, 4364908; 655218, 4365202; 655027, 4365526; 654779, 4365758; 654445, 4365837; 654319, 4366013; 654187, 4366370; 654149, 4366639; 653990, 4366874; 653952, 4367143; 653883, 4367381; 653710, 4367531; 653696, 4367950; 653744, 4368109; 653737, 4368319; 653751, 4368687; 653740, 4369028; 653747, 4369047; 653836, 4369294; 653990, 4369404; 654143, 4369566; 654429, 4369681; 654687, 4369794; 655104, 4369939; 655245, 4369920; 655453, 4369987; 655660, 4370113; 655896, 4370242; 656198, 4370221; 656470, 4370170; returning to 656776, 4370030.

(ii) Note: Map of Units YUB–1 and NEV–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit NEV–1: Nevada County, California. From USGS 1:24,000 scale quadrangle Nevada City and North Bloomfield.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 676906, 4356394; 676962, 4356305; 677130, 4356317; 677131, 4356238; 677181, 4356231; 677306, 4356068; 677485, 4355987; 677670, 4355985; 677882, 4356056; 677980, 4356196; 678051, 4356296; 678137, 4356315; 678170, 4356315; 678201, 4356320; 678231, 4356310; 678224, 4356187; 678232, 4356116; 678268, 4355942; 678277, 4355825; 678274, 4355759; 678251, 4355709; 678217, 4355664; 678229, 4355623; 678337, 4355534; 678350, 4355522; 678361, 4355511; 678374, 4355498; 678418, 4355448; 678444, 4355409; 678448, 4355341; 678432, 4355290; 678417, 4355258; 678406, 4355233; 678390, 4355204; 678379, 4355182; 678354, 4355125; 678356, 4355083; 678510, 4354644; 678528, 4354561; 678540, 4354482; 678577, 4354374; 678642, 4354231; 678654, 4354168; 678649, 4354037; 678650, 4353980; 678683, 4353930; 678734, 4353879; 678783, 4353842; 678852, 4353796; 678971, 4353841; 679102, 4353875; 679178, 4353901; 679227, 4353902; 679353, 4353865; 679459, 4353818; 679563, 4353782; 679706, 4353759; 679914, 4353707; 680299, 4353648; 680349, 4353649; 680352, 4353523; 680352, 4353517; 679780, 4352799; 679437, 4352381; 679422, 4352362; 679157, 4352094; 679157, 4352094; 679148, 4352080; 678711, 4351756; 677827, 4351102; 677690, 4351000; 677303, 4350713; 677303, 4350703; 677292, 4350702; 677270, 4350680; 677256, 4350679; 677248, 4350679; 677202, 4350639; 677199, 4350636; 677198, 4350636; 676807, 4350614; 676807, 4350614; 676812, 4350531; 676440, 4350485; 676219, 4350558; 676117, 4350571; 675995, 4350556; 675823, 4350507; 675686, 4350459; 675583, 4350452; 675457, 4350453; 675362, 4350424; 675325, 4350412; 675325, 4350537; 675325, 4350616; 675293, 4350711; 675206, 4350862; 675166, 4350990; 675063, 4351133; 674920, 4351180; 674673, 4351196; 674371, 4351260; 674173, 4351284; 673807, 4351355; 673616, 4351379; 673417, 4351427; 673139, 4351467; 673020, 4351483; 672710, 4351546; 672559, 4351554; 672424, 4351562; 672281, 4351570; 672074, 4351586; 671907, 4351626; 671684, 4351705; 671534, 4351793; 671438, 4351872; 671239, 4351936; 670969, 4352039; 670738, 4352158; 670668, 4352774; 670633, 4354099; 670634, 4354099; 670679, 4354110; 670780, 4354114; 670847, 4354102; 670901, 4354084; 670960, 4354053; 670990, 4354030; 671054, 4353992; 671117, 4353941; 671174, 4353907; 671212, 4353893; 671282, 4353872; 671394, 4353858; 671435, 4353852; 671426, 4353850; 671437, 4353664; 672180, 4353672; 672208, 4353633; 672243, 4353598; 672287, 4353562; 672365, 4353550; 672450, 4353566; 672475, 4353582; 672578, 4353673; 672716, 4353754; 672766, 4353780; 672817, 4353800; 672938, 4353818; 672910, 4353887; 672900, 4353937; 673158, 4353946; 673150, 4354094; 673148, 4354137; 672855, 4354130; 672842, 4354168; 672783, 4354295; 672757, 4354434; 672799, 4354491; 672842, 4354522; 672941, 4354578; 673021, 4354593; 673084, 4354628; 673117, 4354665; 673122, 4354687; 673119, 4354745; 673140, 4354749; 673191, 4354837; 673202, 4354897; 673236, 4355028; 673247, 4355052; 673253, 4355088; 673243, 4355133; 673224, 4355185; 673201, 4355258; 673199, 4355268; 673199, 4355269; 673175, 4355379; 673188, 4355465; 673226, 4355517; 673228, 4355519; 673283, 4355581; 673391, 4355365; 673402, 4355344; 673600, 4355329; 673616, 4355327; 673903, 4355380; 674072, 4355387; 674203, 4355443; 674378, 4355543; 674440, 4355612; 674554, 4355655; 674698, 4355703; 674779, 4355812; 674843, 4355885; 674907, 4355945; 675027, 4355928; 675092, 4355868; 675272, 4355764; 675414, 4355681; 675573, 4355640; 675621, 4355628; 675622, 4355627; 675647, 4355612; 675763, 4355477; 675775, 4355358; 675775, 4355332; 675773, 4355263; 675827, 4355213; 675947, 4355175; 675947, 4355175; 676036, 4355164; 676080, 4355242; 676143, 4355418; 676255, 4355555; 676269, 4355603; 676350, 4355660; 676400, 4355681; 676445, 4355779; 676405, 4355981; 676418, 4356168; 676456, 4356381; 676581, 4356556; 676668, 4356706; 676693, 4356744; 676751, 4356738; 676818, 4356555; 676906, 4356394;

(ii) Note: Unit NEV–1 for the California red-legged frog is depicted on the map in paragraph (8)(ii) of this entry.

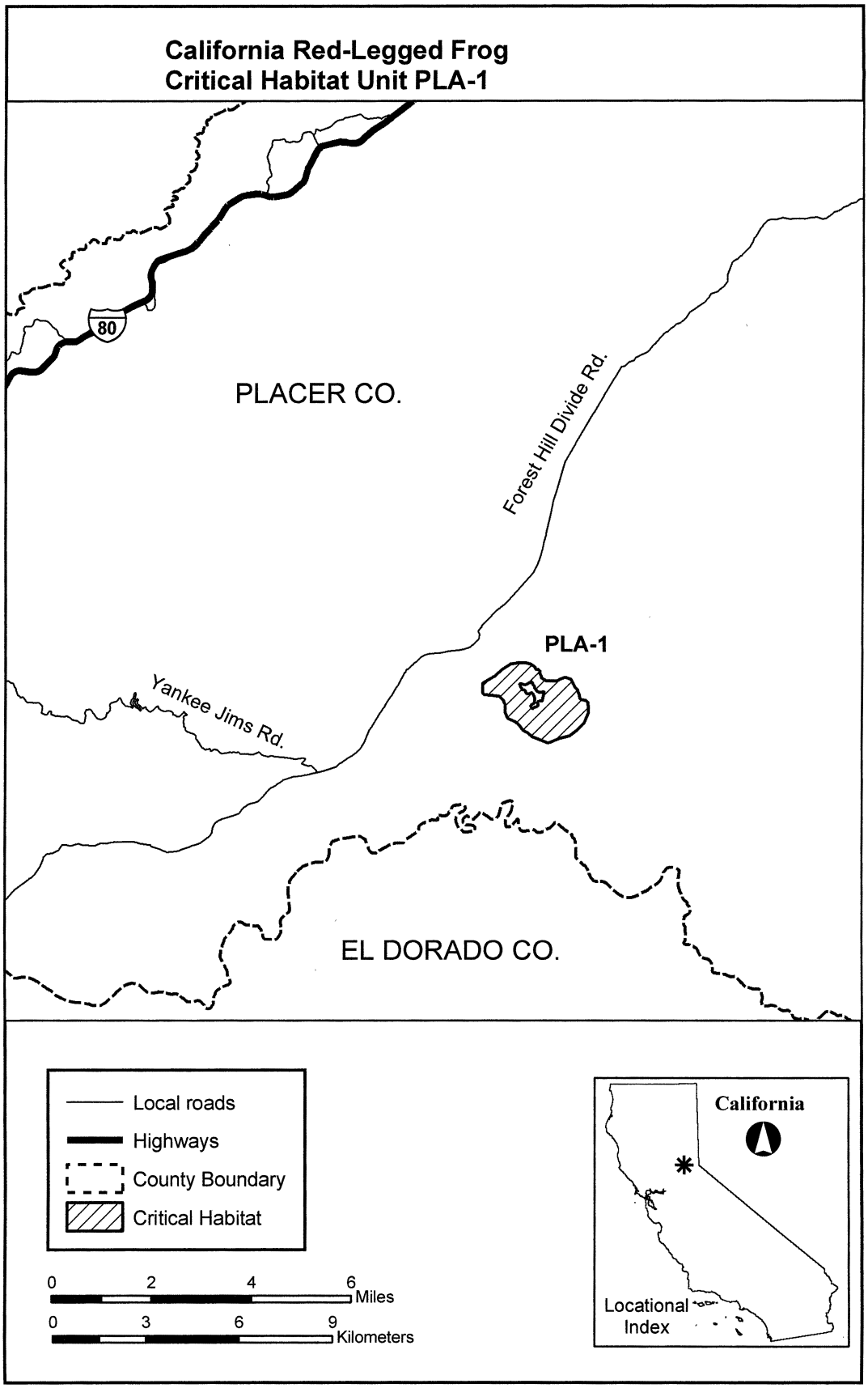
(10) Unit PLA–1: Placer County, California. From USGS 1:24,000 scale quadrangles Forest Hill and Michigan Bluff.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 696102, 4324325; 696269, 4324238; 696581, 4324246; 696678, 4324306; 696792, 4324349; 696895, 4324349; 697034, 4324294; 697070, 4324216; 697118, 4324125; 697148, 4324059; 697227, 4323980; 697287, 4323805; 697317, 4323673; 697390, 4323636; 697517, 4323606; 697571, 4323570; 697601, 4323365; 697577, 4323190; 697456, 4322900; 697239, 4322683; 696979, 4322484; 696678, 4322393; 696303, 4322242; 695802, 4322441; 695627, 4322586; 695501, 4322665; 695350, 4322846; 695229, 4322942; 695006, 4323045; 694933, 4323220; 694909, 4323498; 694849, 4323636; 694740, 4323745; 694523, 4323787; 694360, 4323799; 694233, 4323817; 694197, 4323884; 694209, 4324180; 694577, 4324391; 694831, 4324626; 695096, 4324795; 695374, 4324837; 695615, 4324825; 695748, 4324795; 695881, 4324708; 695908, 4324628; 695996, 4324611; 696033, 4324574; 696046, 4324534; 696050, 4324467; 696075, 4324407; 696090, 4324340; returning to 696102, 4324325.

(ii) Excluding land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 695636, 4324153; 695563, 4324116; 695508, 4324130; 695471, 4324147; 695433, 4324147; 695389, 4324149; 695380, 4324137; 695398, 4324109; 695423, 4324054; 695446, 4324021; 695482, 4323950; 695558, 4323951; 695575, 4323941; 695594, 4323874; 695636, 4323824; 695701, 4323831; 695741, 4323856; 695782, 4323867; 695815, 4323840; 695827, 4323791; 695849, 4323777; 695857, 4323740; 695885, 4323710; 695885, 4323650; 695875, 4323548; 695789, 4323492; 695757, 4323455; 695757, 4323415; 695789, 4323364; 695821, 4323355; 695847, 4323389; 695887, 4323394; 695928, 4323414; 695974, 4323437; 695985, 4323481; 695975, 4323527; 695975, 4323571; 695998, 4323590; 696037, 4323598; 696070, 4323600; 696100, 4323600; 696121, 4323615; 696130, 4323655; 696138, 4323697; 696138, 4323740; 696153, 4323771; 696163, 4323803; 696177, 4323830; 696180, 4323858; 696178, 4323884; 696127, 4323883; 696081, 4323868; 696037, 4323867; 695997, 4323887; 695941, 4323923; 695918, 4323967; 695887, 4324008; 695868, 4324069; 695818, 4324131; 695795, 4324179; 695775, 4324220; 695728, 4324187; 695676, 4324174; 695636, 4324153; returning to 696102, 4324325.

(iii) Note: Map of Unit PLA–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



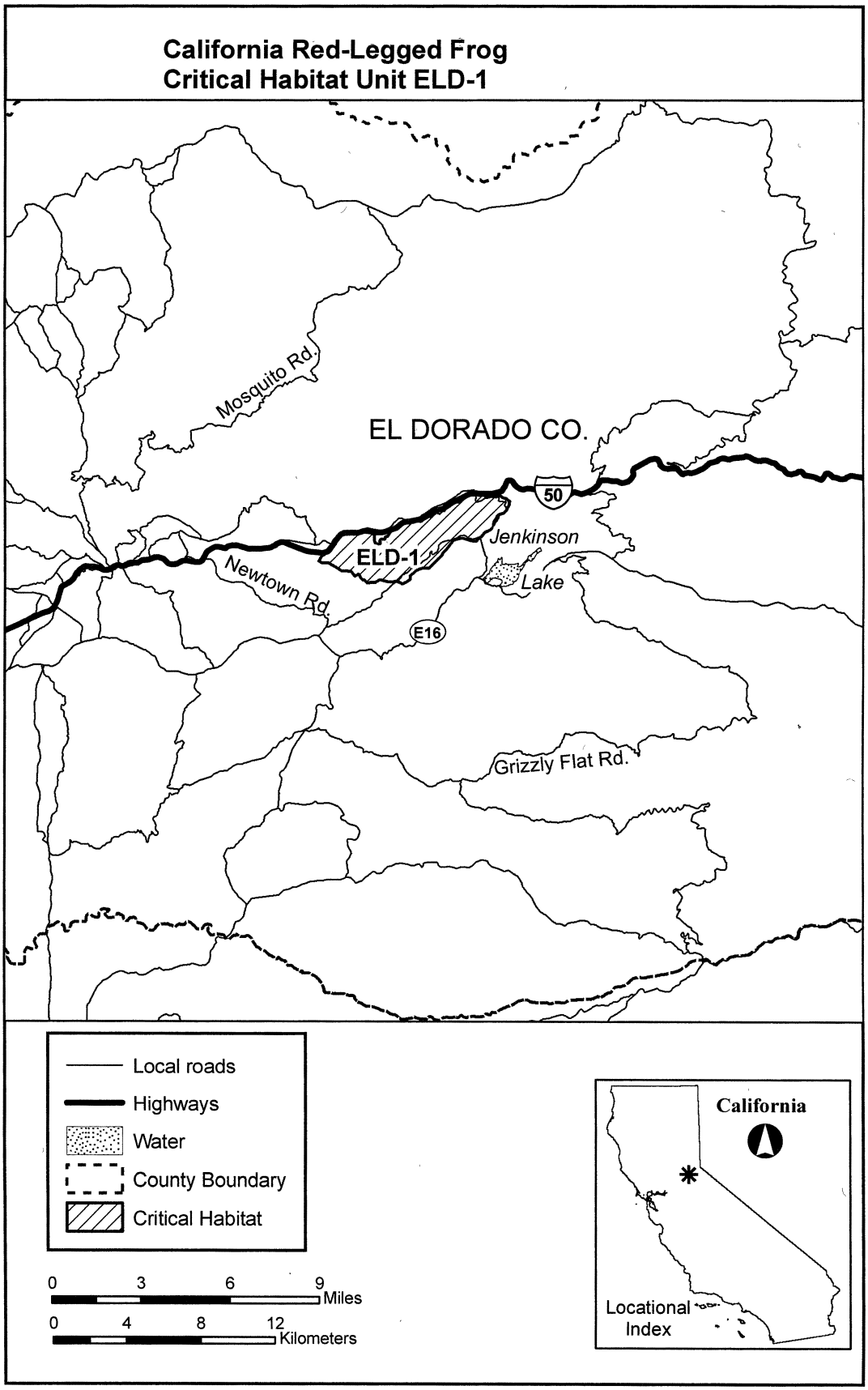
BILLING CODE 4310–55–C

(11) Unit ELD–1: El Dorado County, California. From USGS 1:24,000 scale quadrangles Camino, Pollock Pines and Sly Park.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 712042, 4292979; 712161, 4292902; 712243, 4292856; 712331, 4292834; 712419, 4292796; 712497, 4292718; 712540, 4292683; 712538, 4292678; 712530, 4292662; 712517, 4292599; 712511, 4292523; 712492, 4292476; 712454, 4292420; 712417, 4292357; 712384, 4292281; 712357, 4292219; 712319, 4292151; 712259, 4292082; 712201, 4292042; 712105, 4292004; 712037, 4291985; 711944, 4291952; 711866, 4291905; 711816, 4291791; 711785, 4291740; 711702, 4291628; 711680, 4291585; 711663, 4291485; 711666, 4291403; 711650, 4291319; 711576, 4291195; 711450, 4291102; 711326, 4291028; 711255, 4291003; 711182, 4290958; 711117, 4290899; 711061, 4290822; 711003, 4290754; 710956, 4290705; 710846, 4290604; 710753, 4290533; 710718, 4290493; 710718, 4290490; 710678, 4290488; 710400, 4290528; 710227, 4290581; 710054, 4290648; 709815, 4290648; 709523, 4290568; 709311, 4290303; 709152, 4290090; 708926, 4289838; 708873, 4289705; 708661, 4289533; 708515, 4289347; 708355, 4289201; 708143, 4289015; 707771, 4289015; 707493, 4288896; 707400, 4288789; 707161, 4288617; 707148, 4288404; 706922, 4288245; 706715, 4288156; 706648, 4288194; 706471, 4288294; 706260, 4288274; 706007, 4288251; 705699, 4288341; 705507, 4288398; 705231, 4288234; 704964, 4288221; 704826, 4288214; 704683, 4288368; 704536, 4288381; 704443, 4288528; 704329, 4288707; 704126, 4288577; 703960, 4288838; 703734, 4288849; 703439, 4288864; 703200, 4289009; 702944, 4289165; 702684, 4289323; 702371, 4289290; 702184, 4289384; 702165, 4289393; 702177, 4289402; 702222, 4289458; 702266, 4289549; 702324, 4289643; 702406, 4289714; 702560, 4289799; 702679, 4289855; 702744, 4289897; 702829, 4289991; 702883, 4290067; 702940, 4290184; 703050, 4290362; 703079, 4290429; 703075, 4290480; 703089, 4290507; 703106, 4290570; 703147, 4290632; 703210, 4290691; 703248, 4290770; 703294, 4290808; 703352, 4290850; 703419, 4290892; 703486, 4290934; 703540, 4290942; 703607, 4290942; 703683, 4290942; 703825, 4290938; 703950, 4290938; 704067, 4290938; 704214, 4290934; 704322, 4290921; 704423, 4290921; 704556, 4290984; 704673, 4291013; 704732, 4291034; 704803, 4291038; 704878, 4291038; 704899, 4290959; 704983, 4290959; 705033, 4290959; 705092, 4290959; 705129, 4290959; 705154, 4290925; 705175, 4290879; 705184, 4290833; 705217, 4290699; 705221, 4290616; 705221, 4290540; 705221, 4290478; 705246, 4290411; 705251, 4290398; 705267, 4290369; 705355, 4290336; 705422, 4290340; 705497, 4290340; 705522, 4290361; 705522, 4290423; 705493, 4290490; 705493, 4290545; 705522, 4290574; 705577, 4290574; 705648, 4290574; 705710, 4290574; 705761, 4290578; 705798, 4290616; 705798, 4290674; 705811, 4290733; 705865, 4290733; 705911, 4290733; 705953, 4290791; 705982, 4290875; 706007, 4290942; 706112, 4291025; 706162, 4291113; 706262, 4291122; 706379, 4291172; 706459, 4291235; 706513, 4291289; 706580, 4291347; 706634, 4291402; 706706, 4291435; 706806, 4291465; 706902, 4291506; 707057, 4291511; 707199, 4291531; 707291, 4291531; 707379, 4291577; 707487, 4291598; 707659, 4291644; 707818, 4291724; 708077, 4291858; 708236, 4291933; 708349, 4292004; 708441, 4292071; 708554, 4292134; 708779, 4292192; 708884, 4292234; 708989, 4292267; 709164, 4292376; 709302, 4292489; 709428, 4292568; 709561, 4292644; 709674, 4292706; 709766, 4292736; 709775, 4292665; 709816, 4292639; 709871, 4292677; 709908, 4292740; 709963, 4292782; 710126, 4292920; 710235, 4292970; 710327, 4293012; 710444, 4293024; 710640, 4293024; 710724, 4293020; 710895, 4293016; 711108, 4293016; 711141, 4293016; 711177, 4292991; 711258, 4292972; 711367, 4292964; 711501, 4292971; 711742, 4293022; 711830, 4293033; 711932, 4293020; 711991, 4293001; returning to 712042, 4292979.

(ii) Note: Map of Unit ELD–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



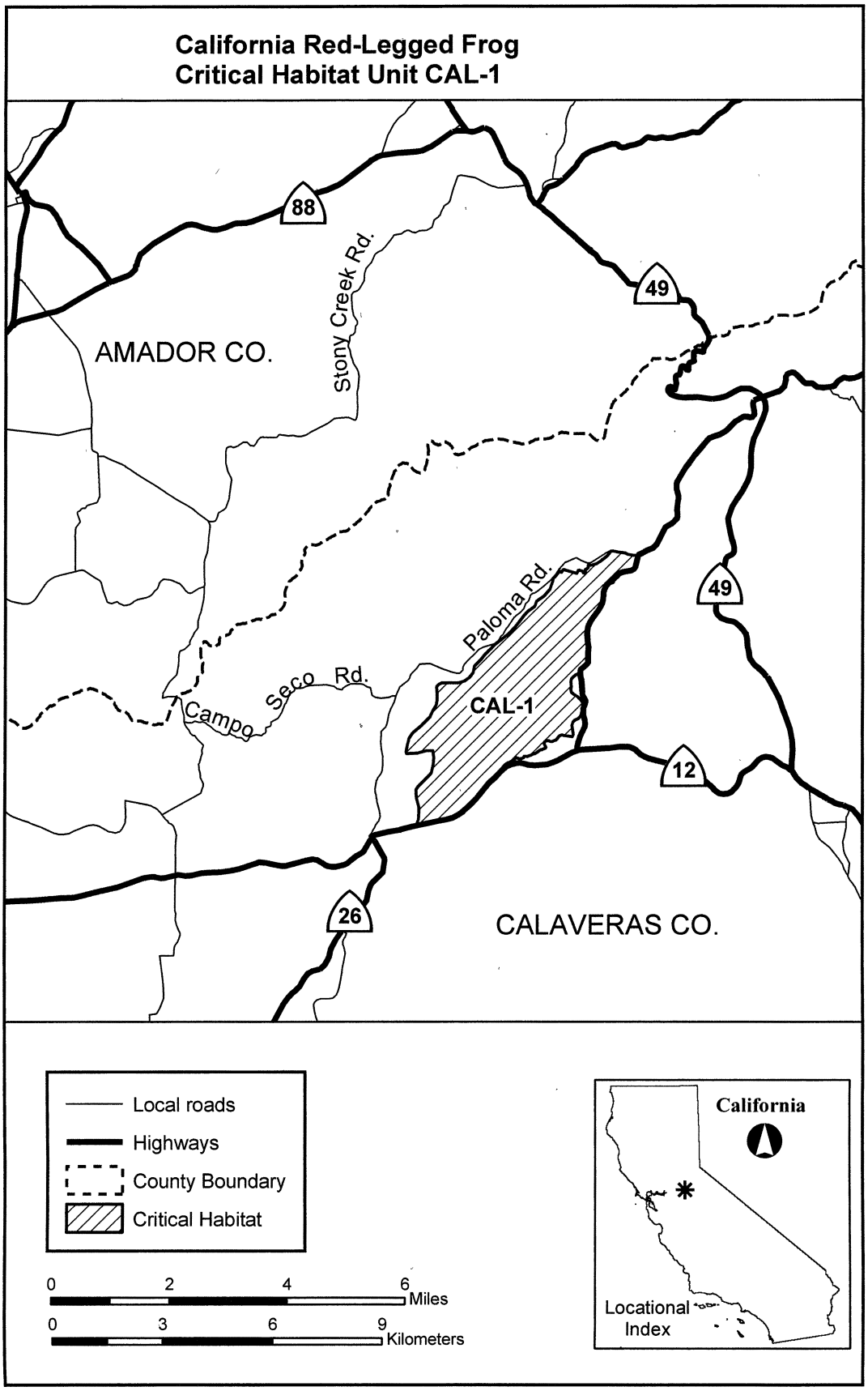
BILLING CODE 4310–55–C

(12) Unit CAL–1: Calaveras County, California. From USGS 1:24,000 scale quadrangles Jackson, Valley Springs and Mokelumne Hill.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 697316, 4236788; 697288, 4236702; 697239, 4236661; 697043, 4236601; 696856, 4236549; 696803, 4236489; 696681, 4236360; 696594, 4236292; 696515, 4236211; 696474, 4236132; 696437, 4236012; 696425, 4235875; 696408, 4235746; 696372, 4235657; 696295, 4235532; 696222, 4235429; 696139, 4235314; 696094, 4235249; 696061, 4235190; 696017, 4235064; 695993, 4234928; 695995, 4234790; 696002, 4234689; 696025, 4234548; 696014, 4234388; 696012, 4234247; 696012, 4234138; 696012, 4234080; 696012, 4234062; 695970, 4234021; 695881, 4233955; 695844, 4233920; 695782, 4233817; 695732, 4233779; 695673, 4233743; 695596, 4233687; 695559, 4233626; 695551, 4233577; 695561, 4233426; 695552, 4233361; 695562, 4233280; 695630, 4233225; 695729, 4233158; 695821, 4233075; 695863, 4233013; 695878, 4232967; 695875, 4232870; 695807, 4232615; 695757, 4232563; 695668, 4232520; 695598, 4232462; 695574, 4232384; 695607, 4232132; 695599, 4232090; 695588, 4232071; 695522, 4232076; 695344, 4232109; 695302, 4232111; 695277, 4232108; 695242, 4232087; 695202, 4232047; 695170, 4231994; 695143, 4231971; 695111, 4231955; 695041, 4231933; 695024, 4231930; 695000, 4231934; 694987, 4231933; 694967, 4231942; 694952, 4231956; 694930, 4231959; 694907, 4231961; 694888, 4231956; 694867, 4231943; 694835, 4231923; 694823, 4231902; 694822, 4231886; 694824, 4231874; 694831, 4231852; 694844, 4231813; 694860, 4231806; 694875, 4231784; 694873, 4231770; 694857, 4231759; 694833, 4231743; 694817, 4231735; 694770, 4231717; 694741, 4231711; 694707, 4231700; 694671, 4231674; 694618, 4231635; 694580, 4231609; 694543, 4231591; 694505, 4231581; 694449, 4231552; 694408, 4231538; 694379, 4231528; 694355, 4231522; 694328, 4231527; 694308, 4231532; 694281, 4231528; 694265, 4231515; 694251, 4231498; 694233, 4231482; 694211, 4231471; 694159, 4231465; 694118, 4231465; 694098, 4231479; 694085, 4231479; 694057, 4231494; 694033, 4231489; 694017, 4231479; 694016, 4231451; 694012, 4231420; 693971, 4231408; 693924, 4231394; 693863, 4231366; 693832, 4231349; 693787, 4231327; 693739, 4231289; 693701, 4231226; 693654, 4231174; 693651, 4231135; 693651, 4231132; 693642, 4231125; 693542, 4231021; 693414, 4230903; 693252, 4230731; 693152, 4230609; 693004, 4230419; 692822, 4230232; 692634, 4230055; 692509, 4229955; 692359, 4229874; 692231, 4229831; 692013, 4229788; 691801, 4229741; 691330, 4229637; 691394, 4229813; 691405, 4230022; 691407, 4230142; 691336, 4230385; 691319, 4230512; 691328, 4230620; 691374, 4230695; 691692, 4231006; 691745, 4231081; 691794, 4231327; 691804, 4231499; 691776, 4231683; 691751, 4231690; 691630, 4231686; 691374, 4231628; 691068, 4231614; 691056, 4231653; 691072, 4231792; 691134, 4232019; 691232, 4232170; 691498, 4232393; 691699, 4232598; 691779, 4232774; 691878, 4232931; 691900, 4233064; 691896, 4233223; 691881, 4233422; 691933, 4233485; 692046, 4233537; 692203, 4233537; 692333, 4233537; 692499, 4233537; 692646, 4233581; 692786, 4233676; 692873, 4233798; 692916, 4233981; 693081, 4234155; 693194, 4234277; 693334, 4234424; 693464, 4234572; 693655, 4234720; 693847, 4234885; 694029, 4235077; 694264, 4235390; 694360, 4235494; 694412, 4235538; 694551, 4235642; 694612, 4235781; 694812, 4235920; 694969, 4236103; 695056, 4236347; 695063, 4236421; 695102, 4236450; 695156, 4236511; 695204, 4236570; 695232, 4236613; 695249, 4236614; 695292, 4236574; 695314, 4236614; 695351, 4236655; 695702, 4236544; 695757, 4236644; 695857, 4236612; 695891, 4236559; 695920, 4236555; 695935, 4236591; 695935, 4236627; 695937, 4236656; 695961, 4236665; 695982, 4236665; 696003, 4236686; 696014, 4236707; 696018, 4236739; 696019, 4236770; 696021, 4236770; 696130, 4236778; 696239, 4236808; 696340, 4236871; 696414, 4236925; 696465, 4236970; 696533, 4237037; 696637, 4237159; 696667, 4237166; 696697, 4237159; 696824, 4237130; 697020, 4237104; 697091, 4237069; 697163, 4237060; 697251, 4237048; 697313, 4237047; 697373, 4237040; 697350, 4236929; 697342, 4236896; returning to 697316, 4236788.

(ii) Note: Map of Unit CAL–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(13) Unit MEN–1: Mendocino County, California. From USGS 1:24,000 scale quadrangles Elk, Mallo Pass Creek, Navarro and Cold Spring.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 441259, 4332964; 441369, 4332901; 441522, 4332801; 441589, 4332742; 441665, 4332648; 441700, 4332614; 441728, 4332600; 441755, 4332595; 441790, 4332597; 441871, 4332622; 441914, 4332655; 441948, 4332696; 442006, 4332714; 442098, 4332694; 442161, 4332689; 442188, 4332678; 442244, 4332612; 442302, 4332576; 442380, 4332561; 442448, 4332521; 442505, 4332446; 442608, 4332379; 442683, 4332338; 442814, 4332241; 442862, 4332197; 442937, 4332138; 442999, 4332116; 443085, 4332119; 443224, 4332155; 443247, 4332166; 443281, 4332164; 443329, 4332130; 443392, 4332103; 443507, 4332041; 443596, 4331977; 443670, 4331951; 443715, 4331959; 443757, 4331982; 443812, 4331997; 443862, 4331998; 443916, 4331973; 444127, 4331835; 444222, 4331793; 444346, 4331784; 444368, 4331794; 444514, 4331677; 444549, 4331671; 444570, 4331672; 444618, 4331703; 444765, 4331884; 444800, 4331921; 444876, 4331982; 444966, 4332027; 445009, 4332043; 445044, 4332051; 445099, 4332047; 445165, 4332023; 445263, 4331954; 445325, 4331942; 445370, 4331946; 445419, 4331964; 445462, 4331953; 445506, 4331947; 445627, 4331967; 445670, 4331979; 445723, 4331974; 445890, 4331879; 446039, 4331744; 446091, 4331681; 446189, 4331540; 446226, 4331472; 446239, 4331427; 446262, 4331369; 446296, 4331338; 446331, 4331290; 446395, 4331161; 446445, 4331095; 446488, 4331051; 446519, 4331009; 446525, 4330979; 446527, 4330949; 446557, 4330844; 446582, 4330805; 446607, 4330786; 446644, 4330778; 446770, 4330791; 446849, 4330782; 447061, 4330778; 447155, 4330770; 447246, 4330750; 447324, 4330710; 447451, 4330612; 447514, 4330587; 447620, 4330570; 447769, 4330561; 447926, 4330563; 447981, 4330574; 448037, 4330596; 448146, 4330651; 448249, 4330699; 448282, 4330704; 448321, 4330700; 448473, 4330625; 448611, 4330538; 448672, 4330508; 448747, 4330449; 448770, 4330415; 448796, 4330335; 448800, 4330201; 448806, 4330144; 448898, 4329967; 448930, 4329897; 448965, 4329785; 448993, 4329717; 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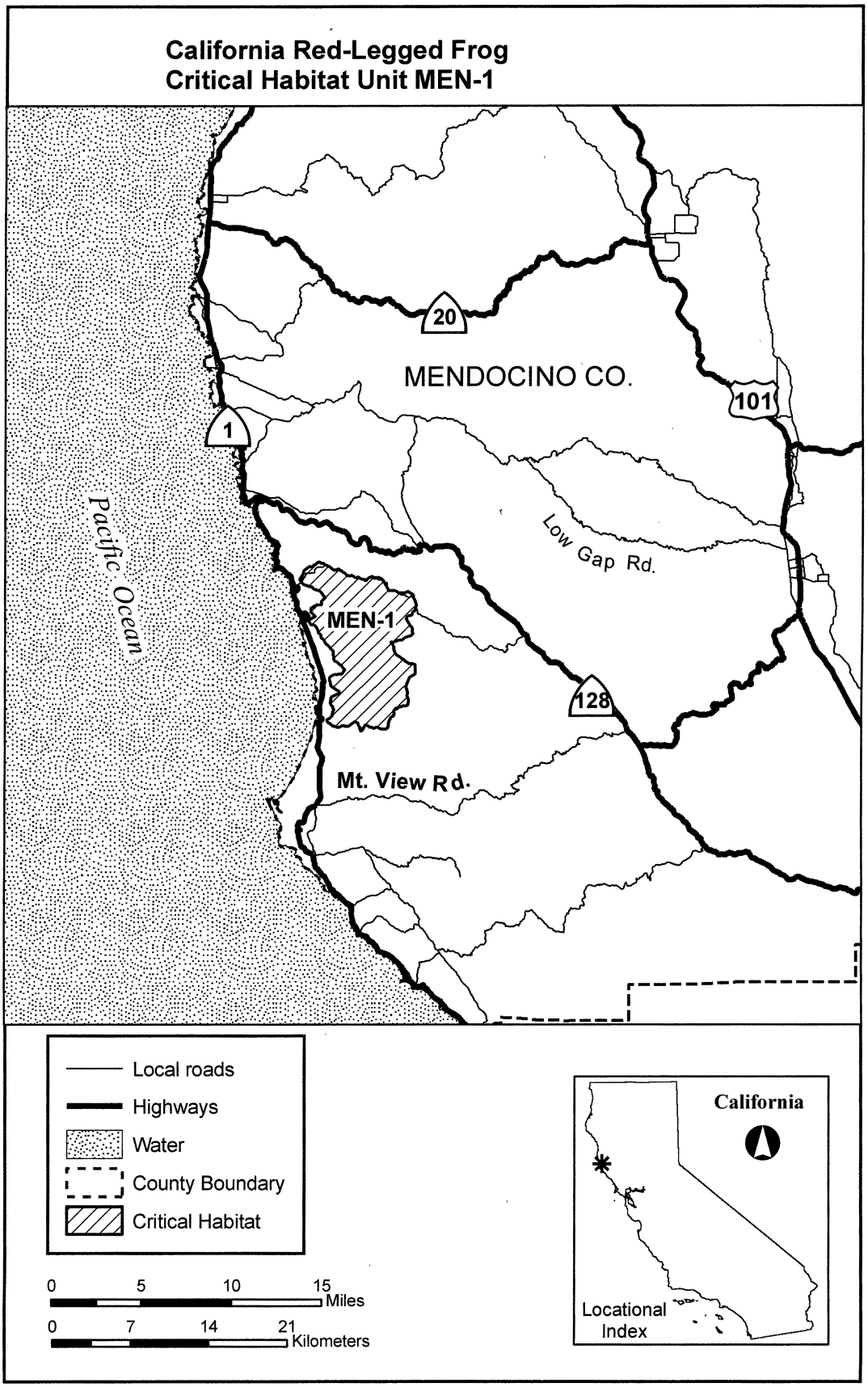
441183, 4325884; 441123, 4325931; 441066, 4325960; 441036, 4325982; 440962, 4326063; 440888, 4326167; 440859, 4326234; 440831, 4326330; 440803, 4326404; 440750, 4326476; 440675, 4326520; 440625, 4326542; 440586, 4326596; 440570, 4326661; 440570, 4326702; 440536, 4326840; 440476, 4326920; 440403, 4326972; 440350, 4327002; 440312, 4327059; 440301, 4327147; 440300, 4327202; 440277, 4327277; 440242, 4327338; 440213, 4327405; 440188, 4327446; 440061, 4327629; 439988, 4327693; 439933, 4327717; 439890, 4327725; 439708, 4327726; 439692, 4327728; 439692, 4327729; 439445, 4328149; 440068, 4328514; 439644, 4328908; 439683, 4329245; 440160, 4329523; 440596, 4329543; 440581, 4329870; 440953, 4330178; 440714, 4330466; 440553, 4330661; 440497, 4330728; 440438, 4330800; 439981, 4330892; 439763, 4331130; 439425, 4331229; 439043, 4331342; 438830, 4331567; 438651, 4331756; 438652, 4331758; 438679, 4331822; 438804, 4332016; 438925, 4332232; 438952, 4332272; 438989, 4332346; 438993, 4332414; 438982, 4332486; 438994, 4332540; 439040, 4332605; 439182, 4332701; 439230, 4332737; 439323, 4332823; 439391, 4332878; 439452, 4332921; 439497, 4332934; 439568, 4332936; 439639, 4332935; 439819, 4332925; 439846, 4332947; 439856, 4332985; 439859, 4333020; 439872, 4333054; 439897, 4333093; 439923, 4333109; 440018, 4333117; 440057, 4333126; 440091, 4333143; 440116, 4333167; 440138, 4333200; 440186, 4333259; 440239, 4333303; 440308, 4333352; 440362, 4333375; 440449, 4333325; 440581, 4333268; 440782, 4333190; 441008, 4333071; 441100, 4333037; returning to 441259, 4332964.

(ii) Note: Map of Unit MEN–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



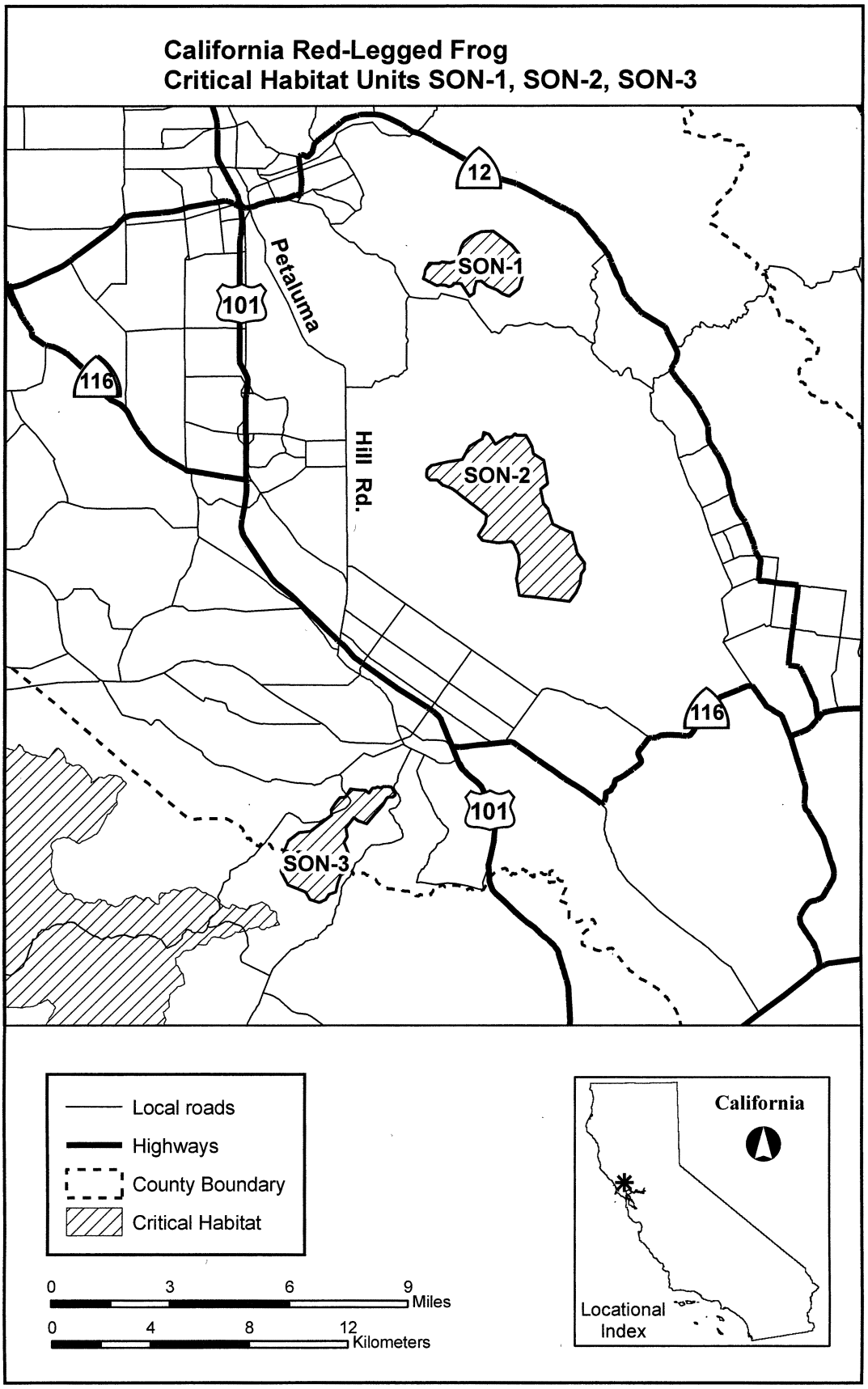
BILLING CODE 4310–55–C

(14) Unit SON–1: Sonoma County, California. From USGS 1:24,000 scale quadrangles Santa Rosa and Kenwood.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 536171, 4251731; 536307, 4251324; 536231, 4250750; 536103, 4250388; 535718, 4250087; 535462, 4250177; 535251, 4250336; 534851, 4250494; 534579, 4250705; 534389, 4250676; 534308, 4250419; 534298, 4250194; 534123, 4250079; 534014, 4250245; 533794, 4250578; 533698, 4250593; 533655, 4250593; 533604, 4250593; 533547, 4250593; 533501, 4250593; 533472, 4250583; 533452, 4250531; 533362, 4250493; 533276, 4250470; 533146, 4250524; 532957, 4250539; 532814, 4250509; 532248, 4250796; 532309, 4250962; 532316, 4251120; 532497, 4251422; 532905, 4251407; 533025, 4251475; 533327, 4251437; 533608, 4251509; 533651, 4251648; 533772, 4252033; 533885, 4252267; 534180, 4252501; 534602, 4252689; 535068, 4252700; 535281, 4252546; 535824, 4252154; 536171, 4251731; returning to 536171, 4251731.

(ii) Note: Map of Units SON–1, SON–2 and SON–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(15) Unit SON–2: Sonoma County, California. From USGS 1:24,000 scale quadrangles Cotati and Glen Ellen.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 535134, 4244142; 535187, 4244062; 535414, 4244211; 535622, 4244348; 535838, 4244353; 535971, 4244499; 536040, 4244436; 536232, 4244436; 536393, 4244436; 536529, 4244206; 536655, 4243995; 536702, 4243674; 536915, 4243541; 537129, 4243407; 537208, 4242969; 537300, 4242457; 537009, 4242237; 537062, 4241971; 537121, 4241673; 537315, 4241438; 537434, 4241052; 537510, 4240808; 538033, 4240573; 538274, 4240465; 538339, 4240214; 538406, 4239957; 538488, 4239638; 538778, 4239243; 538778, 4238977; 538645, 4238790; 538605, 4238404; 538446, 4238045; 538180, 4237686; 537754, 4237739; 537141, 4237816; 536704, 4237870; 536412, 4237907; 536152, 4237939; 536037, 4238617; 536104, 4238990; 536157, 4239291; 536104, 4239642; 535917, 4240041; 535829, 4240117; 535319, 4240068; 534653, 4240161; 534496, 4240364; 534786, 4240840; 534813, 4241186; 534543, 4241396; 534123, 4241722; 533855, 4241931; 533627, 4242108; 533414, 4242273; 533056, 4242396; 532833, 4242624; 532537, 4242609; 532391, 4242756; 532404, 4242899; 532418, 4243049; 532604, 4243222; 532817, 4243261; 533092, 4243313; 533360, 4243363; 533598, 4243408; 533841, 4243454; 534001, 4243740; 534135, 4243980; 534307, 4244086; 534476, 4244190; 534633, 4244287; 534706, 4244539; 534912, 4244479; 535039, 4244286; returning to 535134, 4244142.

(ii) Note: Unit SON–2 for California red-legged frog is depicted on the map in paragraph (14)(ii) of this entry.

(16) Unit SON–3: Sonoma and Marin Counties, California. From USGS 1:24,000 scale quadrangle Petaluma.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 530959, 4230115; 531017, 4230050; 531099, 4229898; 531149, 4229843; 531149, 4229781; 531041, 4229699; 530868, 4229705; 530792, 4229641; 530642, 4229379; 530519, 4229239; 530335, 4229029; 530200, 4228874; 529979, 4228622; 529625, 4228730; 529454, 4228860; 529332, 4228701; 529138, 4228447; 529158, 4228306; 529190, 4228085; 529057, 4227870; 529113, 4227733; 529174, 4227580; 529301, 4227268; 529301, 4227091; 529301, 4226775; 529158, 4226681; 528922, 4226523; 528796, 4226223; 528732, 4225860; 528463, 4225746; 528322, 4225545; 528070, 4225434; 527675, 4225545; 527499, 4225858; 527091, 4226018; 526791, 4226136; 526618, 4226476; 526503, 4226700; 526555, 4227060; 526618, 4227501; 526791, 4227912; 527227, 4228272; 527391, 4228290; 527718, 4228328; 527972, 4228523; 528126, 4228641; 528306, 4228780; 528554, 4228970; 528535, 4229182; 528732, 4229458; 528890, 4229679; 529111, 4229695; 529317, 4230021; 529600, 4229995; 529918, 4229965; 530079, 4229860; 530155, 4229977; 530210, 4230039; 530275, 4230068; 530354, 4230068; 530421, 4230102; 530482, 4230085; 530542, 4230070; 530599, 4230091; 530681, 4230122; 530745, 4230123; 530880, 4230126; returning to 530959, 4230115.

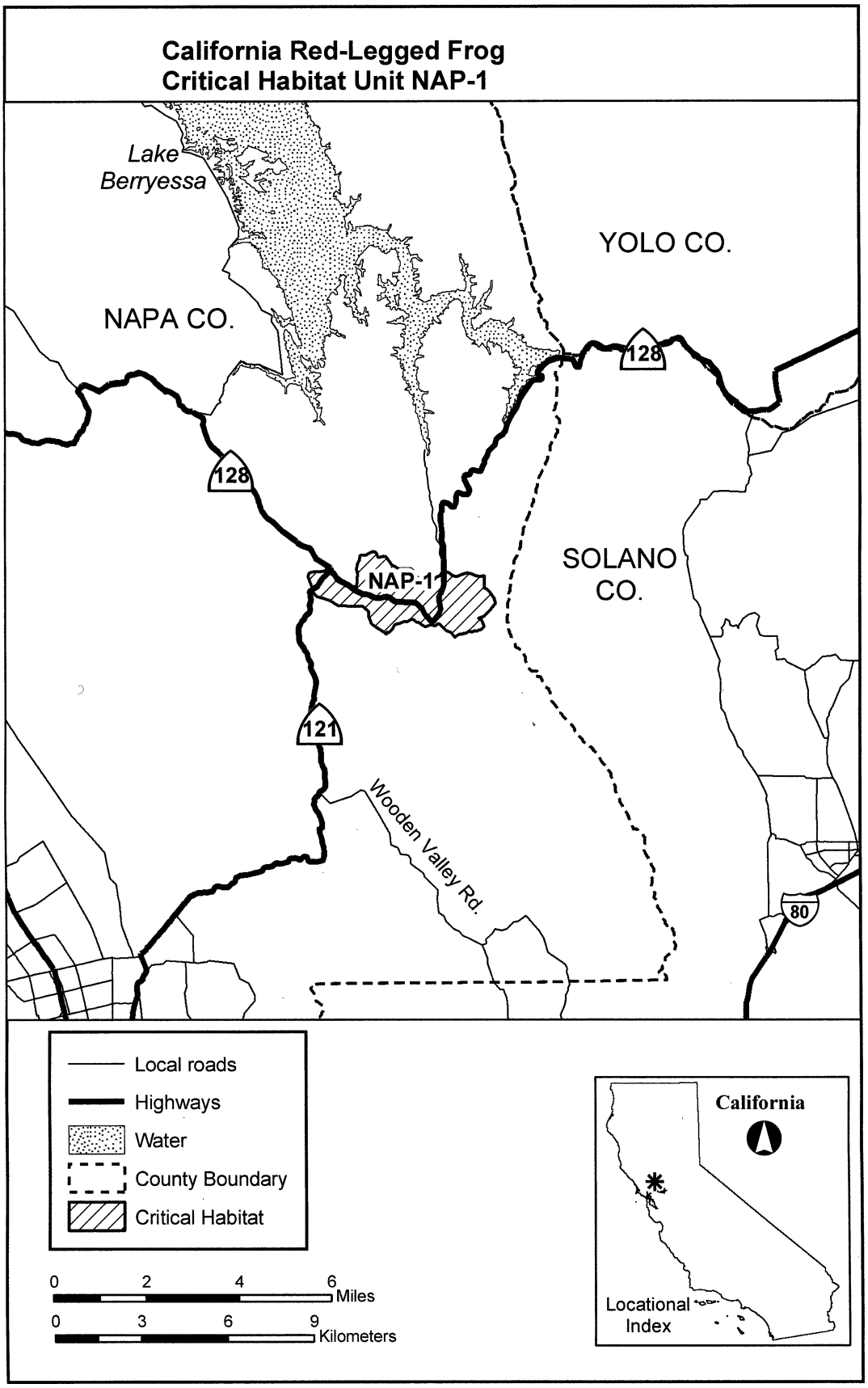
(ii) Note: Unit SON–3 for California red-legged frog is depicted on the map in paragraph (14)(ii) of this entry.

(17) Unit NAP–1: Napa County, California. From USGS 1:24,000 scale quadrangle Capell Valley.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 571668, 4256238; 571744, 4256065; 571928, 4256108; 572003, 4256097; 572230, 4255795; 572479, 4255665; 572879, 4255676; 573030, 4255503; 573063, 4255384; 573182, 4255341; 573495, 4255265; 573603, 4255200; 573798, 4255395; 573895, 4255427; 573949, 4255535; 574100, 4255568; 574187, 4255535; 574327, 4255427; 574468, 4255395; 574630, 4255460; 574835, 4255535; 575008, 4255481; 575116, 4255438; 575278, 4255406; 575408, 4255427; 575430, 4255244; 575408, 4255017; 575505, 4254962; 575592, 4254887; 575765, 4254649; 575808, 4254465; 575581, 4254195; 575408, 4254033; 575214, 4253957; 575333, 4253892; 575419, 4253676; 575321, 4253562; 575277, 4253557; 575222, 4253545; 575199, 4253536; 575049, 4253507; 574998, 4253484; 574972, 4253480; 574953, 4253482; 574899, 4253535; 574853, 4253488; 574781, 4253445; 574705, 4253431; 574585, 4253396; 574564, 4253396; 574538, 4253391; 574508, 4253381; 574463, 4253347; 574429, 4253311; 574411, 4253302; 574385, 4253312; 574367, 4253332; 574315, 4253408; 574301, 4253437; 574279, 4253463; 574229, 4253481; 574172, 4253490; 574146, 4253508; 574118, 4253536; 573980, 4253656; 573958, 4253683; 573855, 4253754; 573831, 4253776; 573804, 4253764; 573715, 4253702; 573684, 4253697; 573634, 4253728; 573609, 4253736; 573552, 4253734; 573530, 4253730; 573386, 4253663; 573213, 4253769; 573186, 4253794; 573145, 4253809; 573088, 4253822; 573050, 4253848; 572996, 4253897; 572972, 4253911; 572925, 4253921; 572909, 4253921; 572877, 4253917; 572820, 4253898; 572766, 4253856; 572740, 4253845; 572693, 4253839; 572602, 4253837; 572582, 4253833; 572454, 4253783; 572418, 4253774; 572359, 4253765; 572328, 4253749; 572299, 4253714; 572235, 4253614; 572104, 4253461; 572073, 4253465; 572055, 4253475; 572027, 4253479; 572022, 4253461; 572020, 4253414; 571863, 4253525; 571679, 4253644; 571495, 4253784; 571420, 4254011; 571420, 4254184; 571204, 4254368; 570923, 4254379; 570652, 4254390; 570339, 4254400; 570079, 4254573; 569885, 4254638; 569593, 4254725; 569474, 4254865; 569431, 4255060; 569388, 4255179; 569344, 4255298; 569290, 4255416; 569344, 4255525; 569463, 4255568; 569669, 4255568; 569852, 4255600; 570015, 4255676; 570047, 4255643; 570207, 4255556; 570241, 4255438; 570350, 4255341; 570458, 4255211; 570641, 4255200; 570706, 4255135; 570804, 4255060; 570858, 4255060; 570966, 4255049; 571020, 4255211; 571009, 4255330; 571031, 4255449; 571009, 4255589; 571009, 4255752; 571031, 4255870; 571085, 4255968; 571117, 4256141; 571301, 4256141; 571441, 4256227; 571560, 4256281; returning to 571668, 4256238.

(ii) Note: Map of Unit NAP–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(18) Unit MRN–1: Marin County, California. From USGS 1:24,000 scale quadrangles Valley Ford and Tomales.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 503193, 4241015; 503243, 4241015; 503269, 4241015; 503294, 4241015; 503345, 4240990; 503421, 4240937; 503446, 4240937; 503471, 4240911; 503522, 4240886; 503598, 4240834; 503623, 4240809; 503673, 4240758; 503749, 4240705; 503774, 4240680; 503825, 4240629; 503876, 4240603; 503883, 4240603; 503901, 4240603; 503955, 4240585; 503977, 4240577; 504028, 4240577; 504066, 4240576; 504079, 4240576; 504104, 4240576; 504155, 4240550; 504205, 4240550; 504256, 4240551; 504307, 4240524; 504358, 4240498; 504408, 4240473; 504433, 4240447; 504433, 4240421; 504484, 4240396; 504526, 4240395; 504534, 4240395; 504584, 4240395; 504545, 4240350; 504559, 4240325; 504587, 4240298; 504632, 4240287; 504674, 4240281; 504733, 4240225; 504773, 4240205; 504835, 4240180; 504875, 4240159; 504870, 4240131; 504856, 4240085; 504851, 4240030; 504875, 4239981; 504874, 4239956; 504799, 4239893; 504770, 4239863; 504766, 4239840; 504808, 4239773; 504829, 4239728; 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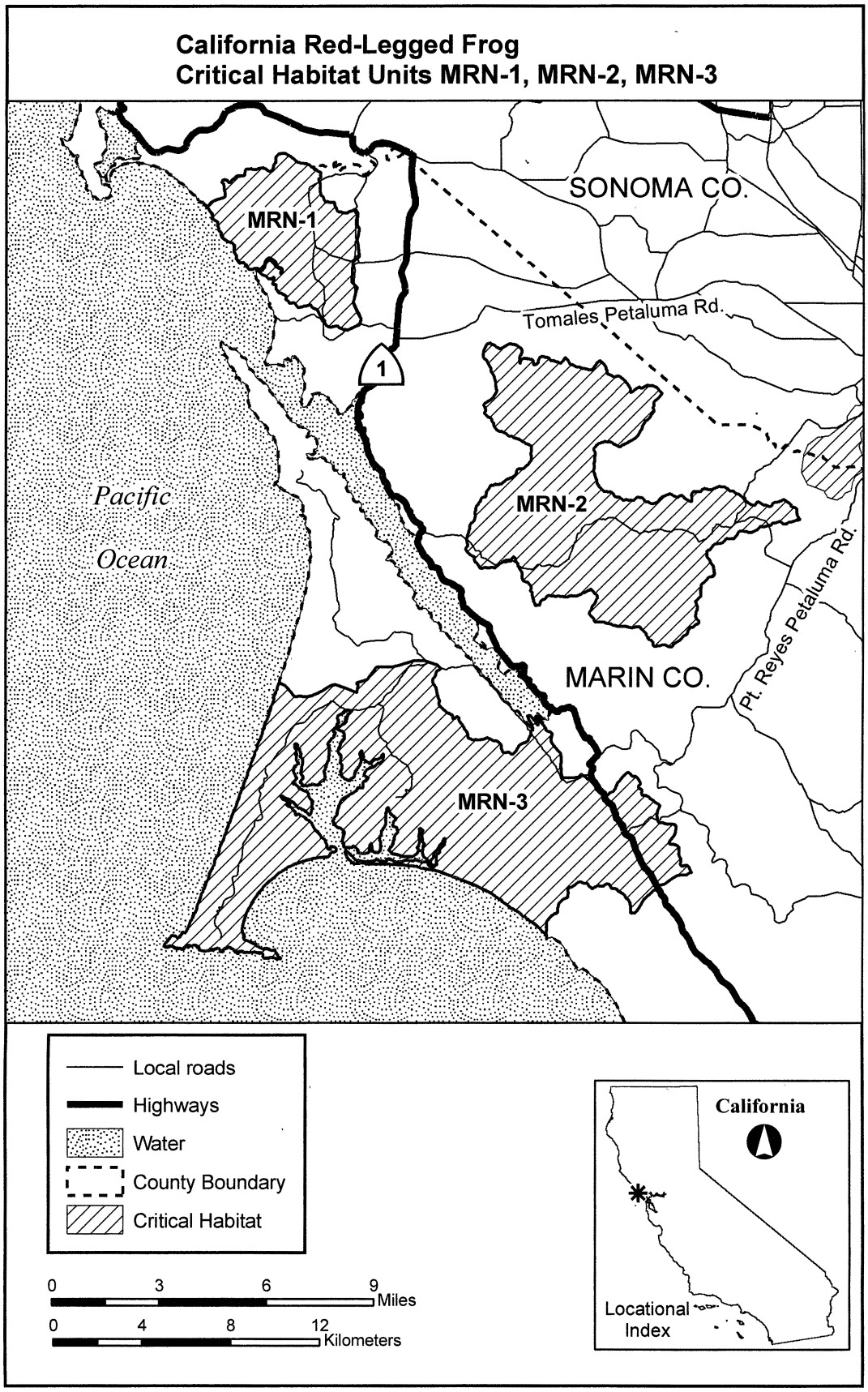
(ii) Note: Map of Units MRN–1, MRN–2 and MRN–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(19) Unit MRN–2: Marin County, California. From USGS 1:24,000 scale quadrangles Point Reyes NE, Inverness, and Petaluma.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 512634, 4232438; 512662, 4232404; 512681, 4232407; 512698, 4232405; 512794, 4232328; 512825, 4232308; 512895, 4232271; 512927, 4232250; 512942, 4232244; 512975, 4232243; 513064, 4232286; 513098, 4232298; 513279, 4232406; 513325, 4232436; 513362, 4232450; 513452, 4232462; 513497, 4232455; 513610, 4232428; 513701, 4232401; 513734, 4232386; 513809, 4232322; 513872, 4232273; 513918, 4232251; 513934, 4232231; 513953, 4232187; 513956, 4232128; 513948, 4232059; 513939, 4232023; 513924, 4231990; 513867, 4231891; 513856, 4231862; 513849, 4231832; 513847, 4231791; 513851, 4231760; 513858, 4231739; 513860, 4231712; 513859, 4231644; 513855, 4231619; 513876, 4231594; 513885, 4231636; 513905, 4231703; 513925, 4231754; 513952, 4231792; 514013, 4231813; 514067, 4231818; 514387, 4231769; 514431, 4231744; 514466, 4231651; 514470, 4231597; 514482, 4231533; 514514, 4231516; 514620, 4231572; 514663, 4231619; 514694, 4231745; 514716, 4231792; 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(ii) Note: Unit MRN–2 for California red-legged frog is depicted on the map in paragraph (18)(ii) of this entry.

(20) Unit MRN–3: Marin County, California. From USGS 1:24,000 scale quadrangles Drakes Bay and Inverness.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 510133, 4216765; 510173, 4216617; 510207, 4216519; 510221, 4216478; 510235, 4216457; 510270, 4216372; 510239, 4216321; 510249, 4216204; 510255, 4216187; 510265, 4216159; 510281, 4216124; 510334, 4216085; 510346, 4216077; 510368, 4216064; 510404, 4216036; 510456, 4215972; 510513, 4215936; 510528, 4215924; 510566, 4215894; 510591, 4215868; 510629, 4215830; 510646, 4215821; 510660, 4215814; 510683, 4215808; 510730, 4215795; 510767, 4215777; 510817, 4215747; 510849, 4215727; 510859, 4215708; 510865, 4215696; 510863, 4215590; 510877, 4215571; 510944, 4215590; 510978, 4215595; 510992, 4215605; 510993, 4215605; 511006, 4215619; 511057, 4215680; 511072, 4215673; 511096, 4215652; 511122, 4215630; 511147, 4215593; 511156, 4215550; 511161, 4215478; 511210, 4215387; 511256, 4215351; 511275, 4215332; 511314, 4215262; 511330, 4215234; 511374, 4215173; 511395, 4215115; 511408, 4215093; 511446, 4215044; 511518, 4214941; 511530, 4214911; 511539, 4214870; 511553, 4214727; 511565, 4214698; 511580, 4214681; 511602, 4214667; 511645, 4214656; 511676, 4214648; 511702, 4214633; 511730, 4214616; 511750, 4214608; 511785, 4214601; 511801, 4214601; 511807, 4214601; 511887, 4214613; 511919, 4214612; 512027, 4214589; 512054, 4214589; 512140, 4214618; 512266, 4214637; 512286, 4214643; 512332, 4214656; 512398, 4214703; 512415, 4214708; 512449, 4214698; 512492, 4214667; 512515, 4214657; 512579, 4214649; 512612, 4214630; 512707, 4214574; 512795, 4214553; 512808, 4214553; 512816, 4214548; 512831, 4214553; 512844, 4214553; 512849, 4214552; 512889, 4214540; 512963, 4214501; 513029, 4214420; 513058, 4214339; 513069, 4214199; 513116, 4214029; 513176, 4214012; 513217, 4214012; 513294, 4214029; 513330, 4214032; 513416, 4214031; 513450, 4214016; 513512, 4213950; 513576, 4213953; 513736, 4214119; 513750, 4214164; 513770, 4214209; 513819, 4214284; 513846, 4214332; 513925, 4214400; 514046, 4214466; 514083, 4214479; 514141, 4214492; 514240, 4214562; 514264, 4214595; 514285, 4214639; 514294, 4214681; 514306, 4214713; 514331, 4214759; 514366, 4214810; 514381, 4214861; 514389, 4214940; 514400, 4214999; 514416, 4215034; 514445, 4215080; 514460, 4215098; 514472, 4215130; 514458, 4215183; 514419, 4215273; 514384, 4215371; 514317, 4215495; 514290, 4215537; 514257, 4215608; 514244, 4215653; 514249, 4215684; 514266, 4215700; 514290, 4215713; 514317, 4215712; 514365, 4215687; 514471, 4215568; 514565, 4215482; 514591, 4215435; 514619, 4215351; 514642, 4215319; 514682, 4215291; 514712, 4215281; 514725, 4215282; 514727, 4215308; 514707, 4215319; 514692, 4215333; 514681, 4215391; 514665, 4215420; 514642, 4215503; 514617, 4215546; 514603, 4215579; 514602, 4215604; 514621, 4215694; 514637, 4215676; 514674, 4215619; 514729, 4215521; 514743, 4215488; 514779, 4215441; 514809, 4215415; 514943, 4215283; 515018, 4215186; 515030, 4215159; 515065, 4215050; 515077, 4215033; 515089, 4215020; 515154, 4215004; 515232, 4214981; 515342, 4214897; 515288, 4214710; 515275, 4214564; 515381, 4214375; 515530, 4214195; 515610, 4214098; 515711, 4213988; 515746, 4213733; 515733, 4213543; 515733, 4213354; 515750, 4213055; 515781, 4212901; 515830, 4212870; 516094, 4212870; 516367, 4212892; 516503, 4212932; 516644, 4213042; 516701, 4213015; 516860, 4212910; 516926, 4212822; 517040, 4212830; 517088, 4212791; 517172, 4212791; 517374, 4212518; 517264, 4212465; 517339, 4212311; 517414, 4212254; 517480, 4212267; 517595, 4212205; 517661, 4212078; 517787, 4212085;

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(ii) Note: Unit MRN–3 for California red-legged frog is depicted on the map in paragraph (18)(ii) of this entry.

(21) Unit SOL–1: Solano and Napa Counties, California. From USGS 1:24,000 scale quadrangles Cordelia, Benecia, Fairfield South and Vine Hill.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 573848, 4228015; 573903, 4227912; 573977, 4227914; 574038, 4227957; 574101, 4228001; 574144, 4227996; 574141, 4227977; 574142, 4227953; 574142, 4227953; 574151, 4227931; 574151, 4227931; 574159, 4227922; 574162, 4227922; 574168, 4227924; 574108, 4227756; 574045, 4227438; 574091, 4227308; 574151, 4227288; 574185, 4227277; 574227, 4227263; 574369, 4227183; 574391, 4227151; 574420, 4227110; 574539, 4226906; 574607, 4226770; 574709, 4226724; 574710, 4226757; 574747, 4226749; 574752, 4226739; 574956, 4226092; 575176, 4225375; 575264, 4225162; 575359, 4224951; 575367, 4224934; 575363, 4224914; 575154, 4224811; 575155, 4224618; 575156, 4224422; 575248, 4224367; 575340, 4224312; 575308, 4224295; 575272, 4224261; 575277, 4224221; 575368, 4224094; 575430, 4223998; 575487, 4223947; 575543, 4223916; 575614, 4223905; 575693, 4223901; 575755, 4223882; 575835, 4223882; 575898, 4223882; 575934, 4223899; 575951, 4223933; 575954, 4223981; 575956, 4224042; 576006, 4224063; 576184, 4224161; 576443, 4224275; 576548, 4224315; 576613, 4224309; 576698, 4224258; 576848, 4224202; 576995, 4224139; 577094, 4224080; 577153, 4224080; 577185, 4224072; 577211, 4224024; 577294, 4223874; 577294, 4223873; 577268, 4223741; 577241, 4223622; 577241, 4223622; 577294, 4223503; 577394, 4223421; 577373, 4223340; 577361, 4223317; 577361, 4223317; 577326, 4223273; 577276, 4223227; 577195, 4223202; 577144, 4223200; 577093, 4223198; 577093, 4223198; 577026, 4223148; 577034, 4223121; 577040, 4223098; 577052, 4222985; 577088, 4222761; 577095, 4222746; 577116, 4222735; 577164, 4222687; 577231, 4222620; 577424, 4222494;

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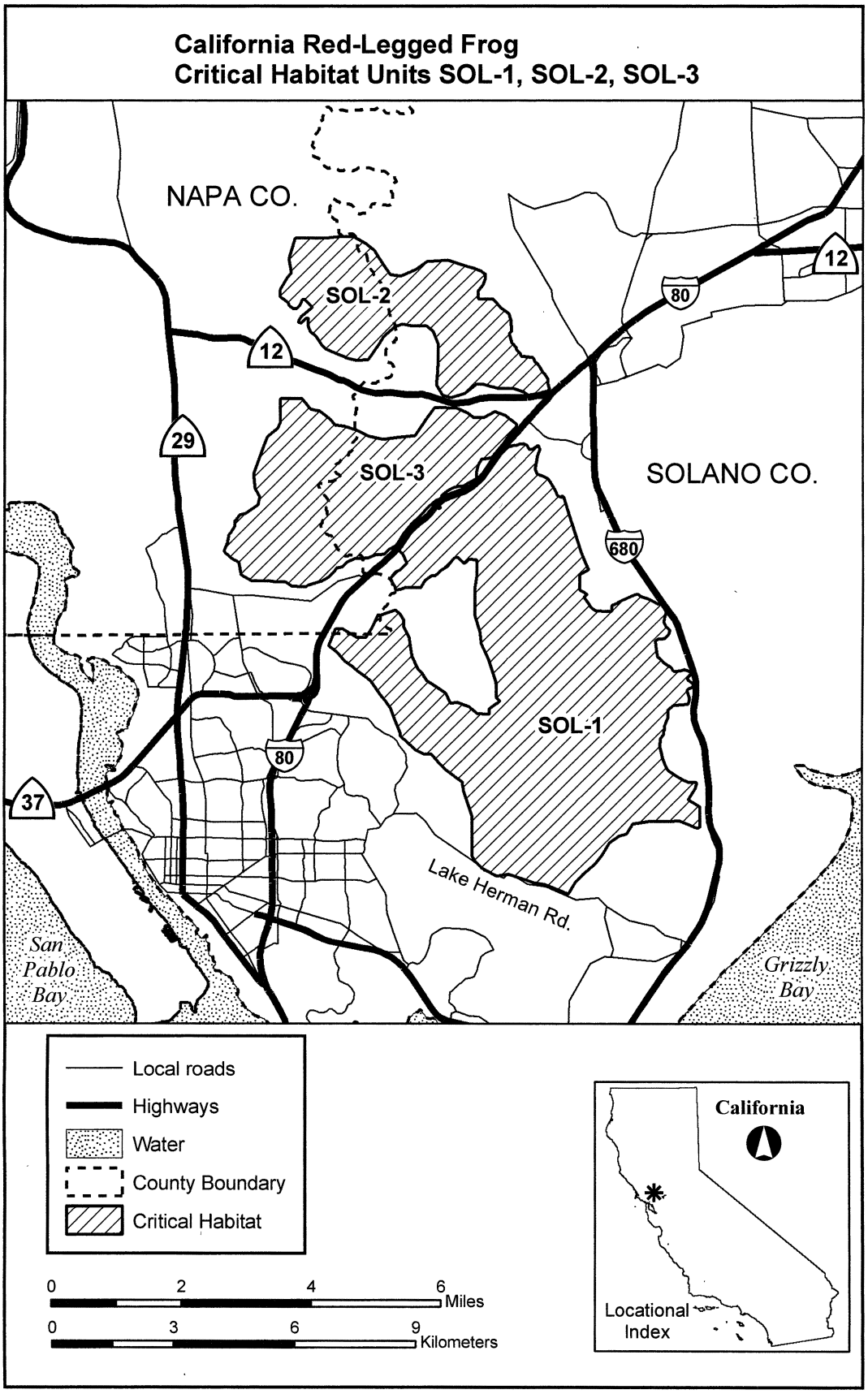
(ii) Note: Map of Units SOL–1, SOL–2 and SOL–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(22) Unit SOL–2: Solano and Napa Counties, California. From USGS 1:24,000 scale quadrangle Cordelia.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 570458, 4232242; 570722, 4232209; 571086, 4232374; 571367, 4232573; 571880, 4232606; 572376, 4232441; 572552, 4232394; 572567, 4232379; 572693, 4232332; 572758, 4232291; 572809, 4232259; 572809, 4232155; 572756, 4231996; 572637, 4231837; 572637, 4231639; 572809, 4231625; 573009, 4231625; 573025, 4231606; 573192, 4231413; 573390, 4231275; 573441, 4231119; 573467, 4230836; 573406, 4230775; 573470, 4230566; 573578, 4230415; 573589, 4230376; 573663, 4230304; 573705, 4230214; 573992, 4230187; 574004, 4230149; 574021, 4230110; 574036, 4230088; 574058, 4230066; 574089, 4230043; 574120, 4230009; 574141, 4229980; 574239, 4229821; 574283, 4229777; 574320, 4229727; 574352, 4229667; 574370, 4229520; 574402, 4229394; 574403, 4229391; 574344, 4229350; 574040, 4229271; 573890, 4229241; 573760, 4229329; 573519, 4229412; 573113, 4229431; 572770, 4229520; 572598, 4229533; 572300, 4229291; 571970, 4229190; 571766, 4229253; 571606, 4229514; 571627, 4229774; 571658, 4230168; 571639, 4230536; 571519, 4230834; 571360, 4230968; 571023, 4230968; 570750, 4231012; 570560, 4230936; 570294, 4230699; 570175, 4230520; 570045, 4230326; 569918, 4230136; 569626, 4230110; 569334, 4230180; 569334, 4230180; 569332, 4230190; 569070, 4230302; 568858, 4230392; 568747, 4230511; 568604, 4230722; 568466, 4230826; 568420, 4230947; 568426, 4231119; 568427, 4231151; 568370, 4231153; 568321, 4231109; 568241, 4231036; 568170, 4231061; 568194, 4231130; 568251, 4231202; 568302, 4231244; 568522, 4231421; 568329, 4231625; 568273, 4231618; 568234, 4231535; 568199, 4231461; 568133, 4231392; 568051, 4231386; 567956, 4231463; 567912, 4231543; 567813, 4231622; 567727, 4231690; 567729, 4231696; 567729, 4231878; 567895, 4232159; 567994, 4232292; 567944, 4232639; 568093, 4233152; 568440, 4233152; 568821, 4233152; 569151, 4233185; 569548, 4233185; 569846, 4233019; 570061, 4232854; 570259, 4232540; returning to 570458, 4232242.

(ii) Note: Unit SOL–2 for California red-legged frog is depicted on the map in paragraph (21)(ii) of this entry.

(23) Unit SOL–3: Solano and Napa Counties, California. From USGS 1:24,000 scale quadrangle Cordelia.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 567740, 4229171; 567893, 4229171; 568267, 4229171; 568477, 4228910; 568712, 4228853; 568966, 4228656; 569087, 4228510; 569334, 4228485; 569607, 4228396; 569918, 4228237; 570276, 4228164; 570623, 4228205; 571071, 4228258; 571392, 4228713; 571556, 4228946; 571862, 4228936; 572117, 4228927; 572376, 4228815; 572535, 4228688; 572789, 4228707; 573052, 4228841; 573309, 4228751; 573595, 4228530; 573591, 4228489; 573424, 4228298; 573276, 4228076; 573104, 4227869; 572973, 4227712; 572829, 4227682; 572720, 4227679; 572641, 4227523; 572604, 4227377; 572604, 4227200; 572501, 4227142; 572414, 4227093; 572266, 4227009; 572144, 4227002; 572043, 4226973; 571932, 4226912; 571841, 4226862; 571747, 4226787; 571739, 4226736; 571691, 4226684; 571607, 4226655; 571551, 4226607; 571371, 4226453; 571252, 4226308; 571088, 4226158; 570965, 4226045; 570858, 4225906; 570780, 4225806; 570681, 4225642; 570606, 4225519; 570453, 4225433; 570323, 4225316; 570191, 4225295; 570183, 4225292; 570088, 4225297; 569929, 4225225; 569754, 4225196; 569569, 4225199; 569376, 4225109; 569270, 4225000; 569119, 4224961; 569074, 4224876; 568960, 4224768; 568844, 4224696; 568745, 4224634; 568708, 4224627; 568642, 4224614; 568523, 4224574; 568417, 4224535; 568380, 4224504; 568307, 4224508; 568010, 4224527; 567929, 4224580; 567864, 4224622; 567746, 4224619; 567638, 4224617; 567485, 4224643; 567363, 4224646; 567019, 4224654; 566765, 4224802; 566704, 4225101; 566522, 4225215; 566413, 4225307; 566360, 4225352; 566353, 4225363; 566357, 4225429; 566423, 4225594; 566462, 4225788; 566489, 4225830; 566610, 4226015; 566604, 4226126; 566655, 4226192; 566731, 4226294; 566877, 4226326; 567175, 4226542; 567232, 4226739; 567105, 4226948; 567076, 4227307; 567221, 4227699; 567328, 4227989; 567417, 4228231; 567664, 4228428; 567740, 4228580; 567740, 4228821; returning to 567740, 4229171.

(ii) Note: Unit SOL–3 for California red-legged frog is depicted on the map in paragraph (21)(ii) of this entry.

(24) Unit CCS–1: Contra Costa County, California. From USGS 1:24,000 scale quadrangles Richmond, Benecia, Briones Valley and Walnut Creek.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 572162, 4205268; 572186, 4205264; 572253, 4205288; 572327, 4205277; 572364, 4205260; 572421, 4205203; 572442, 4205195; 572582, 4205195; 572657, 4205215; 572764, 4205276; 572788, 4205283; 572909, 4205274; 572910, 4205254; 572995, 4205117; 573122, 4204829; 573298, 4204638; 573372, 4204601; 573451, 4204581; 573495, 4204549; 573515, 4204504; 573519, 4204473; 573485, 4204396; 573487, 4204382; 573494, 4204374; 573523, 4204362; 573559, 4204354; 573594, 4204332; 573606, 4204323; 573614, 4204308; 573619, 4204308; 573667, 4204266; 573672, 4204255; 573665, 4204222; 573639, 4204185; 573591, 4204145; 573539, 4204112; 573520, 4204083; 573480, 4203976; 573443, 4203827; 573433, 4203754; 573424, 4203726; 573409, 4203699; 573387, 4203684; 573355, 4203671; 573325, 4203668; 573302, 4203675; 573267, 4203695; 573212, 4203750; 573150, 4203787; 573088, 4203812; 572995, 4203834; 572928, 4203867; 572886, 4203900; 572848, 4203945; 572810, 4204007; 572757, 4204058; 572737, 4204064; 572699, 4204053; 572652, 4204030; 572600, 4203997; 572574, 4203972; 572556, 4203940; 572539, 4203856; 572526, 4203835; 572471, 4203826; 571765, 4203776; 571660, 4203656; 571674, 4203568; 571712, 4203330; 571783, 4202972; 571741, 4202650; 571991, 4202253; 572214, 4201968; 572478, 4201681; 572486, 4201677; 572488, 4201649; 572471, 4201544; 572497, 4201511; 572566, 4201483; 572614, 4201480; 572740, 4201488; 572794, 4201502; 572844, 4201528; 572878, 4201552; 572907, 4201585; 572957, 4201623; 573060, 4201721; 573081, 4201744; 573112, 4201796; 573135, 4201820; 573168, 4201827; 573189, 4201775; 573218, 4201660; 573225, 4201588; 573225, 4201480; 573237, 4201425; 573263, 4201379; 573292, 4201268; 573302, 4201259; 573337, 4201248; 573364, 4201222; 573377, 4201200; 573391, 4201154; 573461, 4200987; 573484, 4200970; 573471, 4200995; 573443, 4201046; 573455, 4201046; 573544, 4201047; 573552, 4201067; 573577, 4201137; 573579, 4201137; 573579, 4201142; 573580, 4201146; 573651, 4201342; 573745, 4201343; 573746, 4201343; 573748, 4201343; 573743, 4201463; 573742, 4201477; 574180, 4201457; 574217, 4201456; 574216, 4201457; 574210, 4201468; 574155, 4201560; 574156, 4201561; 574504, 4201744; 574506, 4201742; 574507, 4201741; 574513, 4201736; 574513, 4201736; 574514, 4201735; 574514, 4201735; 574514, 4201734; 574514, 4201734; 574515, 4201733; 574515, 4201732; 574516, 4201731; 574516, 4201730; 574517, 4201729; 574518, 4201728; 574519, 4201727; 574520, 4201726; 574521, 4201725; 574522, 4201725; 574523, 4201725;

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577051, 4202146; 577055, 4202156; 577059, 4202163; 577067, 4202176; 577077, 4202189; 577089, 4202204; 577123, 4202242; 577129, 4202252; 577131, 4202263; 577122, 4202327; 577126, 4202334; 577165, 4202394; 577221, 4202356; 577252, 4202335; 577286, 4202312; 577377, 4202449; 577394, 4202429; 577415, 4202403; 577553, 4202269; 577370, 4202080; 577433, 4202019; 577361, 4201950; 577307, 4201899; 577273, 4201866; 577181, 4201779; 577181, 4201778; 577217, 4201778; 577331, 4201778; 577332, 4201711; 577396, 4201713; 577394, 4201778; 577491, 4201779; 577538, 4201779; 577538, 4201703; 577538, 4201657; 577538, 4201623; 577538, 4201608; 577528, 4201602; 577516, 4201594; 577508, 4201588; 577427, 4201529; 577406, 4201517; 577375, 4201499; 577311, 4201467; 577244, 4201455; 577180, 4201413; 577171, 4201344; 577175, 4201301; 577177, 4201270; 577238, 4201225; 577244, 4201211; 577253, 4201191; 577226, 4201086; 577192, 4200992; 577195, 4200899; 577195, 4200899; 577197, 4200879; 577204, 4200806; 577242, 4200746; 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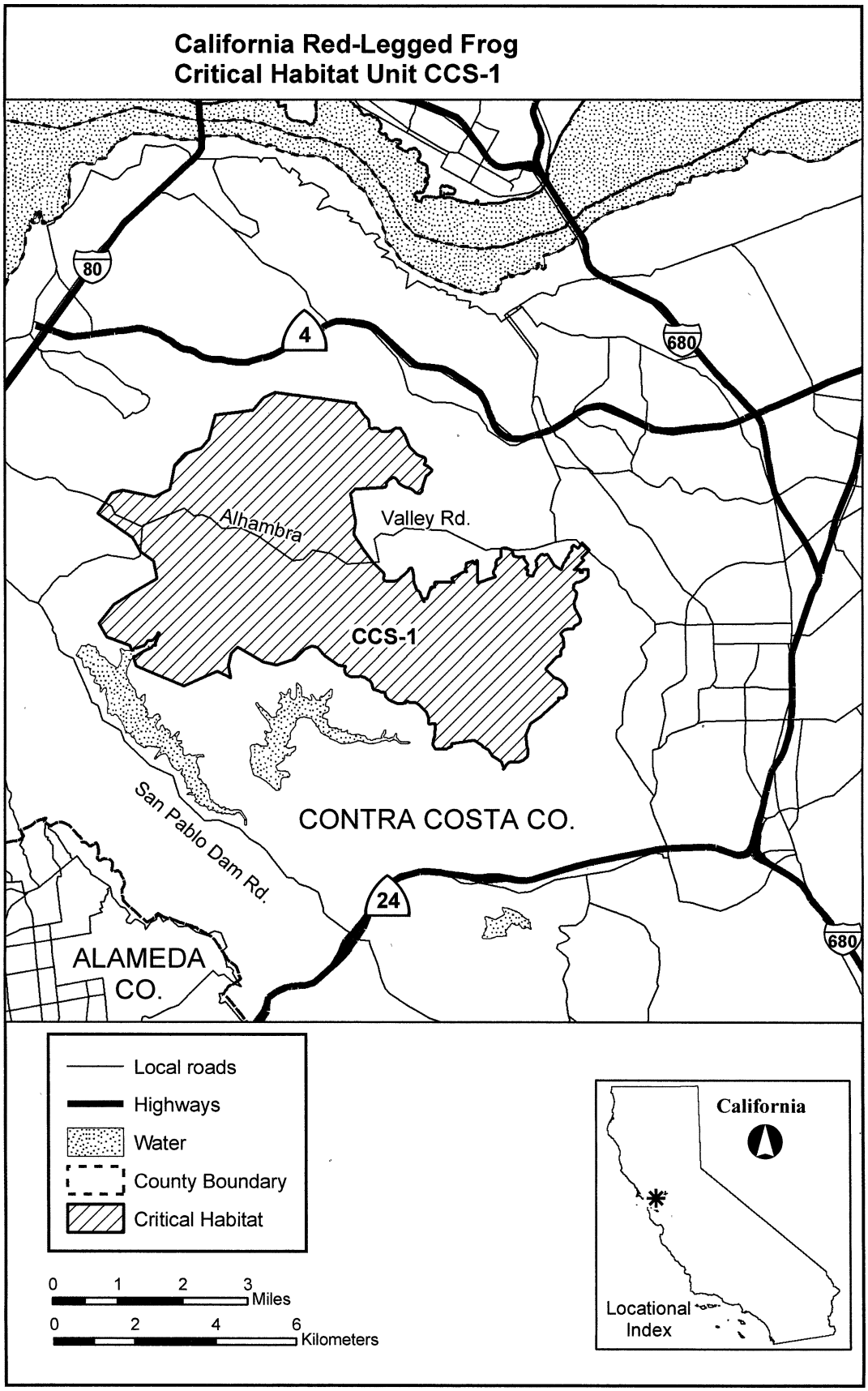
574754, 4197511; 574718, 4197534; 574489, 4197504; 574432, 4197496; 574156, 4197457; 574161, 4197400; 574162, 4197390; 574054, 4197340; 574036, 4197331; 573973, 4197317; 573926, 4197317; 573757, 4197318; 573683, 4197437; 573692, 4197483; 573706, 4197568; 573738, 4197634; 573754, 4197935; 573753, 4197936; 573750, 4197950; 573665, 4197936; 573652, 4197934; 573652, 4197937; 573606, 4197931; 573603, 4197931; 573599, 4197933; 573597, 4197936; 573597, 4197939; 573574, 4198103; 573567, 4198136; 573557, 4198168; 573543, 4198199; 573527, 4198229; 573507, 4198256; 573485, 4198281; 573476, 4198289; 573370, 4198399; 573353, 4198414; 573335, 4198427; 573315, 4198438; 573295, 4198447; 573279, 4198452; 573281, 4198460; 573262, 4198465; 573248, 4198468; 573247, 4198462; 573222, 4198463; 573197, 4198462; 573173, 4198458; 573166, 4198456; 573129, 4198464; 573063, 4198504; 573047, 4198496; 573022, 4198458; 572904, 4198434; 572836, 4198432; 572768, 4198463; 572762, 4198465; 572610, 4198534; 572585, 4198554; 572549, 4198584; 572532, 4198601; 572504, 4198711; 572485, 4198723; 572417, 4198723; 572354, 4198751; 572221, 4198785; 572206, 4198818; 572181, 4198915; 572141, 4198998; 572089, 4199024; 572010, 4199081; 571881, 4199118; 571866, 4199105; 571670, 4199102; 571566, 4199147; 571555, 4199158; 571546, 4199168; 571543, 4199171; 571533, 4199186; 571524, 4199202; 571516, 4199253; 571507, 4199310; 571533, 4199362; 571350, 4199393; 571009, 4199625; 570836, 4199835; 570696, 4199866; 570536, 4199789; 570280, 4199549; 569826, 4199391; 569478, 4199475; 569161, 4199659; 568910, 4199800; 568851, 4199841; 568699, 4199671; 568627, 4199387; 568691, 4199069; 568353, 4199245; 568116, 4199139; 567529, 4198875; 566882, 4199149; 566350, 4199375; 566284, 4199599; 566287, 4199601; 566341, 4199604; 566396, 4199653; 566565, 4199746; 566737, 4199831; 566760, 4199874; 566841, 4199875; 566828, 4199913; 566833, 4199961; 566930, 4200163; 566919, 4200201; 566897, 4200196; 566869, 4200137; 566776, 4200022; 566736, 4200001; 566657, 4200001; 566637, 4199990; 566592, 4199916; 566562, 4199885; 566519, 4199862; 566372, 4199812; 566296, 4199802; 566248, 4199753; 566239, 4199753; 566203, 4199876; 565621, 4200086; 565429, 4200430; 565793, 4200907; 566270, 4201194; 566529, 4201349; 566869, 4201553; 566786, 4201997; 566461, 4202226; 566270, 4202570; 565965, 4202780; 565710, 4202955; 565589, 4203038; 565402, 4203167; 565596, 4203450; 565751, 4203676; 566022, 4203755; 566480, 4203659; 566817, 4203589; 567187, 4203774; 567245, 4204060; 567307, 4204369; 567551, 4204653; 567971, 4204786; 568162, 4205016; 568258, 4205379; 568312, 4205587; 568316, 4205601; 568793, 4205665; 569243, 4205726; 569500, 4206028; 569786, 4206162; 570207, 4206105; 570860, 4206016; 571441, 4205937; 571795, 4205888; 571799, 4205849; 571822, 4205812; 571916, 4205718; 571966, 4205641; 572102, 4205486; 572115, 4205434; 572120, 4205353; 572129, 4205309; 572135, 4205294; returning to 572162, 4205268.

(ii) Note: Map of Unit CCS–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(25) Unit CCS–2: Contra Costa and Alameda Counties, California. From USGS 1:24,000 scale quadrangles Walnut Creek, Honker Bay, Clayton, Diablo, Antioch South, Tassajara, Livermore, Brentwood, Byron Hot Springs, Altamont, Clifton Court Forebay and Midway.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 589897, 4207913; 590050, 4207770; 590120, 4207770; 590155, 4207704; 590253, 4207519; 590263, 4207443; 590283, 4207292; 590447, 4207227; 590625, 4207158; 590828, 4207158; 590980, 4207158; 591063, 4207291; 591215, 4207380; 591279, 4207513; 591293, 4207672; 591407, 4207644; 591485, 4207595; 591592, 4207370; 591631, 4207165; 591661, 4206970; 591709, 4206804; 591758, 4206599; 591973, 4206589; 592139, 4206589; 592344, 4206589; 592559, 4206628; 592949, 4206990; 592969, 4207136; 593008, 4207380; 593008, 4207585; 593013, 4207688; 593036, 4207697; 593647, 4207706; 593675, 4207563; 593680, 4207475; 593711, 4207387; 593737, 4207382; 593784, 4207356; 593810, 4207299; 593825, 4207221; 593825, 4207144; 593913, 4207149; 593944, 4207294; 594017, 4207537; 594043, 4207646; 594131, 4207702; 594234, 4207702; 594312, 4207692; 594322, 4207671; 594338, 4207625; 594343, 4207589; 594343, 4207558; 594374, 4207537; 594451, 4207527; 594503, 4207527; 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(ii) Excluding land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 611574, 4188453; 611564, 4188349; 611460, 4188264; 611375, 4188217; 611309, 4188151; 611242, 4188094; 611167, 4188103; 611091, 4188075; 611110, 4188009; 611129, 4187961; 611110, 4187904; 611025, 4187895; 610949, 4187952; 610854, 4187980; 610779, 4187990; 610703, 4187980; 610675, 4187904; 610675, 4187810; 610684, 4187725; 610627, 4187725; 610570, 4187781; 610447, 4187848; 610334, 4187904; 610192, 4187999; 610173, 4188084; 610116, 4188103; 610078, 4188046; 610069, 4187990; 610135, 4187886; 610144, 4187800; 610211, 4187734; 610286, 4187706; 610353, 4187649; 610372, 4187592; 610305, 4187526; 610305, 4187469; 610372, 4187479; 610409, 4187450; 610419, 4187393; 610476, 4187365; 610542, 4187356; 610580, 4187403; 610608, 4187412; 610703, 4187318; 610769, 4187251; 610807, 4187232; 610902, 4187204; 610958, 4187270; 611015, 4187308; 611100, 4187251; 611148, 4187242; 611167, 4187195; 611091, 4187166; 611025, 4187157; 610958, 4187147; 610987, 4187090; 610977, 4187005; 610930, 4186949; 610968, 4186901; 610949, 4186816; 610949, 4186721; 610940, 4186617; 610816, 4186523; 610684, 4186513; 610608, 4186551; 610551, 4186598; 610514, 4186523; 610466, 4186485; 610400, 4186560; 610267, 4186674; 610107, 4186759; 609974, 4186835; 609775, 4186949; 609548, 4187128; 609368, 4187223; 609264, 4187166; 609283, 4187090; 609330, 4187043; 609425, 4186977; 609453, 4186920; 609482, 4186807; 609548, 4186608; 609643, 4186437; 609747, 4186324; 609787, 4186236; 609847, 4186175; 609878, 4186077; 609915, 4185933; 609961, 4185827; 610006, 4185781; 610052, 4185698; 610067, 4185577; 610052, 4185486; 610076, 4185438; 610143, 4185444; 610209, 4185438; 610246, 4185384; 610246, 4185348; 610282, 4185378; 610342, 4185402; 610403, 4185354; 610439, 4185305; 610488, 4185263; 610506, 4185220; 610512, 4185136; 610500, 4185051; 610536, 4185020; 610548, 4184996; 610536, 4184948; 610452, 4184851; 610373, 4184711; 610342, 4184596; 610373, 4184530; 610387, 4184506; 610391, 4184499; 610421, 4184512; 610458, 4184542; 610524, 4184621; 610548, 4184705; 610627, 4184808; 610694, 4184857; 610773, 4184845; 610809, 4184766; 610827, 4184693; 610888, 4184681; 610918, 4184784; 610985, 4184833; 611027, 4184893; 611003, 4184990; 611039, 4185075; 611069, 4185087; 611088, 4185045; 611088, 4185008; 611088, 4184972; 611130, 4184936; 611172, 4184905; 611215, 4184821; 611245, 4184784; 611263, 4184833;

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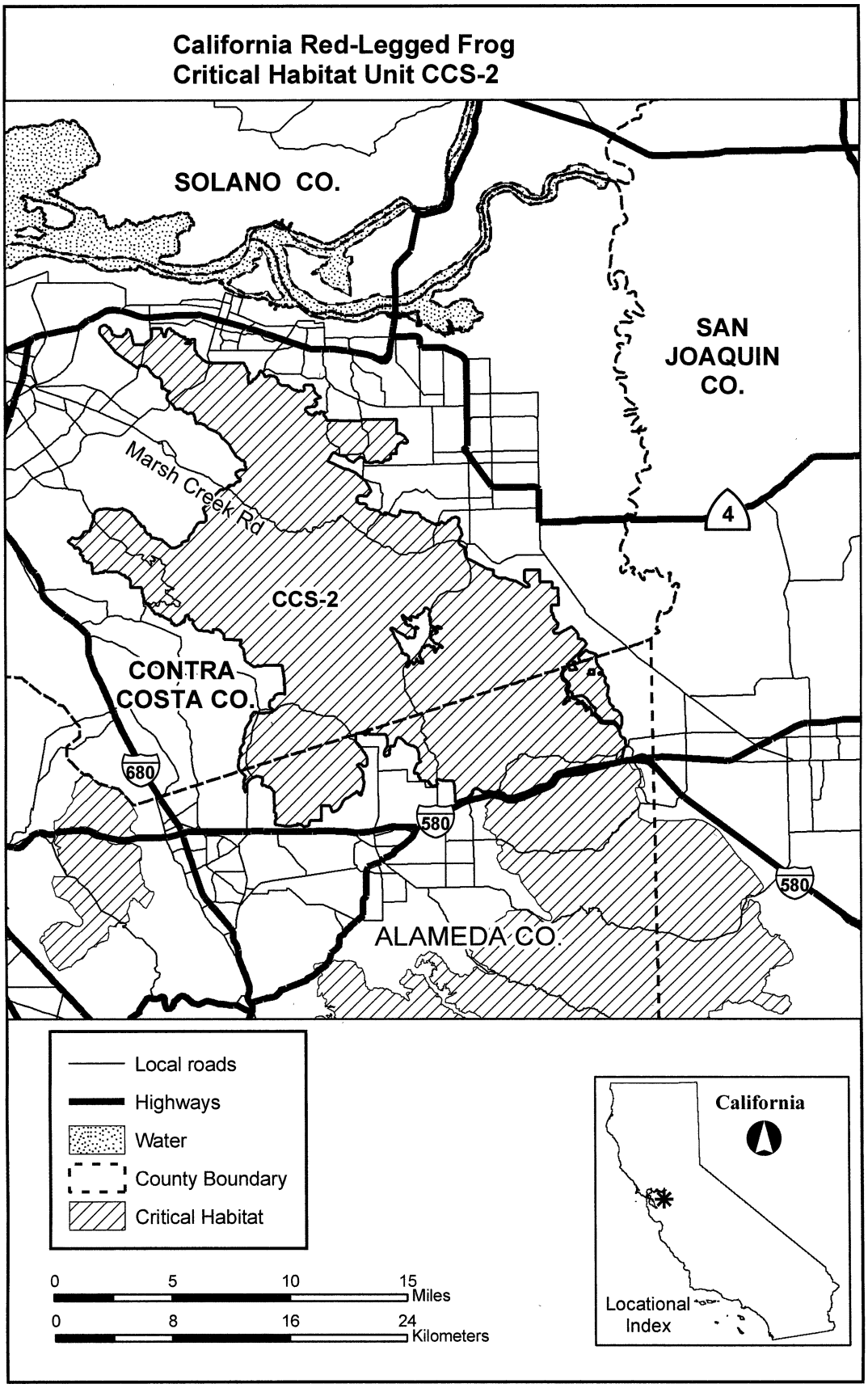
(iii) Also excluding land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 622742, 4184043; 622742, 4183973; 622831, 4183977; 623170, 4183986; 623154, 4184309; 622828, 4184300; 622828, 4184064; returning to 622742, 4184043.

(iv) Note: Map of Unit CCS–2 for the California red-legged frog follows:

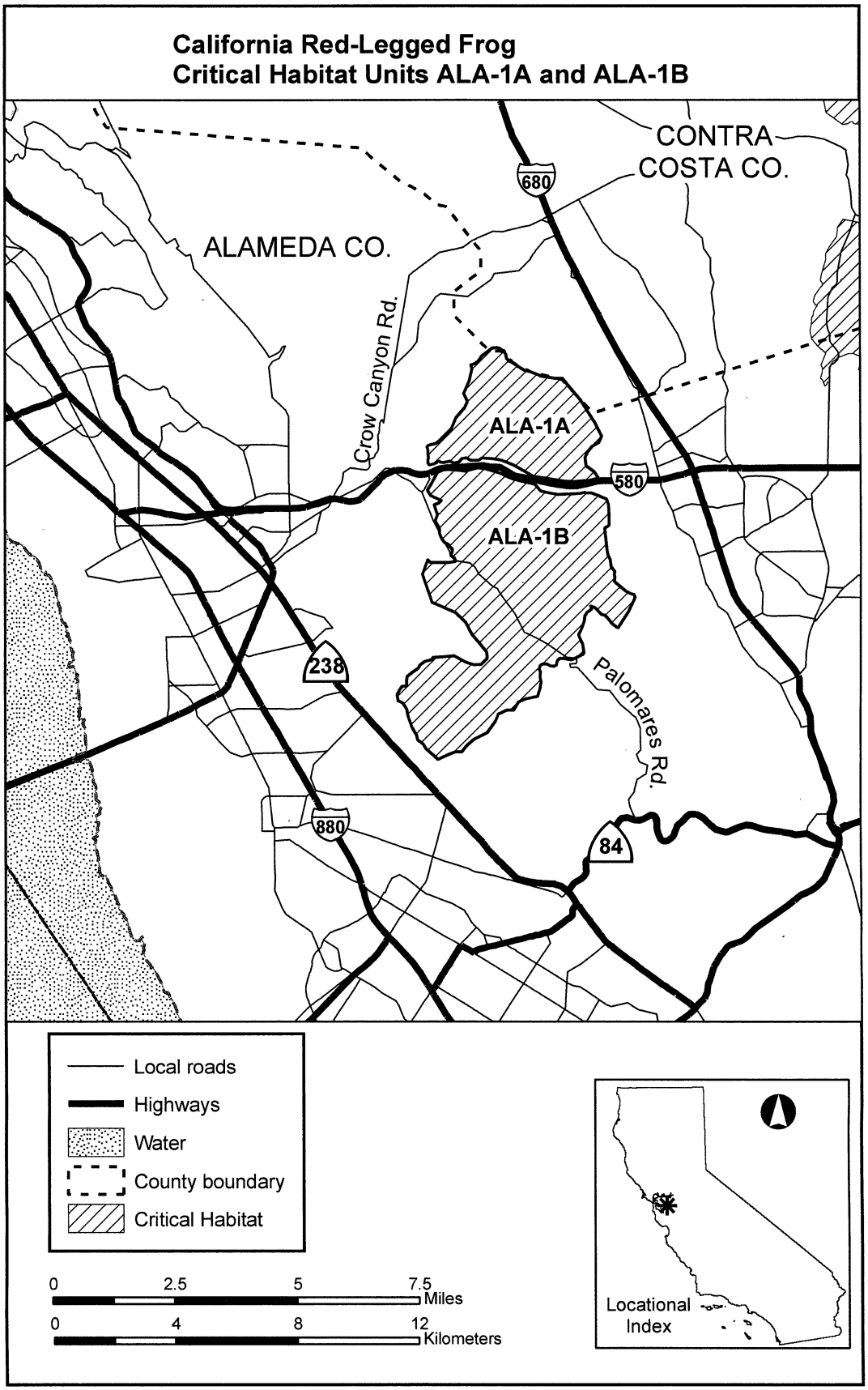
BILLING CODE 4310–55–P


California Red-Legged Frog
Critical Habitat Unit CCS-2
SOLANO CO.
SAN JOAQUIN CO.
Marsh Creek Rd
4
CCS-2
CONTRA COSTA CO.
680
580
580
ALAMEDA CO.
Local roads
Highways
Water
County Boundary
Critical Habitat
0 5 10 15 Miles
0 8 16 24 Kilometers
California
Locational Index

(26) Unit ALA–1A: Alameda and Contra Costa Counties, California. From USGS 1:24,000 scale quadrangles Hayward and Dublin.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 589322, 4176556; 589405, 4176494; 589496, 4176505; 589715, 4176405; 589795, 4176372; 589924, 4176319; 589935, 4176295; 590430, 4176229; 590671, 4176222; 590869, 4175981; 591266, 4175498; 591485, 4175149; 591719, 4174774; 591948, 4174305; 591853, 4174108; 591643, 4173987; 591504, 4173809; 591458, 4173709; 591408, 4173600; 591440, 4173339; 591694, 4173149; 591840, 4172933; 591446, 4172838; 591448, 4172833; 591386, 4172845; 591049, 4172821; 590725, 4172829; 590508, 4172864; 590397, 4172881; 590143, 4172921; 589920, 4172957; 589688, 4172994; 589480, 4173122; 589271, 4173235; 589054, 4173369; 588658, 4173519; 588382, 4173575; 588034, 4173607; 587897, 4173519; 587740, 4173523; 587616, 4173529; 587503, 4173596; 587361, 4173580; 587265, 4173454; 587091, 4173433; 586954, 4173495; 586890, 4173481; 586775, 4173449; 586633, 4173468; 586595, 4173494; 586544, 4173495; 586531, 4173449; 586424, 4173403; 586293, 4173369; 586242, 4173425; 586231, 4173527; 586250, 4173602; 586234, 4173722; 586242, 4173859; 586210, 4173945; 586247, 4174005; 586500, 4174070; 586630, 4174164; 587008, 4174540; 587167, 4174927; 587446, 4175244; 587548, 4175454; 587414, 4175727; 587586, 4176114; 587681, 4176546; 587654, 4176671; 587794, 4176717; 587912, 4176814; 588009, 4176960; 588338, 4177213; 588352, 4177224; 588496, 4177249; 588607, 4177210; 588649, 4177168; 588745, 4177130; 588793, 4177030; 588812, 4177013; 588805, 4176969; 588827, 4176886; 588916, 4176782; 589103, 4176705; 589243, 4176600; returning to 589322, 4176556.

(ii) Note: Map of Unit ALA–1, subunits A and B, for the California red-legged frog follows:



BILLING CODE 4310–55–C

(27) Unit ALA–1B: Alameda County, California. From USGS 1:24,000 scale quadrangles Hayward, Newark, Dublin and Niles.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 588321, 4173181; 588639, 4173092; 588861, 4172977; 589000, 4172905; 589237, 4172849; 589637, 4172754; 589752, 4172727; 589941, 4172509; 590141, 4172449; 590489, 4172393; 590576, 4172397; 590841, 4172409; 591221, 4172426; 591396, 4172458; 591396, 4172444; 591606, 4172445; 591815, 4172355; 592102, 4172231; 592172, 4172044; 592183, 4171619; 592189, 4171371; 592042, 4171279; 592062, 4171117; 592099, 4170813; 592133, 4170533; 592151, 4170380; 592223, 4170274; 592255, 4170057; 592266, 4169980; 592295, 4169974; 592315, 4169948; 592376, 4169868; 592356, 4169776; 592382, 4169675; 592366, 4169540; 592758, 4169210; 592904, 4169127; 593012, 4169114; 593047, 4169002; 592837, 4168532; 592484, 4168000; 592424, 4168028; 592288, 4168138; 592156, 4168294; 592026, 4168424; 591945, 4168430; 591889, 4168487; 591781, 4168611; 591703, 4168675; 591583, 4168715; 591600, 4168604; 591552, 4168555; 591445, 4168506; 591429, 4168449; 591391, 4168384; 591375, 4168229; 591314, 4168047; 591248, 4167890; 591180, 4167755; 591246, 4167599; 591302, 4167480; 591335, 4167293; 591364, 4167166; 591324, 4167114; 590985, 4166944; 590847, 4166939; 590711, 4166974; 590568, 4166990; 590483, 4166904; 590440, 4166758; 590366, 4166722; 590240, 4166746; 590127, 4166801; 590009, 4166810; 589907, 4166736; 589879, 4166634; 589923, 4166536; 589908, 4166444; 589913, 4166354; 589951, 4166210; 589928, 4166116; 589915, 4166032; 589925, 4166027; 589909, 4166010; 589855, 4165816; 589834, 4165738; 589459, 4165656; 589211, 4165548; 589046, 4165281; 588824, 4165281; 588533, 4165134; 588437, 4164907; 588163, 4164532; 587725, 4164310; 587497, 4164106; 587332, 4163903; 587131, 4163906; 586900, 4163802; 586555, 4163647; 586379, 4163802; 586163, 4163992; 586062, 4164145; 585877, 4164291; 585839, 4164456; 585687, 4164710; 585560, 4165078; 585530, 4165238; 585538, 4165286; 585468, 4165407; 585447, 4165416; 585395, 4165510; 585247, 4165573; 585230, 4165603; 585201, 4165782; 585288, 4165951; 585380, 4166061; 585520, 4166085; 585508, 4166256; 585528, 4166374; 585693, 4166513; 585897, 4166640; 585970, 4166766; 586129, 4166878; 586344, 4166952; 586414, 4167028; 586677, 4167043; 586862, 4167053; 587090, 4167066; 587452, 4166869; 587732, 4166767; 587973, 4166786; 588170, 4166970; 588165, 4167053; 588155, 4167200; 587897, 4167504; 587681, 4167758; 587459, 4168183; 587133, 4168507; 586761, 4168666; 586360, 4168839; 586232, 4169222; 586047, 4169778; 586218, 4170240; 586313, 4170161; 586517, 4170161; 586753, 4170161; 586909, 4170161; 587125, 4170201; 587109, 4170285; 586997, 4170377; 586969, 4170461; 587015, 4170485; 587041, 4170593; 586953, 4170669; 586905, 4170757; 586805, 4170789; 586701, 4170933; 586613, 4171125; 586609, 4171265; 586545, 4171385; 586492, 4171485; 586467, 4171532; 586545, 4171729; 586505, 4171849; 586438, 4172049; 586603, 4172104; 586673, 4172189; 586445, 4172297; 586317, 4172358; 586229, 4172533; 586325, 4172705; 586455, 4172938; 586556, 4173120; 586809, 4173225; 587041, 4173205; 587214, 4173191; 587468, 4173169; 587653, 4173213; 587883, 4173268; 588111, 4173240; returning to 588321, 4173181.

(ii) Note: Unit ALA–1B for California red-legged frog is depicted on the map in paragraph (26)(ii) of this entry.

(28) Unit ALA–2: Alameda, Santa Clara and San Joaquin Counties, California. From USGS 1:24,000 scale quadrangles Niles, La Costa Valley, Calaveras Reservoir, Altamont, Mendenhall Springs, Mt. Day, Midway, Cedar Mtn., Tracy, Lone Tree Creek and Eylar Mountain.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 612040, 4142329; 612012, 4142381; 611984, 4142405; 611882, 4142467; 611832, 4142504; 611809, 4142526; 611774, 4142582; 611748, 4142603; 611689, 4142634; 611670, 4142668; 611459, 4142899; 611431, 4142908; 611408, 4142925; 611399, 4142913; 611372, 4142893; 611333, 4142884; 611236, 4142876; 611197, 4142864; 611151, 4142845; 611117, 4142825; 611044, 4142749; 610999, 4142707; 610954, 4142645; 610789, 4142438; 610778, 4142407; 610772, 4142381; 610764, 4142289; 610751, 4142259; 610738, 4142232; 610676, 4142133; 610645, 4142100; 610614, 4142075; 610588, 4142061; 610495, 4142034; 610443, 4142001; 610415, 4141989; 610359, 4141976; 610315, 4141978; 610277, 4141986; 610249, 4141999; 610212, 4142024; 610194, 4142032; 610166, 4142036; 610143, 4142029; 610107, 4142024; 610088, 4142027; 610066, 4142044; 610012, 4142113; 609979, 4142131; 609906, 4142162; 609878, 4142170; 609851, 4142170; 609834, 4142162; 609816, 4142140; 609797, 4142102; 609764, 4142030; 609743, 4141951; 609564, 4141864; 609532, 4141860; 609511, 4141864; 609481, 4141877; 609375, 4141928; 609357, 4141939; 609329, 4141976; 609312, 4142038; 609313, 4142207; 609302, 4142219; 609263, 4142227; 609237, 4142227; 609150, 4142207; 609113, 4142203; 609083, 4142211; 609040, 4142248; 608996, 4142296; 608926, 4142330; 608884, 4142355; 608848, 4142388; 608839, 4142409; 608828, 4142448; 608815, 4142474; 608779, 4142518; 608741, 4142579; 608715, 4142602; 608679, 4142620; 608649, 4142630; 608623, 4142635; 608587, 4142636; 608539, 4142635; 608452, 4142617; 608411, 4142613; 608361, 4142613; 608335, 4142617; 608300, 4142611; 608291, 4142604; 608211, 4142548; 608081, 4142470; 608016, 4142438; 607970, 4142410; 607907, 4142380; 607886, 4142373; 607807, 4142371; 607725, 4142387; 607579, 4142433; 607382, 4142516; 607250, 4142594; 607194, 4142641; 607159, 4142684; 607141, 4142701; 607113, 4142716; 607081, 4142727; 606993, 4142750; 606927, 4142780; 606861, 4142828; 606795, 4142870; 606754, 4142879; 606679, 4142882; 606620, 4142862; 606586, 4142836; 606571, 4142831; 606543, 4142829; 606517, 4142832; 606416, 4142871; 606314, 4142929; 606271, 4142971; 606247, 4143001; 606224, 4143019; 606099, 4143048; 606057, 4143065; 605995, 4143103; 605930, 4143162; 605897, 4143185; 605791, 4143243; 605771, 4143263; 605760, 4143282; 605745, 4143336; 605727, 4143376; 605701, 4143423; 605554, 4143520; 605453, 4143528; 605345, 4143526; 605311, 4143528; 605254, 4143546; 605210, 4143551; 605147, 4143542; 605067, 4143500; 605051, 4143504; 605010, 4143495; 604993, 4143497; 604955, 4143493; 604908, 4143482; 604810, 4143466; 604716, 4143478; 604685, 4143494; 604646, 4143508; 604622, 4143530; 604620, 4143578; 604628, 4143633; 604624, 4143653; 604571, 4143770; 604557, 4143790; 604543, 4143800; 604487, 4143823; 604416, 4143859; 604397, 4143865; 604374, 4143877; 604356, 4143901; 604347, 4143932; 604348, 4143959; 604337, 4143986; 604318, 4143994; 604246, 4144037; 604220, 4144048; 604155, 4144066; 603989, 4144091; 603967, 4144092; 603917, 4144080; 603894, 4144078; 603854, 4144086; 603815, 4144103; 603737, 4144165; 603712, 4144172; 603668, 4144173; 603551, 4144150; 603514, 4144160; 603492, 4144191; 603469, 4144204; 603457, 4144259; 603442, 4144285; 603430, 4144299; 603416, 4144311;

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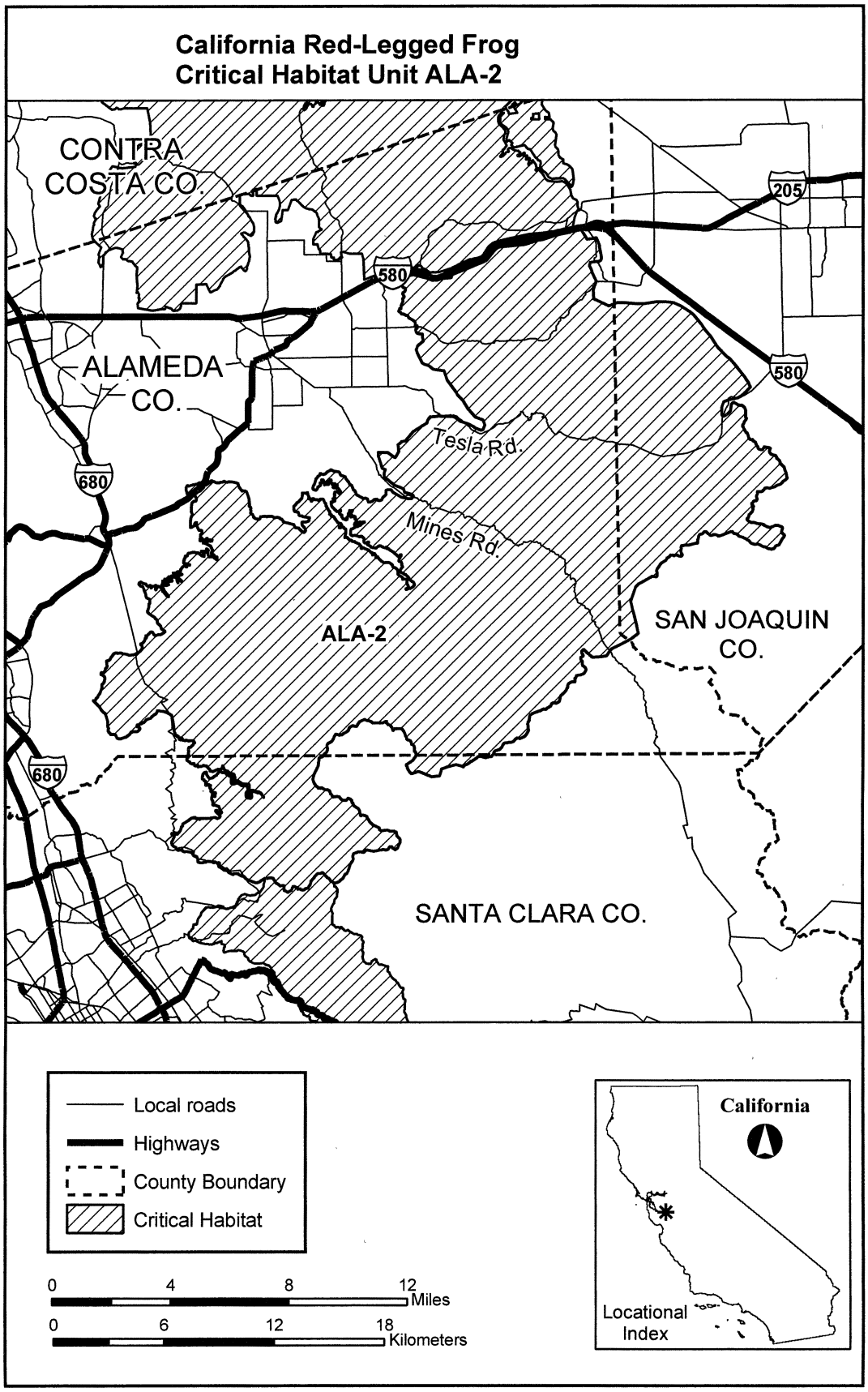
(ii) Note: Map of Unit ALA–2 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(29) Unit SNM–1: San Mateo County, California. From USGS 1:24,000 scale quadrangles Montara Mountain, Half Moon Bay, San Mateo and Woodside.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 547630, 4164045; 547744, 4163977; 547818, 4163983; 547922, 4163898; 547963, 4163840; 548003, 4163821; 548075, 4163840; 548154, 4163787; 548153, 4163732; 548244, 4163618; 548399, 4163493; 548584, 4163581; 548661, 4163682; 548727, 4163782; 548774, 4163801; 548824, 4163816; 548927, 4163833; 549022, 4163842; 549063, 4163786; 549162, 4163642; 549207, 4163592; 549267, 4163511; 549403, 4163337; 549445, 4163265; 549662, 4163019; 549773, 4162861; 549895, 4162605; 550021, 4162446; 550140, 4162327; 550354, 4162086; 550600, 4161758; 551013, 4161303; 551304, 4160988; 551542, 4160713; 551788, 4160393; 551799, 4160319; 551944, 4160134; 552084, 4160038; 552243, 4159834; 552407, 4159687; 552523, 4159489; 552664, 4159147; 552902, 4158657; 553256, 4158186; 553545, 4157930; 553632, 4157879; 553696, 4157816; 553751, 4157758; 553791, 4157705; 553834, 4157670; 553823, 4157626; 553845, 4157594; 553895, 4157578; 553929, 4157579; 553974, 4157519; 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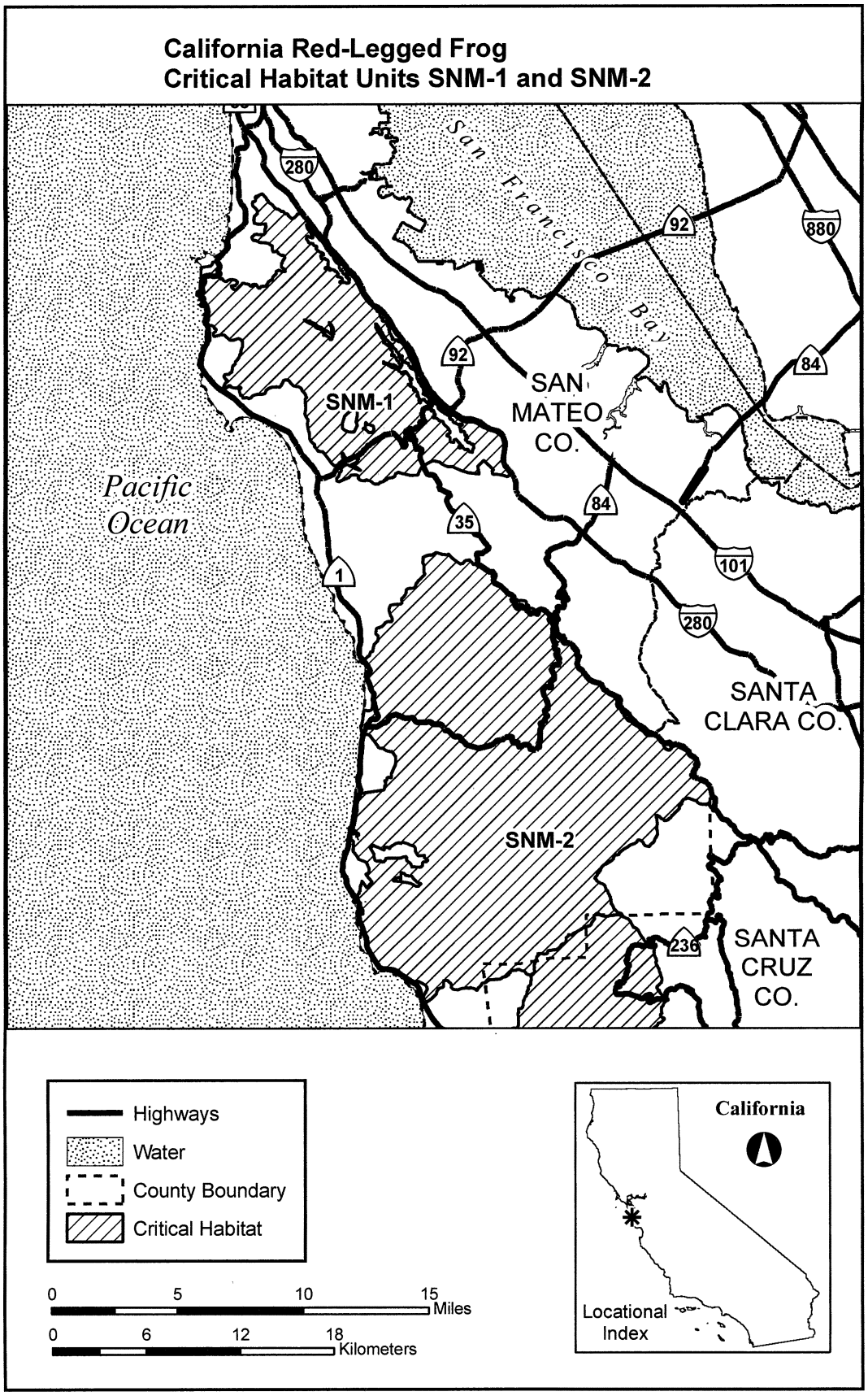
(ii) Note: Map of Units SNM–1 and SNM–2 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(30) Unit SNM–2: San Mateo and Santa Cruz Counties, California. From USGS 1:24,000 scale quadrangles Half Moon Bay, San Gregorio, Pigeon Point, Woodside, La Honda, Franklin Point, Mindego Hill and Big Basin.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 569250, 4119121; 569218, 4119108; 569201, 4119087; 569189, 4119056; 569178, 4119043; 569151, 4119022; 568939, 4118954; 568925, 4118963; 568881, 4118980; 568788, 4118975; 568762, 4118969; 568652, 4118929; 568488, 4118910; 568430, 4118898; 568345, 4118909; 568274, 4118928; 568169, 4118976; 568067, 4119030; 568043, 4119063; 568006, 4119097; 567965, 4119114; 567942, 4119114; 567911, 4119100; 567892, 4119087; 567860, 4119052; 567822, 4119027; 567778, 4119012; 567721, 4118962; 567704, 4118933; 567699, 4118905; 567699, 4118870; 567728, 4118838; 567739, 4118816; 567746, 4118785; 567733, 4118731; 567720, 4118702; 567703, 4118680; 567626, 4118595; 567590, 4118548; 567576, 4118522; 567555, 4118439; 567542, 4118410; 567499, 4118333; 567262, 4118281; 567036, 4118184; 566876, 4118079; 566576, 4117892; 566506, 4117862; 566431, 4117845; 566404, 4117833; 566388, 4117819; 566366, 4117774; 566344, 4117746; 566304, 4117724; 566252, 4117727; 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(ii) Excluding land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 555483, 4121713; 555388, 4121749; 555388, 4121618; 555388, 4121320; 555235, 4121428; 555083, 4121390; 554981, 4121263; 554873, 4121256; 554937, 4121205; 555140, 4121193; 555387, 4121177; 555730, 4121097; 556034, 4121027; 556340, 4120843; 556518, 4120862; 556658, 4120996; 556400, 4121122; 556169, 4121332; 556086, 4121497; 555847, 4121539; 555687, 4121566; 555584, 4121675; returning to 555483, 4121713.

(iii) Also excluding land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 556092, 4122063; 556218, 4122107; 556645, 4122069; 556727, 4122152; 556746, 4122317; 556816, 4122418; 556820, 4122419; 557032, 4122456; 557089, 4122533; 556999, 4122600; 556873, 4122695; 556861, 4122837; 556467, 4122821; 556372, 4122977; 556281, 4123125; 556289, 4123256; 556226, 4123422; 555946, 4123523; 555826, 4123567; 555754, 4123593; 555497, 4123687; 555358, 4123614; 555261, 4123663; 555032, 4123593; 554792, 4123440; 554724, 4123396; 554715, 4123368; 554691, 4123369; 554688, 4123334; 554690, 4123310; 554656, 4123262; 554638, 4123288; 554596, 4123352; 554359, 4123364; 554270, 4123180; 554091, 4123267; 553922, 4123348; 553751, 4123431; 553600, 4123504; 553588, 4123479; 553555, 4123410; 553375, 4123390; 553635, 4122920; 553644, 4122708; 553715, 4122548; 553839, 4122460; 553971, 4122487; 554062, 4122505; 554165, 4122407; 554289, 4122418; 554378, 4122545; 554447, 4122644; 554447, 4122645; 554619, 4122647; 554825, 4122649; 555095, 4122653; 555312, 4122656; 555578, 4122761; 555705, 4122761; 555756, 4122507; 556003, 4122317; returning to 556092, 4122063.

(iv) Note: Unit SNM–2 for California red-legged frog is depicted on the map in paragraph (29)(ii) of this entry.

(31) Unit STC–1: Santa Clara County, California. From USGS 1:24,000 scale quadrangles Calaveras Reservoir, San Jose East, Mt. Day, Lick Observatory, Morgan Hill, Isabel Valley and Mt. Sizer.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 612040, 4142329; 612053, 4142191; 612059, 4142174; 612108, 4142163; 612136, 4142137; 612173, 4142083; 612228, 4142014; 612237, 4141991; 612243, 4141962; 612237, 4141935; 612234, 4141846; 612223, 4141800; 612206, 4141761; 612198, 4141726; 612196, 4141684; 612203, 4141589; 612105, 4141470; 612088, 4141439; 612049, 4141338; 612041, 4141311; 612049, 4141279; 612049, 4141259; 612039, 4141239; 612012, 4141215; 612001, 4141198; 611960, 4141119; 611901, 4140979; 611893, 4140940; 611891, 4140910; 611898, 4140868; 611909, 4140842; 611920, 4140825; 611926, 4140815; 611960, 4140734; 611966, 4140710; 611969, 4140675; 611969, 4140650; 611960, 4140583; 611942, 4140491; 611944, 4140344; 611956, 4140251; 611944, 4140135; 611962, 4140096; 611973, 4140089; 611991, 4140087; 612052, 4140065; 612114, 4139997; 612139, 4139952; 612152, 4139946; 612174, 4139945; 612211, 4139951; 612236, 4139960; 612275, 4139957; 612312, 4139924; 612334, 4139915; 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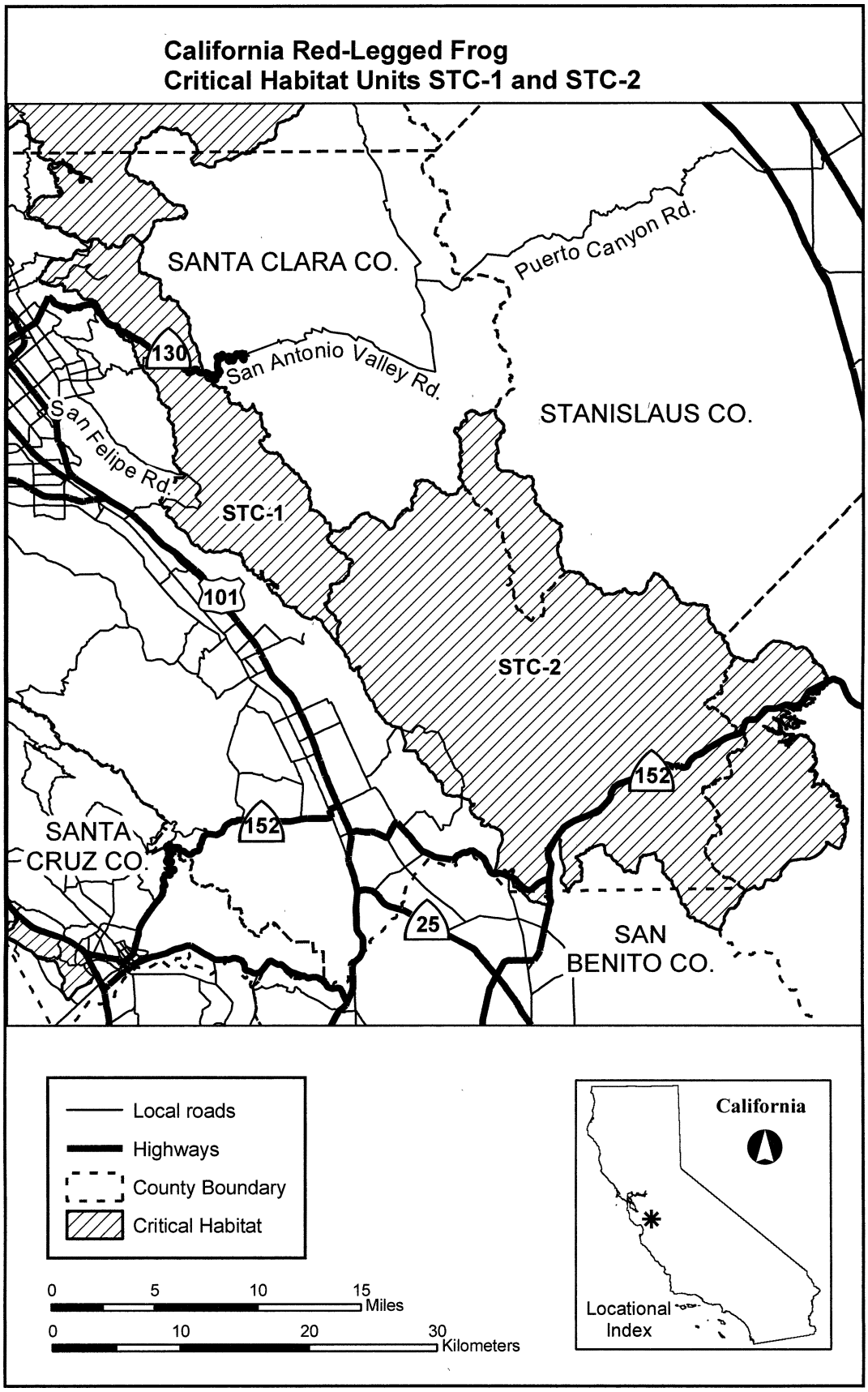
(ii) Note: Map of Units STC–1 and STC–2 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(32) Unit STC–2: Santa Clara, Merced, Stanislaus and San Benito Counties, California. From USGS 1:24,000 scale quadrangles Mt. Sizer, Gilroy, Mt. Stakes, Mississippi Creek, Gilroy Hot Springs, San Felipe, Mustang Peak, Pacheco Peak, Three Sisters, Crevision Peak, Pacheco Pass and Mariposa Peak.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 627388, 4110977; 627392, 4110984; 627437, 4111025; 627467, 4111066; 627490, 4111114; 627440, 4111168; 627408, 4111213; 627391, 4111261; 627394, 4111334; 627412, 4111375; 627480, 4111507; 627466, 4111558; 627408, 4111711; 627385, 4111753; 627404, 4111816; 627426, 4111910; 627422, 4112089; 627418, 4112146; 627470, 4112231; 627500, 4112273; 627509, 4112325; 627614, 4112518; 627631, 4112575; 627638, 4112652; 627621, 4112693; 627557, 4112743; 627504, 4112763; 627412, 4112781; 627358, 4112811; 627291, 4112961; 627268, 4113038; 627261, 4113097; 627201, 4113193; 627132, 4113270; 626973, 4113386; 626903, 4113417; 626843, 4113494; 626756, 4113564; 626719, 4113599; 626654, 4113678; 626623, 4113725; 626594, 4113828; 626578, 4113887; 626552, 4113929; 626505, 4113979; 626434, 4114068; 626423, 4114125; 626584, 4114193; 626690, 4114262; 626718, 4114338; 626784, 4114467; 626787, 4114534; 626765, 4114638; 626746, 4114691; 626726, 4114762; 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(ii) Note: Unit STC–2 for California red-legged frog is depicted on the map in paragraph (31)(ii) of this entry.

(33) Unit SCZ-1: Santa Cruz and San Mateo Counties, California. From USGS 1:24,000 scale quadrangles Franklin Point, Ano Nuevo, Big Basin, Davenport, Felton and Santa Cruz.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 563662, 4115064; 563667, 4115075; 563692, 4115094; 563902, 4115237; 563912, 4115269; 563915, 4115297; 563907, 4115324; 563879, 4115395; 563879, 4115420; 563893, 4115488; 563911, 4115516; 563931, 4115559; 563919, 4115586; 563896, 4115615; 563887, 4115633; 563883, 4115663; 563895, 4115727; 563930, 4115822; 563964, 4115960; 563970, 4115971; 563997, 4115986; 564026, 4116009; 564045, 4116048; 564046, 4116065; 564041, 4116095; 564051, 4116151; 564048, 4116217; 564057, 4116247; 564109, 4116317; 564134, 4116372; 564140, 4116453; 564374, 4116466; 564414, 4116466; 564468, 4116436; 564501, 4116430; 564544, 4116434; 564644, 4116464; 564654, 4116464; 564701, 4116455; 564719, 4116464; 564742, 4116504; 564744, 4116560; 564749, 4116592; 564765, 4116618; 564785, 4116639; 564806, 4116658; 564832, 4116671; 564870, 4116675; 564949, 4116674; 564995, 4116680; 565091, 4116711; 565139, 4116715; 565217, 4116711; 565262, 4116712; 565324, 4116734; 565388, 4116765; 565425, 4116788; 565473, 4116833; 565568, 4116963; 565602, 4117017; 565629, 4117053; 565671, 4117091; 565691, 4117101; 565764, 4117113; 565809, 4117126; 565842, 4117144; 565864, 4117160; 565894, 4117190; 565912, 4117224; 565921, 4117260; 565926, 4117424; 565922, 4117488; 565923, 4117518; 565927, 4117536; 565933, 4117544; 565994, 4117568; 566026, 4117590; 566051, 4117615; 566064, 4117634; 566077, 4117664; 566096, 4117726; 566110, 4117736; 566126, 4117746; 566252, 4117727; 566304, 4117724; 566344, 4117746; 566366, 4117774; 566388, 4117819; 566404, 4117833; 566431, 4117845; 566506, 4117862; 566576, 4117892; 566876, 4118079; 567036, 4118184; 567262, 4118281; 567499, 4118333; 567542, 4118410; 567555, 4118439; 567576, 4118522; 567590, 4118548; 567626, 4118595; 567703, 4118680; 567720, 4118702; 567733, 4118731; 567746, 4118785; 567739, 4118816; 567728, 4118838; 567699, 4118870; 567699, 4118905; 567704, 4118933; 567721, 4118962; 567778, 4119012; 567822, 4119027; 567860, 4119052; 567892, 4119087; 567911, 4119100; 567942, 4119114; 567965, 4119114; 568006, 4119097; 568043, 4119063; 568067, 4119030; 568169, 4118976; 568274, 4118928; 568345, 4118909; 568430, 4118898; 568488, 4118910; 568652, 4118929; 568762, 4118969; 568788, 4118975; 568881, 4118980; 568925, 4118963; 568939, 4118954; 569151, 4119022; 569178, 4119043; 569189, 4119056; 569201, 4119087; 569218, 4119108; 569250, 4119121; 569260, 4119124; 569342, 4119115; 569394, 4119096; 569422, 4119083; 569457, 4119060; 569476, 4119040; 569500, 4119006; 569550, 4118912;

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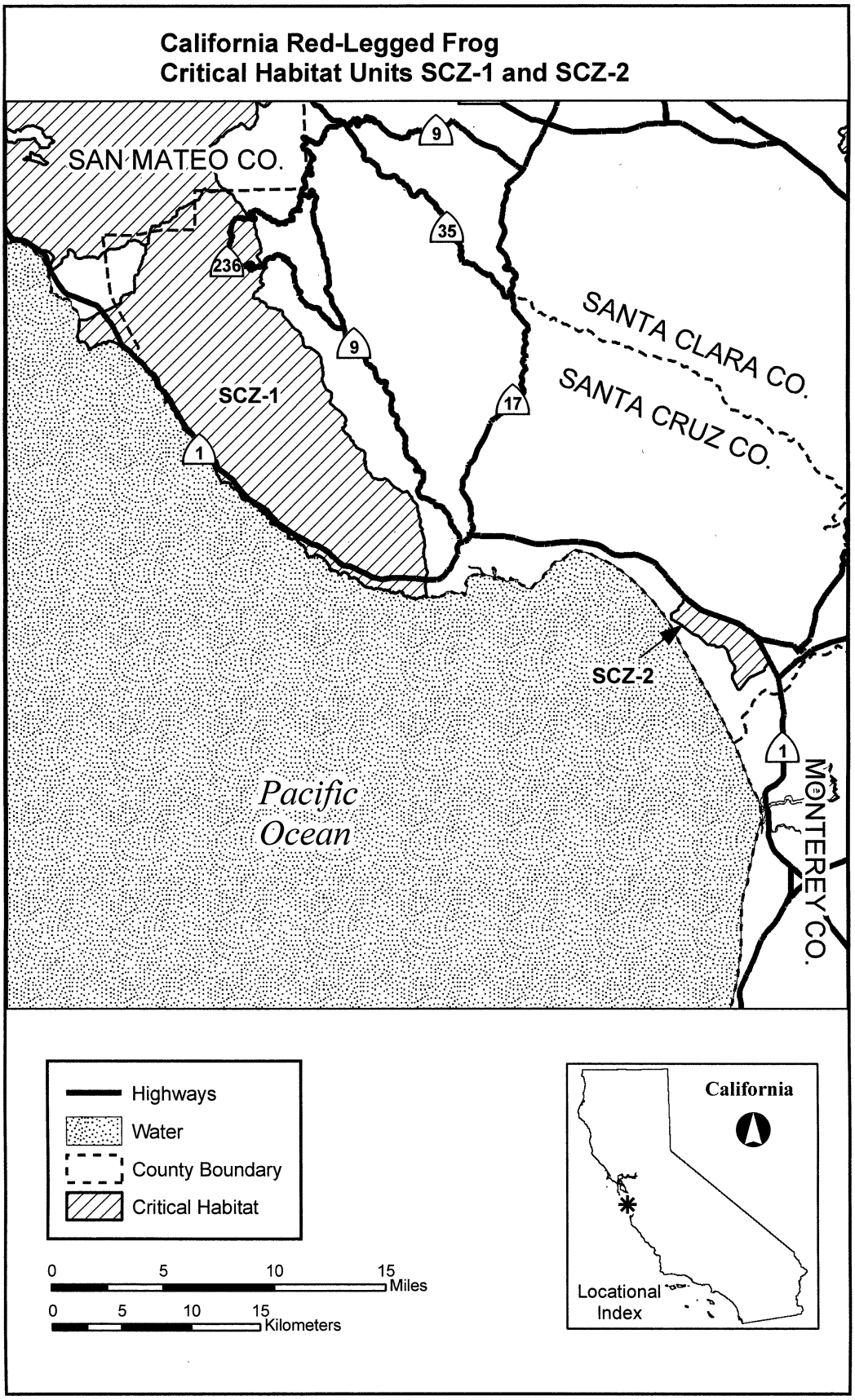
(ii) Note: Map of Units SCZ-1 and SCZ-2 for the California red-legged frog follows:

BILLING CODE 4310–55–P


California Red-Legged Frog
Critical Habitat Units SCZ-1 and SCZ-2
SAN MATEO CO.
SANTA CLARA CO.
SANTA CRUZ CO.
MONTEREY CO.
SCZ-1
SCZ-2
Pacific Ocean
9
35
236
17
1
Highways
Water
County Boundary
Critical Habitat
0 5 10 15 Miles
0 5 10 15 Kilometers
California
Locational Index

(34) Unit SCZ–2: Santa Cruz County, California. From USGS 1:24,000 scale quadrangle Watsonville West.

(i) Land bounded by the following UTM zone 10, NAD 1983 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; 602066, 4088891; 602064, 4088910; 602395, 4089247; 602360, 4089344; 602512, 4089607; 603336, 4088906; 604761, 4088286; 605972, 4087869; 606286, 4087760; 607611, 4086748; returning to 607874, 4086411.

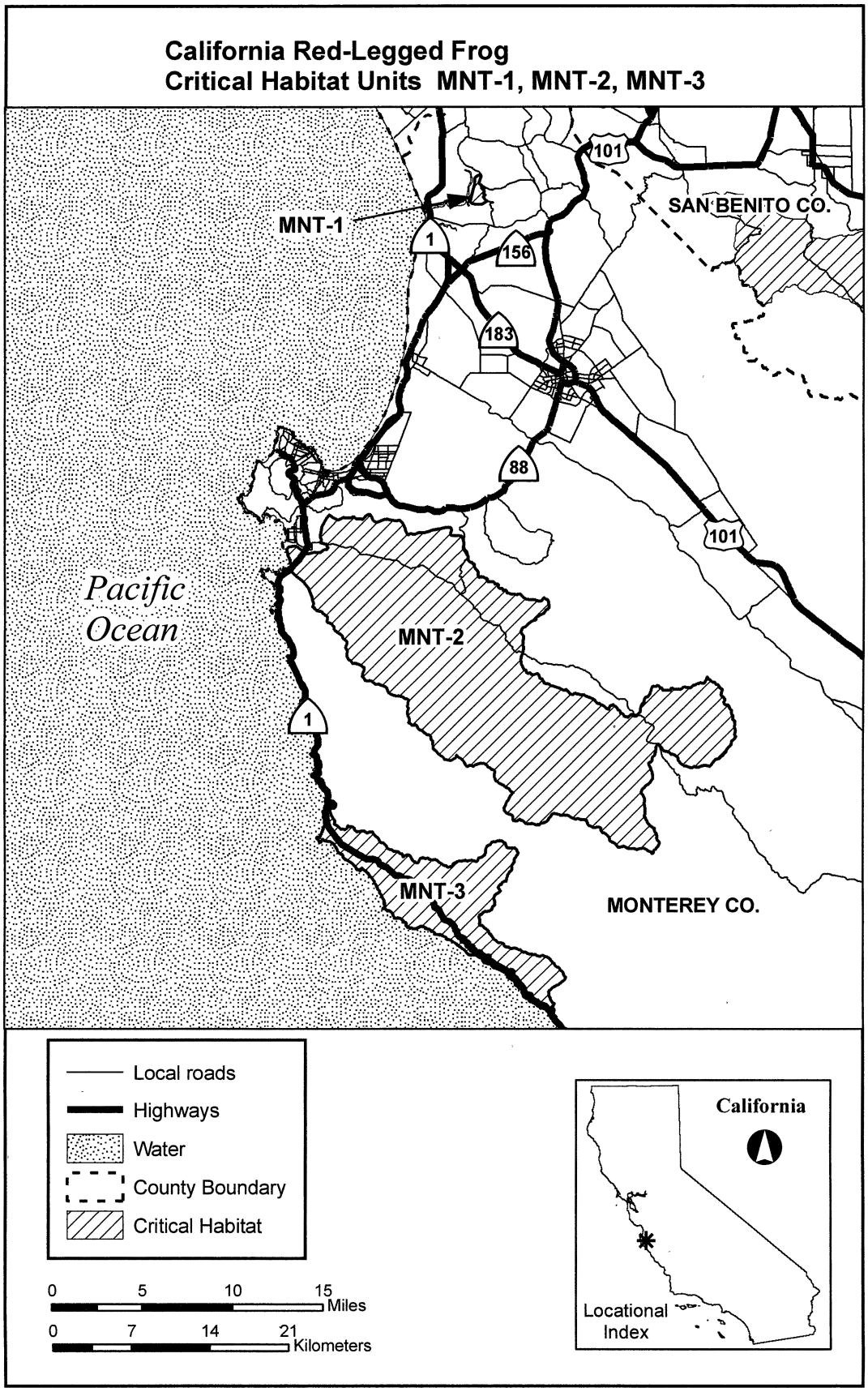
(ii) Note: Unit SCZ–2 for California red-legged frog is depicted on the map in paragraph (33)(ii) of this entry.

(35) Unit MNT–1: Monterey County, California. From USGS 1:24,000 scale quadrangle Prunedale.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 613002, 4076673; 613380, 4076378; 613224, 4076422; 613142, 4076444; 613147, 4076371; 613064, 4076368; 613366, 4076130; 613249, 4075818; 613416, 4075763; 613219, 4075623; 613496, 4075230; 613600, 4075201; 613180, 4074959; 612668, 4074930; 612571, 4074924; 612260, 4075009; 612080, 4075185; 612391, 4076351; 612425, 4076477; 612470, 4076645; 612485, 4076700; 612505, 4076777; 612513, 4077290; 612970, 4077581; 613035, 4077429; 612824, 4076812; 612824, 4076812; 612861, 4076783; 612985, 4076686; returning to 613002, 4076673.

(ii) Note: Map of Units MNT–1, MNT–2 and MNT–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(36) Unit MNT–2: Monterey County, California. From USGS 1:24,000 scale quadrangles Monterey, Soberanes Point, Seaside, Mt. Carmel, Big Sur, Spreckles, Carmel Valley, Ventana Cones, Rana Creek, Chews Ridge, Palo Escrito Peak and Sycamore Flat.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 603442, 4046923; 603634, 4046726; 603827, 4046640; 604251, 4046814; 604472, 4046893; 604714, 4046944; 605081, 4046887; 605564, 4046793; 605712, 4046847; 605926, 4046833; 606069, 4046665; 606157, 4046466; 606239, 4046344; 606345, 4046146; 606386, 4045962; 606452, 4045750; 606540, 4045608; 606636, 4045570; 606841, 4045661; 607122, 4045606; 607261, 4045631; 607468, 4045737; 607676, 4045744; 608030, 4045720; 608238, 4045798; 608444, 4045861; 608776, 4045973; 609015, 4046022; 609217, 4046057; 609446, 4046061; 609649, 4046127; 609863, 4046205; 610192, 4046221; 610407, 4046185; 610485, 4045965; 610423, 4045760; 610412, 4045576; 610466, 4045473; 611198, 4045459; 611386, 4045442; 611405, 4045405; 611541, 4045144; 611589, 4044840; 611561, 4044587; 611518, 4044364; 611959, 4043678; 611994, 4043566; 612003, 4043265; 612036, 4043254; 612081, 4043213; 612111, 4043175; 612175, 4043133; 612250, 4043111; 612308, 4043088; 612342, 4043055; 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(ii) Note: Unit MNT–2 for California red-legged frog is depicted on the map in paragraph (35)(ii) of this entry.

(37) Unit MNT–3: Monterey County, California. From USGS 1:24,000 scale quadrangles Point Sur, Big Sur, Pfeiffer Point, Ventana Cones and Partington Ridge.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 599824, 4020540; 599988, 4020265; 600160, 4020013; 600076, 4019744; 600415, 4019570; 600658, 4019298; 600921, 4019265; 600965, 4019257; 601003, 4019253; 601040, 4019257; 601097, 4019279; 601137, 4019304; 601189, 4019357; 601238, 4019547; 601271, 4019618; 601296, 4019581; 601335, 4019536; 601363, 4019514; 601395, 4019503; 601491, 4019514; 601602, 4019490; 601670, 4019479; 601773, 4019469; 601816, 4019444; 601850, 4019407; 601902, 4019246; 601984, 4019153; 602042, 4019102; 602060, 4019073; 602064, 4019048; 602079, 4019037; 602138, 4019078; 602174, 4019087; 602211, 4019087; 602354, 4019075; 602437, 4019093; 602479, 4019118; 602498, 4019123; 602702, 4019137; 602774, 4019110; 602825, 4019084; 602891, 4019014; 602948, 4018943; 602973, 4018931; 603012, 4018933; 603092, 4018962; 603177, 4019020; 603214, 4019037; 603245, 4019046; 603292, 4019038; 603338, 4019025; 603452, 4019019; 603482, 4019006; 603514, 4018966; 603547, 4018895; 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(ii) Note: Unit MNT–3 for California red-legged frog is depicted on the map in paragraph (35)(ii) of this entry.

(38) Unit SNB–1: San Benito County, California. From USGS 1:24,000 scale quadrangles San Juan Bautista, Hollister, Mt. Harlan, Tres Pinos and Pacines.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 635964, 4075794; 636040, 4075782; 636078, 4075785; 636333, 4075764; 636809, 4075566; 637368, 4075520; 637770, 4075623; 638436, 4075288; 639151, 4074594; 639167, 4074543; 639270, 4074217; 639547, 4073979; 640024, 4073740; 640877, 4073582; 641790, 4073621; 642345, 4072947; 642286, 4072173; 642297, 4072161; 642484, 4071954; 642762, 4071855; 643099, 4071915; 643635, 4071756; 644786, 4072133; 645168, 4072165; 645170, 4072129; 645182, 4072089; 645215, 4072050; 645231, 4072038; 645253, 4072031; 645297, 4072025; 645348, 4072041; 645628, 4072149; 645689, 4072165; 645738, 4072161; 645805, 4072141; 645874, 4072116; 645916, 4072108; 645934, 4072108; 645970, 4072109; 646014, 4072123; 646057, 4072140; 646240, 4072241; 646318, 4072292; 646402, 4072339; 646564, 4072409; 646635, 4072428; 646691, 4072455; 646718, 4072467; 646755, 4072466; 646811, 4072459; 646868, 4072460; 646951, 4072481; 646992, 4072508; 647085, 4072584; 647141, 4072655; 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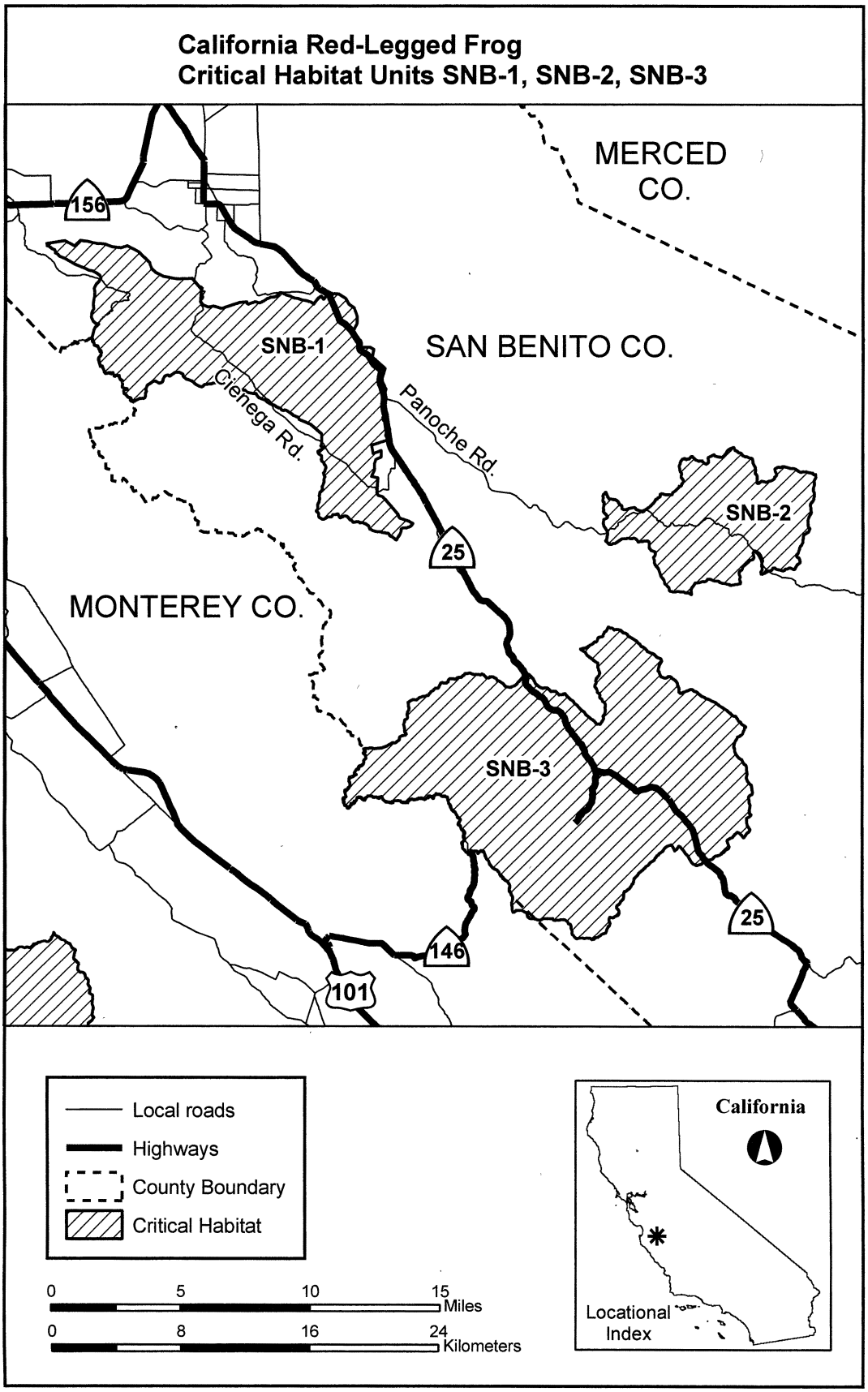
(ii) Note: Map of Units SNB–1, SNB–2 and SNB–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(39) Unit SNB–2: San Benito County, California. From USGS 1:24,000 scale quadrangles Cherry Peak, Panoche Pass, San Benito and Cerro Colorado.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 676029, 4062601; 676103, 4062588; 676170, 4062590; 676230, 4062578; 676284, 4062545; 676348, 4062523; 676419, 4062514; 676483, 4062490; 676510, 4062448; 676535, 4062261; 676554, 4062204; 676580, 4062161; 676608, 4062095; 676674, 4061978; 676692, 4061940; 676704, 4061886; 676711, 4061831; 676711, 4061770; 676685, 4061612; 676692, 4061546; 676716, 4061508; 676763, 4061472; 676790, 4061442; 676807, 4061377; 676820, 4061061; 676805, 4061024; 676804, 4060981; 676823, 4060947; 676862, 4060922; 676926, 4060927; 676974, 4060952; 677046, 4061020; 677078, 4061042; 677119, 4061055; 677250, 4061015; 677323, 4061004; 677447, 4061014; 677500, 4061042; 677562, 4061068; 677706, 4061098; 677774, 4061125; 677852, 4061182; 677903, 4061272; 677924, 4061316; 677993, 4061391; 678022, 4061438; 678026, 4061499; 678008, 4061572; 677950, 4061682; 677919, 4061760; 677918, 4061809; 677936, 4061839; 677972, 4061873; 678020, 4061903; 678073, 4061927; 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(ii) Note: Unit SNB–2 for California red-legged frog is depicted on the map in paragraph (38)(ii) of this entry.

(40) Unit SNB–3: San Benito and Monterey Counties, California. From USGS 1:24,000 scale quadrangles Mount Johnson, Bickmore Canyon, North Chalone Peak, San Benito and Topo Valley.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 667961, 4051790; 667989, 4051780; 668064, 4051808; 668106, 4051812; 668151, 4051810; 668286, 4051788; 668357, 4051764; 668405, 4051734; 668456, 4051670; 668494, 4051633; 668529, 4051611; 668583, 4051600; 668662, 4051574; 668730, 4051545; 668794, 4051501; 668881, 4051383; 668967, 4051348; 669289, 4051134; 669344, 4051081; 669395, 4051042; 669420, 4051000; 669464, 4050957; 669522, 4050928; 669575, 4050880; 669623, 4050812; 669684, 4050763; 669742, 4050747; 669838, 4050656; 669904, 4050611; 669945, 4050576; 669987, 4050518; 670039, 4050465; 670106, 4050415; 670169, 4050384; 670230, 4050362; 670363, 4050329; 670411, 4050295; 670573, 4050143; 670635, 4050110; 670714, 4050076; 670845, 4050005; 670887, 4049936; 670906, 4049872; 670752, 4049571; 670742, 4049485; 670717, 4049411; 670673, 4049309; 670676, 4049267; 670727, 4049215; 670761, 4049165; 670775, 4049123; 670829, 4049013; 670856, 4048941; 670884, 4048896; 670931, 4048872; 671016, 4048840; 671080, 4048830; 671193, 4048831; 671261, 4048860; 671345, 4048914; 671379, 4048922; 671408, 4048916; 671489, 4048868; 671574, 4048796; 671726, 4048701; 671785, 4048650; 671840, 4048582; 671892, 4048493; 671901, 4048453; 671891, 4048413; 671889, 4048376; 671905, 4048342; 671941, 4048286; 671965, 4048256; 671989, 4048203; 671980, 4048026; 671996, 4047960; 672031, 4047891; 672069, 4047870; 672119, 4047880; 672239, 4047934; 672582, 4048045; 672635, 4048070; 672695, 4048107; 672752, 4048122; 672795, 4048106; 672842, 4048073; 672900, 4048027; 672960, 4047995; 673018, 4047980; 673071, 4047959; 673123, 4047927; 673182, 4047877; 673288, 4047775; 673316, 4047755; 673355, 4047733; 673445, 4047669; 673565, 4047631; 673680, 4047555; 673857, 4047497; 674001, 4047410; 674242, 4047306; 674399, 4047188; 674466, 4047097; 674675, 4046971; 674809, 4046882; 674950, 4046800; 675044, 4046732; 675137, 4046648; 675267, 4046517; 675311, 4046480; 675352, 4046459; 675400, 4046447; 675447, 4046445; 675502, 4046420; 675545, 4046377; 675637, 4046238; 675673, 4046166; 675719, 4046125; 675794, 4046074; 675824, 4046017; 675874, 4045960; 676013, 4045846; 676119, 4045781; 676078, 4045736; 676058, 4045687; 676029, 4045554; 675999, 4045505; 675955, 4045444; 675891, 4045303; 675849, 4045258; 675802, 4045226; 675715, 4045188; 675633, 4045144; 675588, 4045108; 675560, 4045038; 675460, 4044844; 675403, 4044678; 675400, 4044629; 675386, 4044591; 675366, 4044549; 675371, 4044511; 675398, 4044468; 675429, 4044427; 675428, 4044352; 675420, 4044259; 675510, 4044072; 675565, 4044004;

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(ii) Note: Unit SNB–3 for California red-legged frog is depicted on the map in paragraph (38)(ii) of this entry.

(41) Unit SLO–1: San Louis Obispo, Kings and Kern Counties, California. From USGS 1:24,000 scale quadrangles Cholame Valley, Tent Hills, Cholame and Orchard Peak.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 752130, 3963634; 752177, 3963621; 752213, 3963622; 752268, 3963595; 752316, 3963561; 752394, 3963470; 752407, 3963405; 752351, 3963238; 752338, 3963176; 752337, 3963122; 752346, 3963062; 752383, 3963030; 752406, 3962984; 752407, 3962939; 752399, 3962920; 752376, 3962881; 752361, 3962832; 752393, 3962782; 752495, 3962683; 752531, 3962658;

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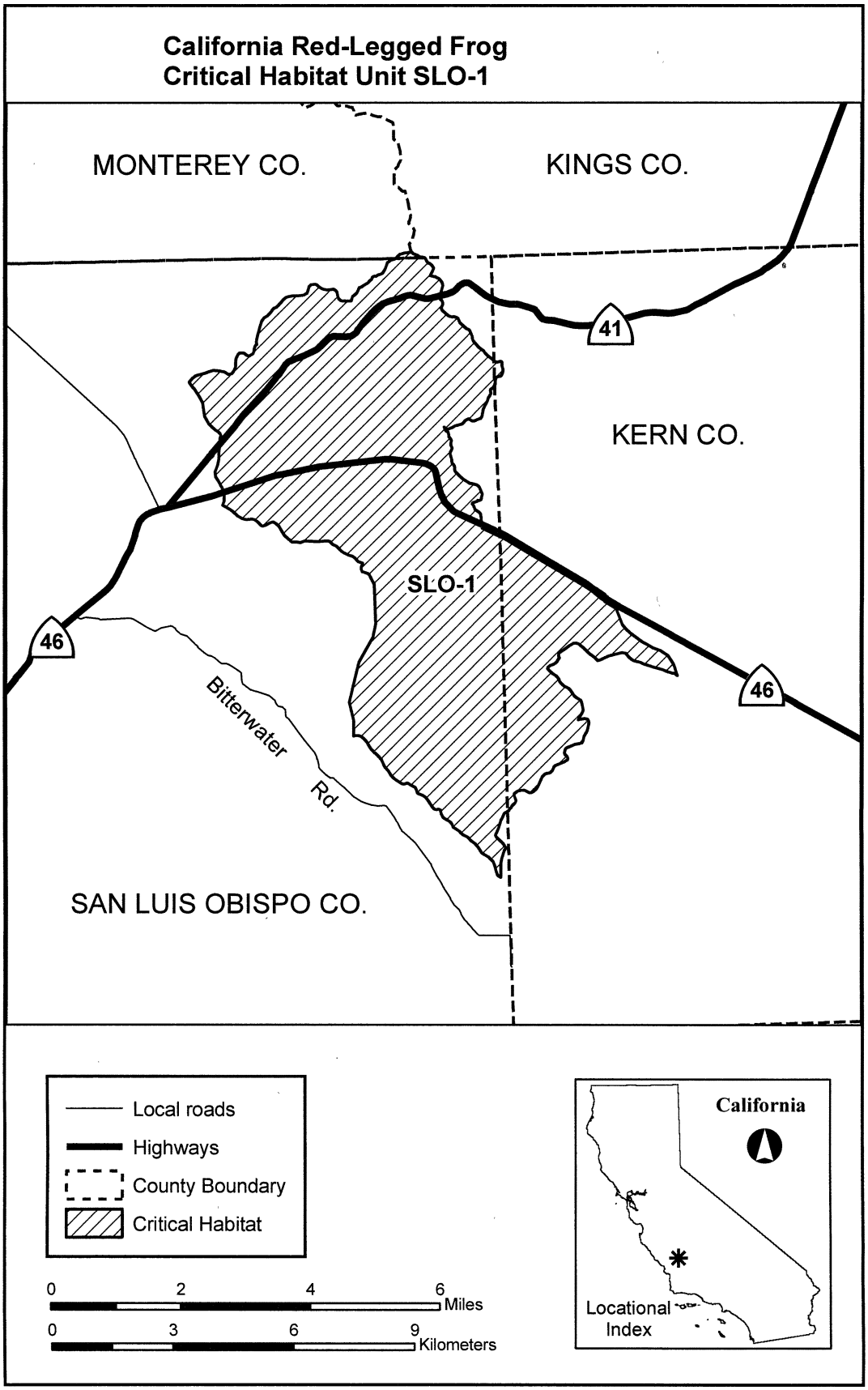
(ii) Note: Map of Unit SLO–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(42) Unit SLO–2: San Louis Obispo County, California. From USGS 1:24,000 scale quadrangles Burro Mountain, Piedras Blancas, San Simeon, Pico Creek, Pebblestone Shut-In, Cambria, Cypress Mountain and Cayucos.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 651539, 3958896; 651591, 3958841; 651612, 3958812; 651637, 3958772; 651667, 3958709; 651692, 3958675; 651720, 3958648; 651757, 3958646; 651841, 3958678; 651933, 3958690; 651998, 3958679; 652046, 3958666; 652160, 3958621; 652214, 3958606; 652272, 3958569; 652336, 3958493; 652445, 3958390; 652539, 3958332; 652607, 3958282; 652701, 3958245; 652760, 3958218; 652938, 3958074; 652966, 3958012; 652969, 3957980; 652995, 3957929; 653042, 3957880; 653074, 3957852; 653130, 3957815; 653250, 3957754; 653351, 3957686; 653398, 3957676; 653458, 3957675; 653500, 3957681; 653568, 3957701; 653602, 3957716; 653709, 3957752; 653766, 3957751; 653873, 3957708; 653947, 3957691; 654030, 3957665; 654081, 3957637; 654144, 3957613; 654200, 3957588; 654206, 3957576; 654284, 3957482; 654315, 3957466; 654350, 3957441; 654415, 3957412; 654648, 3957433; 654781, 3957470; 654824, 3957469; 654908, 3957446; 654982, 3957476; 655016, 3957507; 655117, 3957549; 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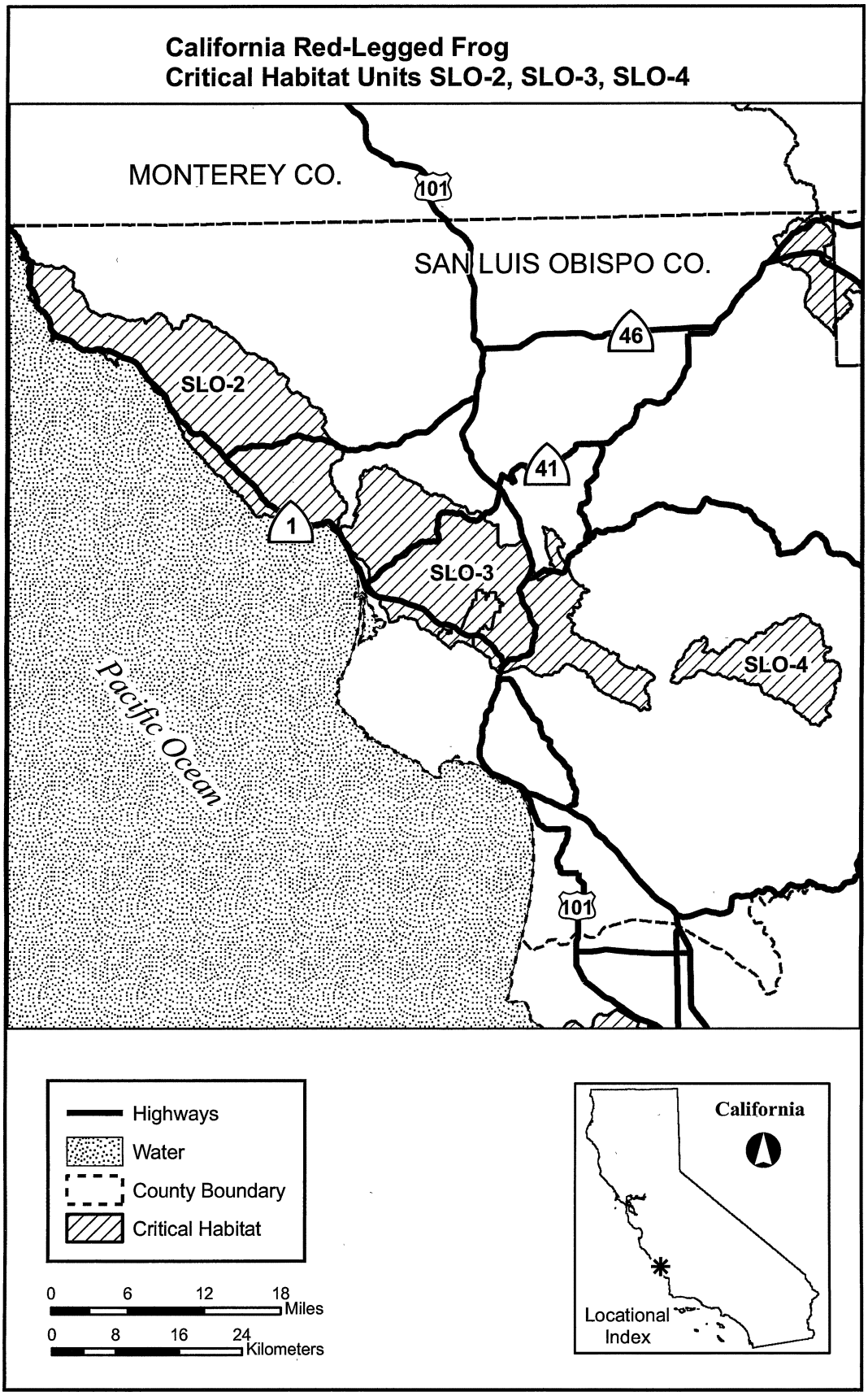
(ii) Note: Map of Units SLO–2, SLO–3 and SLO–4 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(43) Unit SLO–3: San Louis Obispo County, California. From USGS 1:24,000 scale quadrangles Cayucos, York Mountain, Morro Bay North, Morro Bay South, Atascadero, San Luis Obispo, Santa Margarita, Lopez Mtn., Arroyo Grande NE, Santa Margarita Lake and Tar Spring Ridge.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 708480, 3909559; 708447, 3909567; 708387, 3909576; 708312, 3909574; 708246, 3909580; 708197, 3909596; 708118, 3909653; 708048, 3909715; 707996, 3909754; 707944, 3909787; 707895, 3909804; 707796, 3909833; 707742, 3909868; 707653, 3909945; 707599, 3909970; 707550, 3909977; 707496, 3909992; 707432, 3910042; 707398, 3910075; 707364, 3910118; 707334, 3910127; 707285, 3910127; 707201, 3910150; 707121, 3910159; 707077, 3910160; 707014, 3910153; 706937, 3910150; 706886, 3910156; 706762, 3910206; 706634, 3910246; 706598, 3910249; 706549, 3910237; 706460, 3910205; 706363, 3910147; 706282, 3910081; 706202, 3909995; 706111, 3909878; 706034, 3909768; 705968, 3909666; 705919, 3909623; 705797, 3909551; 705681, 3909472; 705649, 3909415; 705631, 3909360; 705620, 3909292; 705587, 3909342; 705537, 3909395; 705473, 3909444; 705407, 3909487; 705338, 3909549; 705226, 3909635; 705033, 3909809; 704984, 3909843; 704937, 3909869; 704896, 3909902; 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(ii) Note: Unit SLO–3 for California red-legged frog is depicted on the map in paragraph (42)(ii) of this entry.

(44) Unit SLO–4: San Louis Obispo County, California. From USGS 1:24,000 scale quadrangles Santa Margarita Lake, Pozo Summit, Caldwell Mesa, La Panza and Los Machos Hills.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 749907, 3913538; 749944, 3913534; 750002, 3913543; 750022, 3913536; 750074, 3913485; 750128, 3913449; 750179, 3913436; 750280, 3913424; 750319, 3913415; 750370, 3913396; 750423, 3913362; 750490, 3913308; 750538, 3913295; 750587, 3913300; 750641, 3913287; 750712, 3913239; 750757, 3913199; 750794, 3913147; 750818, 3913095; 750835, 3913058; 750901, 3912817; 750922, 3912754; 750956, 3912712; 751000, 3912678; 751040, 3912654; 751060, 3912628; 751076, 3912568; 751101, 3912530; 751221, 3912434; 751273, 3912405; 751337, 3912394; 751387, 3912398; 751444, 3912377; 751549, 3912307; 751664, 3912250; 751707, 3912238; 751753, 3912230; 751802, 3912230; 751858, 3912236; 751924, 3912261; 751957, 3912259; 751996, 3912205; 752006, 3912132; 752021, 3912078; 752038, 3912020; 752062, 3911964; 752115, 3911891; 752188, 3911779; 752230, 3911722; 752308, 3911578;

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(ii) Note: Unit SLO–4 for California red-legged frog is depicted on the map in paragraph (42)(ii) of this entry.

(45) Unit STB–2: Santa Barbara County, California. From USGS 1:24,000 scale quadrangles Guadalupe, Casmalia, Surf, Santa Maria and Orcutt.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 727754, 3862948; 727969, 3862805; 728111, 3862721; 728239, 3862669; 728294, 3862654; 728751, 3862321; 728781, 3862308; 728819, 3862272; 728870, 3862245; 729005, 3862200; 729012, 3862198; 729234, 3862071; 729404, 3862017; 729132, 3861318; 730520, 3860854; 730596, 3861591; 730596, 3861595; 730699, 3861558; 731304, 3861313; 731467, 3861260; 731659, 3861185; 731895, 3861083; 732097, 3860989; 732221, 3860925; 732166, 3860903; 732254, 3860823; 732289, 3860843; 732494, 3860743; 732565, 3860659; 732618, 3860544; 732636, 3860398; 732653, 3860259; 732651, 3860145; 732777, 3859761; 732883, 3859161; 733046, 3858083; 733169, 3856993; 733124, 3857022; 733069, 3857088; 732958, 3857283; 732897, 3857362; 732849, 3857411; 732777, 3857459; 732719, 3857464; 732654, 3857462; 732591, 3857466; 732360, 3857533; 732186, 3857578; 732117, 3857632; 732036, 3857709; 731958, 3857796; 731886, 3857860; 731830, 3857930; 731770, 3858036; 731703, 3858136; 731642, 3858239; 731589, 3858312; 731515, 3858402; 731453, 3858485; 731190, 3858896; 731144, 3858960; 731031, 3859061; 730992, 3859104; 730943, 3859166; 730906, 3859203; 730876, 3859226; 730835, 3859211; 730793, 3859172; 730729, 3859126; 730556, 3859033; 730562, 3858941; 730572, 3858841; 730581, 3858774; 730594, 3858725; 730613, 3858694; 730667, 3858653; 730707, 3858628; 730754, 3858570; 730759, 3858491; 730770, 3858404; 730792, 3858322; 730861, 3858147; 730877, 3858043; 730876, 3857961; 730893, 3857886; 730916, 3857836; 730938, 3857800; 730944, 3857692; 730985, 3857610; 731044, 3857527; 731093, 3857479; 731168, 3857431; 731221, 3857368; 731264, 3857288; 731268, 3857183; 731237, 3857088; 731149, 3856958; 731100, 3856922; 731016, 3856912; 730901, 3856943; 730816, 3856974; 730743, 3857005; 730675, 3857015; 730611, 3857048; 730532, 3857094; 730389, 3857129; 730346, 3857144; 730258, 3857234; 730194, 3857340; 730135, 3857420; 730051, 3857453; 729967, 3857473; 729882, 3857458; 729819, 3857459; 729751, 3857487; 729578, 3857568; 729502, 3857640; 729443, 3857667; 729376, 3857635; 729348, 3857611; 729296, 3857555; 729263, 3857453; 729247, 3857354; 729253, 3857234; 729248, 3857114; 729213, 3857044; 729188, 3856981; 729174, 3856856; 729141, 3856851; 729098, 3856838; 729037, 3856840; 728936, 3856837; 728893, 3856830; 728863, 3856806; 728836, 3856768; 728803, 3856670; 728780, 3856635; 728751, 3856609; 728727, 3856595; 728705, 3856588; 728648, 3856582; 728561, 3856579; 728501, 3856557; 728380, 3856462; 728343, 3856443; 728283, 3856444; 728168, 3856502; 728064, 3856542; 727984, 3856530; 727899, 3856472; 727779, 3856420; 727659, 3856419; 727530, 3856446; 727417, 3856451; 727257, 3856438; 727160, 3856405; 726894, 3856248; 726731, 3856145; 726623, 3856065; 726560, 3856012; 726512, 3855967; 726474, 3855940; 726510, 3855877; 726613, 3855660; 726642, 3855527; 726656, 3855351; 726643, 3855237; 726630, 3855048; 726628, 3854996; 726635, 3854926; 726620, 3854849; 726632, 3854667; 726682, 3854484; 726698, 3854442; 726712, 3854375; 726796, 3854045; 726852, 3853917; 726947, 3853792; 727022, 3853705; 727098, 3853637; 727148, 3853578; 727192, 3853501; 727243, 3853349; 727290, 3853158; 727309, 3853006; 727317, 3852821; 727297, 3852471; 727280, 3852325; 727271, 3852162; 727280, 3851974; 727315, 3851779; 727374, 3851551; 727401, 3851462; 727447, 3851352; 727509, 3851215; 727548, 3851105; 727566, 3851021; 727568, 3850899; 727545, 3850789; 727534, 3850673; 727535, 3850561; 727553, 3850426; 727591, 3850319; 727639, 3850225; 727713, 3850172; 727821, 3850173; 727925, 3850192; 728023, 3850218; 728129, 3850265; 728200, 3850309; 728241, 3850338; 728279, 3850372; 728360, 3850406; 728486, 3850397; 728597, 3850341; 728695, 3850275; 728706, 3850261; 728833, 3850171; 728951, 3850143; 729096, 3850133; 729166, 3850121; 729173, 3850114; 729113, 3850110; 729046, 3850087; 729001, 3850063; 728978, 3850044; 728921, 3849983; 728893, 3849938;

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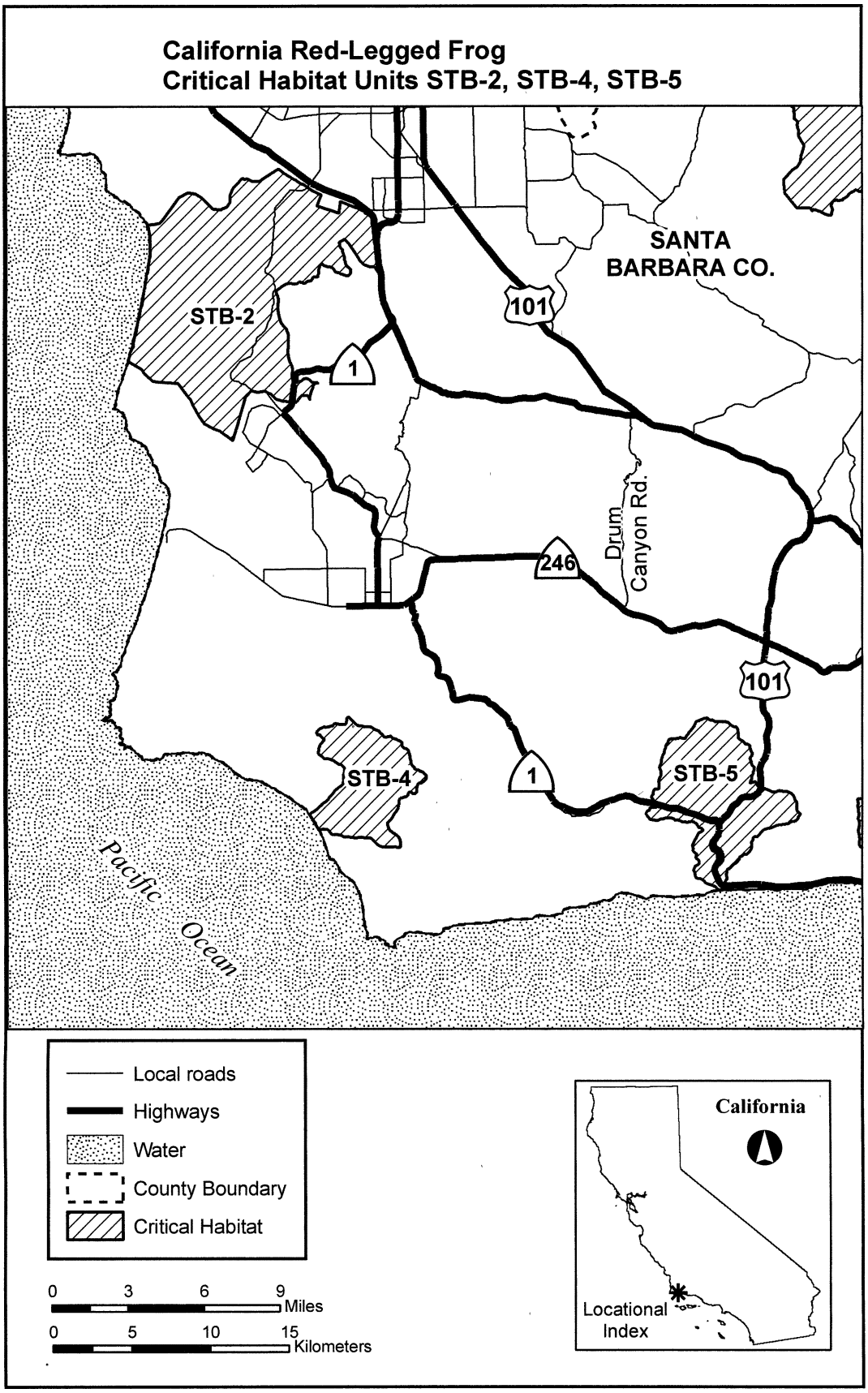
(ii) Note: Map of Units STB–2, STB–4 and STB–5 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(46) Unit STB–4: Santa Barbara County, California. From USGS 1:24,000 scale quadrangles Tranquillon Mountain. and Lompoc Hills.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 731548, 3828414; 731631, 3828340; 731725, 3828302; 731818, 3828284; 731970, 3828271; 732061, 3828237; 732151, 3828210; 732411, 3828217; 732482, 3828211; 732577, 3828173; 732753, 3828066; 732831, 3828031; 732925, 3827998; 732988, 3827969; 733060, 3827929; 733104, 3827883; 733144, 3827820; 733182, 3827777; 733281, 3827712; 733316, 3827677; 733338, 3827632; 733373, 3827572; 733460, 3827544; 733590, 3827560; 733679, 3827587; 733733, 3827609; 733774, 3827615; 733813, 3827600; 733880, 3827547; 733955, 3827496; 734142, 3827411; 734240, 3827371; 734329, 3827341; 734401, 3827309; 734461, 3827273; 734488, 3827244; 734507, 3827177; 734511, 3827084; 734524, 3827005; 734567, 3826941; 734659, 3826858; 734725, 3826825; 734755, 3826822; 734799, 3826810; 734838, 3826787; 734874, 3826750; 734904, 3826681; 734936, 3826576; 734963, 3826511; 734997, 3826441; 735013, 3826386; 735031, 3826308; 735035, 3826244; 735049, 3826177; 735077, 3826100; 735094, 3826035; 735100, 3825867; 735126, 3825805; 735166, 3825748; 735230, 3825699; 735276, 3825653; 735323, 3825580; 735374, 3825521; 735470, 3825486; 735581, 3825437; 735659, 3825398; 735728, 3825374; 735773, 3825355; 735839, 3825334; 735892, 3825308; 735950, 3825253; 736011, 3825180; 736056, 3825108; 736067, 3825041; 736068, 3824966; 736047, 3824895; 736007, 3824849; 735946, 3824795; 735860, 3824725; 735748, 3824677; 735579, 3824624; 735520, 3824562; 735490, 3824485; 735470, 3824349; 735467, 3824220; 735423, 3824057; 735383, 3823999; 735307, 3823965; 735198, 3823985; 735083, 3824069; 735011, 3824092; 734952, 3824057; 734911, 3823997; 734873, 3823877; 734837, 3823821; 734757, 3823788; 734439, 3823681; 734370, 3823633; 734340, 3823582; 734339, 3823439; 734322, 3823311; 734288, 3823155; 734241, 3823031; 734162, 3822886; 734038, 3822733; 733960, 3822628; 733908, 3822522; 733859, 3822409; 733804, 3822337; 733764, 3822290; 733700, 3822229; 733610, 3822158; 733592, 3822135; 733620, 3822078; 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(ii) Note: Unit STB–4 for California red-legged frog is depicted on the map in paragraph (45)(ii) of this entry.

(47) Unit STB–5: Santa Barbara County, California. From USGS 1:24,000 scale quadrangles Santa Rosa Hills, Solvang and Gaviota.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 754082, 3828621; 754118, 3828615; 754173, 3828633; 754220, 3828624; 754272, 3828592; 754314, 3828559; 754353, 3828538; 754484, 3828518; 754530, 3828525; 754594, 3828524; 754651, 3828519; 754785, 3828523; 754931, 3828518; 754993, 3828513; 755077, 3828500; 755167, 3828497; 755206, 3828493; 755239, 3828478; 755300, 3828431; 755354, 3828343; 755414, 3828288; 755514, 3828237; 755575, 3828212; 755697, 3828189; 755742, 3828169; 755779, 3828121; 755795, 3828053; 755823, 3827856; 755872, 3827690; 755879, 3827637; 755871, 3827582; 755856, 3827548; 755833, 3827517; 755821, 3827482; 755964, 3827406; 756196, 3827234; 756251, 3827151; 756293, 3827116; 756352, 3827096; 756432, 3827081; 756511, 3827052; 756572, 3827024; 756595, 3827008; 756607, 3826989; 756593, 3826908; 756601, 3826836; 756642, 3826704; 756664, 3826658; 756695, 3826612; 756716, 3826559; 756734, 3826502; 756743, 3826460; 756728, 3826416; 756673, 3826343; 756612, 3826255; 756595, 3826204; 756591, 3826150; 756657, 3826032;

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(ii) Note: Unit STB–5 for California red-legged frog is depicted on the map in paragraph (45)(ii) of this entry.

(48) Unit STB–1: Santa Barbara County, California. From USGS 1:24,000 scale quadrangles Tepusquet Canyon, Foxen Canyon, Manzanita Mountain and Zaca Lake.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 760562, 3876097; 760672, 3876042; 760732, 3876046; 760958, 3876093; 761005, 3876093; 761065, 3876061; 761121, 3876024; 761287, 3875929; 761374, 3875918; 761428, 3875907; 761484, 3875882; 761612, 3875809; 761676, 3875762; 761783, 3875634; 761834, 3875595; 761915, 3875540; 761948, 3875494; 761987, 3875390; 762011, 3875342; 762040, 3875323; 762129, 3875309; 762187, 3875292; 762248, 3875260; 762302, 3875217; 762326, 3875187; 762339, 3875178; 762395, 3875163; 762422, 3875139; 762448, 3875099; 762484, 3875033; 762518, 3874997; 762585, 3874946; 762670, 3874870; 762715, 3874853; 762778, 3874840; 762885, 3874807; 763079, 3874758; 763098, 3874824; 763121, 3874875; 763145, 3874919; 763191, 3874968; 763219, 3874988; 763269, 3875006; 763311, 3875038; 763330, 3875069; 763359, 3875103; 763377, 3875138; 763397, 3875213; 763422, 3875236; 763459, 3875242; 763490, 3875256; 763558, 3875303; 763680, 3875366; 763752, 3875412; 763812, 3875437; 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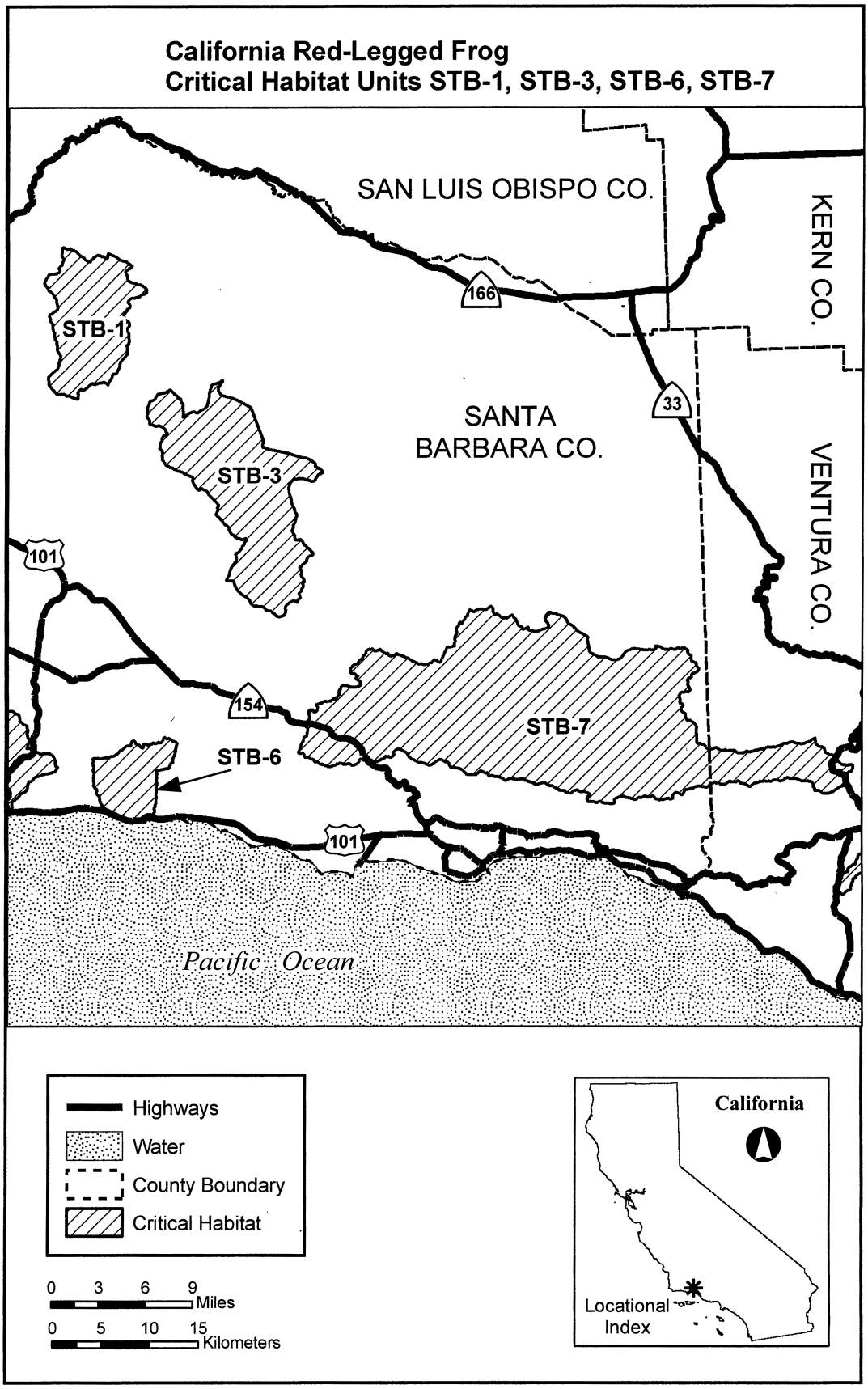
(ii) Note: Map of Units STB–1, STB–3, STB–6 and STB–7 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(49) Unit STB–3: Santa Barbara County, California. From USGS 1:24,000 scale quadrangle Zaca Lake.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 774235, 3859359; 774479, 3851425; 774262, 3851242; 774251, 3851257; 774198, 3851307; 774051, 3851377; 774038, 3851378; 774031, 3851422; 774017, 3851473; 773980, 3851518; 773936, 3851565; 773870, 3851671; 773815, 3851790; 773751, 3851901; 773718, 3851971; 773599, 3852194; 773575, 3852267; 773571, 3852336; 773603, 3852408; 773626, 3852476; 773624, 3852523; 773610, 3852585; 773430, 3852674; 773368, 3852695; 773221, 3852782; 773067, 3852855; 772873, 3852917; 772721, 3852969; 772673, 3853005; 772634, 3853088; 772605, 3853117; 772511, 3853148; 772353, 3853186; 772208, 3853230; 772049, 3853270; 771864, 3853365; 771793, 3853409; 771744, 3853433; 771691, 3853464; 771649, 3853511; 771580, 3853553; 771501, 3853580; 771424, 3853591; 771356, 3853605; 771307, 3853628; 771252, 3853669; 771165, 3853747; 771112, 3853780; 771048, 3853805; 770958, 3853832; 770897, 3853860; 770842, 3853900; 770806, 3853935; 770774, 3853996; 770741, 3854111; 770714, 3854160; 770638, 3854252; 770618, 3854291; 770601, 3854307; 770571, 3854315; 770546, 3854334; 770526, 3854367; 770519, 3854405; 770520, 3854451; 770527, 3854520; 770526, 3854601; 770519, 3854656; 770479, 3854798; 770484, 3854876; 770502, 3854973; 770509, 3855076; 770516, 3855119; 770517, 3855184; 770502, 3855237; 770479, 3855285; 770454, 3855324; 770354, 3855455; 770223, 3855580; 770208, 3855631; 770217, 3855682; 770277, 3855831; 770278, 3855888; 770264, 3855983; 770246, 3856060; 770248, 3856093; 770282, 3856158; 770318, 3856214; 770351, 3856251; 770418, 3856292; 770434, 3856314; 770455, 3856359; 770468, 3856407; 770478, 3856473; 770488, 3856593; 770486, 3856654; 770492, 3856708; 770510, 3856768; 770525, 3856800; 770547, 3856822; 770634, 3856858; 770677, 3856883; 770709, 3856911; 770783, 3856955; 770866, 3857023; 770963, 3857079; 770999, 3857112; 771011, 3857137; 771005, 3857165; 770983, 3857198; 770924, 3857263; 770875, 3857303; 770844, 3857348; 770841, 3857387; 770816, 3857469; 770756, 3857546; 770696, 3857635; 770591, 3857709; 770536, 3857783; 770432, 3857838; 770372, 3857882; 770322, 3857893; 770184, 3857908; 770111, 3857906; 770034, 3857903; 769904, 3857876; 769856, 3857860; 769786, 3857861; 769677, 3857934; 769580, 3857966; 769430, 3857996; 769358, 3858004; 769295, 3858019; 769225, 3858043; 769193, 3858078; 769188, 3858143; 769198, 3858244; 769217, 3858321; 769214, 3858418; 769191, 3858477; 769162, 3858527; 769125, 3858572; 769045, 3858647; 768994, 3858713; 768958, 3858776; 768930, 3858836; 768904, 3858904; 768882, 3858990; 768887, 3859001; 768927, 3859052; 768949, 3859087; 768984, 3859195; 768993, 3859243; 768990, 3859285; 768976, 3859353; 768975, 3859421; 768985, 3859494; 768986, 3859621; 768973, 3859733; 768950, 3859824; 768942, 3859847; 769055, 3859907; 769200, 3860391; 769683, 3860633; 769973, 3861140; 770820, 3861334; 771313, 3861655; 771312, 3861632; 771360, 3861567; 771440, 3861509; 771505, 3861448; 771552, 3861391; 771589, 3861343; 771622, 3861292; 771666, 3861192; 771705, 3861144; 771744, 3861123; 771787, 3861112; 771841, 3861091; 771902, 3861049; 771971, 3860990; 772023, 3860938; 772087, 3860856; 772132, 3860771; 772182, 3860704; 772251, 3860669; 772351, 3860636; 772385, 3860618; 772397, 3860587; 772391, 3860550; 772391, 3860486; 772403, 3860416; 772408, 3860366; 772427, 3860315; 772494, 3860258; 772550, 3860217; 772595, 3860173; 772617, 3860101; 772609, 3860021; 772584, 3859951; 772563, 3859905; 772560, 3859857; 772616, 3859692; 772630, 3859635; 772606, 3859516; 772617, 3859466; 772620, 3859399; 772664, 3859233; 772675, 3859142; 772660, 3859072; 772625, 3858987; 772604, 3858916; 772580, 3858816; 772587, 3858807; 772725, 3858890; 772892, 3859004; 772966, 3859040; 773042, 3859067; 773109, 3859099; 773152, 3859132; 773215, 3859198; 773245, 3859220; 773299, 3859241; 773393, 3859273; 773463, 3859303; 773540, 3859330; 773622, 3859353; 773678, 3859361; 773731, 3859358; 773762, 3859347; 773815, 3859322; 773901, 3859303; 774033, 3859249; 774108, 3859260; returning to 774235, 3859359.

(ii) Note: Unit STB–3 for California red-legged frog is depicted on the map in paragraph (48)(ii) of this entry.

(50) Unit STB–6: Santa Barbara County, California. From USGS 1:24,000 scale quadrangles Solvang, Gaviota, Santa Ynez and Tajiguas.

(i) Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 770986, 3825640; 771043, 3825632; 771105, 3825658; 771147, 3825680; 771193, 3825688; 771256, 3825673; 771349, 3825620; 771424, 3825566; 771613, 3825452; 771711, 3825403; 771789, 3825385; 771858, 3825355; 771983, 3825292; 772104, 3825203; 772092, 3825193; 772066, 3825149; 772038, 3825075; 772006, 3824926; 771995, 3824856; 771984, 3824806; 771961, 3824744; 771949, 3824690; 771949, 3824632; 771945, 3824561; 771920, 3824424; 771907, 3824379; 771903, 3824212; 771893, 3824187; 771832, 3824123; 771816, 3824079; 771797, 3823977; 771794, 3823949; 771803, 3823910; 771803, 3823865; 771756, 3823816; 771714, 3823789; 771692, 3823753; 771692, 3823706; 771673, 3823665; 771646, 3823619; 771632, 3823581; 771638, 3823456; 771635, 3823364; 771645, 3823303; 771652, 3823204; 771634, 3823189; 771599, 3823198; 771498, 3823201; 771455, 3823162; 771432, 3823131; 771416, 3823090; 771416, 3822976; 771402, 3822958; 771370, 3822930; 771341, 3822894; 771315, 3822829; 771304, 3822770; 771260, 3822634; 771241, 3822586; 771176, 3822557; 771136, 3822552; 771058, 3822573; 771008, 3822571; 770973, 3822555; 770933, 3822546; 770869, 3822540; 770824, 3822528; 770755, 3822501; 770610, 3822491; 770470, 3822451; 770389, 3822450; 770117, 3822424; 770036, 3822398; 769972, 3822361; 769943, 3822327; 769948, 3822289; 769999, 3822245; 770019, 3822177; 770022, 3822094; 770018, 3822041; 769955, 3821903; 769939, 3821829; 769951, 3821742; 769989, 3821659; 770006, 3821600; 770000, 3821561; 769988, 3821525; 769983, 3821498; 769983, 3821464; 769990, 3821378; 769995, 3821161; 770014, 3821021; 770018, 3820930; 770000, 3820847; 769967, 3820776; 769943, 3820714; 769923, 3820628; 769921, 3820572; 769954, 3820471; 769972, 3820390; 769971, 3820303; 769956, 3820217; 769953, 3820056; 769944, 3819984; 769908, 3819859; 769911, 3819814; 769941, 3819754; 769971, 3819719; 769993, 3819678; 769983, 3819612; 769914, 3819513; 769905, 3819442; 769917, 3819324; 769937, 3819047; 769923, 3819005; 769899, 3818977; 769869, 3818932; 769841, 3818859; 769841, 3818772; 769822, 3818655; 769789, 3818588; 769753, 3818532; 769729, 3818476; 769727, 3818402; 769744, 3818341; 769775, 3818167; 769776, 3818105; 769742, 3818036; 769684, 3817977; 769624, 3817885; 769563, 3817740; 769489, 3817584; 769461, 3817514; 769447, 3817438; 769432, 3817327; 769365, 3817343; 769292, 3817348; 769196, 3817362; 769179, 3817362; 769171, 3817354; 769148, 3817357; 769131, 3817356; 769024, 3817339; 768964, 3817318; 768855, 3817269; 768821, 3817242;

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(ii) Note: Unit STB–6 for California red-legged frog is depicted on the map in paragraph (48)(ii) of this entry.

(51) Unit STB–7: Santa Barbara and Ventura Counties, California. From USGS 1:24,000 scale quadrangles Lake Cachuma, San Marcos Pass, Big Pine Mtn., Little Pine Mtn., Santa Barbara, Madulce Peak, Hildreth Peak, Carpinteria, Old Man Mountain, White Ledge Peak, Wheeler Springs and Matilija.

(i) Land bounded by the following UTM zone 11, NAD 1983 coordinates (E, N): 254540, 3837294; 254540, 3837180; 254525, 3837141; 254497, 3837043; 254514, 3836991; 254543, 3836941; 254566, 3836882; 254586, 3836767; 254581, 3836738; 254592, 3836742; 254625, 3836744; 254695, 3836742; 254757, 3836764; 254782, 3836768; 254829, 3836762; 254873, 3836753; 254924, 3836730; 255068, 3836627; 255119, 3836601; 255161, 3836560; 255197, 3836514; 255324, 3836388; 255360, 3836359; 255409, 3836335; 255521, 3836301; 255568, 3836303; 255663, 3836325; 255702, 3836338; 255735, 3836335; 255814, 3836274; 255863, 3836260; 255910, 3836272; 255934, 3836300; 255971, 3836323; 256017, 3836346; 256070, 3836385; 256174, 3836436; 256235, 3836477; 256264, 3836509; 256296, 3836531; 256387, 3836541; 256438, 3836538; 256491, 3836507; 256596, 3836298; 256651, 3836220; 256686, 3836187; 256783, 3836123; 256795, 3836098; 256817, 3836018; 256886, 3835833; 256955, 3835623; 256986, 3835539; 257030, 3835459; 257062, 3835412; 257089, 3835374; 257115, 3835368; 257206, 3835369; 257253, 3835359; 257309, 3835319; 257387, 3835238; 257405, 3835202; 257435, 3835099; 257467, 3835040; 257498, 3835014; 257531, 3835040; 257578, 3835057; 257646, 3835077; 257725, 3835094; 257807, 3835121; 257882, 3835153; 257960, 3835201; 258010, 3835198; 258024, 3835173; 258020, 3835153; 257998, 3835113; 257996, 3835061; 258004, 3835015; 258029, 3834960; 258053, 3834932; 258100, 3834897; 258162, 3834873; 258237, 3834855; 258352, 3834814; 258401, 3834811; 258448, 3834797; 258486, 3834769; 258539, 3834749; 258628, 3834750; 258784, 3834742; 258861, 3834733; 258920, 3834739; 259033, 3834757; 259140, 3834782; 259186, 3834795; 259243, 3834821; 259271, 3834840; 259281, 3834851; 259345, 3834869; 259464, 3834910; 259507, 3834919;

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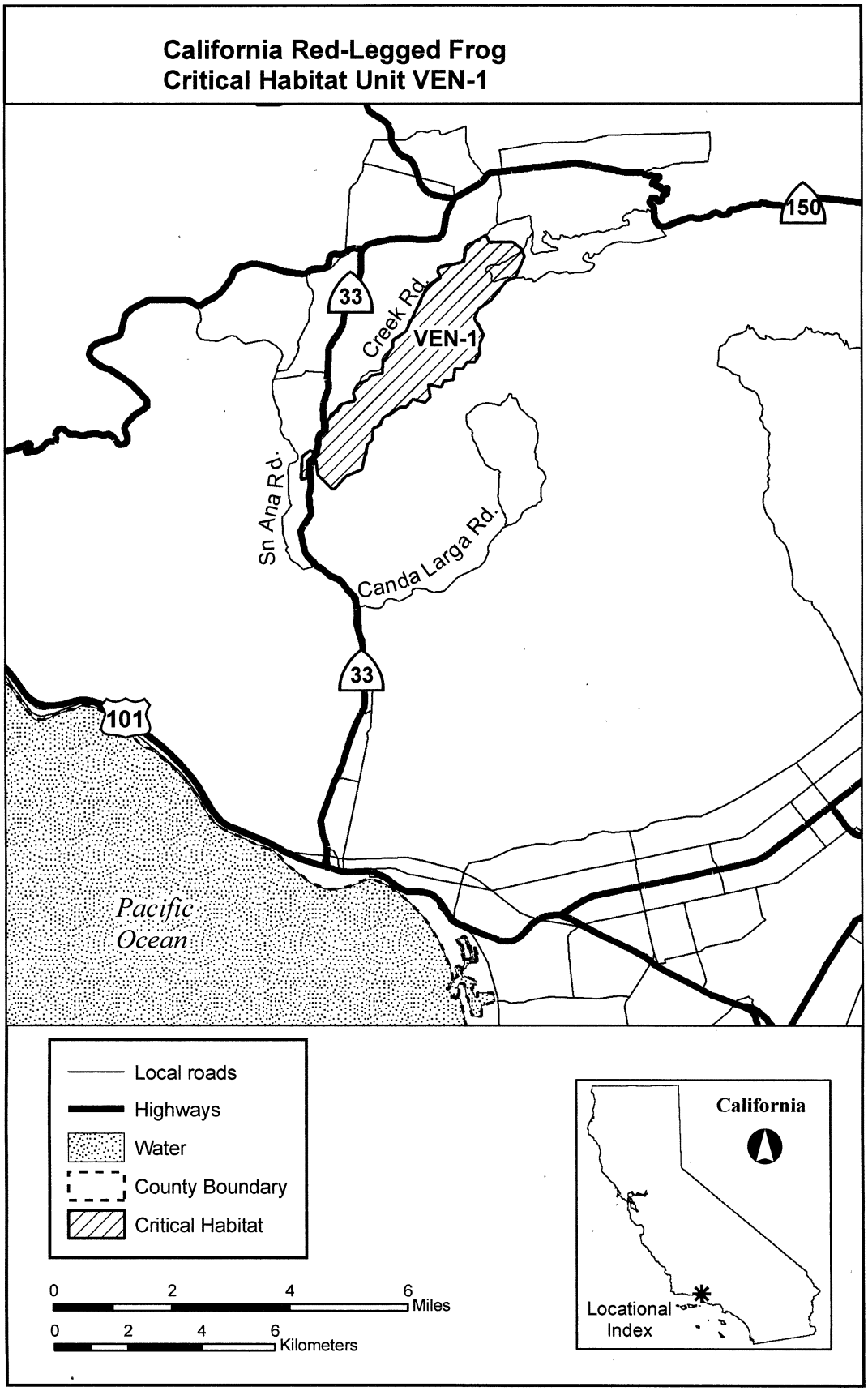
(ii) Note: Unit STB–7 for California red-legged frog is depicted on the map in paragraph (48)(ii) of this entry.

(52) Unit VEN–1: Ventura County, California. From USGS 1:24,000 scale quadrangles Matilija, Ventura and Ojai.

(i) Land bounded by the following UTM zone 11, NAD 1983 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; 291791, 3811384; 291749, 3811476; 291788, 3811585; 292474, 3811706; 292581, 3812127; 293112, 3812393; 293210, 3812196; 293840, 3812153; 294048, 3811973; 294135, 3811749; 293937, 3811354; 293856, 3811194; 293598, 3811103; 293155, 3810614; 292790, 3810406; 292674, 3810144; 292732, 3810030; 292894, 3809713; 292746, 3809412; 292765, 3809204; 292611, 3808985; returning to 292389, 3808989.

(ii) Note: Map of Unit VEN–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P

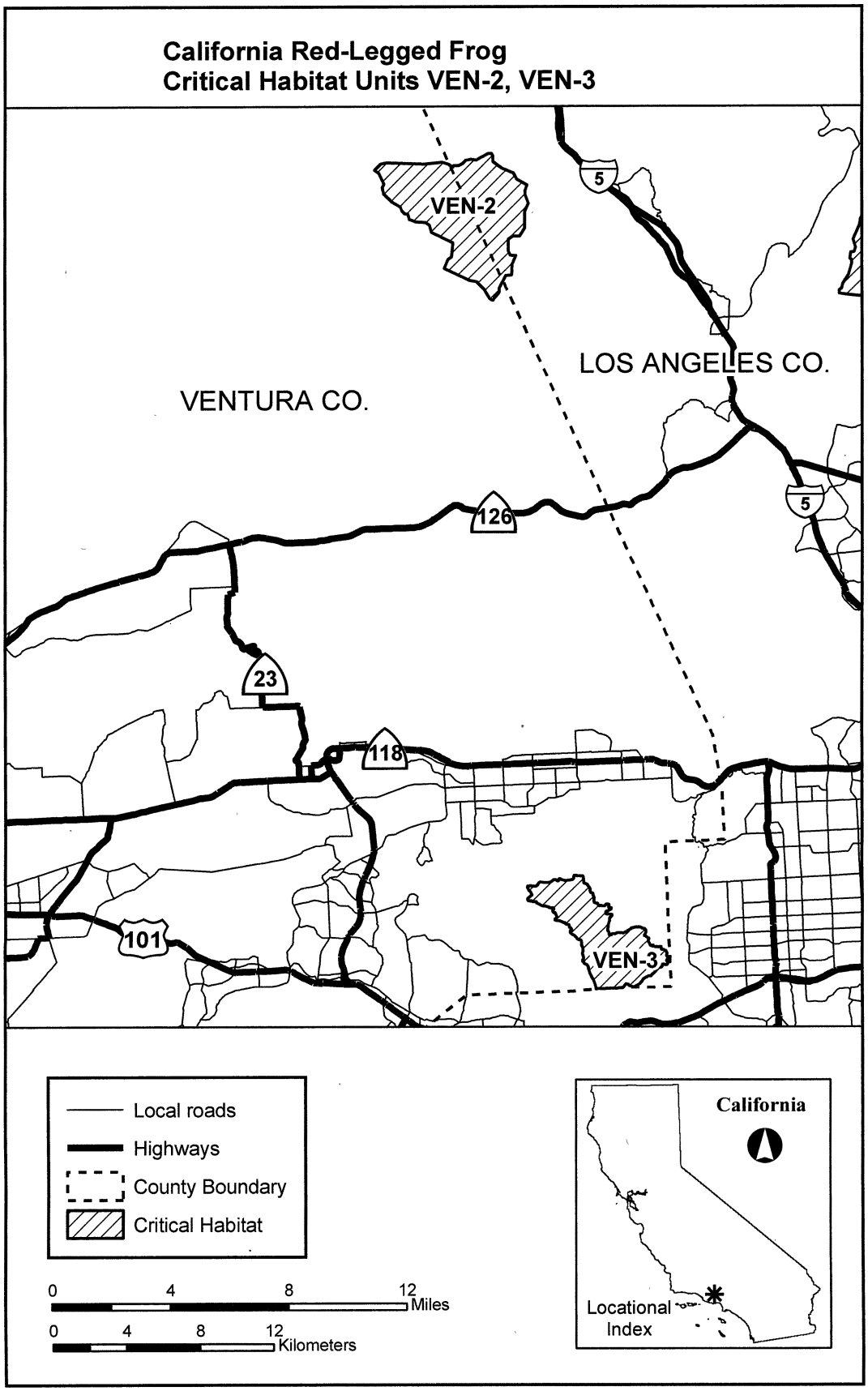

California Red-Legged Frog
Critical Habitat Unit VEN-1
150
33
Creek Rd.
VEN-1
Sn Ana Rd.
Canda Larga Rd.
33
101
Pacific
Ocean
Local roads
Highways
Water
County Boundary
Critical Habitat
0 2 4 6 Miles
0 2 4 6 Kilometers
California
Locational
Index

(53) Unit VEN–2: Ventura and Los Angeles Counties, California. From USGS 1:24,000 scale quadrangles Cobblestone Mountain and Whitaker Peak.

(i) Land bounded by the following UTM zone 11, NAD 1983 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; returning to 339291, 3827835.

(ii) Note: Map of Units VEN–2 and VEN–3 for the California red-legged frog follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(54) Unit VEN–3: Ventura County, California. From USGS 1:24,000 scale quadrangle Calabasas.

(i) Land bounded by the following UTM zone 11, NAD 1983 coordinates (E, N): 341537, 3788481; 341575, 3788472; 341620, 3788481; 341650, 3788480; 341736, 3788470; 341820, 3788450; 341842, 3788432; 341852, 3788404; 341858, 3788081; 341875, 3788053; 341901, 3788038; 342052, 3787988; 342080, 3787895; 342140, 3787797; 342158, 3787778; 342176, 3787747; 342189, 3787650; 342192, 3787595; 342210, 3787526; 342225, 3787509; 342305, 3787467; 342325, 3787446; 342313, 3787400; 342332, 3787372; 342350, 3787338; 342378, 3787252; 342383, 3787189; 342371, 3787150; 342367, 3787119; 342363, 3787057; 342363, 3787000; 342368, 3786971; 342383, 3786937; 342458, 3786917; 342492, 3786911; 342545, 3786875; 342584, 3786791; 342597, 3786770; 342634, 3786746; 342674, 3786745; 342707, 3786761; 342776, 3786736; 342832, 3786737; 342888, 3786729; 342928, 3786736; 343011, 3786794; 343046, 3786812; 343078, 3786819; 343110, 3786813; 343143, 3786802; 343162, 3786780; 343161, 3786758; 343148, 3786730; 343129, 3786675; 343130, 3786655; 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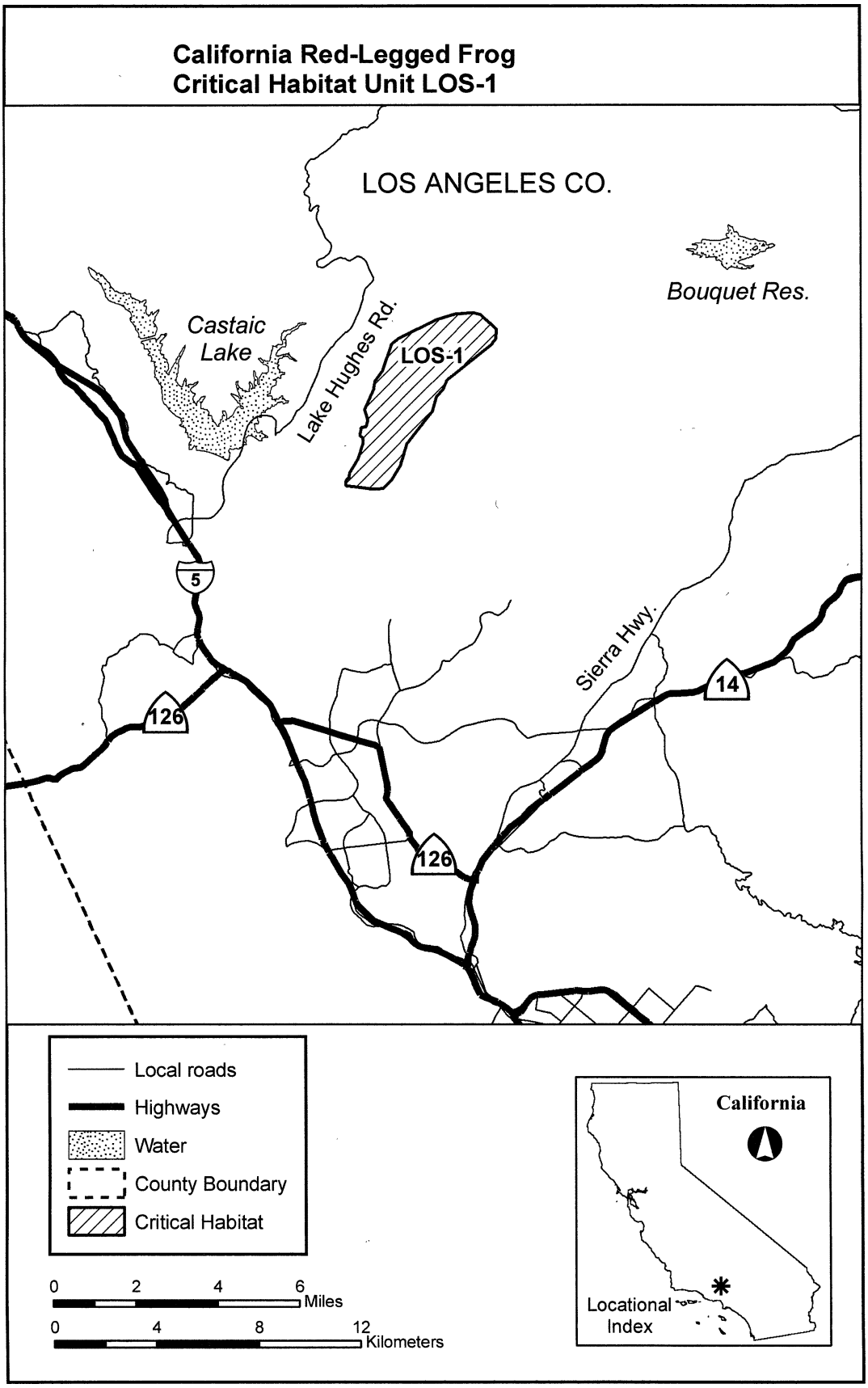
(ii) Note: Unit VEN–3 for California red-legged frog is depicted on the map in paragraph (53)(ii) of this entry.

(55) Unit LOS–1: Los Angeles County, California. From USGS 1:24,000 scale quadrangles Warm Springs Mountain and Green Valley.

(i) Land bounded by the following UTM zone 11, NAD 1983 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; returning to 359031, 3819227.

(ii) Note: Map of Unit LOS–1 for the California red-legged frog follows:

BILLING CODE 4310–55–P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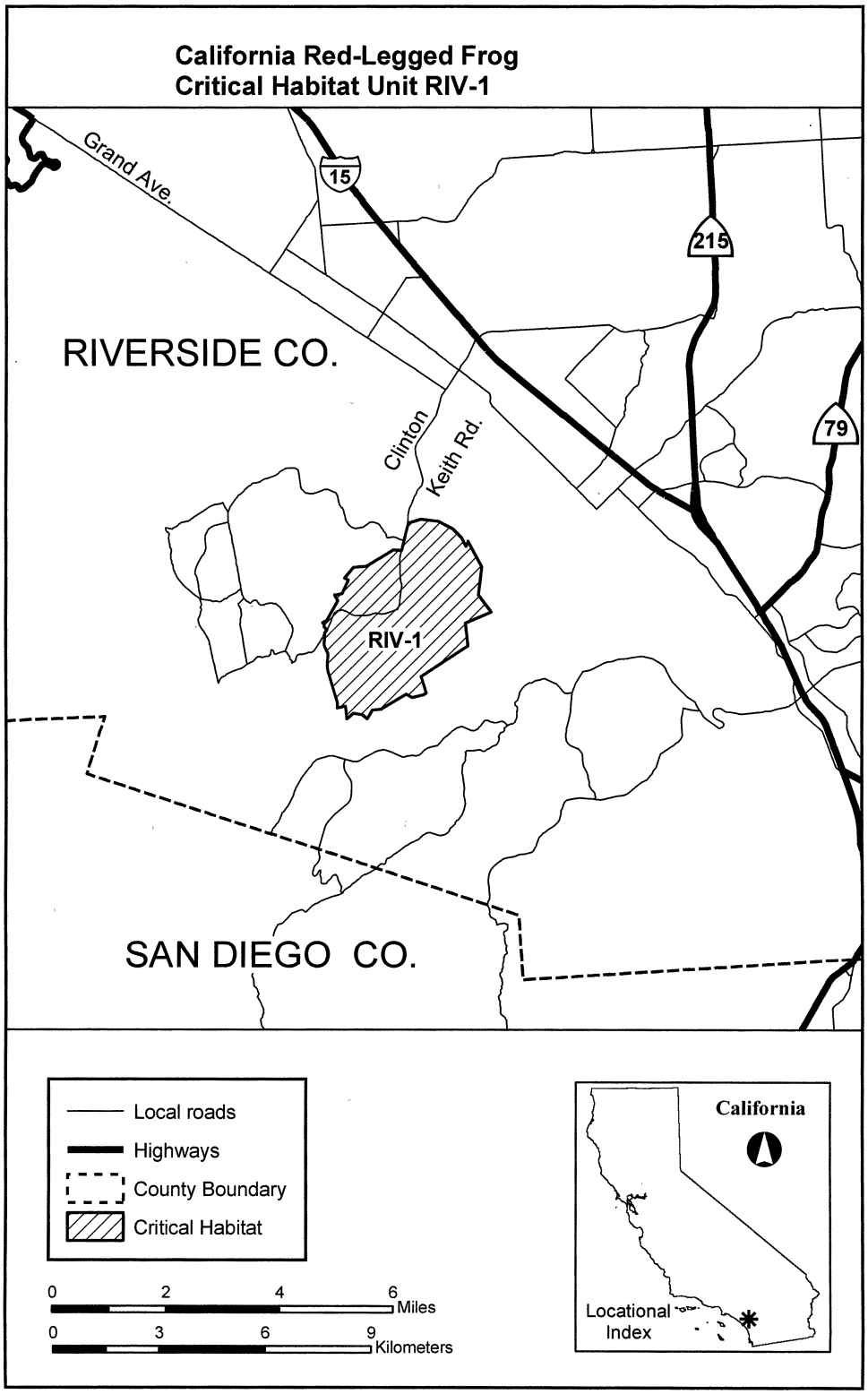
Critical Habitat Unit LOS-1
LOS ANGELES CO.
Bouquet Res.
Castaic Lake
Lake Hughes Rd.
LOS-1
5
126
126
Sierra Hwy.
14
Local roads
Highways
Water
County Boundary
Critical Habitat
0 2 4 6 Miles
0 4 8 12 Kilometers
California
Locational Index

(56) Unit RIV–1: Los Angeles County, California. From USGS 1:24,000 scale quadrangles Wildomar and Murrieta.

(i) Land bounded by the following UTM zone 11, NAD 1983 coordinates (E, N): 476554, 3711798; 476666, 3711551; 476734, 3711697; 477081, 3710963; 476941, 3710168; 477271, 3709664; 476532, 3709406; 476554, 3708751; 475193, 3707966; 475305, 3707490; 475262, 3707457; 475244, 3707454; 475083, 3707421; 474904, 3707384; 474751, 3707492; 474016, 3707117; 473766, 3707097; 473594, 3706853; 473454, 3706981; 473214, 3707036; 473016, 3706897; 473004, 3707255; 472774, 3707210; 472781, 3707327; 472779, 3707376; 472771, 3707419; 472569, 3708284; 472553, 3708377; 472570, 3708548; 472584, 3708692; 472587, 3708781; 472560, 3708857; 472496, 3709016; 472534, 3709342; 472606, 3709441; 472522, 3709529; 472538, 3709608; 472488, 3709647; 472623, 3709708; 472964, 3710235; 472880, 3710403; 473099, 3710442; 473289, 3710801; 473188, 3710862; 473457, 3711153; 473821, 3711159; 474611, 3711574; 474852, 3711551; 474975, 3712010; 475076, 3712302; 475445, 3712386; 475922, 3712307; 476319, 3712078; returning to 476554, 3711798.

(ii) Note: Map of Unit RIV–1 for the California red-legged frog follows:



* * * * *

Dated: August 28, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–20473 Filed 9–15–08; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
September 16, 2008

Part III

Federal Transit Administration

Early Scoping for an Alternatives Analysis of Proposed Transit Improvements in the Harbor Subdivision Transit Corridor of Los Angeles, CA; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notice for an Alternatives Analysis of Proposed Transit Improvements in the Harbor Subdivision Transit Corridor of Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Early Scoping Notice.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) issue this early scoping notice to advise other agencies and the public that they intend to explore, in the context of the Council on Environmental Quality's early scoping process, methods of improving transit capacity and service in the Harbor Subdivision Transit Corridor of Los Angeles, California. The early scoping process is part of a planning Alternatives Analysis (AA) required by Title 49 United States Code (U.S.C.) § 5309, that will lead to the selection of the alternatives that will be subject to the appropriate environmental process. Early scoping meetings have been planned and are announced below.

The Harbor Subdivision Transit Corridor is approximately 35 miles in length and includes; 26.36 miles of the Harbor Subdivision that is owned by LACMTA (BNSF Railway currently has some freight operations on the ROW), approximately 2.5 miles to the north of the LACMTA-owned portion right-of-way that would provide the connection to downtown Los Angeles, and approximately 3.5–6 miles south of the LACMTA-owned portion of the right-of-way that would provide a possible connection to the Metro Harbor Transitway, Metro Blue Line, Port of Los Angeles Waterfront Red Car Line or any other destinations or transit facilities that would attract potential ridership.

The Metro-owned Harbor Subdivision Line extends 26.36 miles from Harbor Junction at the north, near downtown Los Angeles just east of the intersection of Washington Boulevard and Santa Fe Avenue and Watson Yard at the south, in Wilmington just east of Pacific Coast Highway (U.S. Highway 1) and Alameda Street. The Harbor Subdivision connects or runs adjacent to major destinations and transportation hubs including Los Angeles International Airport (LAX), Metro Blue Line, Harbor Transitway and the Port of Los Angeles. The Corridor traverses twelve jurisdictions including the cities of Los Angeles, Vernon, Huntington Park, Inglewood, El Segundo, Hawthorne, Lawndale, Manhattan Beach, Redondo Beach, Torrance, Carson and the County of Los Angeles. As it passes through these communities, it traverses residential neighborhoods, commercial and warehousing districts and industrial areas including oil fields and refineries. LAX lies to the west of the rail line along Aviation Boulevard near Century Boulevard.

The conclusion of the planning Alternatives Analysis is expected to be the selection of a set of alternatives by the LACMTA and the Southern California Association of Governments (SCAG), which is the official metropolitan planning organization for Los Angeles. The set of alternatives will then be the ''proposed action'' that are subject to an appropriate environmental review under the National Environmental Policy Act (NEPA). If the selected set of alternatives would have significant impacts, an environmental impact statement (EIS), combined with a California environmental impact report (EIR) would be initiated with a Notice of Intent in the **Federal Register** and distribution of a Notice of Preparation (NOP) required under the California Environmental Quality Act (CEQA). Public and agency scoping of the EIS/EIR would be conducted at that time. In particular, the purpose and need for the project, the range of alternatives to be considered in the EIS/EIR, the environmental and community impacts to be evaluated, and the methodologies to be used, would be subject to public and interagency review and comment, in accordance with 23 U.S.C. 139 and CEQA.

DATES: Written comments on the scope of the planning Alternatives Analysis, including the alternatives to be considered and the impacts to be assessed, should be sent to LACMTA at the address below by October 9, 2008. See **ADDRESSES** below for the address to which written public comments may be sent. Early scoping meetings to accept comments on the scope of the Alternatives Analysis will be held on the following dates:

- Tuesday, September 23, 2008, from 6:30 p.m. to 8:30 p.m. Torrance Cultural Arts Center, Nakano Theater, 3330 Civic Center Drive, Torrance, CA 90503.
- Wednesday, September 24, 2008, from 6:30 p.m. to 8:30 p.m. Banning's Landing Community Center, Gertrude #2 Room, 100 E. Water Street, Wilmington, CA 90748.
- Thursday, September 25, 2008, from 6 p.m. to 8 p.m. Westside Park Community Center, 2061 E. Gage Avenue, Huntington Park, CA 90255.
- Tuesday, September 30, 2008, from 6 p.m. to 8 p.m. El Segundo Public Library, Friends of the Library Meeting Room, 111 W. Mariposa Avenue, El Segundo, CA 90245.

The draft purpose and need for the project and the initial set of alternatives proposed for study will be presented at these meetings. The buildings and facilities used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in scoping should contact Ms. Devon Cichoski, LACMTA at 213–922–6446 or *CICHOSKID@metro.net*.

Scoping materials will be available at the meetings and are also available on the LACMTA Web site at *http://www.metro.net/harborsubdivision*. Hard copies of the scoping materials are available from Ms. Devon Cichoski, LACMTA at 213–922–6446 or *CICHOSKID@metro.net*.

An interagency scoping meeting will be held on Tuesday, September 30, 2008, from 9:30 a.m. to 11:30 a.m. at LACMTA, One Gateway Plaza, 3rd Floor Union Station Conference Room, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all Federal, State and local agencies that may have an interest in any aspect of the project will be invited by phone, letter or e-mail.

It should be noted that, in addition to the early scoping meetings described herein, the agency and scoping meetings required under NEPA and CEQA to identify the nature and scope of environmental issues that should be addressed in the EIS/EIR will be held following the selection of alternatives to go through the environmental process and issuance of the NOI and NOP. The dates and locations for the EIS/EIR scoping meetings will be announced at that time and will be included in the NOI and NOP, which will be distributed in the same manner as this Early Scoping Notice.

ADDRESSES: Written comments on this Early Scoping Notice should be sent to Ms. Kathleen McCune, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza MS 99–22–3, Los Angeles, CA 90012, phone 213–922–7241, e-mail *MCCUNEK@metro.net*. The locations of the early scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA

90017, phone 213–202–3950, e-mail *ray.tellis@dot.gov*.

SUPPLEMENTARY INFORMATION:

Early Scoping

The FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of the planning Alternatives Analysis, including the purpose and need for transit improvements in the corridor, the alternatives to be considered, and the types of impacts to be evaluated. Comments at this time should focus on the purpose and need for transit improvements in the corridor; alternatives that may be less costly or have less environmental impact while achieving similar transportation objectives; and, the identification of any significant social, economic, or environmental issues that should be considered in developing the alternatives.

Purpose and Need for Action

The Harbor Subdivision project is expected to serve multiple transportation markets and address unmet mobility needs throughout Los Angeles County. Purposes of the project and needs of the community include:

- Improve mobility in southwestern Los Angeles County by introducing reliable, high-frequency transit service options.
- Enhance the regional transit network by interconnecting existing and planned rapid transit lines.
- Provide an alternative mode of transportation for commuters who currently use the congested I–405 and I–110 corridors.
- Encourage denser, transit-oriented development and land use policies around station areas.
- Improve transit accessibility for residents of underserved communities along the corridor.
- Encourage a mode shift to transit, reducing air pollution and greenhouse gas emissions.

Alternatives

A broad range of alternatives are being considered including various transit technologies, corridor alignments, configurations and operations, station types and locations, and Transportation Systems Management (TSM) improvements. In addition to these various types of actions, the implications of taking no action (i.e., the ''no build'' alternative) will be considered in the analysis. The following summarizes the general types of alternatives to be considered in the analysis, understanding that a broad variety of possible alternatives, and combinations thereof, will be initially identified and then undergo evaluation to define the alternatives for advancement to the environmental process. Further description of this process is provided below under FTA Procedures.

Alternative Technologies could include proven transportation systems such as the following: Bus Rapid Transit (BRT), Light Rail Transit (LRT), Electric Multiple Unit (EMU), Diesel Multiple Unit (DMU) in which service must conform to Metro's Clean Fuel Policies, and Commuter Rail. In every case service would be along a portion or all of the Harbor Subdivision corridor. Alignment alternatives will generally follow the Harbor Subdivision corridor as much as possible. Other routings will also be examined as part of the planning Alternatives Analysis using a comparative methodology to evaluate their feasibility. Potential alignment and improvement options outside the immediate Harbor Subdivision corridor that will be studied in the planning Alternatives Analysis include a Northern Terminus option where the Harbor Subdivision's northern terminus is approximately 2.5 miles south of downtown Los Angeles. Consideration will be given for connections to Metrolink, Metro Gold, Red and Purple Lines at Los Angeles Union Station, or the Metro Blue, Red, Purple and Expo Lines in the downtown area, a Southern Terminus option where the southern terminus of the Harbor Subdivision ends in Watson Yard in Wilmington just north of the Port of Los Angeles. Analysis of alternatives will consider the most logical location for a southern terminus. Consideration will be given as to whether it should connect to the existing Metro Blue Line, Harbor Transitway, Downtown Torrance area, Port of Los Angeles Waterfront Red Car Line, or some other transit facility or destination, and a Phased Segment option where the Harbor Subdivision is over 26 miles in length, so shorter alignment and modal alternatives will be considered in discrete segments that can operate as cost-effective stand alone projects. As part of the examination of discrete segments of the Harbor Subdivision, connections with the Crenshaw Transit Corridor, LAX and potential Metro Blue or Green Line interfaces will be evaluated. Rail & Bus Division Support Facilities where each modal alternative will require storage and maintenance facilities that can efficiently service the project. Locations and alternatives for such facilities will be identified in order that fair comparisons can be made. Station alternatives will include variations in the number, interval distance, location, design including whether above ground or below ground and whether stand-alone or integrated as part of another use, and operational characteristics.

Future No-Build Alternative—The study will consider the transportation and environmental effects if no new major transit investments beyond those that have already been environmentally cleared or are implemented in this corridor. This alternative will include the highway and transit projects in the current Metro Long Range Transportation Plan and the 2008 Southern California Association of Governments Regional Transportation Plan through 2030. For purposes of the Alternatives Analysis, the major fixed guideway investments under study for the Exposition Transit Corridor Phase 2 and Crenshaw Transit Corridor projects would not be included in the Future No-Build Alternative. The completion of the Metro Rapid Bus Program would be included as well as possible additional feeder bus networks to serve the region's major activity centers.

Transportation System Management (TSM) Alternative—The study will consider the effects of modest improvements in the highway and transit systems beyond those in the Future No-Build Alternative. The TSM Alternative would evaluate low-cost enhancements to the Future No-Build Alternative and would emphasize transportation system upgrades such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, contra-flow lanes for buses and High Occupancy Vehicles (HOVs) on freeways, special bus ramps on freeways, expanded park/ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

In addition to the alternatives described above, other reasonable alternatives identified through the early scoping process will be considered for potential inclusion in the planning Alternatives Analysis. Alternative modes, vertical or horizontal alignments, or station locations may emerge from the early scoping process.

FTA Procedures

Early scoping is an optional element of the National Environmental Policy Act (NEPA) process that is particularly useful in situations where, as here, a proposed action (the locally preferred alternative) has not been identified and

alternative modes and major alignment variations are under consideration in a broadly-defined corridor. While NEPA scoping normally follows issuance of a notice of intent, which describes the proposed action, it ''may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.'' See the Council on Environmental Quality's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 FR 18026, 18030 (1981). In this case, the available information is more than adequate to permit the public and relevant agencies to participate effectively in early scoping and the planning Alternatives Analysis.

LACMTA may seek New Starts funding for the proposed project under 49 U.S.C. § 5309 and will, therefore, be subject to New Starts regulation (49 Code of Federal Regulations [CFR] part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a Locally Preferred Alternative by LACMTA and the inclusion of the locally preferred alternative in the long-range transportation plan adopted by the Southern California Association of Governments. The planning Alternatives Analysis will examine alignments, technologies, station locations, costs, funding, ridership, economic development, land use, engineering feasibility, and environmental factors in the corridor. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering. After the identification of a proposed action at the conclusion of the planning Alternatives Analysis, if preparation of an environmental impact statement is warranted, a NOI will be published in the **Federal Register** and the scoping of the EIS/EIR will be completed by soliciting and considering comments on the purpose and need for the proposed action, the range of alternatives to be considered in the EIS/EIR, and the potentially significant environmental and community impacts to be evaluated in the EIS/EIR.

Concurrent with publication of the NOI pursuant to NEPA, a NOP will be distributed pursuant to CEQA. In conjunction with this final scoping of the EIS/EIR and consistent with provisions of 23 U.S.C. 139 and CEQA, invitations will be extended to other Federal and non-Federal agencies that may have an interest in this matter to be participating agencies. A plan for coordinating public and agency participation in the environmental review process and for commenting on the issues under consideration at various milestones of the process will be prepared and posted on the LACMTA Web site at *http://www.metro.net/harborsubdivision*.

Issued on: September 9, 2008.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. E8–21615 Filed 9–15–08; 8:45 am]

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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.

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