Federal Register

12–12–07 Wednesday
Vol. 72 No. 238 Dec. 12, 2007

Pages 70479–70762

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 238

Wednesday, December 12, 2007

Agency for International Development
NOTICES
Privacy Act; systems of records, 70559

Agricultural Marketing Service
RULES
National Organic Program:
Allowed and prohibited substances; national list, 70479–70486
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70564–70565
Grade standards:
Frozen okra, 70565–70566

Agriculture Department
See Agricultural Marketing Service
See Forest Service
NOTICES
Privacy Act; systems of records, 70559–70564

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Idaho Technology, Inc., 70576

Army Department
NOTICES
Environmental statements; record of decision:
Base realignment and closure—
Fort Benning, GA, 70576–70577

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

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Institute for Occupational Safety and Health—
Workers potentially exposed to engineered nanoparticles; medical screening, 70598–70599

Coast Guard
RULES
Anchorage regulations:
Maine, 70513–70515
Drawbridge operations:
Louisiana, 70515–70516
New York, 70516–70517

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Cable system definition, 70529–70540

Defense Department
See Air Force Department
See Army Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Defense Business Board, 70575–70576

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70577–70578

Employee Benefits Security Administration
NOTICES
Reports and guidance documents; availability, etc.:
Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception; annual report (2007 Form M-1), 70613

Employment and Training Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
ABN Amro Services Co., Inc., 70613–70614
Gerdau Ameristeel, 70614
INTEL Corp., 70614–70615
Environmental statements; availability, etc.:
Job Corps Training Center, Riverton, WY, 70615–70616

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70616–70617

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Water programs:
Water quality standards—
Puerto Rico, 70517–70526
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Group I polymers and resins, epoxy resins, non-nylon polyamides, etc.; production, 70543–70558
Air quality implementation plans; approval and promulgation; various States:
Montana, 70540–70542
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70581–70582
Meetings:
Clean Water Act Programs, Federal Advisory Committee to Examine Detection and Quantitation Approaches in, 70583–70584
Pesticide registration, cancellation, etc.:
Biopesticides, 70584–70586
EBDC fungicides on potatoes; request to reduce preharvest interval; hearing, 70586–70589
Para-dichlorobenzene, 70589–70591
Sodium hydroxide, etc., 70591–70593
Sodium metasilicate, 70593–70595

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 70595

Executive Office of the President
See National Drug Control Policy Office
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 70595

Farm Credit System Insurance Corporation
NOTICES
Meetings:
Farm Credit System Insurance Corporation Board, 70595–70596

Federal Aviation Administration
RULES
Airworthiness standards:
Damage tolerance data for repairs and alterations, 70486–70508
NOTICES
Meetings:
RTCA, Inc., 70643

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 70596

Federal Energy Regulatory Commission
NOTICES
Complaints filed:
Black Oak Energy, LLC, et al., 70579
Dynegy Moss Landing, LLC, et al., 70579–70580
Valero Marketing & Supply Co., 70580
Environmental statements; availability, etc.:
Idaho Power Co., 70581
Natural gas pipeline rate and refund report filings, 70581
Applications, hearings, determinations, etc.:
Florida Gas Transmission Co., LLC, 70578–70579
Texas Gas Transmission, LLC, 70580

Federal Maritime Commission
NOTICES
Agreements filed, etc., 70596
Ocean transportation intermediary licenses:
Deluxe Shipping Inc. et al., 70596

Federal Reserve System
RULES
Credit by brokers and dealers (Regulation T):
Interpretation cross-reference correction, 70486

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
San Diego fairy shrimp, 70648–70714
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Salt Creek tiger beetle, 70716–70758
NOTICES
Endangered and threatened species:
Recovery plans—
Showy stickseed, 70602–70603
Endangered and threatened species permit applications, determinations, etc., 70602

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70599–70601

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70566–70567

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70597–70598

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70601

Homeland Security Department
See Coast Guard

Industry and Security Bureau
RULES
Export administration regulations:
License exceptions temporary imports, exports, and reexports (TMP) and baggage (BAG); eligible items expansion, 70509–70513

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Magnesium metal from—
China, 70567–70568
Purified carboxymethylcellulose from—
Finland, 70568–70570

International Trade Commission
NOTICES
Import investigations:
3G mobile handsets and components, 70608–70609
African Growth and Opportunity Act—
Denim fabric; commercial availability in 2009 FY, 70609–70610
Flash memory controllers, drives, memory cards, and media players and products containing same, 70610–70612

Justice Department
NOTICES
Pollution control; consent judgments:
Creftcon Industries, 70612
Essroc Cement Corp., 70612–70613
Liberty Property L.P., 70613

Labor Department
See Employee Benefits Security Administration

See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Koliganek Natives Ltd., 70603

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70603–70606

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 70618

National Drug Control Policy Office
NOTICES
Meetings:
Medical Education in Substance Abuse; Leadership Conference, 70618

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Advisory Panel, 70618–70619

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—North Pacific halibut and sablefish, 70570–70575
Reports and guidance documents; availability, etc.:
North American Datum of 1983 State Plane Coordinates in feet—
Maine, 70575

National Park Service
NOTICES
Boundary establishment, description, etc.:
Big Thicket National Preserve, TX, 70606–70607
Meetings:
Delaware Water Gap National Recreation Area Citizen Advisory Commission, 70607
Native American Graves Protection and Repatriation Review Committee, 70607–70608

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Detroit Edison Co., 70619–70620
Applications, hearings, determinations, etc.:
Dominion Virginia Power, 70619

Office of National Drug Control Policy
See National Drug Control Policy Office

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70620

Presidential Documents
PROCLAMATIONS
Special observances:
Human Rights Day, Bill of Rights Day, and Human Rights Week (Proc. 8210), 70759–70762

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70620–70621
Consolidated Tape Association Plan; amendments, 70621–70622
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 70622–70626
Chicago Stock Exchange, Inc., 70627
Financial Industry Regulatory Authority, Inc., 70627–70628
NASDAQ Stock Market LLC, 70628–70634
NYSE Arca, Inc., 70635–70642

Social Security Administration
PROPOSED RULES
Social security benefits:
Federal old age, survivors, and disability insurance—Digestive disorders; medical criteria for evaluating functional limitations, 70527–70529

State Department
NOTICES
Debarment proceedings:
L&M Manufacturing Corp. et al., 70642–70643

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
BNSF Railway Co., 70643

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70643–70645

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 70648–70714

Part III
Interior Department, Fish and Wildlife Service, 70716–70758

Part IV
Executive Office of the President, Presidential Documents, 70759–70762

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8210 70761

7 CFR

205 70479

12 CFR

220 70486

14 CFR

26 70486
121 70486
129 70486

15 CFR

740 70509
772 70509

20 CFR

Proposed Rules:

404 70527

33 CFR

110 70513
117 (2 documents) 70515, 70516

37 CFR

Proposed Rules:

201 70529

40 CFR

131 70517

Proposed Rules:

52 70540
63 70543

50 CFR

17 70648

Proposed Rules:

17 70716

Rules and Regulations

Federal Register
Vol. 72, No. 238
Wednesday, December 12, 2007

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

Agricultural Marketing Service

7 CFR Part 205

[Docket Number AMS–TM–07–0123; TM–03–04]

RIN 0581–AC62

National Organic Program (NOP); Amendments to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) regulations to enact recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) from October 30, 2000, through March 3, 2005. Consistent with the recommendations from the NOSB, this final rule adds two defined terms and nine substances, along with any restrictive annotations, and a category of substances to the National List.

DATES: *Effective Dates:* This final rule becomes effective December 13, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250. *Phone:* (202) 720–3252.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the NOP [7 CFR part 205], the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance for organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural, nonsynthetic nonagricultural substance used in organic handling must also be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on substance recommendations developed by the NOSB. This final rule amends the National List to enact recommendations submitted to the Secretary by the NOSB from November 15, 2000, through March 3, 2005.

II. Overview of Amendments

The following provides an overview of the amendments to designated sections of the National List regulations:

Section 205.2 Terms Defined

This final rule amends § 205.2 of the NOP regulations by adding the following terms:

AMDUCA. The Animal Medicinal Drug Use Clarification Act of 1994 (Pub. L. 103–396).

Excipients. Any ingredients that are intentionally added to livestock medications but do not exert therapeutic or diagnostic effects at the intended dosage, although they may act to improve product delivery (e.g., enhancing absorption or controlling release of the drug substance). Examples of such ingredients include fillers, extenders, diluents, wetting agents, solvents, emulsifiers, preservatives, flavors, absorption enhancers, sustained-release matrices, and coloring agents.

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This final rule amends paragraph (a) of § 205.603 of the National List regulations by adding the following substances:

Atropine (CAS #–51–55–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (1) Use by or on the lawful written order of a licensed veterinarian, in full compliance with the AMDUCA; and (2) a meat withdrawal period of at least 56 days after administering to livestock intended for slaughter; and a milk discard period of at least 12 days after administering to dairy animals.

Butorphanol (CAS #–42408–82–2)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (1) Use by or on the lawful written order of a licensed veterinarian, in full compliance with the AMDUCA; and (2) a meat withdrawal period of at least 42 days after administering to livestock intended for slaughter; and a milk discard period of at least 8 days after administering to dairy animals.

Flunixin (CAS #–38677–85–9)—in accordance with approved labeling; except that for use under 7 CFR part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.

Furosemide (CAS #–54–31–9)—in accordance with approved labeling; except that for use under 7 CFR part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.

Magnesium hydroxide (CAS #–1309–42–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires use by or on the lawful written order of a licensed veterinarian, in full compliance with the AMDUCA.

Peroxyacetic/Peracetic acid (CAS #–79–21–0)—for sanitizing facility and processing equipment.

Poloxalene (CAS #–9003–11–6)—for use under 7 CFR part 205, the NOP requires that poloxalene only be used for the emergency treatment of bloat.

Tolazoline (CAS #–59–98–3)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (1) Use by or on the lawful written order of a licensed veterinarian, in full compliance with the AMDUCA; (2) use only to reverse the effects of sedation and analgesia caused by Xylazine; and (3) a meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

Xylazine (CAS #–7361–61–7)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (1) Use by or on the lawful written order of a licensed veterinarian, in full compliance with the AMDUCA; (2) the existence of an emergency; and (3) a meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

This final rule amends § 205.603 of the National List regulations by adding a new paragraph (f) to read as follows:

Excipients, only for use in the manufacture of drugs used to treat organic livestock when the excipient is: Identified by the FDA as Generally Recognized As Safe; Approved by the FDA as a food additive; or Included in the FDA review and approval of a New Animal Drug Application or New Drug Application.

This final rule also makes a technical correction to § 205.603 paragraph (e) by removing the word ''a'' from between ''or'' and ''synthetic''.

III. Related Documents

Six notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this final rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 65 FR 64657, October 30, 2000, (Calcium borogluconate); (2) 66 FR 10873, February 20, 2001, (Poloxalene); (3) 67 FR 54784, August 26, 2002, (Activated charcoal, Bismuth subsalicylate, Butorphanol, Epinephrine, Kaolin pectin, Magnesium hydroxide, Potassium sorbate, Propylene glycol, Tolazoline, and Xylazine); (4) 67 FR 62949, October 9, 2002, (Excipients and Flunixin); (5) 68 FR 23277, May 1, 2003, (Atropine, Calcium propionate, Furosemide, and Mineral oil); and (6) 69 FR 18036, April 6, 2004, (Moxidectin). The proposed rule for this final rule was published on July 17, 2006 (71 FR 40624).

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on substance recommendations developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop substance recommendations to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in § 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to § 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to § 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this final rule would not be significant. The effect of this final rule would be to allow the use of additional substances in agricultural production and handling. This action would modify the regulations to provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and entirely beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. This final rule would have an impact on a substantial number of small entities.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. By the end of 2006, the number of certified organic crop, livestock, and handling operations totaled over 14,800 operations based on reports by certifying agents to the NOP as part of their annual reporting requirements. AMS believes that most of these entities would be considered small entities under the criteria established by SBA.

U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. Organic food sales are projected to reach $23.8 billion for 2010. The organic industry is viewed as the fastest growing sector of agriculture, currently representing nearly 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year including a 22 percent increase in 2006.

In addition, 95 certifying agents are currently accredited by USDA to provide certification services to producers and handlers under the NOP. A complete list of names and addresses of accredited certifying agents may be found on the NOP web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

Under the OFPA, no additional collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

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

E. Received Comments on Proposed Rule TM–03–04

AMS received 79 comments on proposed rule TM–03–04. Comments were received from organic livestock producers, veterinarians, accredited certifying agents, consumers, retailers, trade associations, manufacturers of animal medications, and public interest groups. A number of comments expressed total opposition to all amendments proposed in TM–03–04 and asserted that such amendments weakened the NOP regulations. A few comments supported the addition of all the proposed amendments without changes. Many comments indicated conditional support for some of the proposed amendments; however, they suggested modifications be made to their inclusion on the National List. Such comments conveyed that the proposed amendments altered the original intent for how the NOSB recommended the substance be used in organic livestock production. Some of those comments proposed that if the substance was not to be listed as recommended by the NOSB, then the proposed amendment should not be added to the National List.

Additional comments raised concern regarding USDA's decision not to include certain substances on the National List. These substances include activated charcoal, calcium borogluconate, calcium propionate, kaolin pectin, mineral oil, propylene glycol, and epinephrine. Comments also indicated that a few of the proposed amendments required further clarification or correction to avoid misinterpretation of the regulations and misapplication of the substance.

Changes Made Based On Comments

The following changes are made based upon comments received.

Calcium propionate as a mold inhibitor in dry formulated herbal products. Some comments expressed opposition to the proposed amendment to add Calcium propionate as a mold inhibitor in dry herbal products to § 205.603(d). At their May 2003 meeting, the NOSB recommended adding Calcium propionate as a mold inhibitor in dry formulated herbal ''remedies.'' Comments on Calcium propionate concluded that the NOSB did not recommend Calcium propionate to be added onto the National List as a livestock feed additive under § 205.603(d); rather, these comments argued that the NOSB recommended Calcium propionate be included as a ''medical treatment'' and listed under § 205.603(a). Comments further suggested that if calcium propionate could not be listed under § 205.603(a) that it should not be included on the National List because the authorization for the substance could be misinterpreted to allow its use for organic livestock feed, which was not the intent of the proposal or the NOSB recommendation.

We agree with these comments that the proposed amendment for Calcium propionate did not correspond with the NOSB recommendation. Based on the consultation between USDA and FDA, we were informed that ''dry formulated herbal remedies'' are not recognized as a ''medical treatment'' for animal illness and could not be authorized as such in the **Federal Register** and under § 205.603(a) of the National List without having been approved by FDA through a New Animal Drug Application (NADA).

As a result, USDA researched the most appropriate way to include the substance on the National List to reflect the NOSB's recommendation. To that effect, we recognized that Calcium propionate did not have any approved uses as a medical treatment under the FDA regulations. However, under 21 CFR 582.3221 (Animal Drugs, Feeds, and Related Products), it is approved as a chemical preservative that is Generally Recognized as Safe. Therefore, since ''dry formulated herbal remedies'' are not recognized as medical treatments under the FDA's regulations and could not be prescribed as such in the National List, the USDA believed that it could implement the recommendation

and intent of the NOSB by permitting the use of Calcium propionate as a mold inhibitor in dry formulated ''products'' (instead of ''remedies'') by authorizing it as a feed. We concluded that herbs (agricultural products) would be fed to an animal and would therefore be considered part of the feed provisions of the National List.

In addition to the general public comments received on Calcium propionate, we received comments from the FDA concerning the proposed language to authorize the use of Calcium propionate as a ''mold inhibitor.'' The FDA shared that Calcium propionate is not authorized for use as a ''mold inhibitor,'' but a ''chemical preservative.'' Therefore, it must only be recognized for use within the parameters for which it has been authorized. The FDA also commented that the AMDUCA does not apply to Calcium propionate and cannot be used to attempt broader uses than authorized by the FDA.

As a result, based on comments received on Calcium propionate's proposed addition to § 205.603(d) of the National List and information shared by the FDA, we have decided not to add Calcium propionate to the National List. Instead, we are referring this substance back to the NOSB for the purpose of reconsidering its placement on the National List (*i.e.* § 205.603(d)), as it relates to the regulatory provisions of the FDA).

Incorrect CAS number for Butorphanol. One commenter observed that the proposed rule included an incorrect CAS number for Butorphanol. The proposed rule listed Butorphanol's CAS number as 14887–18–9. This comment indicated that the proper CAS number is 42408–82–2. NOP research confirmed the CAS number provided within the comment is accurate. Therefore, we agree with this comment and have inserted the proper CAS number into the final rule.

Extended Withdrawal Periods. Many commenters disagreed with USDA's decision to omit the NOSB's recommendations to extend the withdrawal periods for a number of proposed livestock medications (*e.g.* Atropine, Butorphanol, Flunixin, Furosemide, Tolazoline, and Xylazine). Commenters argued that the NOP has the authority to require stricter standards for animal drug use than those specified by the FDA. According to the commenters, all drugs permitted for use in organic farming are subject to stricter standards than those used by nonorganic farmers, because they are subject to certifiers' review and approval in an Organic System Plan (OSP). Commenters also noted that there are currently several livestock medications (Ivermectin, Lidocaine, and Procaine) on the National List whose withdrawal periods already extend beyond that required by FDA.

Commenters expressed that USDA should either accept the NOSB's recommendation to extend the withdrawal period of the proposed livestock medications or not amend the National List at all. Without the extended withdrawal period, according to these commenters, the NOSB's recommendations would be weakened and the synthetic substances would be allowed to be used in ways that the NOSB did not intend.

As a proposed compromise to satisfy the intent of the NOSB, many commenters suggested that USDA should consider amending the annotations of Atropine, Butorphanol, Flunixin, Furosemide, Tolazoline, and Xylazine by establishing extended withdrawal periods, calculated using withdrawal times from the Food Animal Residue Avoidance Databank (FARAD). The FARAD is a National Food Safety Project administered through the USDA Cooperative State Research, Education, and Extension Service. It is a system designed to provide livestock producers, extension specialists, and veterinarians with practical information on how to avoid drug, pesticide and environmental contaminant residue problems. FARAD is a repository of comprehensive residue avoidance information. It is also sanctioned to provide ''withholding period'' (also known as withdrawal period) estimates to the U.S. Pharmacopeia-Drug Information (USP–DI) Veterinary Medicine Advisory Committee. Commenters suggested that USDA account for an extra margin of at least double the withdrawal times of FARAD to safely capture the intent of the NOSB.

USDA agrees with the position stated in the comments. Since many of the aforementioned livestock medications are being authorized for use under AMDUCA and do not have formal FDA approved labels for the use recommended by the NOSB, veterinarians who are authorized to administer the medical treatment to organic livestock would be responsible for establishing a substantially extended withdrawal period prior to the marketing of milk, meat, eggs, or other edible products. The FDA requires that these withdrawal periods be supported by appropriate scientific information, if applicable. The FDA also requires that the veterinarian take appropriate measures to assure the assigned timeframes for withdrawal are met and that no illegal drug residues occur in any food-producing animal subjected to extra-label treatment (21 CFR 530.20(a)(2)(ii); (iv)). Therefore, in an effort to ensure uniformity and consistency regarding the application of withdrawal periods, USDA has amended the annotations of Atropine, Butorphanol, Tolazine, and Xylazine to reflect minimum withdrawal periods that are double the FARAD withdrawal period suggested for the administration of the referenced livestock medication.

With respect to the withdrawal periods for Flunixin and Furosemide, however, these drugs *do* have FDA approved labels for the use recommended by the NOSB and *were not* proposed for use in organic livestock production under AMDUCA but rather existing FDA approved animal drug use and labeling, 21 CFR part 520. As a result, the withdrawal period associated with the use of these substances under the NOP would be based upon the withdrawal period established by the FDA, as opposed to a FARAD withdrawal period.

Based on public comment, USDA consulted further with the FDA, concerning the ability to extend the withdrawal period on these approved drugs. Based on our consultations, USDA agreed to clarify the rationale for extending the FDA established withdrawal period. Secondly, USDA agreed to clarify the language used to authorize the use of the substances by indicating the extended withdrawal periods (at least two-times that required by the FDA) were only relevant for use of the substances under the NOP regulations.

Therefore, to clarify our rationale for extending the withdrawal periods established by the FDA, we acknowledge that this determination was not based on scientific research or risk assessments. The decision to extend the FDA withdrawal periods (or any other withdrawal period) for the use of Flunixin and Furosemide (and other substances) was based on consumer preference and the recommendations of the NOSB. FDA exercises full responsibility for determining and enforcing the withdrawal intervals for animal drugs. No food safety arguments are used or implied to support the use of extended withdrawal periods authorized under the NOP regulations. Rather, we determined that extended withdrawal periods are more compatible with consumer expectations of organically raised animals.

Verification of lawful order of a licensed veterinarian. Federal law restricts Atropine, Butorphanol, Magnesium hydroxide, Tolazine, and

Xylazine to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. For use under 7 CFR part 205, the NOP is requiring use by or on the lawful written order of a licensed veterinarian. Further, under the NOP, a written order is necessary for the livestock producer to prove compliance with paragraph (b) of § 205.238 Livestock health care practice standard. Written orders will also facilitate compliance with the recordkeeping provisions of § 205.103.

Other use restrictions for Tolazine and Xylazine. In addition to the use restrictions noted above, in response to comments, the NOP has added the following use restrictions. For Tolazine, the NOP has added the requirement that Tolazine only be used to reverse the effects of sedation and analgesia caused by Xylazine as originally recommended by the NOSB at its September 17–19, 2002, meeting in Washington, DC. For Xylazine, the NOP has added the requirement for the existence of an emergency as originally recommended by the NOSB at its September 17–19, 2002, meeting in Washington, DC.

Excipients. Commenters suggested that the proposed amendment to include excipients onto the National List was too broad or needed further clarification to reduce possible confusion for producers, certifying agents, and consumers. Commenters asserted that the proposed language could lead readers to believe that excipients are permitted for use in livestock feed or feed supplements.

We do not agree that the proposed language is so misleading to readers. However, we do believe that a definition of excipients would help clarify its meaning. Therefore, we have amended the regulations to include the following definition for excipients: ''any ingredients intentionally added to livestock medications but that do not exert therapeutic or diagnostic effects at the intended dosage, although they may act to improve product delivery (e.g., enhancing absorption or controlling release of the drug substance). Examples include fillers, extenders, diluents, wetting agents, solvents, emulsifiers, preservatives, flavors, absorption enhancers, sustained-release matrices, and coloring agents.''

Poloxalene annotation. A number of comments objected to USDA omitting the NOSB's recommendation to authorize the use of Poloxalene with the annotation ''only be used for emergency treatment of bloat.'' With regard to Poloxalene and the proposed language in TM–03–04, commenters expressed concern that the proposed language would allow routine use of Poloxalene. As a result, commenters believed the proposed language for Poloxalene represents the use of a substance that was not approved by the NOSB.

We agree that the proposed language in TM–03–04, authorizing the use of Poloxalene, did not restrict its use for only the ''emergency treatment of bloat,'' as the NOSB had recommended. Based on our initial consultations with the FDA, we originally proposed the use of the substance as follows ''in accordance with approved labeling.'' However, after reviewing the comments and further consultation with the FDA, we have modified the authorizing language to (1) reflect the intent of the NOSB and (2) clarify the language used to authorize the use of the substance by indicating that the restricted use of Poloxalene (only for the emergency treatment of bloat) is only relevant for use of the substance under the NOP.

Exclusion of Moxidectin. A number of commenters requested that USDA include Moxidectin on the National List, as the NOSB had recommended (to control internal parasites). We did not propose to add Moxidectin to the National List because the substance is a macrolide antibiotic and does not comply with the April 22, 2005, NOP policy statement on antibiotic use in livestock production. The statement provides that the use of antibiotics and other prohibited substances is not allowed for organically produced livestock or their edible products once a producer is certified organic. Commenters stated that USDA's rationale for not adding Moxidectin to the National List was arbitrary and without scientific or regulatory basis. Commenters argued that Moxidectin should not be considered an antibiotic, but a parasiticide, and therefore should be allowed for use as medication to treat organic livestock. One commenter presented information that attempted to delineate the difference between an antibiotic and a parasiticide. The comment argued that the defining feature of an antibiotic is its ability to inhibit the growth of microorganisms or kill them outright. It included that Moxidectin does not have this capacity. Instead, Moxidectin targets parasites, rather than bacterial infections.

We have verified the information shared through public comment and agree that Moxidectin, even though an animal drug that is a macrolide antibiotic, does not function as an antibiotic (targeting bacterial infections), but as a parasiticide (targeting parasites/helminthes, e.g., roundworms, lungworms, hookworms, flatworms, etc.). As a result, we will initiate proposed rulemaking to authorize Moxidectin as a livestock medication to control internal parasites.

Removal of Bismuth subsalicylate (CAS #–14887–18–9). Bismuth subsalicylate was proposed for inclusion on the National List. It was proposed for use as a drug restricted to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the FDA regulations. In the proposed rule, the NOP shared that consultations with the FDA revealed that Bismuth subsalicylate is approved as a drug for use in humans (FDA, ''Approved Drug Products with Therapeutic Equivalence Evaluations, 2005'') and that New Animal Drug Application (NADA) approvals for Bismuth subsalicylate were not identified. The NOP further stated that despite the absence of a NADA approval for Bismuth subsalicylate, the substance could be permitted for use in livestock production if used in full compliance with the AMDUCA and 21 CFR part 530 of the FDA regulations, ''Provision permitting extra-label use of animal drugs.'' This action was based on the rationale that Bismuth subsalicylate was an approved human drug and qualified for use under the provisions of AMDUCA.

However, in response to the proposed rule, the FDA informed the NOP that Bismuth subsalicylate *could not* be authorized for use in livestock production under the AMDUCA and 21 CFR part 530 of the FDA regulations, because Bismuth subsalicylate is not approved as an independent, active ingredient for use as a human drug, but only in combination with Metronidazole and Tetracycline hydrochloride. The FDA further commented that over-the-counter medications do not qualify for use under the provisions of AMDUCA and 21 CFR part 530. As a result, they advised the NOP to remove Bismuth subsalicylate from the proposed amendments to the National List; Bismuth subsalicylate has been removed from inclusion.

Other Changes Made

Several of the new substance listings contain the term ''AMDUCA.'' For the convenience of persons using the NOP regulations we have added a definition of AMDUCA to § 205.2. That definition reads: ''AMDUCA. The Animal Medicinal Drug Use Clarification Act of 1994 (Pub. L. 103–396).''

While preparing this final rule, we noted a technical error in the wording of § 205.603(e). Accordingly, this final

rule also makes a technical correction to § 205.603 paragraph (e) by removing the word ''a'' from between ''or'' and ''synthetic''. Section 205.603(e) now reads: ''As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.''

Changes Requested But Not Made

A number of commenters opposed the addition of *any* of the proposed amendments to the National List. The majority of these comments did not provide any evidence under the OFPA and NOP regulations that would support the position stated. Instead, these commenters stated the addition of any of the proposed amendments weakened the NOP regulations and compromised the integrity of organic foods. We considered these comments but have determined that the record supports the need for livestock medications in the interest of humane treatment of livestock. We believe commenters' concerns have been addressed by including double withdrawal periods and other use restrictions.

Six non-accepted substances. Several comments, including a number from organic dairy farmers, supported adding Activated charcoal, Calcium borogluconate, Calcium propionate (as a medical treatment for milk fever), Kaolin pectin, Mineral oil, and Propylene glycol onto § 205.603(a) as substances that should be allowed for use as medical treatments in organic livestock production. These substances were not included as amendments to the National List in the proposed rule. The NOSB recommended that the Secretary include these substances onto the National List, in § 205.603, as veterinary treatments in organic livestock production. Comments in support of including these substances onto the National List argued that these substances were essential tools for dairy farmers, effective in restoring animal health, and widely available and commonly used by livestock producers and veterinarians, with no significant environmental impacts. Additionally, a few of these commenters argued that FDA considers these drugs to be a low regulatory priority or ''allowed by regulatory discretion.''

As stated in the proposed rule, consultation with the FDA revealed that Activated charcoal, Calcium borogluconate, Calcium propionate, Kaolin pectin, Mineral oil, and Propylene glycol have *not* received approval through the FDA drug approval process to be authorized as medical treatments for livestock. Consultation also revealed that the proposed substances could not qualify for extra-label use by a licensed veterinarian under AMDUCA. As a result, the synthetic forms of these substances remain prohibited for use in organic livestock production.

One commenter asserted that USDA should have not stated that the six substances could not be used in organic livestock production, because some of the substances could be sourced and used in nonsynthetic form. USDA agrees that nonsynthetic forms of the medication would not be prohibited from use in organic livestock production. The proposed rule did not address the nonsynthetic forms of the medications because the NOSB's recommendations only addressed the synthetic forms. As a result, we reiterate that the prohibited use of the six substances was made in the context of the synthetic form of the substances, not the nonsynthetic form.

Epinephrine as a prohibited nonsynthetic substance. A few comments were received concerning USDA's decision not to include Epinephrine as a prohibited nonsynthetic substance on the National List. Some comments were in favor of the proposed action on Epinephrine, while a few did not favor USDA's decision to exclude the substance from the National List. We also received one comment that recommended USDA, with respect to the FDA restriction on the use of Epinephrine, consult with the NOSB to see if there is still a need to identify the substance as a prohibited nonsynthetic on the National List.

The proposed rule acknowledged that Epinephrine is a nonsynthetic substance; and it emphasized that nonsynthetic substances are allowed in organic production, unless prohibited. For instance, under the NOP regulations, a livestock producer may not administer animal drugs in violation of the Federal Food, Drug and Cosmetic Act. The proposed rule also noted that the FDA regulations currently restrict the use of the medication to the emergency treatment of anaphylactic shock in cattle, horses, sheep, and swine, which is what the NOSB had recommended. As a result, we did not see a clear need to include the substance on the National List. USDA will consult with the NOSB to see if there is still a need to identify Epinephrine as a prohibited nonsynthetic on the National List.

F. Effective Date.

This final rule reflects recommendations submitted to the Secretary by the NOSB. The substances being added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are crucial to organic livestock production operations, producers should be able to use them in their operations as soon as possible. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553(d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 205.

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205, subpart G is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.2 is amended by adding two new terms in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

AMDUCA. The Animal Medicinal Drug Use Clarification Act of 1994 (Pub. L. 103–396).

* * * * *

Excipients. Any ingredients that are intentionally added to livestock medications but do not exert therapeutic or diagnostic effects at the intended dosage, although they may act to improve product delivery (e.g., enhancing absorption or controlling release of the drug substance). Examples of such ingredients include fillers, extenders, diluents, wetting agents, solvents, emulsifiers, preservatives, flavors, absorption enhancers, sustained-release matrices, and coloring agents.

* * * * *

■ 3. Section 205.603 is revised to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

In accordance with restrictions specified in this section the following

synthetic substances may be used in organic livestock production:

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol-disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol-disinfectant only.

(2) Aspirin-approved for health care use to reduce inflammation.

(3) Atropine (CAS #–51–55–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR Part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian; and

(ii) A meat withdrawal period of at least 56 days after administering to livestock intended for slaughter; and a milk discard period of at least 12 days after administering to dairy animals.

(4) Biologics—Vaccines.

(5) Butorphanol (CAS #–42408–82–2)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR Part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian; and

(ii) A meat withdrawal period of at least 42 days after administering to livestock intended for slaughter; and a milk discard period of at least 8 days after administering to dairy animals.

(6) Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(7) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(8) Electrolytes—without antibiotics.

(9) Flunixin (CAS #–38677–85–9)—in accordance with approved labeling; except that for use under 7 CFR Part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.

(10) Furosemide (CAS #–54–31–9)—in accordance with approved labeling; except that for use under 7 CFR Part 205, the NOP requires a withdrawal period of at least two-times that required that required by the FDA.

(11) Glucose.

(12) Glycerine—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(13) Hydrogen peroxide.

(14) Iodine.

(15) Magnesium hydroxide (CAS #–1309–42–8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires use by or on the lawful written order of a licensed veterinarian.

(16) Magnesium sulfate.

(17) Oxytocin—use in postparturition therapeutic applications.

(18) Paraciticides. Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.

(19) Peroxyacetic/peracetic acid (CAS #–79–21–0)—for sanitizing facility and processing equipment.

(20) Phosphoric acid—allowed as an equipment cleaner, *Provided*, That, no direct contact with organically managed livestock or land occurs.

(21) Poloxalene (CAS #–9003–11–6)—for use under 7 CFR Part 205, the NOP requires that poloxalene only be used for the emergency treatment of bloat.

(22) Tolazoline (CAS #–59–98–3)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR Part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian;

(ii) Use only to reverse the effects of sedation and analgesia caused by Xylazine; and

(iii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

(23) Xylazine (CAS #–7361–61–7)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR Part 205, the NOP requires:

(i) Use by or on the lawful written order of a licensed veterinarian;

(ii) The existence of an emergency; and

(iii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.

(b) As topical treatment, external parasiticide or local anesthetic as applicable.

(1) Copper sulfate.

(2) Iodine.

(3) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(4) Lime, hydrated—as an external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.

(5) Mineral oil—for topical use and as a lubricant.

(6) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(7) Sucrose octanoate esters (CAS #s–42922–74–7; 58064–47–4)—in accordance with approved labeling.

(c) As feed supplements—None.

(d) As feed additives.

(1) DL–Methionine, DL–Methionine—hydroxy analog, and DL–Methionine—hydroxy analog calcium (CAS #–59–51–8; 63–68–3; 348–67–4)—for use only in organic poultry production until October 1, 2008.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

(3) Vitamins, used for enrichment or fortification when FDA approved.

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(1) EPA List 4—Inerts of Minimal Concern.

(2) [Reserved]

(f) Excipients, only for use in the manufacture of drugs used to treat organic livestock when the excipient is: Identified by the FDA as Generally Recognized As Safe; Approved by the FDA as a food additive; or Included in

the FDA review and approval of a New Animal Drug Application or New Drug Application.

(g)–(z) [Reserved]

Dated: December 5, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–23915 Filed 12–11–07; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–1301]

Credit by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correcting amendment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending Regulation T (Credit by Brokers and Dealers) to correct a cross-reference in one of its interpretations.

DATES: *Effective Date:* December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Counsel, Legal Division (202–452–2966). For users of the Telecommunications Device (TDD) only, please call 202–263–4869.

SUPPLEMENTARY INFORMATION: The National Securities Markets Improvement Act of 1996 (NSMIA). (Pub. L. 104–290, 110 Stat. 3416) amended section 7 of the Securities Exchange of 1934 (15 U.S.C. 78g) to limit the Board's authority to impose restrictions on credit extended, maintained, or arranged to or for a member of a national securities exchange or a registered broker or dealer, a substantial portion of whose business consists of transactions with persons other than brokers or dealers, or to finance its activities as a market maker or an underwriter. Restrictions on these types of credit were found at that time in Regulations G, T and U (12 CFR Parts 207, 220, and 221, respectively).

NSMIA gave the Board the authority to maintain or adopt restrictions on these types of credit if it determines that such action is necessary or appropriate in the public interest or for the protection of investors. In November 1996, the Board adopted an interpretation of its margin regulations (1996 interpretation), indicating that the Board had not made such a finding (61 FR 60166, November 26, 1996). The 1996 interpretation stated the Board's belief that the restrictions on these types of credit found in the Regulations G, T and U had been superseded by NSMIA.

NSMIA also repealed section 8(a) of the Securities Exchange Act of 1934, dealing with extensions of credit to brokers and dealers collateralized with exchange-traded securities. The Board's 1996 interpretation indicated that the provisions in Regulations G, T and U adopted to implement section 8(a) of the Securities Exchange Act of 1934 were without effect in light of NSMIA.

The text of the 1996 interpretation was published as part of Regulation G, and Regulations T and U were amended with interpretations that referred to the text of the 1996 interpretation appearing in Regulation G.

In 1998, the Board adopted regulatory amendments to remove the restrictions that conflicted with NSMIA (63 FR 2806, January 16, 1998). As part of this process, the Board amended the 1996 interpretation to delete references to the conflict between the regulations and NSMIA. The remaining provisions of Regulation G, including the amended 1996 interpretation, were incorporated into Regulation U. However, the reference in Regulation T to the text of the 1996 interpretation was inadvertently not changed to reflect the elimination of Regulation G. Today's action will correct this cross-reference by amending Regulation T to reflect the fact that the text of the amended 1996 interpretation now appears in Regulation U.

List of Subjects in 12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, part 220 is amended to read as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78q, and 78w.

§ 220.132 [Amended]

■ 2. In § 220.132, introductory paragraph, replace the phrase ''§ 207.114'' with ''§ 221.125.''

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, December 7, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–24052 Filed 12–11–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 26, 121, and 129

[Docket No. FAA–2005–21693; Amendment Nos. 26–1, 121–337, 129–44]

RIN 2120–AI32

Damage Tolerance Data for Repairs and Alterations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires holders of design approvals to make available to operators damage tolerance data for repairs and alterations to fatigue critical airplane structure. This rule will support operator compliance with the Aging Airplane Safety final rule with respect to the requirement to incorporate into the maintenance program, a means for addressing the adverse effects repairs and alterations may have on fatigue critical structure. The intent of this final rule is to ensure the continued airworthiness of fatigue critical airplane structure by requiring design approval holders to support operator compliance with specified damage tolerance requirements.

DATES: These amendments become effective January 11, 2008.

FOR FURTHER INFORMATION CONTACT: If you have technical questions about this action, contact Greg Schneider, ANM–115, Airframe and Cabin Safety, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, telephone: (425–227–2116); facsimile (425–227–1232); e-mail *greg.schneider@faa.gov.* Direct any legal questions to Doug Anderson, ANM–7, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes—

- New safety standards for the design of transport category airplanes, and
- New requirements necessary for safety for the design, production, operation, and maintenance of those airplanes, and for other practices, methods, and procedures relating to those airplanes.

Table of Contents

I. Executive Summary
II. Background
A. Summary of the NPRM
1. The Proposed Rule
2. Related Activities
B. Differences Between the NPRM and the Final Rule
1. New Part 26 for Design Approval Holders' Airworthiness Requirements
2. New Subparts for Airworthiness Operational Rules
3. Minor Conforming Changes to the Aging Airplane Safety Final Rule
4. Other Miscellaneous Changes
C. Summary of Comments
III. Discussion of the Final Rule
A. Overview
1. Final Rule
2. Guidance Material
B. Airplane Applicability and Exceptions
1. Airplane Certification Amendment Level
2. Parts 91, 125, and 135 Operations
3. Exception of Airplanes Not Operating in the U.S. Under Part 121 or 129
C. Fatigue Critical Structure (FCS)
D. Damage Tolerance Evaluation (DTE)
E. Damage Tolerance Inspections (DTIs)
F. DT Data for Repairs
1. Published Repair Data
2. Effects of Multiple Repairs
G. Repair Evaluation Guidelines (REGs)
H. DT Data for Alterations
I. Required Documentation
J. Proprietary Data
K. Compliance Plan
1. Process for Continuous Assessment of Service Information
2. Timing of FAA Approval
L. Harmonization
1. Foreign Authority Approval of Required Data
M. Enforcement
N. Industry and FAA Resources
O. Compliance Dates
P. Costs and Benefits
IV. Final Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment
V. The Amendments

I. Executive Summary

Fatigue cracking has been a major aviation safety concern for many years. Unless detected and repaired, fatigue cracks can grow to the point of catastrophic failure. Since 1978 the FAA has required new types of airplanes to meet damage tolerance [1] (DT) requirements to ensure their continued airworthiness. Industry has also used this method successfully to develop inspection programs for older airplanes. Since the 1980s, the FAA has mandated that operators of most large transport airplanes carry out these programs.

While these programs have been largely effective, industry has not carried out DT methods comprehensively. In particular, while these programs apply to the airplane ''baseline'' structure (the airplane structure as originally manufactured), they often do not apply to repairs and alterations.[2] This omission is important because airplanes are subject to many repairs and alterations throughout their operational lives. If fatigue cracking occurs in a repaired or altered area, the results can be just as catastrophic as if it had occurred in the baseline structure.

The FAA adopted the Aging Airplane Safety final rule (AASFR) [3] in early 2005. Among other things, the AASFR requires airline operators of certain large transport category airplanes [4] to implement DT-based inspection programs for airplane structure; that is, structure susceptible to fatigue cracking that could contribute to a catastrophic failure. In this final rule, we refer to this structure as ''fatigue critical structure.'' Most importantly for this rule, the AASFR requires these inspection programs to ''take into account the adverse effects repairs, alterations, and modifications may have on fatigue cracking and the inspection of this airplane structure.''

With the AASFR, we now have in place the regulatory means to provide for comprehensive implementation of DT methods on all large transport airplanes used by air carriers. To carry out these requirements fully, however, it is necessary to place corresponding requirements on the holders of FAA design approvals for these airplanes. Otherwise, the operators may not be able to obtain the data and documents they need to comply with the AASFR. As the owners of the data for these airplanes, the design approval holders [5] (DAHs) are in the best position to identify the fatigue critical structure and the methods and frequency of inspections that may be needed. Therefore, this final rule requires DAHs to develop and make available to operators the data and documents they need to support compliance with the DT requirements of the AASFR.

Specifically, this final rule requires DAHs to develop and make available the following four types of documents to operators:

(1) Lists of fatigue critical structure (to aid operators in identifying repairs and alterations that need to be addressed for DT).

(2) Damage tolerance inspections to provide operators with the necessary inspection times and methods for the following:

- Repair data published by type certificate (TC) holders.[6]
- TC holder's future repair data not published for general use.[7]
- Repair data developed by supplemental type certificate (STC) holders.
- Alteration data developed by TC and STC holders.

(3) Damage tolerance evaluation guidelines for all other repairs (to enable operators to obtain the necessary damage tolerance inspections).

(4) Implementation schedules (to define the necessary timing for performing damage tolerance

[1] Damage tolerance (DT) is a method used to evaluate the crack growth and residual strength characteristics of structure. Based on the results, inspections or other procedures are established as necessary to prevent catastrophic failures due to fatigue. Most commonly, the maintenance actions developed are directed inspections for fatigue cracking.

[2] Various segments of industry use the term ''modification'' to define a design change. We consider this term to be synonymous with the term ''alteration.'' We use both terms in this rule to mean a design change that is made to an airplane.

[3] 70 FR 5518; February 2, 2005.

[4] The rule applies to turbine powered airplane models with a maximum type certificated passenger seating capacity of 30 or more, or a maximum payload capacity of 7,500 pounds or more.

[5] For purposes of this rule, design approval holders (DAHs) are holders of type certificates (TCs) or supplemental type certificates (STCs) issued under 14 CFR part 21.

[6] Published repair data are instructions for accomplishing repairs, which are published for general use in structural repair manuals (SRMs) and service bulletins. These data are approved for general application to a particular airplane model or airplane configuration.

[7] This includes repairs that are developed for individual airplanes at the request of an operator. These repairs are often complex or unique to a particular airplane or group of airplanes experiencing similar damage conditions.

evaluations and developing damage tolerance inspections and for incorporating the DT data into the operator's maintenance program).

This final rule transfers the responsibility for developing DT-based data from operators to DAHs and, therefore, has minimal to no societal costs. The aviation industry as a whole would also benefit because DAHs could amortize their development costs for DT data over a larger fleet.

II. Background

A. Summary of the NPRM

1. The Proposed Rule

On April 21, 2006, the FAA published in the **Federal Register** the Notice of proposed rulemaking (NPRM) entitled, Damage Tolerance Data for Repairs and Alterations (DAH DT Data NPRM),[8] which is the basis of this final rule.

In the DAH DT Data NPRM, the FAA proposed to require DAHs to develop and make available to operators certain damage tolerance (DT) data that address the adverse effects repairs, alterations, and modifications may have on fatigue critical structure. These data are necessary to support operator compliance with the Aging Airplane Safety Final Rule (AASFR).[9] Specifically, we proposed to require DAHs to develop and make available to operators the following: (1) Lists of fatigue critical structure for baseline and alteration structure; (2) Damage tolerance inspections (DTIs) for existing published repair and alteration data; (3) DTIs for future repair and alteration data; (4) Repair evaluation guidelines (REGs) that include a process for conducting airplane surveys, a process for establishing DT Data, and implementation schedules for the above actions. In addition, we proposed to require DAHs to develop a compliance plan for meeting these four requirements and to obtain FAA approval of the plan.

The NPRM contains the background and rationale for this rulemaking and, except where we have made revisions in this final rule, you should refer to it for that information.

2. Related Activities

In July 2004, we published the Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments),[10] where we informed the public of our intent to propose DAH airworthiness requirements to support certain operational rules. We requested comments on our proposal.

In December 2002, we published the Aging Airplane Safety Interim final rule; request for comments.[11] In February 2005, we adopted the AASFR in which we responded to the comments from the interim rule and made some changes to that rule. The February 2005 AASFR requires affected operators to include certain damage tolerance inspections and procedures in their maintenance programs by December 20, 2010. Today's final rule is directly related to the AASFR in that it provides a means for operators to get the data and documents they need to comply with the AASFR.

In July 2005, we published a disposition of comments document,[12] in which we responded to comments to the July 2004 action. Also in July 2005, we published a policy statement, Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Airplanes,[13] that explains our criteria for adopting DAH requirements like those described in this final rule.

On April 21, 2006,[14] along with the NPRM for this rulemaking, we published a Notice of Availability (NOA) and request for comments on draft AC 120–XX [15] (Damage Tolerance Inspections for Repairs). This AC included guidance related to repairs, which the Aviation Rulemaking Advisory Committee's (ARAC) Airworthiness Assurance Working Group (AAWG) [16] developed.

On July 7, 2006, we published a notice [17] that granted industry a 90-day extension to comment on the NPRM; and on February 27, 2007, we published a NOA [18] and request for comments on revised AC 120–XX,[19] which includes guidance from the AAWG on both repairs and alterations.

B. Differences Between the NPRM and the Final Rule

1. New Part 26 for Design Approval Holders' Airworthiness Requirements

In the NPRM (and other Aging Airplane Program rules), we placed the DAH airworthiness requirements in part 25, subpart I. As we explained in the recently adopted Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety final rule (EAPAS/FTS),[20] we have placed these requirements in new part 26, and we have moved the enabling regulations into part 21.[21] We determined that this was the best course of action because it keeps part 25 as strictly airworthiness standards for transport category airplanes, thus maintaining harmonization and compatibility among the United States, Canada, and the European Union regulatory systems. Providing references to part 26 in part 21 clarifies how the part 26 requirements will address existing and future design approvals.

In creating new part 26, we renumbered the proposed sections of part 25, subpart I and we incorporated the changes discussed in this preamble. A table of this renumbering is shown below.

TABLE 1.—RELATIONSHIP OF PROPOSED PART 25 SUBPART I TO PART 26 FINAL RULES

Part 26 final rules	Proposed part 25
Subpart E—Aging Airplane Safety—Damage Tolerance Data for Repairs and Alterations.	Subpart I—Continued Airworthiness.
§ 26.5 Applicability table.	New.[22]
§ 26.41 Definitions	New.[23]
§ 26.43 Holders of and applicants for type certificates—Repairs.	§ 25.1823 Holders of type certificates—Repairs.
§ 26.45 Holders of type certificates—Alterations and repairs to alterations.	§ 25.1825 Holders of type certificates—Alterations and repairs to alterations.
§ 26.47 Holders of and applicants for a supplemental type certificate—Alterations and repairs to alterations.	§ 25.1827 Holders of and applicants for a supplemental type certificate—Alterations and repairs to alterations.

[8] 71 FR 20574.

[9] AASFR: 70 FR 5518; February 2, 2005. See also 70 FR 23935; May 6, 2005: Aging Airplane Safety; Correcting Amendment.

[10] 69 FR 45936; July 30, 2004.

[11] 67 FR 72726; December 6, 2002.

[12] 70 FR 40168; July 12, 2005: Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments).

[13] 70 FR 40166, July 12, 2005 (PS–ANM110–7–12–2005).

[14] 71 FR 20750.

[15] Issued as AC 120–93.

[16] AAWG Member Organizations: Boeing Commercial Airplanes, Federal Express (FedEx), Airbus, Air Transport Association (ATA), American Airlines, British Airways, Continental Airlines, Japan Airlines, Northwest Airlines, United Airlines, United Parcel Service (UPS), Airborne Express, U.S. Airways, Federal Aviation Administration (FAA), and European Aviation Safety Agency (EASA).

[17] 71 FR 38541.

[18] 72 FR 8834.

[19] Issued as AC 120–93.

[20] 72 FR 63364; November 8, 2007.

[21] Certification Procedures for Products and Parts.

[22] This section, which includes an applicability table for part 26, was adopted as part of the EAPAS final rule.

[23] These definitions were proposed in § 25.1823(b).

TABLE 1.—RELATIONSHIP OF PROPOSED PART 25 SUBPART I TO PART 26 FINAL RULES—Continued

Part 26 final rules	Proposed part 25
§ 26.49 Compliance Plan.	§ 25.1829 Compliance Plan.

2. New Subparts for Airworthiness Operational Rules

We discussed in the preamble to the proposed rule that we would establish new subparts for airworthiness-related operational rules. Since there were several other aging airplane proposals (e.g., EAPAS) published around the same time, each proposal contained language that established the new subparts and redesignated certain sections of those rules. We said when any one of those proposals became a final rule, we would remove the duplicative provisions that established the new subparts and redesignated sections from the other aging airplane rules. In the DAH DT Data proposal, we included regulatory text to add subparts AA and B (Continued Airworthiness and Safety Improvements) to include the airworthiness requirements from parts 121 and 129, respectively. We also included regulatory language to redesignate the section numbers in parts 121 and 129 that were moved to the new subparts. However, since the EAPAS final rule was the first to be codified, that final rule adopted subparts AA and B and redesignated appropriate sections of parts 121 and 129. Therefore, we have removed the duplicative regulatory text from this final rule.

To aid understanding of our discussion about the DAH DT Data rule as it relates to the AASFR, we have indicated below the prior and redesignated sections of parts 121 and 129 of the AASFR that include DT-related requirements.

Prior sections	Redesignated sections
§ 121.370a	§ 121.1109
§ 129.16	§ 129.109

3. Minor Conforming Changes to the Aging Airplane Safety Final Rule

During the rulemaking process for the DAH DT Data rule, the FAA determined that minor changes to the AASFR were needed to ensure clarity of the two rules. The original wording in §§ 121.370a and 129.16 (redesignated as §§ 121.1109 and 129.109, respectively) required that changes to the certificate holder's maintenance program (i.e., inclusion of DT-based inspections and procedures and any revisions to them) be approved by the Aircraft Certification Office (ACO) [24] or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate, as determined by the Administrator.

Although the ACO will approve the documentation that the DAH DT Data final rule requires DAHs to submit to the FAA, the DT inspections and procedures resulting from this documentation, which certificate holders must incorporate into their maintenance programs, should be approved by their Principal Maintenance Inspector (PMI). Therefore, we revised §§ 121.1109 and 129.109 to state that it is the PMI's responsibility to review and approve changes to a certificate holder's maintenance program.

Also, we believe the requirements in current §§ 121.1109(c)(1) and 129.109(b)(1) that address DT relative to baseline structure and repairs, alterations, and modifications would be clearer if they were in separate paragraphs. Therefore, we revised §§ 121.1109 and 129.109 to include requirements related to baseline structure in § 121.1109(c)(1) and § 129.109(b)(1) and those related to repairs, alterations, and modifications in § 121.1109(c)(2) and § 129.109(b)(2). We also made minor wording changes for clarity and consistency with the new part 26 requirements and Advisory Circular (AC) 120–XX,[25] which describes an acceptable means of compliance with the DAH DT Data final rule.

4. Other Miscellaneous Changes

Based on comments to the proposed rule, we have revised the final rule as summarized below and discussed in more detail under the Discussion of the Final Rule heading.

We extended the compliance times for DAHs to develop the required lists of fatigue critical structure. For TC holders, we extended the compliance date for them to submit their lists of fatigue critical baseline structure to the FAA Oversight Office for review and approval from 90 to 180 days after the effective date of the final rule. We also added a provision that makes it clear to future TC holders that the lists of fatigue critical baseline structure must be submitted as part of the type certification process.

In the NPRM, we proposed TC holders submit their lists of fatigue critical alteration structure to the FAA Oversight Office for review and approval 90 days after the effective date of the final rule. We proposed 270 days for STC holders. In the final rule, we extended the compliance date to 360 days after the effective date of the final rule for both TC holders and STC holders to submit these lists.

The NPRM included a requirement for TC and STC holders to develop a process to enable operators to ''establish'' damage tolerance inspections (DTIs) for repairs and alterations to fatigue critical baseline structure (FCBS). This final rule replaces the term ''establish'' with ''obtain.'' We made this change because the term ''obtain'' better reflects the intent of the rule and is meant to be all inclusive. That is, the operator may ''obtain'' a DTI by establishing it themselves, or by receiving the DTI directly from a TC holder, STC holder, or a third party.

Section 25.1823(f)(1)(iii) (adopted as § 26.43(e)(1)(iii)) proposed an implementation schedule for repairs covered by the repair evaluation guidelines (REGs). To clarify this proposed requirement, we revised it in the final rule to specify that the implementation schedule must identify the times when actions must be taken as specific numbers of flight cycles, flight hours, or both.

We revised proposed § 25.1823(f)(3) (adopted as § 26.43(e)(3)) to remove the reference to § 25.1827. That reference would have required TC holders to make their REGs available to STC holders. We made this change because TC holders do not need to provide REGs to STC holders. However, they must provide their lists of fatigue critical structure (FCS) to STC holders.

As discussed in more detail later in this preamble, based on comments submitted to other DAH airworthiness rules, we removed some provisions of the compliance plan in proposed § 25.1829 (adopted as § 26.49). Specifically, we removed the proposed requirements in § 25.1829(a)(3) for DAHs to identify the intended means of compliance that differ from those described in FAA advisory materials. Similarly, we removed the requirement in proposed § 25.1829(c) that would have authorized the FAA Oversight Office to identify deficiencies in a compliance plan or the DAH's implementation of the plan and to require specified corrective actions to remedy those deficiencies. We do not

[24] The regulatory text in this rule refers to the ACO or office of the Transport Airplane Directorate with oversight responsibility for the relevant type certificate or supplemental type certificate as the FAA Oversight Office.

[25] Issued as AC 120–93.

believe removal of these requirements will adversely affect our ability to facilitate DAH compliance.

In § 25.1829(5), we proposed a requirement for including in the compliance plan a process for continuous assessment of service information related to structural fatigue damage. As discussed later in this preamble, we have determined that existing regulations should enable us to determine whether the objectives of this DAH DT Data final rule are being met. Therefore, we have removed this provision from this final rule.

In addition to the changes discussed above, we made minor changes to clarify the definitions of damage tolerance inspections and published repair data in proposed § 25.1823 (the definitions are now in § 26.41). We also made other minor changes to clarify the requirements in proposed §§ 25.1823 (adopted as § 26.43), 25.1825 (adopted as § 26.45), 25.1827 (adopted as § 26.47), and 25.1829 (adopted as § 26.49).

C. Summary of Comments

The FAA received multiple comments from 17 commenters, including the Air Transport Association (ATA) and a collective group of certain industry representatives who are members of the AAWG.[26] In the following discussion of the comments received to the proposed rule, we will refer to the comments received from those industry representatives of the AAWG as the ''AAWG industry representatives.'' Also, several of the AAWG and the ATA member organizations sent separate comments on behalf of their organizations, with some specifically expressing support for the comments submitted by the AAWG industry representatives and the ATA. The comments to the proposed rule covered an array of topics and contained a range of responses, which we discuss more fully below under the Discussion of the Final Rule heading. In general, commenters supported the intent of the rule and the guidance material. They also requested some changes and clarifications.

Many of the comments to the proposed rule concerned issues specific to the Widespread Fatigue Damage (WFD)[27] proposal. The FAA intends to address the WFD-related comments in a separate action, so we will not address them here.

We also received several comments about the DAH airworthiness requirements. We addressed many of the same or similar comments and issues in the July 2005 disposition of comments document to the Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments). In addition, we explained in detail the need for these requirements in our July 2005 policy statement. As a result, we will not revisit those comments and issues here.

III. Discussion of the Final Rule

A. Overview

1. Final Rule

Fatigue cracking has been a major aviation safety concern for many years. Unless detected and repaired, fatigue cracks can grow to the point of catastrophic failure. Since the adoption of Amendment 25–45[28] in 1978, the FAA has required new types of airplanes to meet damage tolerance (DT) requirements to ensure their continued airworthiness. Industry has also used this method successfully to develop inspection programs for older airplanes, such as Supplemental Structural Inspection Programs (SSIP). Since the 1980s, the FAA has mandated that operators of most large transport airplanes carry out these programs.

Although these programs have been effective for baseline structure (the airplane structure as originally manufactured), industry has not comprehensively implemented DT methods for repairs and alterations. For airplanes certified to Amendment 25–45 and later, repairs and alterations were not always evaluated for damage tolerance. This omission is important because airplanes are subject to many repairs and alterations throughout their operational lives. If fatigue cracking occurs in a repaired or altered area, the results can be just as catastrophic as if it had occurred in the baseline structure.

The AASFR requires airline operators of certain large transport category airplanes[29] to implement DT-based inspection programs for airplane structure; that is, structure susceptible to fatigue cracking that could contribute to a catastrophic failure. In today's DAH DT Data final rule, we refer to this structure as ''fatigue critical structure.'' Most importantly for today's DAH DT Data final rule, the AASFR requires the maintenance program for the airplane include a means to address the adverse effects repairs and alterations may have on airplane structure.

With the AASFR, we now have in place the regulatory means to provide for comprehensive implementation of DT methods on all large transport category airplanes used by air carriers operating under 14 CFR parts 121 and 129. To carry out these requirements fully, however, we must place corresponding requirements on the holders of FAA design approvals for these airplanes. Otherwise, the operators may not be able to obtain the data and documents they need to comply with the AASFR. As the owner of the design data for these airplanes, the DAH is in the best position to identify the fatigue critical structure and the methods and frequency of inspections that may be needed.

As indicated in our July 2005 policy statement about the shared responsibility for addressing airworthiness issues, in cases where operators must rely on data or documents from DAHs to comply with operational rules, we will require DAHs to develop that information by a specified date. This final rule includes such requirements.

Specifically, 14 CFR 26.43, 26.45, and 26.47 require that the TC holders and STC holders develop certain information that will provide a means for operators to address the adverse effects of repairs and alterations. The information required by this final rule includes the following:

- List of Fatigue Critical Structure (baseline and alteration).
- Damage tolerance inspections (DTIs) for existing published repair data and all future repair data.
- DTIs for all existing and future alteration data.
- Repair evaluation guidelines (REGs), which include—
  - —Instructions for conducting airplane surveys;
  - —Instructions an operator uses to obtain DTIs; and
  - —An implementation schedule that provides timing for the above actions.

2. Guidance Material

The FAA has issued Advisory Circular (AC) 120–93, Damage Tolerance of Repairs and Alterations, concurrently with this rule. The AC provides TC and STC holders with an acceptable method of compliance with this final rule. The AC, which was developed through a collaborative effort between the FAA and the Aviation Rulemaking Advisory Committee

[26] AAWG industry representatives (a collective group of commenters who are members of the AAWG): Boeing Commercial Airplanes, Federal Express (FedEx), Airbus, American Airlines, British Airways, Continental Airlines, Japan Airlines, Northwest Airlines, United Airlines, United Parcel Service (UPS), Airborne Express, US Airways.

[27] 71 FR 19928; April 18, 2006.

[28] 43 FR 46242; October 5, 1978.

[29] The rule applies to turbine powered airplane models with a maximum type certificated passenger seating capacity of 30 more, or a maximum payload capacity of 7,500 pounds or more.

(ARAC), supports operator compliance with the AASFR with respect to repairs and alterations.

As amended by this final rule, § 121.1109(c)(2) of the AASFR requires operators to incorporate into their maintenance program a ''means'' for addressing the adverse effects that repairs and alterations may have on fatigue critical structure. This AC provides guidance that TC holders, STC holders, and operators can use in developing a means for addressing repairs and alterations.

To facilitate operators' timely compliance with the AASFR for repairs, the guidance material in this AC includes implementation schedules that specify acceptable time frames for when operators can incorporate required DT data into their maintenance programs. The implementation schedules allow for a phased-in program where existing repairs on the older and higher utilization airplanes are assessed first, and the newer airplanes assessed as they approach their Design Service Goal (DSG). This approach ensures that DTIs will be available when needed for both older and newer airplanes.

B. Airplane Applicability and Exceptions

This rule applies to transport category, turbine powered airplane models with an original TC issued after January 1, 1958. With certain exceptions, this rule applies to those airplanes that, as a result of the original certification or later increase in capacity, have a maximum type certificated passenger seating capacity of 30 or more or a maximum payload capacity of 7,500 pounds or more. The final rule differs from the proposal in that we revised the list of excepted airplanes to include the Lockheed L–300, deHavilland DHC–7, and Boeing 707/720 airplanes. We included these airplanes on the excepted list because they are not currently being operated in commercial service in the U.S., and we do not expect they will be in the future.

1. Airplane Certification Amendment Level

Airbus and United Parcel Service (UPS) expressed concern that the requirements of this rule duplicate certain requirements of current regulations.

Airbus said because newer airplanes like the A330/A340 and A380 have a state-of-the-art damage tolerance assessment for all activities related to baseline structure, repairs, and alterations, the TC holder's activities under proposed §§ 25.1823(d) and (e) and 25.1825(c) and (d) would be ''senseless.'' It said applying the proposed requirements to its newer model airplanes would offer no additional safety benefit because they are already inherent in the consistent application of the damage tolerance requirements in § 25.571. It also said the proposed activities for these airplane models would create an unnecessary administrative burden and would require re-approval of already DT-justified modifications and repairs. Airbus asked the FAA to reconsider applying proposed §§ 25.1823 and 25.1825 to TC holders as they relate to airplane models A330/A340/A380 and future Airbus models. It suggested addressing this issue under proposed § 25.1829 in the model-specific compliance plans.

UPS said if the proposed rule is adopted, it would force operators to survey every airplane in their fleet to find repairs and then evaluate them based on guidelines produced by TC holders. UPS believes airplanes certified to comply with Amendment 25–54 or later already have DT data developed for fatigue critical structure, which includes certain baseline structure, as well as all repairs and alterations. UPS suggested the FAA make the proposed surveys applicable only to airplanes certified prior to Amendment 25–54. To accomplish this, it said, the FAA should revise proposed § 25.1823(a) to limit the applicability to airplanes type certified to pre-Amendment 25–54 requirements.

As discussed in the NPRM, the FAA has identified several airplane models certified to Amendment 25–45 or later (including airplane models certified to Amendment 25–54) for which published repair data have not been evaluated for DT. Therefore, unless accomplished previously, a damage tolerance evaluation (DTE) needs to be accomplished for all airplanes, regardless of the certification level. For those airplanes certified to Amendment 25–45 or later that have had a DTE completed for all published repair and alteration data, the compliance plan required by § 26.49 (proposed as § 25.1829) should contain a statement to that effect, and the TC holder will need to substantiate this statement with previously approved data from their certification effort to show compliance with this rule. TC holders who have already substantiated compliance with DT requirements should not find compliance with this rule burdensome.

Regarding UPS's comment, if the TC holder can substantiate compliance for its repairs and alterations, it is still likely that operators have installed repairs and alterations that were not designed by the TC holder on many airplanes. It is also likely that many of these repairs and alterations were not assessed for damage tolerance. Therefore, a survey will still be necessary to identify those repairs and alterations and to determine if DT data are available to support operator compliance with the AASFR.

Bombardier noted that the proposed rule would apply only to DAHs for airplanes currently operated under parts 121 or 129. It said this would not change the requirement to maintain damage tolerance for all airplanes originally certified as damage tolerant under § 25.571 (Amendment 45 or later). It said it presumes these airplanes will continue to be regulated under § 25.1529, using AC 25.1529–1 as guidance (and under Canadian Air Regulations & Airworthiness Manual 511.34 for Canadian DAHs). Bombardier asserted that the four DAH deliverables required by proposed § 25.1823 (lists of fatigue critical baseline structure, damage tolerance inspections, damage tolerance evaluation guidelines, and implementation schedules) are already required under § 25.1529 (with guidance provided in AC 25.1529–1) and could constitute compliance with the proposed rule.

We agree that TC holders and others designing repairs and alterations for airplanes certificated to Amendment 25–45 or later amendments will continue to be required to comply with § 25.1529, regardless of the types of operations conducted. For airplanes subject to this DAH DT Data rule, DAHs and operators should use the guidance in AC 120–93 instead of AC 25.1529–1 for repairs. Because this rule is entirely consistent with §§ 25.571 and 25.1529, DTIs that comply with this rule will also comply with those sections. To the extent such data have been developed previously, their compliance will be simplified.

2. Parts 91, 125, and 135 Operations

Transport Canada and Mr. Thomas A. Knott expressed concern that the proposed rule only applies to airplanes operated under parts 121 and 129. Mr. Knott also stated that it leaves out airplanes operated under parts 91, 125, and 135. Transport Canada expressed concern that the DAH DT Data proposal and the AASFR do not apply to airplanes operated under part 125 and would allow airplanes such as the B727 and B747 to operate as passenger-carrying airplanes under part 125 without having to meet DT or the aging airplane safety requirements.

As we discussed earlier in this preamble, the purpose of this rule is to support parts 121 and 129 operators'

compliance with the AASFR. For the reasons discussed in the preamble to the AASFR, we limited applicability of the DT requirements (supplemental inspections) in that rule to certain large transport airplanes that are typically operated under parts 121 or 129. For the affected airplanes that are operated under parts 91, 125, or 135, their utilization is much lower and the risks associated with fatigue damage that the AASFR is intended to address is, therefore, also much lower. Because of this, we determined it would not be cost-effective to impose the AASFR's supplemental inspection requirements on parts 91, 125, or 135 operators.

3. Exception of Airplanes Not Operating in the U.S. Under Part 121 or 129

Viking Air Limited said it owns seven de Havilland heritage aircraft, including the DHC–5 Buffalo and DHC–7. Viking Air Limited said there are about 23 DHC–5s in confirmed operation, and the DHC–7 has about 66 in confirmed operation. Many of those in confirmed operation are used in military operations and are not subject to part 121 or 129. According to the FAA Registry, no DHC–5 aircraft are presently registered in the U.S. Therefore, Viking proposed that the DHC–5 be added as an exception under proposed § 25.1823(h). Viking Air Limited also said that for the DHC–7, there presently are the following safety measures in place: Canadian Airworthiness Directive CF–94–19R1 that mandates a Supplemental Inspection Program; CF–2005–36 that imposes a Structural Life Limit; and CF–98–03 that mandates the Corrosion Prevention and Control Program. With these actions, the DHC–7, the commenter stated, has already met the intentions of aging aircraft initiative for structures.

The FAA researched its data bases and found that the DHC–5 does not have a type certificate issued by the U.S. Therefore, there is no need for an exception for the DHC–5 Buffalo. Furthermore, we have determined that there are no DHC–7 airplanes currently operated under part 121 or U.S.-registered DHC–7 airplanes operated under part 129. For the reasons discussed earlier in this preamble, we added the DHC–7, as well as the Lockheed L–300 and the Boeing 707/720, to the list of excepted airplanes in § 26.43(g) of this final rule.

C. Fatigue Critical Structure (FCS)

This final rule requires TC and STC holders to evaluate their designs for baseline and alteration structure to identify FCS. They must also develop lists of FCS and make the lists available to operators.

This final rule defines fatigue critical structure as airplane structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, as determined under § 25.571. This is structure that may need special maintenance actions to manage the threat of fatigue. This would be the case for structure that has the potential to develop fatigue cracks that, without intervention, could lead to a catastrophic failure. The fatigue evaluations are performed to determine if special actions are needed and if so, to provide the data needed to define the maintenance action requirements. Fatigue critical structure may be part of the baseline structure or part of an alteration to the baseline structure. As explained in the NPRM,[30] by referencing § 25.571 in the sentence noted below, we intended to rely on the many precedents established in finding compliance with this section.

> Because of industry's extensive experience in showing compliance with the damage tolerance requirements of § 25.571, these key terms [e.g., fatigue critical structure] should be readily understood and applied.

To clarify how the criteria of § 25.571 apply within the context of this rule, we revised the definition of ''fatigue critical structure'' by adding the following language: ''Fatigue critical structure includes structure, which, if repaired or altered, could be susceptible to fatigue cracking and contribute to a catastrophic failure.''

Airbus, the ATA, and UPS, asked for a more detailed definition of fatigue critical structure. They expressed concern that, as proposed, the definition is open to varying interpretations, so it may not be applied consistently across industry or across different airplane models. UPS added that some STC holders do not have experience in complying with § 25.571. It asserted, the definition must be clear so that it can be interpreted and applied in the same manner across the industry.

The ATA and UPS said the methodology for identifying fatigue critical structure should include quantitative criteria for assessing the criticality of structural elements, based on a comparison of their operational loads to their design limit loads or ultimate loads; and it should account for load type and single- and multiple-load paths. Also, the ATA said, the methodology should define what ''could contribute'' means as stated in the definition of fatigue critical structure. It recommended possibly using criteria similar to that in § 25.1309 to clarify the definition.

The term ''fatigue critical structure,'' as explained in the proposed rule, is intended to identify the same kind of structure for which applicants must perform fatigue evaluations to comply with § 25.571.[31] These evaluations have been required for new type certificates since the adoption of Amendment 25–45 in 1978. Furthermore, AC 25–571–1C, published in 1998, provides many examples of the types of structural elements that should be evaluated. Therefore, we believe there is little, if any, room for differing interpretations of this term.

We believe many of the commenters' concerns result from differences in the way industry has used the term ''principal structural elements'' (PSEs). This term, as used in § 25.571 and AC 25.571, is synonymous with the term ''fatigue critical structure.'' That is, a PSE is structure that needs to be evaluated to determine if special maintenance actions are needed to manage fatigue. And if such actions are needed, they must be defined. The meaning of PSE in § 25.571 contrasts significantly with its usage in certain industry practices that have evolved over the years.

For some TC and STC holders, a PSE is considered to be a specific, localized area within fatigue critical structure where special, directed inspections are required by an Airworthiness Directive (AD) or airworthiness limitations. For example, all longitudinal skin splices in a pressurized fuselage should be considered fatigue critical structure if they are not immune to fatigue cracking which could lead to a catastrophic failure. However, it may be reasonable to manage fatigue in these splices by only performing a special directed inspection on the most highly stressed area, which may only constitute a small percentage of the at-risk structure.

Some TC and STC holders have identified the PSE as being limited to this localized area. While this narrow usage of the term might be acceptable within the context of specific supplemental inspection documents (SID) or Airworthiness Limitations Sections (ALS), it could and has led to confusion and inappropriate actions when taken out of context. For this

[30] 71 FR 20583.

[31] § 25.571(a): ''An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, * * * will be avoided throughout the operational life of the airplane. This evaluation must be conducted * * * for each part of the structure which could contribute to a catastrophic failure (such as wing, empennage, control surfaces, fuselage, engine mounts, and their related primary attachments) * * *.''

reason, we have chosen not to use the term ''principal structural element'' in this rule.

The purpose of requiring identification and listing of fatigue critical structure under this rule is to provide operators with a tool that will help in the evaluation of existing and future repairs and alterations. In this context, fatigue critical structure (FCS) is any structure that, if repaired or altered, could be susceptible to fatigue cracking and contribute to a catastrophic failure.

In the case of the longitudinal skin splices discussed above, we would expect that the FCS listed by the TC holder would include much more structure than just, for example, the localized area that is being inspected to gauge the fatigue state of all the splices. A hypothetical repair applied to even the lowest stress area of the splices could potentially make it more critical than the highest stressed area without a repair by increasing and redistributing structural loads. The result would be a repair needing its own special directed inspection to prevent potentially catastrophic failure. The only way to cover this contingency would be to perform a DTE.

As discussed above, we revised the proposed definition of FCS to clarify how the criteria of § 25.571 apply in the context of this rule. As we stated in the NPRM, [32] we intend for this rule to apply to future type certificate holders, as well as current holders. Because the list of FCS required by this rule may be more extensive than the structure identified as airworthiness limitations items currently developed by TC applicants, we added provisions to § 26.43 paragraphs (a) and (e) to make it clear that the list of FCS must be submitted as part of the type certification process. This requirement will help ensure that, new TC holders are properly addressing DT requirements in developing structural repair manuals (SRMs) and other service documents for use by operators. It will also assist operators in ensuring that a DTE is performed for all repairs and alterations to structure identified as FCS, as required by the AASFR, from the beginning of an airplane's operational life.

Regarding the concern that STC holders may not have experience in complying with § 25.571, current and earlier versions of AC 25.571–1C provide guidance on identifying PSEs that is also applicable to identification of FCS under this rule. Also, one reason this rule requires a compliance plan is to ensure that TC holders, STC holders, and the FAA have a common understanding of the rule's requirements, including acceptable compliance methods.

Regarding suggestions to use quantitative methods or methodologies used to comply with § 25.1309, our intent is to use the same method to identify FCS that is required by § 25.571. Paragraph (a) of § 25.571 states that an evaluation must be conducted for ''each part of structure that could contribute to a catastrophic failure.'' Therefore, the applicant must determine which parts of structure could contribute to a catastrophic failure when damaged as a result of fatigue cracking. Applying a probabilistic approach to determine if and when a part will contribute to a catastrophic failure has not been industry practice in complying with § 25.571. TC holders are required under § 25.571 to perform a damage tolerance evaluation on structure to determine when fatigue cracking may occur. At that point an inspection is performed to determine if cracking has occurred. A probabilistic approach would raise many implementation questions because fatigue cracking in metallic structure is a certainty and detection is imperative in order to prevent catastrophic failure of airplane structure. Probabilistic approaches would not be consistent with our objective of facilitating timely compliance.

D. Damage Tolerance Evaluation (DTE)

This rule requires TC holders and STC holders to review their repair and alteration data and determine if a DTE is needed. Unless previously accomplished, a DTE must be performed on all repairs and alterations that affect fatigue critical structure. A DTE is a process that leads to a determination of maintenance actions necessary to detect or preclude fatigue cracking that could contribute to a catastrophic failure. As applied to repairs and alterations, a DTE includes the evaluation of the repair or alteration and the fatigue critical baseline structure affected by the repair or alteration. Acceptable methods for performing DTEs are described in AC 25.571–1C.

The maintenance actions developed as a result of a DTE may include inspections, time limits for removal and replacement of repairs, modification of the repair, alteration to improve its fatigue characteristics, or in some cases modification of the affected FCS. The type of maintenance action that is appropriate depends upon the type of structure affected and the type of fatigue anticipated. For example, for fatigue cracks that grow at a predictable rate and that can be detected by inspections, a repetitive inspection program would be acceptable. For cracks in locations that cannot be inspected and for cracking that may grow too rapidly to be detected reliably, replacement or modification may be necessary.

Section 26.43(c) requires TC holders to perform a DTE of those repairs specified in their published repair data that affect fatigue critical structure. Similarly, §§ 26.45(c) and 26.47(c) require TC and STC holders to perform a DTE on their FAA-approved alteration data. In addition to the published repair and alteration data, this final rule requires that all future repair and alteration data receive a DTE to determine if inspections or other actions are necessary to ensure the airworthiness of the repair or alteration. This rule also requires TC holders to develop Repair Evaluation Guidelines (REGs) that will enable operators to survey their airplanes to identify repairs that affect fatigue critical baseline structure (FCBS) and to obtain any necessary damage tolerance inspections (DTI) for those repairs. If the REG directs the operator to obtain assistance from the TC holder for developing the DTI, the TC holder must make such assistance available.

As discussed below, based on comments to the NPRM, we revised the proposed requirements in §§ 25.1825(c) and 25.1827(c) (adopted as §§ 26.45(c)(1) and 26.47(c)(1), respectively)) to clarify that a DTE must be performed and the DTI developed for the alteration and the FCBS that is affected by the alteration.

Boeing and AAWG industry representatives asked that the regulatory text in proposed §§ 25.1825 and 25.1827 be revised to clarify that both alteration and baseline structure need to be assessed. They state that the description of the work proposed in these sections of the NPRM may be interpreted to mean that DTIs only need to be developed for the alteration that happens to affect FCBS. However, AAWG industry representatives do not believe this is the interpretation the FAA intends. AAWG industry representatives recommended that the language in both §§ 25.1825 and 25.1827 be changed to clearly say that the following three components must be addressed for alterations:

1. Identification of alterations that affect baseline fatigue critical structure.
2. Identification of the structural design details of the alteration that require DTE.
3. Identification of the affected design details of the baseline fatigue critical

[32] 71 FR at 20583.

structure that require a re-evaluation of their DTE.

The commenters are correct in that we did not intend for the development of DTIs to be limited to the alteration structure. When a DTE is performed for an alteration, the DTE must be applied to both the alteration and the FCBS that is affected by the alteration. Therefore, the DTI developed (as determined by the DTE) for an alteration would apply to the alteration structure and to the FCBS that is affected by the alteration. As stated above, we revised §§ 25.1825(c) and 25.1827(c) (adopted as §§ 26.45(c)(1) and 26.47(c)(1), respectively) to clarify that for the alteration and the FCBS that is affected by the alteration a DTE must be performed and the DTI developed.

The FAA does not believe that §§ 25.1825(c) and 25.1827(c) (adopted as §§ 26.45(c) and 26.47(c), respectively) need to be revised to clarify that alterations that affect FCBS need to be assessed, or to provide clarification on which structural design details of an alteration would require a DTE. Sections 25.1825(c)(1) (adopted as § 26.45(c)(1)) and 25.1827(c)(1) (adopted as § 26.47(c)(1)) already specify that a DTE must be performed for alterations that affect FCBS. In addition, the structure of the alteration that requires development of a DTI will be identified as part of a DTE performed on the alteration. The DTI may need to be developed for fatigue critical alteration structure or for other alteration structure that may affect the FCBS. We expect that this identification would be part of the DTE of the alteration.

Regarding the commenters' position that the proposed rule needs to be revised to clarify the design details of the affected FCBS that will need a re-evaluation of their DTE, the DTE of an alteration will include an evaluation of the FCS that is affected by the alteration. Therefore, in performing the evaluation of the affected FCBS, it must be determined if new or revised DTIs need to be developed for this structure. Such a determination is made as part of a DTE.

Mr. Thomas A. Knott, P.E., said the proposed rule ''is fine,'' except it does not address repairs and modifications done under part 43. He said there are many alterations and repairs that were not approved under an STC or developed by TC holders.

The FAA acknowledges that there are existing repairs and alterations that were developed and installed under 14 CFR part 43 without involvement by DAHs. This final rule takes into account these types of repairs. The guidelines the DAHs are required to develop will describe procedures for operators to follow in developing DTIs for repairs. For alterations affecting FCS for which no DAH is responsible, the AASFR requires operators either to develop the DT data themselves or contract for their development. Because there is no DAH for these alterations, they may be especially problematic if the installers failed to consider the fatigue characteristics of the alterations or their effects on the baseline structure. Both repairs and alterations will be identified and assessed as part of surveys conducted to support compliance with the AASFR.

E. Damage Tolerance Inspections (DTIs)

A DTI is defined in this final rule as inspections developed as a result of a DTE. The DTI includes the location of the airplane structure to be inspected, the inspection method, inspection procedures that include acceptance and rejection criteria, and the thresholds and intervals associated with those inspections. The DTI may also specify a time limit when the repair or alteration needs to be replaced. As discussed below, this definition reflects minor changes from the one in the proposed rule.

Boeing asked that the FAA revise the definition of DTI. It said the phrase ''and corrective maintenance actions'' could be confused with a requirement to provide repair instructions or other corrective measures for a condition found during an inspection. It said, historically, the only instructions provided are how to accomplish the inspection contained in the DTI and what action should be taken if the inspection could not be accomplished. Therefore, Boeing requested that the phrase ''and corrective maintenance actions'' be removed from the definition and replaced with the phrase, ''or a time limit when the repair needs to be replaced, or both.''

We agree and have revised the definition in the final rule as requested. The purpose of this rule is to support operators' implementation of damage tolerance inspection programs, as required by the AASFR. Operators already have access to information on corrective actions in the form of SRMs and other documents that may be necessary if the inspections reveal fatigue cracks. Therefore, it is not necessary to include the phrase ''and corrective maintenance actions'' in the definition of DTI.

Bombardier asked, with respect to inspections of repairs, that we clarify the phrase ''the location of the airplane structure to be inspected'' used in the DTI definition. Bombardier said it understands this phrase to mean that the DTI should clearly define which regions of the repair and underlying structure should be inspected and the NDT (non-destructive testing) method to be used in carrying out the inspection. It said the DTI should be clearly linked to the repair data, which will of itself define the repair location.

The FAA agrees that the DTI should clearly define the areas of the repair and underlying structure that should be inspected and the inspection method to be applied. The DTI will be applicable to specific repair data that will define the repair location. This approach is the same as that currently used by TC holders in developing SRMs to comply with § 25.571, Amendment 25–45 and later.

F. DT Data for Repairs

1. Published Repair Data

This final rule requires TC holders to review their published repair data and determine if DT data exist for the repairs or if the DT data need to be developed. This final rule defines published repair data as instructions for accomplishing repairs, which are published for general use in SRMs and service bulletins (or equivalent types of documents). As discussed below, we made minor revisions to the proposed definition.

Boeing requested that we revise the definition of ''published repair data'' to make it clearer. It recommended the following revised version of the proposed definition:

> Published repair data means applicable instructions for accomplishing repairs, which are published for general use in structural repair manuals and service bulletins (or equivalent types of documents).

The FAA agrees with the recommended revision to the definition of ''published repair data,'' and we have revised the definition, accordingly, with a minor change in wording.

Bombardier said a list of Structural Significant Items (primary structure) is provided in the SRMs for Bombardier Regional Aircraft. It urged the FAA to consider rulemaking to require the SRM to be an approved document. The SRM, Bombardier commented, can then incorporate all of the instructions for continuing airworthiness required by the NPRM and described previously in AC 25.1529. It said this approach has been used by Bombardier and Transport Canada for SRMs and component maintenance manuals (CMMs) applicable to aircraft and components certified as damage tolerant to § 25.571 (Amendment 25–45) and later.

As explained in the NPRM, SRMs, while not required documents, are FAA approved. Their purpose is to provide operators with readily available sources of approved repair data. Because the operational rules require that major repairs be accomplished according to FAA-approved data, an SRM that has not been FAA approved would not serve operators' needs. The SRM, if assessed for damage tolerance under § 25.571 (Amendment 25–45 or later Amendment), should include the necessary instructions to ensure a particular repair meets the criteria in AC 25.1529.

2. Effects of Multiple Repairs

Mr. Glenn Davis commented that DT data should address the effects of multiple repairs in close proximity on older aircraft, and future inspections should be based on a ''worst case scenario of the 'combination effect' of the multiple repairs.'' He said the FAA might consider requiring a time limit for individual or multiple repairs when the repaired structure would have to be replaced, unless the applicant or operator can confirm through a rational fatigue analysis, using an acceptable fatigue model, that the repaired structure does not need to be replaced. Mr. Davis said such a requirement could be applied to high stress areas in older aircraft such as pressure bulkheads, door apertures, attach fitting support structure for wings, and stabilizers.

The FAA agrees with Mr. Davis's comment that the DT data, specifically the DTE, should take into account the close proximity of repairs. AC 25.571–1C provides guidance on determining the effects of multiple repairs that are in close proximity. In addition, the repair assessment guideline (RAG) documents developed in support of § 121.370 (redesignated as § 121.1107)[33] address the effects of these types of repairs on the pressure vessel. The FAA believes that existing guidance in AC 25–571–1C, along with guidance developed in AC 120–93, as part of this final rule, adequately addresses this issue.

G. Repair Evaluation Guidelines (REGs)

This final rule requires TC holders to develop REGs that include processes operators could use to support compliance with §§ 121.1109 and 129.109 for repairs that affect FCBS. The guidelines must include—

- A process for conducting surveys of affected airplanes to identify and document all existing repairs that affect FCBS;
- A process that will enable operators to obtain DTIs for repairs that affect FCBS and for the FCBS affected by the repairs; and
- An implementation schedule that provides the timing for conducting airplane surveys and for developing and incorporating DTIs into the operator's maintenance program.

TC holders must submit the REGs to the FAA Oversight Office for review and approval and then make them available to affected operators.

As discussed below, we made several minor revisions to the proposed REG requirements.

In § 25.1823(f)(1)(iii) and (f)(4) (adopted as § 26.43(e)(1)(iii) and (e)(4)), we removed the term ''DT data'' from the phrase ''DT data implementation schedule.'' We made this change because the term ''DT data implementation schedule'' may be misunderstood to mean the actual timing of DT inspections (thresholds and inspection intervals). It was only intended to refer to the timing of major process related events (i.e., survey, development of DTIs, and incorporation of the DTI into the maintenance program).

We revised proposed § 25.1823(f)(1)(iii) (adopted as § 26.43(e)(1)(iii)) to make it clear that the implementation schedule must identify the times when actions must be taken as specific numbers of flight cycles, flight hours, or both. In developing its recommendation regarding implementation schedules, the AAWG proposed an approach that would have referenced the design service goal (DSG) for determining the timing of various actions and would have allowed for variability in DSGs for different airplanes of the same model, depending upon actual flight lengths and other factors.

We agree with the AAWG that it is appropriate to allow reference to DSGs in the implementation schedule to allow for industry resources to be allocated for compliance when they are needed. For example, the AAWG recommended that certain actions be taken when an airplane reaches ¾ DSG, before which fatigue cracking is less likely to have occurred. However, allowing variability in DSG for different airplanes of the same model would introduce a level of complexity and uncertainty to the requirements of the operational rules that would jeopardize their enforceability. Therefore, this rule requires that DSGs be stated as ''hard numbers.''

We revised § 25.1823(f)(3) (adopted as § 26.43(e)(3)) to remove the requirement that TC holders must make REGs available to STC holders. As adopted, this paragraph only requires the TC holder to make the REGs available to specified operators. We made this change because if STC holders have access to the TC holder's list of FCS, they will not need their REGs.

We also revised § 25.1823(f)(4) (adopted as § 26.43(e)(4)). The proposed paragraph reads as follows: ''If the guidelines direct the operator to obtain assistance from the holder of a type certificate, provide such assistance in accordance with * * *'' We revised this paragraph in the final rule to replace the words ''provide such assistance'' with the words ''make such assistance available.'' This change makes it clear that, as with other requirements for TC holders to support operators, this rule is not intended to require TC holders to provide this support without compensation.

Boeing said proposed § 25.1823(f)(3) specifies that the TC holder will make available the guideline documents to various entities. Boeing believes this proposed requirement is in error and the reference to proposed § 25.1827 should be removed from § 25.1823. Section 25.1827 is applicable to holders of and applicants for an STC. In reading § 25.1827 and draft AC 120–XX,[34] Boeing said there is no need for third parties to have access to the guidelines developed as part of § 25.1823. According to § 25.1827 and AC 120–XX, the only data required by an STC holder is the list of fatigue critical structure, as stipulated in § 25.1823(c)(2). In light of this, Boeing said, the reference to § 25.1827 should be deleted from proposed § 25.1823.

We agree that STC holders do not need the guidelines to comply with this final rule as long as they have access to the TC holder's list of FCS. We have revised the final rule as discussed above.

Boeing commented that proposed § 25.1823(f)(4) appears to be using incorrect terminology. It said the wording in § 25.1823(f)(4) could circumvent the current business practices and established relationships between the TC holder and the operator. Boeing requested that paragraph (f)(4) be changed as follows:

> If the guidelines direct the operator to obtain assistance from the holder of a type certificate, the holder of the type certificate will make available such assistance in accordance with the DT data implementation schedule.

It was not our intent to require TC holders to provide assistance to operators without compensation. As

[33] Repair Assessment for Pressurized Fuselages final rule (65 FR 24108; April 25, 2000).

[34] Issued as AC 120–93.

indicated above, we have revised the final rule as the commenter requested.

UPS expressed concern about the effectiveness of the proposed REGs. The proposed rule, it said, assumes that practical, cost effective REGs are achievable. However, the proposed procedure will be significantly more complex than the current Repair Assessment Guideline (RAG) documents, which only survey fuselage skin. UPS said the current repair assessment of pressurized fuselage skin results in removal and replacement of some repairs due to the inability to accurately determine the exact repair details. Fuselage skin repairs are relatively easy to assess because almost all damage is cut out and one side of the repair is accessible for detailed measurements. For other structure (e.g., stringers, ribs, spars, frames, shear clips, bathtub fitting) the ability to determine hidden repair details may not be possible without removing the repair. Consequently, the proposed survey method of documenting and establishing DTIs on existing repairs could result in a higher than necessary repair replacement frequency. To minimize the impact of the DTE of repairs, UPS believes it is vital that the FCS be properly identified.

In response to UPS's concerns about the effectiveness of the proposed REGs, the airplane repair survey process was patterned after existing RAG documents to minimize the impact of the DTE of repairs. AC 120–93 provides guidance for performing surveys to identify repairs that may affect FCS.

Regarding UPS's comment that certain structure may be difficult to inspect without having to remove the repair, operators should work with the TC holder in the Structural Task Group (STG) meetings to ensure an efficient process is developed for assessing repairs to minimize the unnecessary removal of repairs. The DTE will determine what actions are necessary to ensure the continued airworthiness of the affected FCBS. Performing DTIs on these airplanes should be no more difficult than performing them on airplanes for which repair data already have DTIs for compliance with the airplane's certification basis. We agree that it is vital that FCS be properly identified. As discussed previously, this final rule requires TC holders to apply the same analytical methods to create this list that they have applied for many years in complying with § 25.571.

H. DT Data for Alterations

This final rule requires TC holders to perform DTEs, and develop DTI, if necessary, for their alterations that affect FCBS. For existing alterations, TC holders must submit the DT data for FAA approval by June 30, 2009. For future alterations, the DT data are required before we approve the alteration data.

Similarly, STC holders must perform DTEs and develop DTIs for their alterations that affect FCBS. In addition to alterations, some STC holders must perform DTEs and develop DTIs, if necessary, for repairs developed by them that affect any FCS. For existing alterations, STC holders must submit the DT data for FAA approval by June 30, 2009. For future alterations, the DT data are required before we approve the alteration data.

The sections of the proposal that relate to alterations, (§§ 25.1825 and 25.1827 (adopted as §§ 25.45 and 25.47, respectively)) were revised as discussed below to make them clearer. As proposed, these sections may be misinterpreted to mean that the TC and STC holders need to perform a DTE of their alterations as installed on individual airplanes, addressing variations in the configurations of these airplanes. Our intent, however, is that they perform a DTE only of their alteration design data.

These sections may also be misinterpreted to mean that DTIs only need to be developed for the FCS of the alteration. In addition, as stated in the definition of damage tolerance evaluation in proposed § 25.1823(b), we intended that the DTE would also apply to the FCBS that is affected by the alteration and that the resulting DTI would also address the affected baseline structure. To clarify these requirements, the final rule specifies that TC and STC holders must, for each alteration affecting FCBS, identify and develop DTIs for both the FCBS that is affected by the alteration and the fatigue critical alteration structure. Other than some additional minor wording changes, there are no other changes to the sections of the final rule pertaining to alterations.

The ATA commented that the FAA should limit the number of DTEs necessary for alterations. Proposed § 25.1825(c) and § 25.1827(c) require TC holders to perform a DTE of each existing and future alteration and submit DT data for the existing alterations to the FAA. These provisions would apply to an impracticable number of alterations, according to the commenter. The ATA recommended, therefore, that the FAA clarify §§ 25.1825(c) and 25.1827(c) to stipulate that ''each alteration'' applies to each certificate or approval of an alteration rather than each installation.

The FAA agrees that it would be impracticable for TC or STC holders to perform a DTE for alterations as installed on individual airplanes, which may contain alterations and repairs that would affect the DTE of which the TC or STC holder is unaware. It was not the FAA's intent to require TC and STC holders to develop DT data for the actual installation of their developed design changes (alterations), but rather to require them to perform a DTE of the design changes affecting FCBS that are specified in their FAA-approved alteration data. This DTE must, however, address the range of airplane configurations on which the TC or STC holder showed the alteration is eligible for installation. We revised §§ 25.1825(c) and 25.1827(c) (adopted as §§ 26.45(c) and 26.47(c), respectively) to clarify that the DAHs are only responsible for performing DTE of their alteration data, and not of the alterations as actually installed.

I. Required Documentation

The ATA said the FAA should define the documents required of DAHs as specifically as possible, and the product should be delivered to the FAA for certification or approval in a form ready for direct installation or incorporation as required by the associated operating rule. The ATA said adherence to this recommendation should be facilitated by the participation of Structural Task Groups (STG) in the development of the DTI and REG. The ATA recommended that the FAA use consistent terminology in the final rule and in AC 120–XX,[35] so they clearly describe the documentation and data DAHs must make available to operators. It said draft AC 120–XX states that DAHs would provide operators with a model-specific ''compliance document.'' The NPRM, however, does not discuss the ''compliance document'' referenced in the draft AC. Similar to the ATA comment, Horizon Air asked that the rule define the specific type of required data that DAHs must make available to operators.

We agree with the ATA that this final rule should clearly identify the required data and documents. This final rule requires DAHs to develop and make available to operators lists of fatigue critical structure, damage tolerance inspections for their alterations and repair data (supported by DTE documentation submitted to the FAA), repair evaluation guidelines, and implementation schedules.

Based on the Aviation Rulemaking Advisory Committee's (ARAC)

[35] Issued as AC 120–93.

recommendations, the FAA developed AC 120–93 to facilitate DAH compliance with this rule and operator compliance with the AASFR. This AC describes a compliance document that would either contain or reference these required documents. Because the compliance dates for these documents differ, the DAH would not make the compliance document, as a whole, available until the last of these documents is approved.

As described in the AC, this compliance document would support an operator's development of an Operator's Implementation Plan (OIP). The OIP would provide the means for addressing the adverse effects of repairs and alterations. Once this OIP is approved by the operator's principal maintenance inspector (PMI), the operator would comply with the AASFR by incorporating the OIP into its maintenance program and implementing the OIP by performing surveys of its airplanes, obtaining necessary damage tolerance inspections and procedures, and performing those inspections and procedures, all in accordance with the approved implementation schedule contained in the OIP.

STGs, working under the auspices of the ARAC's Airworthiness Assurance Working Group (AAWG), may be convened to assist TC holders in developing airplane model-specific DT data. This rule and AC 120–93 reflect consistent terminology. The DT data to be developed and made available are described in §§ 26.43, 26.45, and 26.47 of this final rule, as well as in AC 120–93.

J. Proprietary Data

The ATA said the FAA should work with DAHs to establish a narrow and clear definition of proprietary data. DAHs have expressed concerns that the proposed requirements could lead to the disclosure of proprietary data (e.g., DT documentation). Conversely, operators are concerned that restrictive disclosure policies could result in REGs and DTIs that are too general to be used without costly and time-consuming consultation with the DAH. The ATA recommended that the FAA coordinate with DAHs to support a goal for documents that must be ''made available'' under the proposal that would allow operators to comply autonomously with the DT requirements without consulting with the DAH more than absolutely necessary. ATA said the FAA can support this recommendation further by providing guidelines to DAHs and STGs to ensure that claims of proprietary data are not overstated.

For many years, the FAA has required DAHs to disclose to affected persons information they might otherwise consider proprietary. For example, since 1981, DAHs have been required to provide Instructions for Continued Airworthiness, including DT data, which DAHs may have considered proprietary. However, because we have determined that this information is essential to maintaining the airplanes in an airworthy condition, we have required DAHs to make it available as a condition for obtaining and retaining their certificates. Regarding the usefulness of the documents developed by the DAHs, because we expect these documents will be developed by DAHs in collaboration with the affected operators, we anticipate that the operators will ensure they are useful for their intended purposes. FAA technical specialists will also be monitoring development of these documents for this purpose.

K. Compliance Plan

This final rule includes requirements for a compliance plan to ensure that affected TC and STC holders produce DT data in a timely manner that are acceptable in content and format. Integral to the compliance plan are procedures to allow the FAA to monitor progress toward compliance. The affected TC and STC holders must submit to the FAA Oversight Office on the compliance dates specified in the rule a compliance plan that addresses—

- The project schedule for meeting the compliance dates, including all major milestones;
- A proposed means of compliance with the requirements to develop and make available DT data; and
- A plan to submit to the FAA Oversight Office, not less than 60 days before the stated compliance dates, a draft of the required compliance items.

Based on comments submitted to other DAH airworthiness rules, the FAA has determined that we can remove some provisions of proposed § 25.1829 (adopted as § 26.49) without adversely affecting our ability to facilitate DAH compliance. Specifically, in § 25.1829(a)(3), we proposed a requirement for DAHs to identify the intended means of compliance that differ from those described in FAA advisory materials. While this is still a desirable element of any compliance plan, we have concluded that an explicit requirement is unnecessary. As with normal type certification planning, we expect that DAHs will identify these differences and fully discuss them with the FAA Oversight Office early in the compliance period to ensure that these differences will ultimately not jeopardize full and timely compliance.

Similarly, § 25.1829(c) contains provisions that would have authorized the FAA Oversight Office to identify deficiencies in a compliance plan or the DAH's implementation of the plan and to require specified corrective actions to remedy those deficiencies. While we anticipate that this process will still occur in the event of potential non-compliance, we have concluded that it is unnecessary to adopt explicit requirements to correct deficiencies.

Ultimately, DAHs are responsible for submitting compliant documents by the dates specified in §§ 26.43, 26.45, and 26.47 of this final rule. Section 26.49 retains the requirements to submit a compliance plan and to implement the approved plan. If the FAA Oversight Office determines that the DAH is at risk of not submitting compliant documents by the compliance dates because of deficiencies in either the compliance plan or the DAH's implementation of the plan, the FAA Oversight Office will document the deficiencies and request DAH corrective action. Failure to implement proper corrective action under these circumstances, while not constituting a separate violation, will be considered in determining appropriate enforcement action if the DAH ultimately fails to meet the requirements of this section.

We also added an exception for future TC applicants in § 26.49(a) to make it clear that these applicants are not required to submit a separate compliance plan for the applicable requirements of this final rule. These compliance issues should be addressed as part of the normal certification plan submitted for any type certificate project.

Section 25.1829(5) included a proposed requirement to include in the compliance plan a process for continually assessing service information related to structural fatigue damage. We have reconsidered this proposed requirement and concluded that existing regulations [36] that require both DAHs and operators to report structural defects should be adequate to enable us to determine whether the objectives of this final rule are being met. Therefore, we removed this provision from the final rule.

1. Process for Continuous Assessment of Service Information

Bombardier, in its comment on the compliance plan, referred to the proposed requirement that the compliance plan must address a process for continuous assessment of service information. Bombardier said feedback

[36] 14 CFR 21.3 and 121.703.

from operators on the effectiveness and findings resulting from DT-based inspections of baseline structure, as well as repairs and alterations, may not be adequate to enable them to meet this requirement.

As discussed above, we have removed this provision from this final rule since existing regulations will enable us to determine if the objectives of this final rule are being met.

2. Timing of FAA Approval

Airbus expressed concern that the FAA may not have sufficient resources to handle approval of compliance plans in a timely manner. Therefore, it recommends a thorough review of FAA resources needed for this activity before committing to the proposed compliance date.

FedEx said it understands that the compliance documents must be approved by the FAA Aircraft Certification Office (ACO) before they are made available to operators, but the proposed rule does not state when the documents would be made available to operators. FedEx said the rule should include a date by which the FAA would approve the DT data that TC and STC holders provide, as well as a date by which the approved data will be made available to operators.

The ATA said the FAA should commit to a schedule for approving the DT data from DAHs and implementation plans from operators. It requested that the FAA give an estimate of when industry can expect the FAA to approve the DT documents and implementation plans, taking into account the volume of the submissions.

We are not including time frames in the regulation for our review and approval of the compliance plans and compliance documents. Expectations for FAA personnel have been defined in FAA Order 8110.26, which directs the Aircraft Certification Service and Flight Standards Service in their roles and responsibilities for implementing these initiatives. The Order includes expected times for reviewing and approving DAH compliance plans, plans to correct deficiencies, and draft and final compliance data and documents. To facilitate implementation, we will also train affected personnel in their roles and responsibilities and provide familiarization with requirements of the regulations and associated guidance. However, our ability to approve documents, and the timing of our approvals, ultimately depends on the quality of the documents submitted by the DAHs and their responsiveness if we identify deficiencies.

L. Harmonization

The AAWG industry representatives, ATA, Boeing, Embraer, and Horizon Air commented that the FAA should harmonize the DT Data rule with EASA and other national airworthiness authorities. If the rule is not harmonized, the AAWG industry representatives expressed concern that the FAA's retention of authority to make all necessary compliance determinations for foreign DAHs will establish ''a substantial precedent that could create a significant challenge to all future certification programs.'' The AAWG industry representatives said the stated requirements advocate ''a procedure that could permit unilateral and potentially arbitrary certification activities at the whim of any regulatory authority.''

Boeing and the ATA said the lack of harmonization will cause unnecessary conflicts and complexities between the FAA's and foreign authorities' requirements. Boeing said while it is aware that EASA is pursuing a similar proposal, EASA may not adopt the same requirements as the FAA. Also, Boeing said, having to comply with different requirements in the same time frame would cause added complications and difficulties with meeting aggressive schedules, and it would result in unnecessary, additional work for the FAA.

Both Boeing and the ATA believe harmonization is a standard of excellence that has been achieved over many years of hard work and this rule should not interfere with that achievement.

We agree with the commenters that harmonization of this rule with other national authorities is an important objective. We fully expect to coordinate with EASA and other authorities on findings of compliance. EASA and Transport Canada Civil Aviation (TCCA) have participated in the AAWG's development of the AC that will support compliance with this final rule. As a follow-on to this activity, EASA has proposed the formation of a European Aging Aircraft Working Group and has requested participation by the FAA. The FAA plans to support this activity with representatives from both the Aircraft Certification Service and the Flight Standards Service. There is general agreement among the authorities on the need to address DT for repairs and alterations and on the approach adopted in this rule.

The AAWG industry representatives commented that there is the potential for creating substantial negative impact in the industry with respect to airplane certification sales and transfers between U.S. and foreign entities because the proposal has not been harmonized with EASA. According to the AAWG industry representatives, the economics of this impact has not been accounted for in the regulatory evaluation; therefore, the FAA should assure that the final rule is harmonized to the extent possible with EASA because of the potential economic issue for all parties. The AAWG industry representatives also said it appears that the long-term intention of EASA is to harmonize with the U.S. requirements by 2008 or 2009. And it said that the implementation time scales are different between the two authorities' approaches.

This rule will not have the negative effects suggested by the commenter. In fact, by requiring DAHs to develop and make available the data necessary to comply with the AASFR, this rule will facilitate compliance for all airplanes, which is a prerequisite for transferability. All authorities recognize that harmonization of this rule is important in that common requirements will allow expeditious transfer of airplanes across borders, and we are working towards that objective.

1. Foreign Authority Approval of Required Data

Airbus commented that the NPRM preamble indicates that the FAA cannot accept foreign authority approval for documents under Bilateral Agreements because these foreign authorities have not yet adopted a similar rule. It said the Joint Aviation Authorities (JAA) issued and applied Notice of Proposed Amendment (NPA 20–10) (the European Aviation Safety Agency (EASA) updated NPA 20–10 to NPA 05/2006), which addresses the same airworthiness issues and incorporates similar technical guidance. Moreover, evaluation of repairs, alterations, and modifications to DT requirements is state-of-the-art and is approved under the EASA regulatory system on a daily basis.

Airbus also said it will be at a disadvantage by having to deal unilaterally with the FAA without the support and involvement of EASA. Also, it said it would have to coordinate with the FAA's international branch along with several other non-U.S. TC holders. However, U.S. TC holders will have a dedicated FAA certification office to work with and may be able to use their authorized designees to perform compliance related activities.

According to Airbus, obtaining support from the FAA is especially important for proposed §§ 25.1823(d) and 25.1825(c) and (d) for alteration and

repair approvals. Therefore, Airbus requested that the FAA include EASA in the approval process, such that in the near future the FAA could accept the majority of the activities performed by EASA under the Bilateral Agreement. In addition, Airbus requested that the FAA give non-U.S. TC and STC holders the same level of priority and the same allocation of FAA resources as U.S. TC and STC holders. This, Airbus said, would help mitigate delays in reaction and approval time.

Horizon Air said the proposed rule states that data will be submitted to the FAA Oversight Office or its properly authorized designees. In defining ''authorized designees,'' reference is made only to Designated Engineering Representatives (DERs) specifically authorized by their supervising ACO.

Horizon Air also said that currently because of the Bilateral Agreement between Transport Canada and the FAA, it is able to incorporate DTE and DTI documentation for Bombardier and deHavilland airplanes directly into its maintenance program. Under the new rule, it appears it would be required to submit the developed repair data to the ACO before being able to implement it. Therefore, Horizon Air requested that Foreign Authorities, specifically Transport Canada, or their designees be included under Bilateral Agreements.

We recognize the important role other national authorities are likely to play in implementation of this rule. In addition to the on-going efforts to harmonize these requirements, we have been working closely with the other national authorities to define appropriate roles, responsibilities, and relationships among all affected authorities. As discussed in the NPRM, the compliance planning provisions are equally important for foreign TC holders, and we expect to have mutually agreeable arrangements with their authorities on how compliance planning will be overseen. We expect these other authorities to play a major role in reviewing their TC holders' compliance plans and other required documents, which will enable us to provide timely approvals for all affected TC and STC holders, assuming the submitted documents comply with the applicable requirements.

M. Enforcement

Bombardier and UPS expressed concerns about enforcement. Bombardier asked what mechanism the FAA would use to impose civil penalties on non-U.S. DAHs. UPS said the proposed rule does not state how the FAA would handle a DAH that does not complete the damage tolerance assessment tasks on time. It is also concerned whether the FAA can effectively enforce the intent of these types of provisions.

The compliance planning provisions of this rule are intended to facilitate timely compliance and avoid the need of enforcement for non-compliance. However, under 49 U.S.C. 46301, the FAA has authority to take civil penalty action without regard to nationality of the respondent. The FAA's general enforcement policies, which are set forth in 14 CFR part 13 and Order 2150.3, will apply to the DAH requirements. These general policies provide wide discretion for us to impose administrative action, civil penalties (up to $25,000 per violation per day) or action against a TC or STC holder's certificate (including suspension or revocation).

If a TC or STC holder is found to be non-compliant, we will consider the circumstances of non-compliance before determining an appropriate course of action. For example, deliberate violations will be treated more severely than inadvertent non-compliance. Any enforcement action the FAA may choose to take will be in consideration of the circumstances of the violation and defined on a case-by-case basis.

N. Industry and FAA Resources

UPS commented that DT analysis depends on complex methodology and data. Because of this, there are very few DERs in the industry that have FAA DTE approval authority. UPS suggested it is highly unlikely that this methodology and relevant data can be streamlined into an approach that is useful and effective. It suggested the FAA establish an initiative to authorize additional structures DERs with DTE approval authority.

ABX expressed concern that both industry and the FAA have a shortage of specialists in areas related to the rule. It said FAA ACOs don't have enough resources to provide the needed support to industry in a timely manner. It also said the present delegation requirements in the area of DT are unachievable for non-OEM DERs. Therefore, ABX said the FAA, with support of the industry, should take the following steps:

- Create different levels of delegation for DTE. If necessary, keep the requirements the same for full authority but allow DERs with less than required experience to obtain delegation to show compliance in specific areas, using previously FAA-approved methodology.
- Provide training to DERs and/or call for specific college courses that can substitute the experience to facilitate the delegation.
- Develop methodologies for DT analysis in the areas that are frequently needed by operators and STC holders.
- Postpone any rulemakings until the industry has the required tools to comply with the rule in the mandated time frame.

Recognizing the limited industry and FAA resources available to perform and approve DTEs, ARAC has developed guidance material in AC 120–93 that describes a means of compliance with this rule and the AASFR that allows the available resources to focus on the highest priority DTEs for repairs. This AC describes an implementation schedule with a phased-in approach under which existing repairs on the older and higher-utilization airplanes are assessed first (highest risk repairs), with newer airplanes being assessed when they approach their design service goal (DSG). This approach is similar to that established for certain RAGs developed for compliance with § 121.370[37] (redesignated as § 121.1107)). Therefore, we find the implementation schedule approach described in AC 120–93 to be a rational one. We believe this approach will help ensure that adequate industry and FAA resources will be available to support timely compliance with this final rule and with the AASFR.

The FAA agrees that there is a need for an increased number of designees having authorization for DT. To address this potential problem, the FAA is continuing to hold DER seminars to encourage participation by DERs in these programs. DERs can work with their FAA Oversight Office to develop a plan that would support expanding their authorized delegation to include DT. Due to the complexities associated with DT, particularly those related to performing DTEs on repairs and alterations, it is necessary to ensure DER candidates have adequate experience in performing DT and in analyzing repairs and alterations. The current process for obtaining DT-delegated functions requires DER applicants to have at least 1 year of experience in performing DTEs. This experience is necessary for the FAA to gain a level of confidence that the DER, once authorized to perform DT on repairs and alterations, will submit DT data that are appropriate and not subject to a need for extensive review by the FAA Oversight Office.

For compliance with the AASFR, it is of particular importance that the DERs have a working knowledge of what is required for showing compliance with § 25.571 for repairs and alterations. The FAA does not agree with the

[37] Special maintenance program requirements.

commenter's recommendation to allow DER candidates with less than the required experience to obtain a delegation for DT, or to substitute the requirement for experience with college courses to facilitate delegation. Experience is a key element in ensuring the success of the FAA's delegation program.

Regarding the recommendation that the FAA develop methodologies for DT analysis in the areas that are frequently needed by operators and STC holders, we believe the methodologies employed today, which have been used for several years throughout the aviation industry, are adequate. Damage-tolerance-based programs such as RAGs developed by TC holders to support operator compliance with § 121.370 (redesignated as § 121.1107), provide a streamlined approach operators can use for assessing repairs common to the airplane pressure boundary. Expansion of these guidelines to address additional structural areas (e.g., frequently repaired areas), or development of new RAGs, may support operator compliance with the AASFR. However, these types of DT-based programs are model specific and typically require TC holder involvement. Operators should coordinate with TC holders during STG meetings to determine the need for such programs and how they should be structured.

We disagree with the recommendation to postpone this rulemaking because we do not believe industry needs additional time to comply. As we have discussed, this final rule is needed to support operator compliance with the AASFR. That rule was adopted in February 2005. Delaying adoption of the DAH requirements in this rule would adversely affect operators' ability to meet the compliance time frame in the AASFR. In addition, methodologies for performing a DTE have been applied for several years and are readily available. Also, to reduce the resource burden, we describe in AC 120–93 an implementation schedule that may provide more time for operators to obtain DTEs for alterations for which there are no TC or STC holders. This implementation schedule may provide, in part, a means for addressing the potential adverse effects of alterations.

UPS said some STC holders may not have the resources (either financially, technically, or both) to comply with the proposal. Further, it said, the proposal does not address the situation where an STC holder has gone out of business or has surrendered its STC to the FAA.

The FAA recognizes that there may be some occasions where the DAH is unwilling or unable to comply with the regulations. There may also be cases where the DAH no longer exists. As stated in the policy statement, Safety—A Shared Responsibility—New Direction for Addressing Airworthiness Issues for Transport Category Airplanes, under these circumstances, the operator is still obligated to comply with the operational rules. However, the FAA recognizes that such occasions may significantly complicate the operator's effort to show compliance with the operational rules. The FAA recommends the affected operators contact their DAHs early in the compliance process to ensure their intent to comply. These operators are also encouraged to collaborate with other operators who may also be impacted by lack of support on a means for compliance.

O. Compliance Dates

As noted before, today's final rule supports the AASFR, which requires operators to incorporate a means to address the adverse effects of repairs and alterations into their maintenance program by December 20, 2010. This DAH DT Data final rule includes compliance dates that require DAHs to make the required DT documents available to operators in enough time for them to comply with their approved means for addressing repairs and alterations. The approved means will include implementation schedules that provide timing for when airplane repair surveys are to be performed and when DTI or other maintenance actions for repairs and alterations need to be incorporated into the maintenance program. Certain of the compliance dates in the DAH DT Data final rule have changed from those in the proposed rule.

Specifically, in proposed § 25.1823(g)(1), TC holders would have 90 days after the effective date of the rule to submit their lists of fatigue critical baseline structure. In proposed § 25.1825(e)(1), they would have 90 days to submit their lists of fatigue critical alteration structure. In proposed § 25.1827(e)(1), STC holders would have 270 days to submit their lists of fatigue critical alteration structure.

In the final rule (§ 26.43(f)(1)), TC holders have 180 days from the effective date to submit their lists of fatigue critical baseline structure. TC and STC holders (§§ 26.45(e)(1) and 26.47(e)(1), respectively) have 360 days from the effective date of the rule to submit their lists of fatigue critical alteration structure.

The AAWG industry representatives, Boeing, FedEx, and Embraer asked for an extension of the compliance date in the AASFR and a commensurate extension of the DAH DT Data rule's compliance date. While several of the commenters acknowledged the FAA's prior 3-year extension (from 2007 to 2010) to the compliance time for the AASFR, they said if the FAA had published the DAH DT Data NPRM at the time of that extension, industry would have had more time to comply with the DAH DT Data final rule.

The AAWG industry representatives asked us to extend the AASFR compliance date of December 20, 2010 to December 20, 2013. FedEx asked the FAA to give operators a minimum of 12 months after receiving the FAA-approved documents to develop their implementation plan to send to their FAA Flight Standards District Office. Boeing asked us to extend the AASFR compliance date to August 18, 2013. It said the FAA should impose incremental compliance times from the effective date of final rules, rather than impose a fixed date. For the DAH DT Data final rule, Boeing believes the FAA should allow DAHs 4 years from the effective date of the rule to submit their documents to the FAA because of the addition of the DAH requirements and related compliance plan in this final rule.

Except as discussed previously regarding lists of fatigue critical structure (FCS), we do not believe an extension of the compliance dates in either rule is appropriate. As several of the commenters acknowledged, we previously extended the compliance date for the AASFR by 3 years to allow ARAC time to develop guidance material operators could use to support compliance with DT requirements related to repairs and alterations.

Based on requests from industry, in May 2004, we tasked [38] ARAC to develop guidance to support operator compliance with the AASFR. Included in the tasking notice was a task for ARAC to do the following:

> Oversee the Structural Task Group (STG) activities that will be coordinated for each applicable airplane model by the respective type certificate holders and parts 121 and 129 certificate holders. These STG activities will involve the development of model specific approaches for compliance with §§ 121.370a and 129.16 [redesignated as §§ 121.1109 and 121.109, respectively]* * *

In addition, the tasking states that the data developed by the TC holders via STG meetings, using the guidance material developed by ARAC, should be completed by December 18, 2009. ARAC accepted this tasking, which it assigned

[38] 69 FR 26641; May 13, 2004.

to the AAWG, and agreed to complete it by the specified date of December 18, 2009.

In the February 2005 AASFR, we extended the December 5, 2007 compliance date adopted in the Aging Airplane Safety Interim final rule [39] to December 20, 2010. This extension was meant to give ARAC time to complete the tasking and allow operators a full year to implement the resulting program changes. The AAWG developed a schedule for completion of the tasking by the agreed-upon date. The compliance dates specified in this DAH DT Data final rule are fully consistent with these commitments, and none of the commenters have identified reasons why we should not expect these commitments to be fulfilled.

Regarding Boeing's comment that this rule imposes additional requirements for which they need more time, assuming ARAC and the STGs fulfill their commitments, we anticipate that the products of the tasking will enable Boeing and other participating TC holders to meet the requirements of this rule with little additional effort. Specifically, regarding compliance planning, this type of planning is normal business practice, regardless of the requirements of this rule, as evidenced by the AAWG's schedule development discussed earlier.

The ATA, Boeing, UPS, FedEx, and AAWG industry representatives asked that DAHs be given 180 days from the effective date of the final rule to submit their lists of fatigue critical baseline structure to the FAA. The ATA and UPS asked that the FAA allow 360 days from the effective date of the final rule for STC holders to submit their lists of fatigue critical alteration structure. Airbus requested an extension of 1 year from the effective date of the final rule to submit its lists of fatigue critical baseline structure. The commenters believe it is important to allow DAHs enough time to develop the lists to ensure they are accurate.

Boeing and AAWG industry representatives indicated that the FAA should allow additional time to develop the lists because of their importance to industry and to other rules like the proposed Widespread Fatigue Damage (WFD) rule. Boeing said more time would enable it to consult with the STGs on the format and content of the lists. It also said more time is needed because of the large numbers of airplanes and alterations involved and the need for internal coordination to ensure consistency. It estimates that for its airplane models, it would have to produce more than 40 lists.

The ATA, FedEx, and UPS said if DAHs do not have sufficient time to develop accurate lists, they may produce overly conservative lists that include all primary structure. The ATA and FedEx add that such lists would be of little value to operators and would add costs and complexities to operator compliance with the AASFR. Also, the ATA said DAHs may opt to recommend replacement of structural elements rather than inspections and repairs if they do not have enough time to compile the lists. Airbus commented that it does not have the resources to complete the necessary assessments and compile the lists in the proposed time frames. Airbus said the consequence of not having enough time to develop accurate lists could be either incomplete lists or extremely long lists.

The FAA believes additional time to establish the lists of fatigue critical baseline and alteration structures is appropriate, and has revised the rule as discussed above. The revised time frames, which give TC holders 180 days to submit their lists of FCBS and TC and STC holders 360 days to submit their lists of fatigue critical alteration structure, should allow sufficient time to develop the lists. This is particularly true since the TC holders have been required to identify fatigue critical structure to comply with the damage tolerance requirements of § 25.571 since 1978. For pre-amendment 25–45 airplanes, the TC holder analysis that led to the development of the SID documents provide a useful starting point for developing these lists. As discussed previously, these activities should already be well underway.

P. Costs and Benefits

The AAWG industry representatives and Boeing commented on our statement in the NPRM that the costs of the proposed rule were accounted for in the AASFR. The AAWG industry representatives believe that the economics on which the proposed rule is based are questionable and their basis cannot be determined. Boeing said the FAA assumed that much of the work required for compliance with the proposed rule was already completed by the TC holders on other programs, such as the SID and RAG initiatives. The commenters added that the costs ascribed to the TC holder in the proposed rule, in fact, did not exist at the time the original rule was published for comment, nor do they exist today.

The AAWG industry representatives and Boeing requested that the FAA revise the basis of the economic evaluation of the proposed rule, and include accurate estimates of the cost of the development of compliance data by the TC holders, based on the means of compliance suggested in AC 120–93.

The ATA said the FAA should disclose DAH estimates for the cost of damage tolerance data and documents. The ATA indicated that it does not concur with the FAA's assertion that the proposed rule has minimal to no costs. The ATA recommended that the FAA include DAH estimates for the cost of these documents in its disposition of comments to the proposal.

UPS said the costs of the proposed rule changes are understated. Although the regulatory flexibility analysis in the rulemaking states that this rule would relieve small-entity part 121 operators of what could be a significant cost, there is nothing in this proposal that prevents DAHs from passing all their costs on to the operators. Although this compensation could be reasonable, it will also likely be significant. UPS suggested that an accurate cost-benefit analysis be accomplished and evaluated prior to adopting this rulemaking.

The requirements to develop damage tolerance (DT) based data for repairs and alterations were originally established in the Aging Airplane Safety Interim final rule (AASIFR). These responsibilities were initially placed on the operators of part 121 and U.S.-registered part 129 transport category airplanes. The costs and benefits were computed in the regulatory evaluation for that rulemaking. The regulatory evaluation for the AASIFR, as well as the regulatory evaluation for the AASFR, which clarified these requirements, recognized that to comply with the rule's requirements, operators would have to develop and implement DT-based inspections and procedures for the affected airplane structure. This DAH DT Data final rule is a counterpart to the AASFR; it transfers the responsibility of developing DT-based data from operators to design approval holders (DAHs). Therefore, it has minimal to no societal costs.

We anticipate that by the compliance date for the AASFR, DT inspection programs for baseline structure, required by this DAH DT Data final rule, will already be mandated by AD or certification or operational regulations for all airplanes affected by this final rule. A significant number of operators subject to the AASFR are small entities. If each of the small-entity operators individually took the responsibility for developing DT-based data, the cost for the data would be significant. By transferring the responsibility from part 121 operators to DAHs, this rule will

[39] 67 FR 72726; December 6, 2002.

relieve those operators of what could be a significant cost.

While UPS is correct that operators may have to compensate TC holders for the data they make available, we expect these costs to be substantially less than if the operators had been required to individually develop their own data.

The DAHs, with their greater expertise and access to design data, are in the best position to identify fatigue critical structure and methods and frequency of inspections operators need to comply with the AASFR. DAHs can develop these data with greater efficiency than individual operators and these costs would be amortized over a larger fleet. With STG participation, we expect that the resulting compliance documents will minimize costs for operators and facilitate their compliance with the AASFR. This final rule will ensure that the required data are developed in a timely manner to minimize the possibility for disruption of airline operations when the AASFR compliance deadline is reached. AC 120–93 is largely a product of ARAC and reflects industry's view of the most cost effective means for developing the data operators must implement under the AASFR.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), 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. Information collection requirements in the AASFR previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers: 2120–0020 and 2120–0008. Part 129 record requirements can be found in International Civil Aviation Organization Annexes.

The FAA reviewed data associated with compliance to the AASFR and data associated with this rule. We have determined that this rule is a transfer of responsibility only, and there is no additional paperwork burden on the public. The paperwork burden for compliance with the AASFR will be reduced as a result of this rule due to a reduction in the numbers of repairs and alterations that will need an individual damage tolerance assessment. This is because this rule will require design approval holders to develop a streamlined approach for assessing repairs.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

IV. Final Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

We begin with a discussion of the AASFR. Then we discuss the existing certification and operational rules that already require operators to develop and implement the DT inspections and procedures this final rule will require.

This rule transfers the responsibility of developing AASFR DT data and documents from operators to DAHs. A transfer of responsibility from one entity to another does not increase societal costs; therefore, this rule has minimal to no costs. Additionally, the DAH requirements do not preclude DAHs from recouping their costs by seeking reasonable compensation from the operators for the required DT data and documents. The recently published AASFR [40] requires airline operators of certain large transport category airplanes to implement DT-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to catastrophic failure. Damage tolerance data are essential for operators to implement and conduct DT-based inspections and procedures.

This final rule is a counterpart to the AASFR to ensure that operators have the necessary data and documents to support timely compliance with the requirements of §§ 121.1109 and 129.109. Timely operator compliance improves the safety of the fleet.

This final rule will require DAHs to develop DT inspections and procedures for repairs and alterations. Existing operational rules already require DT inspections and procedures for repairs and alterations to baseline structure. TC Holders of airplanes certified to Amendment 25–45 (or later), which are affected by this proposal, are required by § 25.571 to perform a damage tolerance evaluation and establish, as necessary, damage tolerance inspections or other procedures. On pre-Amendment 25–45 airplanes, DT inspection and procedures for the baseline structure are required by airworthiness directive (AD). Damage tolerance inspections for repairs and alterations to affected Boeing 727 and 737–100/200 airplanes are also required by AD. Damage tolerance inspections for repairs to the pressurized fuselage [41] for certain pre-Amendment 25–45 airplanes [42] are required by § 121.370 (redesignated as § 121.1107). By December 2010, damage tolerance inspections for the baseline structure and repairs and alterations will be required by §§ 121.1109 and 129.109 for airplanes certificated after January 1, 1958 that have a passenger seating

[40] 70 FR 5518, February 2, 2005.

[41] Fuselage, door skins, and bulkhead webs.

[42] A–300 (excluding the –600 model), 707, 720, 727, 737–300/400/500/600/700/800, 747 BAC 1–11, F–28, L–1011, DC–8, DC–9, MD–80, and DC–10.

capacity of 30 or more or a maximum payload capacity of 7500 pounds or more. Despite these requirements, in many cases, DT data and documents have not yet been developed for many repairs and alterations made to the affected airplanes.

The following table summarizes the regulatory requirements for DT inspection programs. The shaded areas in the table represent regulatory gaps filled by the AASFR (§ 121.1109) requirements to develop DT inspections and procedures for fatigue critical airplane structural areas.

BILLING CODE 4910–13–P

	Airplane Damage Tolerance Requirements			
Amendment Level Airplane Models	BASELINE structure	REPAIRS to fuselage & door skin, bulkhead webs	REPAIRS to all other areas	ALTERATIONS/ MODIFICATIONS
25-45 or later 737-600/700/800/900, 757, 767, 777, MD11, ATR42/72, F100, A320, A321, A318, A319, A300-600, A310, A340, A330, A380, EMB 135/145/170/190, SAAB 340/ 2000, CL-600/700/900, DHC-8, CASA C-295, CN-235, DO-328, DO 328JET, BAE146, AVRO 146, BAE Jetstream 4100	Certification Basis § 25.571 - Amdt 25-45 and later amendments require damage tolerance (DT) inspections	Certification Basis § 25.571 - Amdt 25-45 and later amendments require damage tolerance (DT) inspections	Certification Basis § 25.571 - Amdt 25-45 and later amendments require damage tolerance (DT) inspections	Certification Basis § 25.571 - Amdt 25-45 and later amendments require damage tolerance (DT) inspections
Pre 25-45 727, 737-100/200	SID[43] ADs	§ 121.1107 (Repair Assessment Rule) and SID ADs	SID ADs	SID ADs
Pre 25-45 737-300/400/500	A SID has been developed AD is pending	§ 121.1107 (Repair Assessment Rule) and SID ADs	§ 121.1109	§ 121.1109
Pre 25-45 A300, 747, F-28, L-1011-1/-2, DC-8, DC-9, MD-80, DC-10	SID ADs	§ 121.1107 (Repair Assessment Rule) and SID ADs	§ 121.1109	§ 121.1109
Pre 25-45 L-188, F27	SID ADs	§ 121.1109	§ 121.1109	§ 121.1109
Pre 25-45 L-382 L1011-3	DT data have been developed	§ 121.1109	§ 121.1109	§ 121.1109

BILLING CODE 4910–13–C

In summation, this final rule will transfer the responsibility from the existing requirements for developing DT based inspections and procedures from part 121 operators to DAHs. The DAHs, with their greater expertise and access to design data, are in the best position to identify fatigue critical structure and methods and frequency of inspections operators need to comply with the

[43] Supplemental Inspection Document.

AASFR. DAHs can develop these data with greater efficiency than individual operators and these costs will be amortized over a larger fleet. This final rule will ensure that the required data are developed in a timely manner to minimize the possibility for disruption of airline operations when the AASFR compliance deadline is reached.

The FAA has, therefore, determined this rulemaking action is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this final rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

We did not receive comments from U.S. small entities in the responses to the proposed rule.

The FAA recently adopted the Aging Airplane Safety Final Rule (AASFR),[44] which, among other things, requires airline operators of certain large transport category airplanes[45] to implement damage tolerance (DT) based inspections and procedures for airplane structure.

This final rule is a counterpart to the AASFR. By the effective date of this rule, DT inspection programs will already be required by AD, certification or operational regulations for all part 121 airplanes affected by this proposal. The final rule will transfer the requirement to develop AASFR DT based data for inspections and procedures from part 121 operators to design approval holders (DAH). A significant number of part 121 operators are small entities. By transferring the responsibility from part 121 operators to DAH, this final rule may relieve small-entity part 121 operators of what could be a significant cost.

DAHs include manufacturers of part 25 airplanes and supplemental type certificate (STC) holders for repairs and alterations made to these airplanes.

The current United States part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, and Raytheon Aircraft. These manufacturers will incur Type Certificate (TC) and Amended TC costs. Because all U.S. transport-aircraft category manufacturers have more than 1,500 employees, none are considered small entities.

STC holders include manufacturers and operators of part 25 airplanes, some of which are small-entities. Since the DAH requirements do not preclude them from seeking reasonable compensation from the operators for the proposal's required DT data and documents, small-entities STC holders, with less than 1,500 employees, should be able to recoup their costs.

Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandate Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under Executive Order 12866, and it is not

[44] 70 FR 5518, February 2, 2005.

[45] The rule applies to turbine powered airplane models with a maximum type certificated passenger capacity of 30 or more, or a maximum payload capacity of 7,500 pounds or more.

likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR Parts 121, 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Continued airworthiness.

V. The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations parts 26, 121, and 129 as follows:

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 2. Revise § 26.5 to read as follows:

§ 26.5 Applicability table.

Table 1 of this section provides an overview of the applicability of this part. It provides guidance in identifying what sections apply to various types of entities. The specific applicability of each subpart and section is specified in the regulatory text.

TABLE 1.—APPLICABILITY OF PART 26 RULES

	Applicable sections	
	Subpart B (EAPAS/FTS)	Subpart E damage tolerance data
Effective Date of Rule	December 10, 2007	January 11, 2008
Existing [1] TC Holders	26.11	26.43, 26.45, 26.49
Pending [1] TC Applicants	26.11	26.43, 26.45
Existing [1] STC Holders	N/A	26.47, 26.49
Pending [1] STC/ATC Applicants	26.11	26.45, 26.47, 26.49
Future[2] STC/ATC Applicants	26.11	26.45, 26.47, 26.49
Manufacturers	N/A	N/A
Persons seeking design approval of repairs	N/A	N/A

[1] As of the effective date of the identified rule.
[2] Application made after the effective date of the identified rule.

■ 3. Amend part 26 to add subparts C, D, and E to read as follows:

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Aging Airplane Safety—Damage Tolerance Data for Repairs and Alterations

Sec.
§ 26.41 Definitions.
§ 26.43 Holders of and applicants for type certificates—Repairs.
§ 26.45 Holders of type certificates—Alterations and repairs to alterations.
§ 26.47 Holders of and applicants for a supplemental type certificate—Alterations and repairs to alterations.
§ 26.49 Compliance plan.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Aging Airplane Safety—Damage Tolerance Data for Repairs and Alterations

§ 26.41 Definitions.

Affects (or Affected) means structure has been physically repaired, altered, or modified, or the structural loads acting on the structure have been increased or redistributed.

Baseline structure means structure that is designed under the original type certificate or amended type certificate for that airplane model.

Damage Tolerance Evaluation (DTE) means a process that leads to a determination of maintenance actions necessary to detect or preclude fatigue cracking that could contribute to a catastrophic failure. As applied to repairs and alterations, a DTE includes the evaluation both of the repair or alteration and of the fatigue critical structure affected by the repair or alteration.

Damage Tolerance Inspection (DTI) means the inspection developed as a result of a DTE. A DTI includes the areas to be inspected, the inspection method, the inspection procedures, including acceptance and rejection criteria, the threshold, and any repeat

intervals associated with those inspections. The DTI may specify a time limit when a repair or alteration needs to be replaced or modified. If the DTE concludes that DT-based supplemental structural inspections are not necessary, the DTI contains a statement to that effect.

DT data mean DTE documentation and the DTI.

DTE documentation means data that identify the evaluated fatigue critical structure, the basic assumptions applied in a DTE, and the results of a DTE.

Fatigue critical structure means airplane structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure, as determined in accordance with § 25.571 of this chapter. Fatigue critical structure includes structure, which, if repaired or altered, could be susceptible to fatigue cracking and contribute to a catastrophic failure. Such structure may be part of the baseline structure or part of an alteration.

Implementation schedule consists of documentation that establishes the timing for accomplishing the necessary actions for developing DT data for repairs and alterations, and for incorporating those data into an operator's continuing airworthiness maintenance program. The documentation must identify times when actions must be taken as specific numbers of airplane flight hours, flight cycles, or both.

Published repair data mean instructions for accomplishing repairs, which are published for general use in structural repair manuals and service bulletins (or equivalent types of documents).

§ 26.43 Holders of and applicants for type certificates—Repairs.

(a) *Applicability.* Except as specified in paragraph (g) of this section, this section applies to transport category, turbine powered airplane models with a type certificate issued after January 1, 1958, that as a result of original type certification or later increase in capacity have—

(1) A maximum type certificated passenger seating capacity of 30 or more; or

(2) A maximum payload capacity of 7,500 pounds or more.

(b) *List of fatigue critical baseline structure.* For airplanes specified in paragraph (a) of this section, the holder of or applicant for a type certificate must—

(1) Identify fatigue critical baseline structure for all airplane model variations and derivatives approved under the type certificate; and

(2) Develop and submit to the FAA Oversight Office for review and approval, a list of the structure identified under paragraph (b)(1) of this section and, upon approval, make the list available to persons required to comply with § 26.47 and §§ 121.1109 and 129.109 of this chapter.

(c) *Existing and future published repair data.* For repair data published by a holder of a type certificate that is current as of January 11, 2008 and for all later published repair data, the holder of a type certificate must—

(1) Review the repair data and identify each repair specified in the data that affects fatigue critical baseline structure identified under paragraph (b)(1) of this section;

(2) Perform a DTE and develop the DTI for each repair identified under paragraph (c)(1) of this section, unless previously accomplished;

(3) Submit the DT data to the FAA Oversight Office or its properly authorized designees for review and approval; and

(4) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(d) *Future repair data not published.* For repair data developed by a holder of a type certificate that are approved after January 11, 2008 and are not published, the type certificate holder must accomplish the following for repairs specified in the repair data that affect fatigue critical baseline structure:

(1) Perform a DTE and develop the DTI.

(2) Submit the DT data required in paragraph (d)(1) of this section for review and approval by the FAA Oversight Office or its properly authorized designees.

(3) Upon approval, make the approved DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(e) *Repair Evaluation Guidelines.* The holder of a type certificate for each airplane model subject to this section must—

(1) Develop repair evaluation guidelines for operators' use that include—

(i) A process for conducting surveys of affected airplanes that will enable identification and documentation of all existing repairs that affect fatigue critical baseline structure identified under paragraph (b)(1) of this section and § 26.45(b)(2);

(ii) A process that will enable operators to obtain the DTI for repairs identified under paragraph (e)(1)(i) of this section; and

(iii) An implementation schedule for repairs covered by the repair evaluation guidelines. The implementation schedule must identify times when actions must be taken as specific numbers of airplane flight hours, flight cycles, or both.

(2) Submit the repair evaluation guidelines to the FAA Oversight Office for review and approval.

(3) Upon approval, make the guidelines available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(4) If the guidelines direct the operator to obtain assistance from the holder of a type certificate, make such assistance available in accordance with the implementation schedule.

(f) *Compliance times.* Holders of type certificates must submit the following to the FAA Oversight Office or its properly authorized designees for review and approval by the specified compliance time:

(1) The identified list of fatigue critical baseline structure required by paragraph (b)(2) of this section must be submitted no later than 180 days after January 11, 2008 or before issuance of the type certificate, whichever occurs later.

(2) For published repair data that are current as of January 11, 2008, the DT data required by paragraph (c)(3) of this section must be submitted by June 30, 2009.

(3) For repair data published after January 11, 2008, the DT data required by paragraph (c)(3) of this section must be submitted before FAA approval of the repair data.

(4) For unpublished repair data developed after January 11, 2008, the DT data required by paragraph (d)(1) of this section must be submitted within 12 months of the airplane's return to service or in accordance with a schedule approved by the FAA Oversight Office.

(5) The repair evaluation guidelines required by paragraph (e)(1) of this section must be submitted by December 30, 2009.

(g) *Exceptions.* The requirements of this section do not apply to the following transport category airplane models:

(1) Convair CV–240, 340, 440, if modified to include turbine engines.

(2) Vickers Armstrong Viscount, TCDS No. A–814.

(3) Douglas DC–3, if modified to include turbine engines, TCDS No. A–618.

(4) Bombardier CL–44, TCDS No. 1A20.

(5) Mitsubishi YS–11, TCDS No. A1PC.

(6) British Aerospace BAC 1–11, TCDS No. A5EU.

(7) Concorde, TCDS No. A45EU.
(8) deHavilland D.H. 106 Comet 4C, TCDS No. 7A10.
(9) deHavilland DHC–7, TCDS No. A20EA.
(10) VFW-Vereinigte Flugtechnische Werk VFW–614, TCDS No. A39EU.
(11) Illyushin Aviation IL 96T, TCDS No. A54NM.
(12) Bristol Aircraft Britannia 305, TCDS No. 7A2.
(13) Handley Page Herald Type 300, TCDS No. A21N.
(14) Avions Marcel Dassault—Breguet Aviation Mercure 100C, TCDS No. A40EU.
(15) Airbus Caravelle, TCDS No. 7A6.
(16) Lockheed L–300, TCDS No. A2S0.
(17) Boeing 707–100/–200, TCDS No. 4A21.
(18) Boeing 707–300/–400, TCDS No. 4A26.
(19) Boeing 720, TCDS No. 4A28.

§ 26.45 Holders of type certificates—Alterations and repairs to alterations.

(a) *Applicability.* This section applies to transport category airplanes subject to § 26.43.

(b) *Fatigue critical alteration structure.* For existing and future alteration data developed by the holder of a type certificate, the holder must—

(1) Review existing alteration data and identify all alterations that affect fatigue critical baseline structure identified under § 26.43(b)(1);

(2) For each alteration identified under paragraph (b)(1) of this section, identify any fatigue critical alteration structure;

(3) Develop and submit to the FAA Oversight Office for review and approval a list of the structure identified under paragraph (b)(2) of this section; and

(4) Upon approval, make the list required in paragraph (b)(3) of this section available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(c) *DT Data.* For existing and future alteration data developed by the holder of a type certificate that affect fatigue critical baseline structure identified under § 26.43(b)(1), unless previously accomplished, the holder must—

(1) Perform a DTE and develop the DTI for the alteration and fatigue critical baseline structure that is affected by the alteration;

(2) Submit the DT data developed in accordance with paragraphs (c)(1) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(3) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(d) *DT Data for Repairs Made to Alterations.* For existing and future repair data developed by a holder of a type certificate, the type certificate holder must—

(1) Review the repair data, and identify each repair that affects any fatigue critical alteration structure identified under paragraph (b)(2) of this section;

(2) For each repair identified under paragraph (d)(1) of this section, unless previously accomplished, perform a DTE and develop DTI;

(3) Submit the DT data developed in accordance with paragraph (d)(2) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(4) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(e) *Compliance times.* Holders of type certificates must submit the following to the FAA Oversight Office or its properly authorized designees for review and approval by the specified compliance time:

(1) The list of fatigue critical alteration structure identified under paragraph (b)(3) of this section must be submitted no later than 360 days after January 11, 2008.

(2) For alteration data developed and approved before January 11, 2008, the DT data required by paragraph (c)(2) of this section must be submitted by June 30, 2009.

(3) For alteration data approved on or after January 11, 2008, DT data required by paragraph (c)(2) of this section must be submitted before initial approval of the alteration data.

(4) For repair data developed and approved before January 11, 2008, the DT data required by paragraph (d)(2) of this section must be submitted by June 30, 2009.

(5) For repair data developed and approved after January 11, 2008, the DT data required by paragraph (d)(2) of this section must be submitted within 12 months after initial approval of the repair data and before making the DT data available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

§ 26.47 Holders of and applicants for a supplemental type certificate—Alterations and repairs to alterations.

(a) *Applicability.* This section applies to transport category airplanes subject to § 26.43.

(b) *Fatigue critical alteration structure.* For existing structural alteration data approved under a supplemental certificate, the holder of the supplemental certificate must—

(1) Review the alteration data and identify all alterations that affect fatigue critical baseline structure identified under § 26.43(b)(1);

(2) For each alteration identified under paragraph (b)(1) of this section, identify any fatigue critical alteration structure;

(3) Develop and submit to the FAA Oversight Office for review and approval a list of the structure identified under paragraph (b)(2) of this section; and

(4) Upon approval, make the list required in paragraph (b)(3) of this section available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(c) *DT Data.* For existing and future alteration data developed by the holder of a supplemental type certificate that affect fatigue critical baseline structure identified under § 26.43(b)(1), unless previously accomplished, the holder of a supplemental type certificate must—

(1) Perform a DTE and develop the DTI for the alteration and fatigue critical baseline structure that is affected by the alteration;

(2) Submit the DT data developed in accordance with paragraphs (c)(1) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(3) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(d) *DT Data for Repairs Made to Alterations.* For existing and future repair data developed by the holder of a supplemental holder of a supplemental type certificate, the holder of a supplemental type certificate must—

(1) Review the repair data, and identify each repair that affects any fatigue critical alteration structure identified under paragraph (b)(2) of this section;

(2) For each repair identified under paragraph (d)(1) of this section, unless previously accomplished, perform a DTE and develop DTI;

(3) Submit the DT data developed in accordance with paragraph (d)(2) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(4) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(e) *Compliance times.* Holders of supplemental type certificates must submit the following to the FAA

Oversight Office or its properly authorized designees for review and approval by the specified compliance time:

(1) The list of fatigue critical alteration structure required by paragraph (b)(3) of this section must be submitted no later than 360 days after January 11, 2008.

(2) For alteration data developed and approved before January 11, 2008, the DT data required by paragraph (c)(2) of this section must be submitted by June 30, 2009.

(3) For alteration data developed after January 11, 2008, the DT data required by paragraph (c)(2) of this section must be submitted before approval of the alteration data and making it available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(4) For repair data developed and approved before January 11, 2008, the DT data required by paragraph (d)(2) of this section must be submitted by June 30, 2009.

(5) For repair data developed and approved after January 11, 2008, the DT data required by paragraph (d)(2) of this section, must be submitted within 12 months after initial approval of the repair data and before making the DT data available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

§ 26.49 Compliance plan.

(a) *Compliance plan.* Except for applicants for type certificates and supplemental type certificates whose applications are submitted after January 11, 2008, each person identified in §§ 26.43, 26.45, and 26.47, must submit a compliance plan consisting of the following:

(1) A project schedule identifying all major milestones for meeting the compliance times specified in §§ 26.43(f), 26.45(e), and 26.47(e), as applicable.

(2) A proposed means of compliance with §§ 26.43, 26.45, and 26.47, as applicable.

(3) A plan for submitting a draft of all compliance items required by this subpart for review by the FAA Oversight Office not less than 60 days before the applicable compliance date.

(b) *Compliance dates for compliance plans.* The following persons must submit the compliance plan described in paragraph (a) of this section to the FAA Oversight Office for approval on the following schedule:

(1) For holders of type certificates, no later than 90 days after January 11, 2008.

(2) For holders of supplemental type certificates no later than 180 days after January 11, 2008.

(3) For applicants for changes to type certificates whose application are submitted before January 11, 2008, no later than 180 days after January 11, 2008.

(c) *Compliance Plan Implementation.* Each affected person must implement the compliance plan as approved in compliance with paragraph (a) of this section.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 5. Amend § 121.1109 to revise paragraph (c) to read as follows:

§ 121.1109 Supplemental inspections.

* * * * *

(c) *General requirements.* After December 20, 2010, a certificate holder may not operate an airplane under this part unless the following requirements have been met:

(1) *Baseline Structure.* The certificate holder's maintenance program for the airplane includes FAA-approved damage-tolerance-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure. For the purpose of this section, this structure is termed ''fatigue critical structure.''

(2) *Adverse effects of repairs, alterations, and modifications.* The maintenance program for the airplane includes a means for addressing the adverse effects repairs, alterations, and modifications may have on fatigue critical structure and on inspections required by paragraph (c)(1) of this section. The means for addressing these adverse effects must be approved by the FAA Oversight Office.

(3) *Changes to maintenance program.* The changes made to the maintenance program required by paragraphs (c)(1) and (c)(2) of this section, and any later revisions to these changes, must be submitted to the Principal Maintenance Inspector for review and approval.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 6. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 49113, 440119, 44101, 44701–44702, 447–5, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 44105., Pub. L. 107–71 sec. 104.

■ 7. Amend 129.109 by revising paragraph (b) to read as follows:

§ 129.109 Supplemental inspections for U.S.-registered aircraft.

* * * * *

(b) *General requirements.* After December 20, 2010, a certificate holder may not operate an airplane under this part unless the following requirements have been met:

(1) *Baseline Structure.* The certificate holder's maintenance program for the airplane includes FAA-approved damage-tolerance-based inspections and procedures for airplane structure susceptible to fatigue cracking that could contribute to a catastrophic failure. For the purpose of this section, this structure is termed ''fatigue critical structure.''

(2) *Adverse effects of repairs, alterations, and modifications.* The maintenance program for the airplane includes a means for addressing the adverse effects repairs, alterations, and modifications may have on fatigue critical structure and on inspections required by paragraph (b)(1) of this section. The means for addressing these adverse effects must be approved by the FAA Oversight Office.

(3) *Changes to maintenance program.* The changes made to the maintenance program required by paragraph (b)(1) and (b)(2) of this section, and any later revisions to these changes, must be submitted to the Principal Maintenance Inspector for review and approval.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. 07–6016 Filed 12–7–07; 12:04 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 772

[Docket No. 071114704–7749–01]

RIN 0694–AD72

Revisions to License Exceptions TMP and BAG: Expansion of Eligible Items

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to expand the availability of License Exceptions Temporary Imports, Exports, and Reexports (TMP) and Baggage (BAG) to allow for certain temporary exports and reexports of technology by U.S. persons to U.S. persons or their employees traveling or temporarily assigned abroad.

DATES: *Effective Date:* This rule is effective: December 12, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD72, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AD72'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AD72.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AD72)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

Under part 740 of the EAR, License Exception Temporary Imports, Exports, and Reexports (TMP) (§ 740.9) and License Exception Baggage (BAG) (§ 740.14) both contain tools of trade provisions (§ 740.9(a)(2)(i) and § 740.14(b)(4), respectively) which authorize certain temporary exports and reexports for usual and reasonable kinds and quantities of tools of trade for use in a lawful enterprise or undertaking of the exporter. Previously, License Exceptions TMP and BAG did not authorize temporary exports or reexports of technology because the scope of these license exceptions was limited to commodities and software.

This rule expands the availability of License Exceptions TMP and BAG to allow for certain temporary exports and reexports of technology by U.S. persons to U.S. persons or their employees traveling or temporarily assigned abroad. This rule does *not* authorize any new release of technology. Technology exported under License Exceptions TMP or BAG may only be released to persons who may receive that same technology pursuant to other provisions of the EAR. Exporters and reexporters who wish to use the tools of trade provisions of the two relevant license exceptions for the temporary export or reexport of technology subject to the EAR may do so, subject to certain restrictions specifically applicable to technology exports and reexports. These restrictions provide safeguards against the unauthorized risk of access to technology.

Amendments to the Export Administration Regulations

This rule makes the following revisions to the Export Administration Regulations (EAR) to reflect changes to License Exceptions TMP and BAG:

In part 740 (License Exceptions):

(1) This rule makes changes in § 740.9 (Temporary Imports, Exports, and Reexports (TMP)), to amend the ''tools of trade'' provisions in paragraph (a)(2)(i) to authorize the export or reexport by U.S. persons of certain technology to U.S. persons or their employees traveling or temporarily assigned abroad. This rule adds a new paragraph (a)(2)(i)(C) to add a specific definition of U.S. person applicable to paragraph (a)(2)(i).

In § 740.9, this rule also adds a new paragraph (a)(3)(iv), establishing restrictions to prevent unauthorized export or reexport of technology. These restrictions include a restriction added to paragraph (a)(3)(iv)(A) for exports or reexports to employees who are not U.S. persons, as defined in (a)(2)(i)(C), to ensure that this license exception will not be used to circumvent other license requirements under the EAR such as the ''deemed export'' license requirements set forth in § 734.2(b)(2)(ii). Specifically, TMP may be available to employees who are not U.S. persons, as defined in paragraph (a)(2)(i)(C), for exports or reexports of technology under the tools of trade provisions set forth in paragraph (a)(2)(i)(A) only to the extent that such employees are authorized to receive the same technology in accordance with the EAR (e.g., a license or license exception), or, alternatively, do not require such authorization on account of the technology's NLR status. As an additional safeguard, under paragraph (a)(3)(iv)(A)(2), the U.S. person employer must demonstrate and document for recordkeeping purposes the reason that the technology to be authorized for export or reexport under the tools of trade provisions of paragraph (a)(2)(i)(A) is needed by such employees in their temporary business activities abroad on behalf of their U.S. person employer.

This rule adds a new paragraph (a)(1)(i) to provide an additional requirement and guidance for the return or disposal of technology authorized under License Exception TMP. This paragraph (a)(1)(i) clarifies that technology shipped or transmitted as temporary exports or reexports under the provisions of paragraph (a)(2)(i)(A) that exists in a format that could facilitate a subsequent release of the technology must be returned or disposed of in accordance with paragraph (a)(4) of License Exception TMP. This paragraph also provides an illustrative list of examples of technology that exists in a format that could facilitate a subsequent release of technology.

(2) This rule also revises § 740.14 (Baggage (BAG)) to amend the tools of trade provisions in paragraph (b)(4) (Tools of Trade) to authorize the export or reexport of certain technology to U.S. persons for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the U.S. person's household, provided they are also U.S. persons, who are traveling or moving. This rule adds a new paragraph (b)(4)(i) to add a specific definition of U.S. person applicable to paragraph (b)(4) of this section. In addition, this rule adds a new paragraph (h) prohibiting the unauthorized export or reexport of technology.

(3) In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule revises paragraph (b) of the definition of U.S. person to clarify that exporters should see § 740.14 (License Exception BAG) for a definition of U.S. person that is specific to that section.

(4) In § 740.9, the reference to Note 2 in Category 5—Part 2 ''Information Security'' of the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) is removed. Note 2 in Category 5, Part 2 refers persons to License Exceptions TMP and BAG. Prior to the publication of this rule, the last sentence of paragraph (a)(2)(i) of License Exception TMP referred persons back to Note 2 in Category 5, Part 2. License Exception BAG does not contain a reference to Note 2 of Category 5, Part 2. To provide clarity, the reference to Note 2 in § 740.9 is eliminated with the publication of this rule.

In order to provide clearer guidance to the public regarding which encryption items are authorized under License Exceptions TMP and BAG, this rule also specifies certain restrictions applicable to the use of both License Exceptions TMP and BAG for exports and reexports of certain types of encryption technology. First, encryption technology controlled under ECCN 5E002 is not authorized for export or reexport under the amended ''tools of trade'' provisions of License Exception TMP. Second, in License Exception BAG § 740.14, the new U.S. person ''tools of trade'' provisions do *not* authorize the export or reexport of ECCN 5E002 encryption technology to any destination listed in Country Group E:1 of Supplement No. 1 to part 740. For the export or reexport of 5E002 technology by companies, their subsidiaries and employees, see License Exception Encryption Commodities and Software (ENC) set forth in § 740.17.

In License Exception TMP § 740.9 paragraph (a)(2)(i), this rule also removes the second to last sentence that stated, prior to the publication of this rule, that items controlled under ECCN 5D992 are permitted pursuant to this section, as this sentence is not needed to clarify the scope of items available under License Exception TMP.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

■ Accordingly, parts 740 and 772 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Section 740.9 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Revising paragraphs (a)(2) introductory text, (a)(2)(i) introductory text, (a)(2)(i)(A) and adding new paragraph (a)(2)(i)(C);
■ c. Revising paragraphs (a)(3)(i)(A), (a)(3)(i)(B) introductory text, (a)(3)(i)(B)(*1*), (a)(3)(i)(B)(*2*), (a)(3)(ii), (a)(3)(iii) and adding new paragraph (a)(3)(iv);
■ d. Revising paragraph (a)(4); and
■ e. Revising paragraph (a)(5), to read as follows:

§ 740.9 Temporary imports, exports and reexports (TMP).

* * * * *

(a) * * * (1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and restrictions described in paragraphs (a)(2) through (a)(5) of this section. U.S. persons, as defined in paragraph (a)(2)(i)(C), may export and reexport technology for temporary use abroad under paragraph (a)(2)(i) of this section to U.S. persons or their employees traveling or temporarily assigned abroad (including use in international waters) subject to the conditions and restrictions described in paragraphs (a)(2) through (a)(5) of this section. Paragraph (a) does not authorize any new release of technology. Persons receiving technology exported or reexported under paragraph (a)(2)(i) must already be authorized to receive the same technology in accordance with the EAR (e.g., through a license or license exception), or, alternatively, not require such authorization on account of the technology's NLR status. Technology exports and reexports authorized under this paragraph (a) may be made as actual shipments, transmissions, or releases. Exports and reexports of encryption items controlled under ECCN 5E002 are not permitted pursuant to this paragraph (a). Items shipped as temporary exports and reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported or reexported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export or reexport. This requirement does not apply if the items are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BIS.

(i) *Additional requirement for return or disposal of technology.* Technology shipped or transmitted as a temporary export or reexport under the provisions of this paragraph (a)(2)(i)(A) that exists in a format that could facilitate a subsequent release of the technology must be returned or disposed of in accordance with paragraph (a)(4) of this section. Examples of technology that exists in a format that could facilitate a subsequent release of technology include the following: technology in a hard copy format (e.g. blue prints, manuals); technology in an electronic format stored on an electronic device (e.g. laptop, PDA); or technology stored on removable storage media and devices (e.g. CD-ROMS, flash drives, video cassettes).

(ii) [RESERVED]

(2) *Eligible items.* The following items are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of tools of trade (commodities, software, and technology) for use in a lawful enterprise or undertaking of the exporter. For the export or reexport of commodities or software, the transaction must meet the requirements of paragraph (a)(2)(i)(A) or paragraph (a)(2)(i)(B) of this section. For the export or reexport by U.S. persons of technology authorized under this paragraph, the transaction must meet the requirements of paragraph (a)(2)(i)(A) of this section.

(A) *Destinations other than Country Group E:2 or Sudan.* Exports and reexports of tools of trade for use by the exporter or employees of the exporter may be made only to destinations other than Country Group E:2 or Sudan. The tools of trade must remain under the ''effective control'' (see § 772.1 of the EAR) of the exporter or the exporter's employee. Eligible tools of trade may include, but are not limited to, equipment and software as is necessary to commission or service items, provided that the equipment or software is appropriate for this purpose and that all items to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been lawfully exported or reexported. For exports and reexports by U.S. persons to U.S. persons or their employees traveling or temporarily assigned abroad, eligible tools of trade may also include, but are not limited to, technology as is necessary to commission or service items, provided that all items to be commissioned or serviced either are of foreign origin and not subject to the EAR, or, if subject to the EAR, have been lawfully exported or reexported. Tools of trade may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure.

* * * * *

(C) For purposes of this paragraph (a)(2)(i), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also means any juridical person organized under the laws of the United States, or any jurisdiction within the United States (e.g., corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States).

* * * * *

(3) * * *

(i) * * *

(A) No item may be exported or reexported under paragraph (a) of this section to Country Group E:2 (see Supplement No. 1 to this part) except as permitted by paragraph (a)(2)(viii) of this section (news media). These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under the ownership, control, lease, or charter by any country in Country Group E:2, or any national thereof;

(B) No item may be exported under this License Exception to Country Group D:1 (see Supplement No. 1 to part 740) except:

(*1*) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(*2*) Items exported under paragraph (a)(2)(i), tools of trade, of this section;

(ii) *Ineligible items.* (A) Items that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly, in any sensitive nuclear activity as described in § 744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(B) Exports and reexports of encryption items controlled under ECCN 5E002 are not permitted pursuant to this paragraph (a).

(iii) *Use or disposition.* No item may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the item has been received before shipment;

(B) The exporter has prior knowledge that the item will stay abroad beyond the terms of this License Exception; or

(C) The item is for lease or rental abroad.

(iv) *Restrictions specific to the export or reexport of technology.* The authorization for the export or reexport of technology under the tools of trade provisions of paragraph (a)(2)(i)(A) is subject to the restrictions in this paragraph (a)(3)(iv), as described in paragraphs (a)(3)(iv)(A), (a)(3)(iv)(B) and (a)(3)(iv)(C).

(A) The authorization for the export or reexport of technology under the tools of trade provisions of paragraph (a)(2)(i)(A) of this section may be used only by U.S. persons, as defined in (a)(2)(i)(C), or their employees traveling or on temporary assignment abroad. The restrictions under this paragraph (a)(3)(iv)(A) include the following three additional restrictions:

(*1*) Employees who are not U.S. persons, as defined in (a)(2)(i)(C), may be authorized to receive exports or reexports of the technology eligible for export or reexport under the tools of trade provisions of paragraph (a)(2)(i)(A), only if such employees are already eligible to receive such technology through a current license or a license exception or on account of NLR status;

(*2*) A U.S. employer of individuals who are not U.S. persons, as defined in (a)(2)(i)(C), must demonstrate and document for recordkeeping purposes the reason that the technology to be authorized for export or reexport under the tools of trade provisions of paragraph (a)(2)(i)(A) is needed by such employees in their temporary business activities abroad on behalf of the U.S. person employer, prior to using the tools of trade provisions of paragraph (a)(2)(i)(A) of this section. This documentation must be created and maintained in accordance with the recordkeeping requirements of part 762 of the EAR; *and*

(*3*) The U.S. person must retain supervision over the technology that has been authorized for export or reexport under these or other provisions.

(B) The exporting or reexporting party and the recipient of the technology must take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(*1*) Use of secure connections, such as Virtual Private Network connections, when accessing IT networks for e-mail

and other business activities that involve the transmission and use of the technology authorized under this license exception;

(*2*) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(*3*) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(C) Technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS.

(4) *Return or disposal of items.* All items exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export or reexport, to the United States or other country from which the items were so exported or reexported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the items abroad, except as permitted by this or other applicable provision of the EAR, the exporter must request authorization by submitting a license application to BIS at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same items directly from the United States to the proposed destination. BIS will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of items covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same items to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain item abroad beyond one year.* If the exporter wishes to retain an item abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BIS–748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the items were exported, a brief product description, and the justification for the extension. If BIS approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BIS normally will not allow an extension for items that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the items abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* (i) Commodities and software lawfully exported from the United States may be reexported to a new country or countries of destination other than Sudan or Country Group E:2 under provisions of this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(ii) Technology legally exported from the United States may be reexported by a U.S. person to U.S. persons and their employees in a new country or countries of destination other than Sudan or Country Group E:2 under provisions of this paragraph (a)(2)(i)(A) provided its terms and conditions are met and the technology is returned to the country from which the reexport occurred.

* * * * *

■ 3. Section 740.14 is amended:

■ a. By revising paragraphs (a) and (b) introductory text ;

■ b. By revising paragraph (b)(4);

■ c. By revising the introductory text of paragraph (c); and

■ d. By adding new paragraph (h), to read as follows:

§ 740.14 Baggage (BAG).

(a) *Scope.* This License Exception authorizes individuals leaving the United States either temporarily (i.e., traveling) or longer-term (i.e., moving) and crew members of exporting or reexporting carriers to take to any destination, as personal baggage, the classes of commodities, software and technology described in this section.

(b) *Eligibility.* Individuals leaving the United States may export or reexport any of the following commodities or software for personal use of the individuals or members of their immediate families traveling with them to any destination or series of destinations. Individuals leaving the United States who are U.S. persons, as defined in paragraph (b)(4)(i), may export or reexport technology as a tool of trade under paragraph (b)(4) for their personal use or for the personal use of members of their immediate families who are traveling or moving with them, provided they are also U.S. persons, as defined in paragraph (b)(4)(i), to any destination or series of destinations. Technology exports and reexports authorized under paragraph (b)(4) of this section may be made as actual shipments, transmissions, or releases. Individuals leaving the United States temporarily (i.e., traveling) must bring back items exported and reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR. Crew members may export or reexport only commodities and software described in paragraphs (b)(1) and (b)(2) of this section to any destination.

* * * * *

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers and also technology for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household who are traveling or moving. For special provisions regarding encryption commodities and software subject to EI controls, see paragraph (f) of this section. For a special provision that specifies restrictions regarding the export or reexport of technology under this paragraph, see paragraph (h).

(i) For purposes of this paragraph (b), U.S. person is defined as follows: an individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2) or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3).

(ii) [RESERVED]

(c) *Limits on eligibility.* The export of any item is limited or prohibited, if the kind or quantity is in excess of the limits described in this section. In addition, the items must be:

* * * * *

(h) *Special provision: restrictions for Export or Reexport of Technology.* This authorization for the export or reexport of technology under the tools of trade provisions of paragraph (b)(4) of this section may be used only if:

(1) The technology is to be used overseas solely by individuals or members of their immediate families traveling with them provided they are U.S. persons as defined in paragraph (b)(4)(i).

(2) The exporting or reexporting party and the recipient take adequate security precautions to protect against

unauthorized access to the technology while the technology is being transmitted and used overseas. Examples of security precautions to help prevent unauthorized access include the following:

(i) Use of secure connections, such as Virtual Private Network connections when accessing IT networks for e-mail and other business activities that involve the transmission and use of the technology authorized under this license exception;

(ii) Use of password systems on electronic devices that will store the technology authorized under this license exception; and

(iii) Use of personal firewalls on electronic devices that will store the technology authorized under this license exception.

(3) The technology authorized under these provisions may not be used for foreign production purposes or for technical assistance unless authorized by BIS;

(4) Any encryption item controlled under ECCN 5E002 is not exported or reexported to any destination listed in Country Group E:1 of Supplement No. 1 of this part.

PART 772—[AMENDED]

■ 4. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 5. Section 772.1 is amended by revising paragraph (b) in the definition of ''U.S. person'', as set forth below:

§ 772.1 Definitions of Terms as used in the Export Administration Regulations (EAR).

* * * * *

''*U.S. person*''.

* * * * *

(b) See also §§ 740.9, 740.14 and parts 746 and 760 of the EAR for definitions of ''U.S. person'' that are specific to those parts.

* * * * *

Dated: December 7, 2007.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E7–24077 Filed 12–11–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. CGD01–07–011]

RIN 1625–AA01

Anchorage Regulations; Edgecomb, ME, Sheepscot River

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby establishes a general anchorage area in Edgecomb, Maine on the Sheepscot River. This action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages. This action is intended to increase the safety of life and property in Edgecomb, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective January 11, 2008.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–07–011, and are available for inspection or copying at Room 628, First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, between 8 a.m. and 3 p.m., Monday th rough Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, e-mail: *John.J.Mauro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 24, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Edgecomb Maine, Sheepscot River'' in the **Federal Register** (72 FR 29092). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

This rule is intended to reduce the risk of vessel collisions by creating a general anchorage area in Edgecomb, Maine adjacent to the current town mooring fields. This rule is designed to reserve approximately 15 anchorages for transient vessels visiting the area from May through October each year. The anchorage would accommodate both sail and power vessels with a 3-to-12-foot draft.

The Coast Guard is designating the general anchorage area in accordance with 33 U.S.C. 471. The Coast Guard has defined the anchorage area contained herein with the advice and consent of the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Regulatory Evaluation

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

The anchorage area does not impede the passage of recreational or commercial vessels as it is not located in the primary channel of the Sheepscot River, and will therefore have a minimal economic impact.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they 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 John J. Mauro, at the address listed in **ADDRESSES** above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(f), of the Instruction from further environmental documentation. Paragraph (34)(f) applies to this rule because it establishes an anchorage area. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. Revise the authority citation for part 110 to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.131 to read as follows:

§ 110.131 Sheepscot River in the vicinity of Edgecomb, Maine.

(a) *Anchorage grounds.* All of the waters enclosed by a line starting from a point located at the southwestern end of Davis Island at latitude 43°59.655′ N., longitude 69°39.617′ W.; thence to latitude 43°59.687′ N., longitude 69°39.691′ W.; thence to latitude 43°59.847′ N., longitude 69°39.743′ W.; thence to latitude 43°59.879′ N., longitude 69°39.559′ W.; thence to latitude 43°59.856′ N., longitude 69°39.488′ W.; thence to latitude 43°59.771′ N., longitude 69°39.585′ W.; thence to the point of beginning. DATUM: NAD 83

(b) *Regulations.* (1) This anchorage is reserved for vessels of all types, with drafts of 3 to 12 feet.

(2) These anchorage grounds are authorized for use from May through October.

(3) Vessels are limited to a maximum stay of 1 week.

(4) Fixed moorings, piles or stakes are prohibited.

(5) Vessels must not anchor so as to obstruct the passage of other vessels proceeding to or from other anchorage spaces.

(6) Anchors must not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(7) The anchorage of vessels is under the coordination of the local Harbormaster.

Dated: November 23, 2007.

Timothy S. Sullivan,

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

[FR Doc. E7–24007 Filed 12–11–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–07–042]

RIN 1625–AA09

Drawbridge Operating Regulation; Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation for the State Route 23 vertical lift bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana. The portion of the existing regulation allowing the bridge to remain closed to navigation on the last weekend in October is no longer necessary and is being removed from the operating schedule.

DATES: This rule is effective on December 12, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD08–07–042] and are available for inspection or copying at Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 671–2128.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–671–2128.

SUPPLEMENTARY INFORMATION: We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Public comment is not necessary since the event requiring the closure has modified its schedule and the bridge closure no longer conforms to the dates and times of the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the portion of the regulation being removed was date specific to the last weekend in October of each year.

Background and Purpose

On October 11, 2001, a Final Rule was published in the **Federal Register** [65 FR 60360] to change the operating schedule of the SR 23 vertical lift bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, in Belle Chasse, Louisiana. The change allowed the drawbridge to not open for the passage of vessels from 4 p.m. to 7 p.m. on Saturday and Sunday of the last weekend in October. This regulation was in addition to the existing regulation that required the draw to open on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened from the passage of vessels. The change was to facilitate the movement of vehicular traffic from the New Orleans Open House Air Show held annually at the Naval Air Station, Joint Reserve Base at Belle Chasse, Louisiana.

Subsequent to the modification of the rule, the Air Show was cancelled in 2005, moved to a different weekend in 2006, and the time of the closure request was modified in 2007. The rule change for 2006 required a Temporary Rule to be published and the rule change for 2007 required a Temporary Deviation to be published. Additionally, the Air Show will not be held in 2008 in Belle Chasse making the regulation unnecessary. Therefore, it has been determined that the regulation be modified to remove the requirements of § 117.451(b)(2). Any future closure requirements, associated with any future Air Shows in Belle Chase, will be publicized as required by 33 CFR part 117, subpart A.

Discussion of Rule

The Coast Guard is changing 33 CFR 117.451 without publishing an NPRM. This final rule changes the regulation governing the bridge to eliminate the section of the regulation that does not require the draw to open for the passage of vessels from 4 p.m. to 7 p.m. on Saturday and Sunday of the last weekend in October. This change improves the ability of vessels to transit on the waterway during this time period. As explained above, it is not necessary to publish an NPRM.

Regulatory Evaluation

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

The Coast Guard does not consider this rule to be ''significant'' under that Order because it does not adversely affect the owners and operators of vessels operating on the waterway.

Small Entities

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

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

This rule will have no impact on any small entities because it will not adversely affect the owners and operators of vessels needing to transit the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This final 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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. § 117.451(b) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(b) The draw of the SR 23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, shall open on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: December 3, 2007.

J.R. Whitehead,

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

[FR Doc. E7–24050 Filed 12–11–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–161]

Drawbridge Operation Regulations; Harlem River, New York City, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Spuyten Duyvil Bridge across the Harlem River at mile 7.9, at New York City, New York. Under this temporary deviation in effect from January 10, 2008 through April 14, 2008, the Spuyten Duyvil Bridge need not open for the passage of vessel traffic from 6 a.m. to 1:30 p.m. and from 3 p.m. to 9 p.m. The draw shall open on signal one time each day to accommodate vessel traffic between 1:30 p.m. and 3 p.m., after a one-hour advance notice is given by calling the number posted at the bridge. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 6 a.m. on January 10, 2008 through 9 p.m. on April 14, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION: The Spuyten Duyvil Bridge, across the Harlem River, mile 7.9, at New York City, New York, has a vertical clearance in the closed position of 5 feet at mean high water and 9 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.789(f).

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation to facilitate scheduled bridge maintenance, the replacement of the bridge protective fender system at the west end.

Under this temporary deviation in effect from January 10, 2008 through April 14, 2008, the Spuyten Duyvil Bridge need not open for the passage of vessel traffic from 6 a.m. to 1:30 p.m. and from 3 p.m. to 9 p.m. The draw shall open on signal one time each day to accommodate vessel traffic between 1:30 p.m. and 3 p.m., after at least a one-hour notice is given by calling the number posted at the bridge. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operation schedule.

Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: December 4, 2007.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E7–24049 Filed 12–11–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–0259; FRL–8504–9]

Water Quality Standards for Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating water quality standards that establish methods to implement Puerto Rico's existing antidegradation policy for waters in the Commonwealth of Puerto Rico. EPA was required to propose antidegradation implementation methods under court order. The Clean Water Act requires that all States, Territories, and authorized Tribes develop water quality standards that include the designated use or uses of the water, water quality criteria to protect those uses, and an antidegradation policy and implementation methods. Through this promulgation, the federal antidegradation implementation methods are added to Puerto Rico's water quality standards.

DATES: This final rule is effective January 11, 2008.

ADDRESSES: The public record for this rulemaking is located at USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and EPA Region 2, 290 Broadway, New York, New York 10007, and can be viewed between 8:30 a.m. and 4:30 p.m. at both locations.

FOR FURTHER INFORMATION CONTACT: For further information concerning today's final rule, contact Wayne Jackson, U.S. EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: 212–637–3807 or e-mail: *jackson.wayne@epa.gov*) or Lauren Wisniewski, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0394 or e-mail: *wisniewski.lauren@epa.gov*).

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information
- A. What Entities May Be Affected by this Action?
- B. How Can I Get Copies of This Document and Other Related Information?

II. Background
- A. What Are the Applicable Federal Statutory and Regulatory Requirements?
- B. Why Is EPA Promulgating Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?

III. This Final Rule
- A. What Are the Federal Antidegradation Implementation Methods to Protect Puerto Rico's High Quality Waters?
- B. How Will Puerto Rico Implement the Federal Antidegradation Implementation Methods?
- C. What Are the Cost Implications of the Final Rule?
- D. Comments Received in Response to EPA's May 2007 Proposal

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866 (Regulatory Planning and Review)
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132 (Federalism)
- F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
- G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
- H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution or Use)
- I. National Technology Transfer and Advancement Act of 1995
- J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
- K. Endangered Species Act
- L. Congressional Review Act

I. General Information

A. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Puerto Rico may be interested in this rulemaking which establishes federal antidegradation implementation methods by regulation for waters in the Commonwealth of Puerto Rico (hereafter, ''the Commonwealth'' or ''Puerto Rico''). Entities discharging pollutants to the surface waters of Puerto Rico could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits, CWA section 404 dredge and fill permits, and other activities requiring CWA section 401 certification. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Puerto Rico.
Municipalities	Discharges to surface waters in Puerto Rico from publicly owned facilities such as publicly owned treatment works and water filtration facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to the particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket Id. No. [EPA–HQ–OW–2007–0259]. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Quality Standards for Puerto Rico docket located at both U.S. EPA Region 2, 290 Broadway, New York, New York 10007, and the OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. These Docket Facilities are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone numbers are 212–637–3807 and 202–566–1744, respectively. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through one of the Docket Facilities identified in Section I.B.1.

II. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or ''the Act'') directs States, Territories, and authorized Tribes (hereafter referred to as ''States''), with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the water quality criteria necessary to protect those uses and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements. In a February 14, 2007, Opinion and Order from the United States District Court for the District of Puerto Rico in the case of *CORALations and the American Littoral Society* v. *United States Environmental Protection Agency, et al.* (No. 02–1266 (JP) (D. Puerto Rico)), the Court ordered EPA to ''prepare and publish new or revised water quality standards identifying antidegradation methods for Puerto Rico within 60 days'' (April 17, 2007). The Court granted EPA's motion for an additional 30 days. EPA proposed Federal water quality standards for these waters in Puerto Rico on May 17, 2007.

As one of the minimum elements that must be included in a State's water quality standards, antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the nation's waters. Antidegradation requirements help ensure that any degradation in water quality is subject to review and approval by the State even in cases where the existing water quality far exceeds the water quality criteria and designated use applicable to individual waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies and identify implementation methods to provide three levels or tiers of water quality protection. The first level of protection at 40 CFR 131.12(a)(1), also known as Tier 1 of antidegradation, requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses. Protection of existing uses is the floor of water quality protection afforded to all waters of the United States. Existing uses are ''* * * those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards'' (40 CFR 131.3(e)).

The second level of protection, or Tier 2 of antidegradation, is for high quality waters. High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality of the waters is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized

Tribe must assure water quality adequate to protect existing uses. Further, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all new and existing point sources and all cost-effective and reasonable best management practices are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection, or Tier 3, is for outstanding national resource waters (ONRWs). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then that water quality must be maintained and protected (see 40 CFR 131.12(a)(3)).

In addition to requiring States and authorized Tribes to adopt an antidegradation policy, 40 CFR 131.12 requires States to identify methods for implementing such a policy. Such methods are not required to be contained in the State's regulation, but because they inform EPA's judgment regarding whether the State's antidegradation policy is consistent with the Federal regulations at 40 CFR 131.12, they are subject to EPA review. Where the State chooses to make such methods part of its water quality standards regulations, section 303(c)(3) of the CWA and EPA's implementing regulations require them to be submitted to EPA for review and approval. When a State or authorized Tribe chooses to develop such methods as guidance or outside of regulation, EPA reviews the methods in the context of determining whether the State's antidegradation policy as interpreted and implemented through the methods, is consistent with 40 CFR 131.12.

EPA's regulations at 40 CFR 131.12 provide a great deal of discretion to States regarding the amount of specificity required in a State's antidegradation implementation methods. The regulations do not specify minimum elements for such methods, but do require that such methods not undermine the intent of the antidegradation policy. *See* Advanced Notice of Proposed Rulemaking, 63 FR 36742, 36781, July 7, 1998.

B. Why Is EPA Promulgating Federal Antidegradation Implementation Methods for the Commonwealth of Puerto Rico?

Puerto Rico has an existing EPA-approved antidegradation policy, which was adopted on October 27, 1990, and approved by EPA on March 28, 2002. This antidegradation policy mirrors that of the federal regulation. The policy states the following:

''It is the policy of the Government of Puerto Rico to conserve and protect the existing uses of the Waters of Puerto Rico. The water quality necessary to protect the existing uses, including threatened and endangered species shall be maintained and protected.

In those water bodies where the quality exceeds levels necessary to support propagation of fish, shellfish, wildlife, desirable species including threatened or endangered species and recreation in and on the water, that quality shall be maintained and protected. A lower water quality may be allowed when the [Environmental Quality Board of the Commonwealth of Puerto Rico] finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Board's Continuing Planning Process that allowing lower water quality is necessary to accommodate important economic or social development in the area where the waters are located. In allowing such lower water quality, the Board shall require a water quality level adequate to protect existing uses fully. Further, the Board will require that:

(1) The highest statutory and regulatory requirements for all new and/or existing point sources be achieved and

(2) All cost-effective and reasonable best management practices for non-point source control be implemented.

Where high quality waters constitute an outstanding national resource, such as waters of El Yunque National Forest and State parks, wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

Where potential water quality impairment is associated with a thermal discharge, this thermal discharge must comply with Section 316 of the Clean Water Act as amended.''

The Environmental Quality Board of the Commonwealth of Puerto Rico (EQB or Board) first adopted an antidegradation policy in its water quality standards regulation in June 1973. EQB is responsible, in part, for developing and recommending to the Governor public policy to encourage and promote the improvement of environmental quality so as to meet the conservation, social, economic, health and other requirements and goals of the Commonwealth. One of the specific functions of EQB is to develop and adopt water quality standards, which are intended to ''enhance, maintain and preserve the quality of the waters of Puerto Rico compatible with the social and economic needs of Puerto Rico.'' This antidegradation policy was approved by EPA on November 15, 1973. Puerto Rico's antidegradation policy statement remained unchanged until 1990. In August 1990, the Commonwealth of Puerto Rico adopted revisions to the Puerto Rico Water Quality Standards Regulation (PRWQSR). These were sent to EPA Region 2 on September 21, 1990, with the caveat from the Chairman of the EQB that the transmittal may not be the final submittal, since EQB was going to hold additional public hearings on November 1, 1990, regarding certain aspects of the revisions. Because of this caveat, and because the requisite certification from the Commonwealth's Secretary of Justice was not submitted with the revisions as required by 40 CFR 131.6(e), EPA did not act on these revisions immediately.

From 1991 to 1993, EPA Region 2 worked with EQB on a series of subsequent draft revisions to the PRWQSR. These drafts were never adopted by Puerto Rico.

The requisite certification from the Commonwealth's Secretary of Justice was ultimately submitted to EPA on February 25, 2002. Upon receipt of this certification EPA took final action on all new and revised provisions of the 1990 PRWQSR on March 28, 2002. These revisions included the above-referenced revisions to the Puerto Rico antidegradation policy.

Prior to October 2001, Puerto Rico had antidegradation implementation methods set forth in a document known as its Continuing Planning Process (CPP). In the fall of 2001, EPA commenced work with the Puerto Rico EQB to enhance their antidegradation implementation methods. EQB submitted its first reasonably complete draft of its consolidation of antidegradation implementation methods on September 3, 2003.

On February 20, 2002, CORALations, American Littoral Society, and the American Canoe Association filed a complaint in the U.S. District Court for the District of Puerto Rico. In this action, the plaintiffs alleged, among other things, that a September 4, 1992 letter from a EPA Region 2 Division Director to the EQB had triggered a mandatory duty under section 303(c)(4) of the CWA for EPA to prepare and propose regulations for Puerto Rico setting forth a revised water quality standard for antidegradation implementation methods.

In October and December 2003, EQB submitted two revised drafts of its consolidation of antidegradation implementation methods. The December 2003 draft was submitted under cover of a letter dated December 16, 2003, from Ruben Gonzalez Delgado, Director of EQB's Water Quality Area, to Walter Mugdan, Director of the EPA

Region 2's Division of Environmental Planning and Protection. This letter stated that it was EQB's intent to promulgate this consolidation as part of the PRWQSR in order to consolidate EQB's existing antidegradation implementation methods ''either explicitly or by reference, into one document so that it is readily accessible to the public and the regulated community.''

On June 17, 2004, EQB submitted to EPA its final revised consolidation document. This consolidation document, however, was not adopted as a regulation. In a letter dated July 9, 2004, from Mr. Mugdan to EQB's President, Esteban Mujica Cotto, EPA stated that these methods meet the requirements of the Clean Water Act and 40 CFR 131.12(a).

On February 14, 2007, the U.S. District Court of Puerto Rico issued an opinion ruling that EPA had failed to execute a mandatory duty to propose antidegradation implementation methods for Puerto Rico and ordered EPA to prepare and publish new or revised water quality standards identifying antidegradation implementation methods for Puerto Rico within 60 days. The court granted a 30-day extension and EPA proposed federal water quality standards identifying methods for implementing Puerto Rico's antidegradation policy on May 17, 2007.

III. This Final Rule

EPA is promulgating federal water quality standards identifying methods for implementing Puerto Rico's antidegradation policy. If Puerto Rico adopts antidegradation implementation methods and EPA approves Puerto Rico's action, EPA will initiate withdrawal of its corresponding federal water quality standards.

A. What Are the Federal Antidegradation Implementation Methods To Protect Puerto Rico's High Quality Waters?

The federal antidegradation implementation methods are the same as the implementation methods Puerto Rico provided to EPA in 2004. EPA reviewed those and on July 9, 2004, sent a letter from Walter Mugdan, Director of EPA Region 2's Division of Environmental Planning and Protection Division to Esteban Mujica Cotto, President of Puerto Rico's Environmental Quality Board stating that these methods meet the requirements of 40 CFR 131.12(a). (It should be noted that subsequent to the issuance of EPA's July 9, 2004 letter, EQB incorporated some non-substantive updates to its consolidation of implementation methods. The purpose of these updates is to reflect the fact that the Puerto Rico Environmental Public Policy Act (12 LPRA 8001 et. seq.), which is one of the referenced documents in the consolidation document, was amended and re-issued on September 22, 2004. The June 17, 2004 version of the consolidation document had referenced the previously applicable version of the Puerto Rico Environmental Public Policy Act. The methods EPA is promulgating reflect this update).

Consistent with Puerto Rico's antidegradation implementation methods, the federal methods provide that all point sources would be subject to antidegradation review. The CWA and EPA's regulations leave to the States and authorized Tribes the decision whether to regulate nonpoint sources by requiring that they undergo antidegradation review *(American Wildlands* v. *Browner,* 260 F.3d 1192, 1198 (10th Cir. 2001)). To date, Puerto Rico has not chosen to subject nonpoint sources to antidegradation review. As a result, EPA is not applying Puerto Rico's methods to sources other than point sources.

In addition, as envisioned by Puerto Rico, the federal methods provide that the antidegradation review would occur as part of Puerto Rico's CWA section 401 certification process. EPA issues all of the National Pollutant Discharge Elimination System (NPDES) permits under CWA section 402 for the Commonwealth of Puerto Rico. As part of this process, Puerto Rico must certify under CWA section 401 that those permits comply with Puerto Rico's water quality requirements. Conducting the antidegradation review process during this certification is a logical time for this review to occur, since this is the time when EQB conducts its formal analysis to determine, in part, if a proposed action will comply with all aspects of the Puerto Rico Water Quality Standards Regulation (PRWQSR).

To implement Tier 1, it is important to explain what is meant by the term ''existing in-stream water use'' (40 CFR 131.12 (a)(1)) and explain how the level of water quality will be identified that is required to allow an existing use to continue to occur. Section 131.3 of the federal regulations defines existing uses as ''those uses actually attained in the water body on or after November 28, 1975* * *''. The proposed methods provide that where there are concentrations or levels of a particular pollutant that have caused a waterbody to be listed as impaired under section 303(d) of the CWA, no additional degradation may occur in the waterbody. Puerto Rico's methods provide that this would be assured through water quality-based effluent limits meeting water quality criteria ''end-of-pipe''. EPA believes this approach will protect the quality of water in the waterbody from further degradation, which will lead to the protection of the existing uses.

EPA has articulated that states may take one of two approaches in identifying their high quality waters, also known as Tier 2 of antidegradation: a parameter-by-parameter approach or a waterbody-by-waterbody approach. Under the parameter-by-parameter approach, States and authorized Tribes determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. The water body-by-water body approach weighs the chemical, physical, biological, or other factors to judge a water body's overall quality. In EPA's Advanced Notice of Proposed Rulemaking (ANPRM), EPA discussed the advantages and disadvantages to both approaches to designating high quality waters. 63 FR 36782, 36783, July 7, 1998. EPA also discussed these issues in the preamble to its proposed rule regarding antidegradation implementation methods for Kentucky. 67 FR 68971, 67798–99, November 14, 2002. EPA interprets its regulation to authorize either approach. Consistent with the implementation methods identified by Puerto Rico, EPA is today requiring that antidegradation reviews for high quality waters in Puerto Rico occur on a parameter-by-parameter basis.

Under the federal methods, Puerto Rico must implement protection of waters it identifies as ONRWs, also known as Tier 3 of antidegradation, through a requirement that prohibits point source discharges in ONRWs. As described earlier in this section, the federal methods mirror those methods already identified by Puerto Rico for implementing its antidegradation implementation policy. EPA believes this approach is more than sufficient to meet the federal requirements at 40 CFR 131.12(a)(3) to maintain and protect the water quality of waters identified as ONRWs and is consistent with Puerto Rico's preferred approach.

Consistent with the antidegradation methods identified by Puerto Rico, this final rule includes methods for implementing Puerto Rico's antidegradation policy for permits issued under section 404 of the CWA or permits issued under section 10 of the

River and Harbors Act. The federal methods require that the discharge of dredged or fill material not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland before they can be allowed to discharge. Further, the federal methods provide that any proposed discharge will not be allowed if there is a practicable alternative that would have less adverse impact. With regard to how the permits for these types of activities will be implemented in waters identified by Puerto Rico as ONRWs, the federal methods provide that any proposed permitted activity under these sections of the statutes be treated the same as NPDES-permitted dischargers, that is, that these types of activities will be prohibited. This approach, also contained in Puerto Rico's methods, will assure that the water quality in waters identified as ONRWs be maintained and protected.

B. How Will Puerto Rico Implement the Federal Antidegradation Implementation Methods?

Puerto Rico will implement the federal antidegradation implementation methods through its ongoing CWA section 401 certification process. As described earlier in Section III.A., EPA Region 2 issues the NPDES permits for the Commonwealth of Puerto Rico. The permit issuance and preparation of the water quality certification occurs sequentially as described below.

Section 6.11 of the PRWQSR describes how the EQB will issue CWA section 401 Water Quality Certifications (WQC) for federally-issued permits, such as NPDES permits. This provision provides, in part, that when requesting a WQC, an applicant must submit, as part of the application, all relevant information to demonstrate to the satisfaction of the Board that the proposed action will not cause a violation of any applicable water quality standards in the receiving water body.

Puerto Rico's requirements for conducting CWA section 401 certifications, which include antidegradation reviews, are found in Resolution R–89–2–2 of the Governing Board of EQB—February 2, 1989, and are summarized as follows.

1. EPA Region 2 (the Region) receives an application from a discharger for a NPDES permit, or for the renewal or modification of an existing NPDES permit. The applicant also submits a copy of the application to the EQB.

2. The Region reviews the application, and, if necessary, obtains additional information from the applicant. After all information is submitted, and EPA completes its review, EPA solicits certification from EQB in accordance with 40 CFR Part 124.

3. EQB evaluates the application/draft permit and issues or denies a 401 certification, or waives the right to review the permit. (EQB will not waive the right when an initial environmental assessment indicates that the discharge for which a permit is sought will have a significant impact on the environment, triggering the need for an antidegradation review.) In summary, if EQB plans to certify the discharge, an intent to issue a WQC will be prepared. If EQB plans to deny the certification, an intent to deny a WQC will be prepared, including the basis of the determination that the discharge will not comply with applicable water quality standards. A copy of the intent to issue or deny a WQC, whichever the case, will be sent to EPA and the petitioner. A public notice and comment period follows. EQB then decides to issue the WQC or denial. Petitioners have the ability to seek reconsideration before the WQC decision becomes final.

4. In conducting an antidegradation review as part of the CWA section 401 certification process, EQB first determines which level of antidegradation applies based upon a review of existing water quality data, and other required information, to be provided by the applicant. Based upon this review, EQB then determines if additional information is necessary in order to make a determination. In the case of Tier I waters, a determination is made as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. When the assimilative capacity of a water body is determined to be insufficient to protect existing and designated uses with an additional load to the water body, EQB does not allow a discharge increase by requiring that the applicable water quality standards be met at the end of the pipe. In order to allow the lowering of water quality in Tier 2 waters, EQB evaluates the existing and protected quality of the receiving water on a parameter-by-parameter basis. In those cases where a potential increase in loading from a discharge may result in the lowering of water quality, the applicant must show and justify the necessity for such lowering of water quality. As part of the Tier 2 antidegradation review process, EQB provides a public comment period of at least 30 days. In the case of Tier 3 waters, no point source discharge will be allowed.

5. If EQB issues a 401 certification, then EPA Region 2 incorporates the WQC into the draft permit and issues public notice of its intention to issue a final permit pursuant to 40 CFR Part 122.

C. What Are the Cost Implications of the Final Rule?

Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation methods set forth in this final rule. Thus, while not in regulation, these implementation methods are already in place in Puerto Rico and as such, EPA's federal antidegradation methods are not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's federal standards. This analysis is documented in the ''Economics Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking and concludes that the total annualized costs of EPA's final rule for both the Commonwealth and the point source dischargers could range from $14,500 to $32,900.

Any NPDES-permitted facility that discharges to water bodies affected by this final rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, because EPA's final rule would only require that antidegradation be applied to point sources. In addition, EPA did not address the potential monetary benefits of this final rule for Puerto Rico.

1. Identifying Affected Entities

EPA identified approximately 265 point source facilities that may be affected by the rule. Of these potentially affected facilities, 76 are classified as major dischargers, and 189 are minor dischargers.

Exhibit 1 provides a summary of facilities that are currently permitted to discharge to Puerto Rico surface waters, as identified in EPA's Permit Compliance System (PCS). There are a total of 265 facilities, 71 percent of which are minor dischargers.

EXHIBIT 1.—POTENTIALLY AFFECTED INDIVIDUAL NPDES PERMITTED DISCHARGERS IN PUERTO RICO

Facility type	Number of Facilities		
	Majors [1]	Minors [2]	Total
Municipal	36	33	69
Industrial	40	156	196
Total	76	189	265

Sources: U.S. EPA (2007) and U.S. EPA Region 2 (2007).
[1] Major dischargers are facilities discharging greater than 1 million gallons per day (mgd) and likely to discharge toxic pollutants in toxic amounts.
[2] Minor dischargers are defined as facilities discharging less than 1 million gallons per day (mgd) and not likely to discharge toxic pollutants in toxic amounts.

In the case of Tier 1 waters, EQB would make a determination as to whether a discharge would lower water quality such that it would no longer be sufficient to protect and maintain the existing and designated uses of that water body. For Tier 2 waters, EQB would evaluate the existing and protected quality of the receiving water on a parameter-by-parameter basis. Under this approach, EQB would determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. In addition, no point source discharges would be allowed to Tier 3 waters.

2. Method for Estimating Potential Compliance Costs

EPA Region 2 indicates that is has received five antidegradation review requests within the last five years, or approximately one request per year. This includes antidegradation reviews for both existing and new facilities. EPA assumed that each type of facility (*e.g.*, major municipal, minor municipal, major industrial, and minor industrial) is equally likely to request an antidegradation review.

Costs for the final antidegradation implementation methods include costs to facilities for preparing the review material and necessary data, and costs associated with the Commonwealth's review of the facility information and certification process. The cost incurred by facilities represents the cost of a preliminary engineering analysis and the subsequent financial analysis for which EPA provides guidance and a workbook. This analysis could cost between one percent and three percent of the installed cost of additional pollution controls.

The cost potentially incurred by Puerto Rico's Environmental Quality Board (EQB) represents the cost of reviewing the engineering cost analysis and financial impact analysis, validating source data and checking calculations, evaluating the engineering design and the conclusions regarding potential financial and community impacts, evaluating the information provided regarding the importance of the proposed development to the economic and social conditions of the affected community, and reviewing and responding to comments from the public. EPA estimated the total time requirement to process each request to be 140 hours.

3. Results

Based on the potential number of antidegradation requests, EPA estimated that point source dischargers may incur total annual costs from $9,200 to $27,600 per year. EPA also estimated that Puerto Rico's EQB may incur annual costs to review the requests of approximately $5,300. Thus, total annual costs of the final rule could be $14,500 to $32,900.

D. Comments Received in Response to EPA's May 2007 Proposal

EPA solicited written public comment on the federal antidegradation methods proposed in the **Federal Register** on May 17, 2007 and held a public hearing on Monday, June 4, 2007 in Puerto Rico. No public comments were received.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

Puerto Rico is already implementing the antidegradation methods set forth in this final rule. Therefore, these EPA methods are not expected to result in any additional monetary costs. However, EPA has prepared an analysis of the costs of the Puerto Rico antidegradation policy and methods. This analysis is contained in the ''Economic Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.'' A copy of the analysis is available in the docket for this action and is briefly summarized in Section III.C of today's notice.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995. It does not include any information collection, reporting or recordkeeping requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities

include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Puerto Rico's existing antidegradation implementation methods are the same as the antidegradation implementation methods set forth in this final rule. Thus, while not in regulation, the implementation methods are already in place in Puerto Rico and, as a result, this regulation is not expected to result in any additional monetary costs. Nonetheless, EPA prepared an analysis to evaluate potential impacts to the Commonwealth of Puerto Rico associated with future implementation of EPA's federal standards. This analysis is documented in the ''Economic Analysis of Antidegradation Implementation Methods for the Commonwealth of Puerto Rico,'' which can be found in the record for this rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of the Unfunded Mandates Reform Act.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not affect the nature of the relationship between EPA and States generally, for the rule only applies to waters within Puerto Rico's jurisdiction. Further the final rule does not substantially affect the relationship of EPA and the Commonwealth of Puerto Rico, or the distribution of power or responsibilities between EPA and the various levels of government. Because Puerto Rico is already implementing these antidegradation methods, this final rule does not change the Commonwealth's ability to implement these methods. Further, this final rule does not preclude Puerto Rico from adopting its own antidegradation methods that meet the requirements of the CWA into its own regulations. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this final rule, EPA did consult with the Commonwealth of Puerto Rico in developing this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175, because no Indian Tribal Governments exist in Puerto Rico. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant and EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act of 1995

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The antidegradation implementation methods set forth in this final rule are the same as the implementation methods Puerto Rico provided to EPA in 2004, which Puerto Rico is already implementing.

K. Endangered Species Act

EPA transmitted the proposed rule to the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) for review and comment concurrent with its publication in the **Federal Register** on May 17, 2007. That transmittal constituted EPA's initiation of informal consultation with the Services on this rulemaking, pursuant to section 7 of the Endangered Species Act and its implementing regulations. EPA received concurrence from the FWS on June 18, 2007, that the rule is not likely to adversely affect federally-listed species in the Commonwealth of Puerto Rico. EPA also received a similar concurrence from the NMFS on September 18, 2007.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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). This rule will be effective January 11, 2008.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: December 6, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.42 is added to read as follows:

§ 131.42 Antidegradation Implementation Methods for the Commonwealth of Puerto Rico.

(a) General Policy Statement.

(1) All point sources of pollution are subject to an antidegradation review.

(2) An antidegradation review shall be initiated as part of the Section 401—''Water Quality Certification Process'' of the Clean Water Act.

(3) The 401 Certification Process shall follow the procedures established by the February 2, 1989 Resolution R–89–2–2 of the Governing Board of the Puerto Rico Environmental Quality Board (EQB).

(4) The following are not subject to an antidegradation review due to the fact that they are nondischarge systems and are managed by specific applicable Puerto Rico regulations:

(i) All nonpoint sources of pollutants.

(ii) Underground Storage Tanks.

(iii) Underground Injection Facilities.

(5) The protection of water quality shall include the maintenance, migration, protection, and propagation of desirable species, including threatened and endangered species identified in the local and federal regulations.

(b) Definitions.

(1) All the definitions included in Article 1 of the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended, are applicable to this procedure.

(2) High Quality Waters:

(i) Are waters whose quality is better than the mandatory minimum level to support the CWA Section 101(a)(2) goals of propagation of fish, shellfish, wildlife and recreation in and on the waters. High Quality Waters are to be identified by EQB on a parameter-by-parameter basis.

(ii) [Reserved].

(3) Outstanding National Resources Waters (ONRWs):

(i) Are waters classified as SA or SE in the PRWQSR, as amended, or any other water designated by Resolution of the Governing Board of EQB. ONRWs are waters that are recreationally or ecologically important, unique or sensitive.

(ii) [Reserved].

(c) Antidegradation Review Procedure

(1) The antidegradation review will commence with the submission of the CWA Section 401 water quality certification request. EQB uses a parameter-by-parameter approach for the implementation of the anti-degradation policy and will review each parameter separately as it evaluates the request for certification. The 401 certification/antidegradation review shall comply with Article 4(B)(3) of the

Puerto Rico Environmental Public Policy Act (Law No. 416 of September 22, 2004, as amended (12 LPRA 8001 *et seq.*)). Compliance with Article 4(B)(3) shall be conducted in accordance with the Reglamento de la Junta de Calidad Ambiental para el Proceso de Presentación, Evaluación y Trámite de Documentos Ambientales (EQB's Environmental Documents Regulation). As part of the evaluation of the Environmental Document an alternatives analysis shall be conducted (12 LPRA 8001(a)(5), EQB's Environmental Documents Regulation, e.g., Rules 211E and 253C), and a public participation period and a public hearing shall be provided (12 LPRA 8001(a), EQB's Environmental Documents Regulation, Rule 254).

(2) In conducting an antidegradation review, EQB will sequentially apply the following steps:

(i) Determine which level of antidegradation applies

(A) Tier 1—Protection of Existing and Designated Uses.

(B) Tier 2—Protection of High Quality Waters.

(C) Tier 3—Protection of ONRWs.

(ii) [Reserved].

(3) Review existing water quality data and other information submitted by the applicant. The applicant shall provide EQB with the information regarding the discharge, as required by the PRWQSR including, but not limited to the following:

(i) A description of the nature of the pollutants to be discharged.

(ii) Treatment technologies applied to the pollutants to be discharged.

(iii) Nature of the applicant's business.

(iv) Daily maximum and average flow to be discharged.

(v) Effluent characterization.

(vi) Effluent limitations requested to be applied to the discharge according to Section 6.11 of the PRWQSR.

(vii) Location of the point of discharge.

(viii) Receiving waterbody name.

(ix) Water quality data of the receiving waterbody.

(x) Receiving waterbody minimum flow (7Q2 and 7Q10) for stream waters.

(xi) Location of water intakes within the waterbody.

(xii) In the event that the proposed discharge will result in the lowering of water quality, data and information demonstrating that the discharge is necessary to accommodate important economic or social development in the area where the receiving waters are located.

(4) Determine if additional information or assessment is necessary to make the decision.

(5) Prepare an intent to issue or deny the 401 water quality certificate and publish a notice in a newspaper of wide circulation in Puerto Rico informing the public of EQB's preliminary decision and granting a public participation period of at least thirty (30) days.

(6) Address the comments received from the interested parties and consider such comments as part of the decision making process.

(7) Make the final determination to issue or deny the requested 401 certification. Such decision is subject to the reconsideration procedure established in Law 170 of August 12, 1988, *Ley de Procedimiento Administrativo Uniforme del Estado Libre Asociado de Puerto Rico* (3 LPRA 2165).

(d) Implementation Procedures.

(1) Activities Regulated by NPDES Permits

(i) Tier 1—Protection of Existing and Designated Uses:

(A) Tier 1 waters are:

(1) Those waters of Puerto Rico (except Tier 2 or Tier 3 waters) identified as impaired and that have been included on the list required by Section 303(d) of the CWA; and

(2) Those waters of Puerto Rico (except Tier 2 and Tier 3 waters) for which attainment of applicable water quality standards has been or is expected to be, achieved through implementation of effluent limitations more stringent than technology-based controls (Best Practicable Technology, Best Available Technology and Secondary Treatment).

(B) To implement Tier 1 antidegradation, EQB shall determine if a discharge would lower the water quality to the extent that it would no longer be sufficient to protect and maintain the existing and designated uses of that waterbody.

(C) When a waterbody has been affected by a parameter of concern causing it to be included on the 303(d) List, then EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a Total Maximum Daily Load (TMDL) is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(D) When the assimilative capacity of a waterbody is not sufficient to ensure maintenance of the water quality standard for a parameter of concern with an additional load to the waterbody, EQB will not allow an increase of the concentration of the parameter of concern or pollutants affecting the parameter of concern in the waterbody. This no increase will be achieved by meeting the applicable water quality standards at the end of the pipe. Until such time that a TMDL is developed for the parameter of concern for the waterbody, no discharge will be allowed to cause or contribute to further degradation of the waterbody.

(ii) Tier 2—Protection of High Quality Waters:

(A) To verify that a waterbody is a high quality water for a parameter of concern which initiates a Tier 2 antidegradation review, EQB shall evaluate and determine:

(1) The existing water quality of the waterbody;

(2) The projected water quality of the waterbody pursuant to the procedures established in the applicable provisions of Articles 5 and 10 of the PRWQSR including but not limited to, Sections 5.2, 5.3, 5.4, 10.2, 10.3, 10.4, 10.5, and 10.6;

(3) That the existing and designated uses of the waterbody will be fully maintained and protected in the event of a lowering of water quality.

In multiple discharge situations, the effects of all discharges shall be evaluated through a waste load allocation analysis in accordance with the applicable provisions of Article 10 of the PRWQSR or the applicable provisions of Article 5 regarding mixing zones.

(B) In order to allow the lowering of water quality in high quality waters, the applicant must show and justify the necessity for such lowering of water quality through compliance with the requirements of Section 6.11 of the PRWQSR. EQB will not allow the entire assimilative capacity of a waterbody for a parameter of concern to be allocated to a discharger, if the necessity of the requested effluent limitation for the parameter of concern is not demonstrated to the full satisfaction of EQB.

(iii) Tier 3—Protection of ONRWs:

(A) EQB may designate a water as Class SA or SE (ONRWs) through a Resolution (PRWQSR Sections 2.1.1 and 2.2.1). Additionally, any interested party may nominate a specific water to be classified as an ONRW and the Governing Board of EQB will make the final determination. Classifying a water as an ONRW may result in the water being named in either Section 2.1.1 or 2.2.2 of the PRWQSR, which would require an amendment of the PRWQSR. The process for amending the PRWQSR, including public participation, is set forth in Section 8.6 of said regulation.

(B) The existing characteristics of Class SA and SE waters shall not be altered, except by natural causes, in order to preserve the existing natural phenomena.

(1) No point source discharge will be allowed in ONRWs.

(2) [Reserved].

(2) Activities Regulated by CWA Section 404 or Rivers and Harbors Action Section 10 Permits (Discharge of Dredged or Fill Material)

(i) EQB will only allow the discharge of dredged or fill material into a wetland if it can be demonstrated that such discharge will not have an unacceptable adverse impact either individually or in combination with other activities affecting the wetland of concern. The impacts to the water quality or the aquatic or other life in the wetland due to the discharge of dredged or fill material should be avoided, minimized and mitigated.

(ii) The discharge of dredged or fill material shall not be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the recipient ecosystem, so long as the alternative does not have other more significant adverse environmental consequences. Activities which are not water dependent are presumed to have practicable alternatives, unless the applicant clearly demonstrates otherwise. No discharge of dredged and fill material shall be certified unless appropriate and practicable steps have been taken which minimize potential adverse impacts of the discharge on the recipient ecosystem. The discharge of dredged or fill material to ONRWs, however, shall be governed by paragraph (d)(1)(iii) of this section.

[FR Doc. E7–24097 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 72, No. 238

Wednesday, December 12, 2007

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.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA 2007–0065]

RIN 0960–AG65

Revised Medical Criteria for Evaluating Functional Limitations Due to Digestive Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On October 19, 2007, we published final rules in the **Federal Register** (72 FR 59397) revising the criteria in sections 5.00 and 105.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings), the sections that we use to evaluate claims involving digestive disorders. In those rules, we indicated that we would issue an Advance Notice of Proposed Rulemaking (ANPRM) inviting public comments on whether we should add a functional listing for digestive disorders, and if so, what functional criteria would be appropriate (72 FR at 59416). We are now requesting your comments and suggestions.

After we have considered your comments and suggestions, other information about the functional effects of digestive disorders, and our adjudicative experience, we will determine whether it is appropriate to add a functional listing for digestive disorders. If we decide to add such a listing, we will publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

DATES: To be sure that your comments are considered, we must receive them no later than February 11, 2008.

ADDRESSES: You may submit comments by any of the following methods. Regardless of which method you choose, to ensure that we can associate your comments with the correct regulation for consideration, you must state that your comments refer to Docket No. SSA–2007–0065:

- Federal eRulemaking Portal at *http://www.regulations.gov.* (This is the preferred method for submitting your comments.) In the Search Documents section, select ''Social Security Administration'' from the agency drop-down menu, then click ''submit''. In the Docket ID Column, locate SSA–2007–0065 and then click ''Add Comments'' in the ''Comments Add/Due By'' column.
- Telefax to (410) 966–2830.
- Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703.
- Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on the Federal eRulemaking portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, 937 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1769, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

What is the purpose of this notice?

The purpose of this notice is to give you an opportunity to send us comments and suggestions regarding the possible addition of a listing based on functional limitations to the listings for evaluating digestive disorders in sections 5.00 and 105.00 of the listings. On October 19, 2007, we published final rules revising the criteria in sections 5.00 and 105.00. Some commenters on the NPRM for those rules (66 FR 57009, published November 14, 2001) recommended that we add a functional listing for hepatitis using criteria similar to those in listings 14.08N and 114.08O for human immunodeficiency virus (HIV). In responding to this comment, we explained that we did not adopt the recommendation because we did not believe we should add such a listing without first proposing it for public comment. We also believe that we need additional information to determine the criteria that would be included in a functional listing, and whether such a listing should be applicable to all digestive disorders or limited to specific disorders, such as hepatitis. Accordingly, we indicated in the NPRM that we would issue an Advanced Notice of Proposed Rulemaking, inviting public comments on these questions.

On which rules are we inviting comments?

We are considering whether to add a listing based on functional limitations to the listings for evaluating digestive disorders in sections 5.00 and 105.00 of the listings. You can find the revised rules for these listings on the Internet at: *http://frwebgate1.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=039144316124+0+0+0&WAISaction=retrieve.*

You can find the functional listings we use to evaluate HIV on our Internet site at these locations:

- Listing 14.08N is available at *http://www.socialsecurity.gov/disability/professionals/bluebook/14.00–Immune-Adult.htm,* and listing 114.08O is available at *http://www.socialsecurity.gov/disability/professionals/bluebook/114.00–Immune-Childhood.htm.*
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Who should send us comments and suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have digestive disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have digestive disorders, State agencies that make

disability determinations for us, experts in the evaluation of digestive disorders, and researchers.

What should you comment about?

We are specifically interested in any comments and suggestions you have about adding a listing based on functional limitations to sections 5.00 and 105.00 of our listings. The issues we want to address are:

- Should we add a listing based on functional limitations to the listings for digestive disorders?
- If so, what criteria should we use?
- Should we use these criteria to evaluate all digestive disorders, or should they be applicable only to the evaluation of specific disorders, such as hepatitis?

Will we respond to your comments from this notice?

We will not respond directly to comments you send us in response to this notice. However, after we consider your comments along with other information, such as medical research and our adjudicative experience, we may decide to add a listing based on functional limitations to the listings for digestive disorders. If we propose the addition of such a listing, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on any proposed addition(s) to the digestive listings if we publish an NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Other Information

Who can get disability benefits?

Under title II of the Social Security Act (the Act), we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How do we define disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above that results in * * *
Title II	an adult or child	the inability to do any substantial gainful activity (SGA).
Title XVI	an individual age 18 or older	the inability to do any SGA.
Title XVI	an individual under age 18	marked and severe functional limitations.

How do we decide whether you are disabled?

If you are applying for benefits under title II of the Act, or if you are an adult applying for payments under title XVI of the Act, we use a five-step ''sequential evaluation process'' to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing SGA? If you are working and the work you are doing is SGA, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go to step 4.

4. Do you have the residual functional capacity (RFC) to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your RFC, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under SSI. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What are the listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How do we use the listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. Part B contains criteria that apply only to individuals who are under age 18. If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate

consideration to the effects of the impairment(s) in children. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What if you do not have an impairment(s) that meets or medically equals a listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will not deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process.'' Likewise, we will not decide that your disability has ended only because your impairment(s) no longer meets or medically equals a listing.

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: November 26, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7–24061 Filed 12–11–07; 8:45 am]

BILLING CODE 4191–02–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2007–11]

Definition of Cable System

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office is seeking comment on issues associated with the definition of the term ''cable system'' under the Copyright Act and the Copyright Office's implementing rules. The Copyright Office is also seeking comment on the National Cable and Telecommunications Association's request for the creation of subscriber groups for the purposes of eliminating the ''phantom signal'' phenomenon. Further, the Copyright Office seeks comment on several other issues related to the existence of phantom signals on certain cable systems. The purpose of this Notice of Inquiry is to solicit input on, and address possible solutions to, the complex issues presented in this proceeding.

DATES: Written comments are due February 11, 2008. Reply comments are due March 26, 2008. December 12, 2007.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Public Information Office, 101 Independence Avenue, SE, Washington, DC 22043, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 430, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, and Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act (''Act''), title 17 of the United States Code (''Section 111''), provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television or radio station licensed by the Federal Communications Commission (''FCC''). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi–annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

I. Background

The National Cable and Telecommunications Association (''NCTA''), by its attorneys, has petitioned the Copyright Office to commence a rulemaking proceeding to address cable copyright royalty issues arising from the current definition of ''cable system'' found in Section 201.17 of part 37 of the Code of Federal Regulations. The NCTA has proposed rule changes that it believes will better effectuate the cable statutory license under Section 111 of the Copyright Act. We initiate this Notice of Inquiry (''NOI'') to address the issues raised by NCTA and to seek comment on its proposed changes to Section 201.17 of the Copyright Office's rules and associated cable Statement of Account (''SOA'') forms. We also raise for comment several other issues pertinent to the discussion of the phantom signal phenomenom, as that concept is defined below.

A. Statutory and Regulatory Definitions

Section 111(f) of the Copyright Act defines a ''cable system'' as:

> ''a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1)[of Section 111], two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered one system.'' 17 U.S.C. 111(f).[1]

[1]We note that the definition of ''cable system'' under the Communications Act of 1934 is different than the Copyright Act definition. *See* 47 U.S.C. 522(7) (''the term ''cable system'' means a facility, consisting of a set of closed transmission paths and

Continued

In implementing the cable statutory license provisions of the Copyright Act, the Copyright Office adopted a definition of the term ''cable system'' that replicated the statutory provision. The Copyright Office, however, separated the text of the provision into two parts in order to clarify that a cable system can be defined in two ways for the purpose of calculating royalty fees. Thus, the regulatory definition provides that ''two or more facilities are considered as one individual cable system if the facilities are either: (1) in contiguous communities under common ownership or control or (2) operating from one headend.'' 37 CFR 201.17(b)(2). The Copyright Office stated that its interpretation of the statutory ''cable system'' definition was consistent with Congress's goal of avoiding the ''artificial fragmentation'' of systems (a large system purposefully broken up into smaller systems) and the consequent reduction in royalty payments to copyright owners. *See Compulsory License for Cable Systems*, 43 FR 958 (Jan. 5, 1978).

The Copyright Office has, in the past, recognized certain practical problems associated with the definition when cable systems merge. For example, in 1997, the Copyright Office stated that ''[s]o long as there is a subsidy in the rates for the smaller cable systems, there will be an incentive for cable systems to structure themselves to qualify as a small system.'' *See A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* (''1997 Report'') (Aug. 1, 1997) at 45. The Copyright Office further stated that although Section 111(f) has worked well to avoid artificial fragmentation, ''it has had the result of raising the royalty rates some cable systems pay when they merge. This happens because, if the two systems have different distant signal offerings, then all the signals are being paid for based on the total number of subscribers of the two systems, even if some of those signals are not reaching all the subscribers.'' *Id.* at 46. The Copyright Office, echoing the NCTA's nomenclature, called this phenomenon the ''phantom signal'' problem. *Id.* In the 1997 Report, the Copyright Office recommended to Congress, as part of a broader effort to reform Section 111, that cable statutory royalties be based on ''subscriber groups'' that actually receive the signal. The Copyright Office also recommended that systems under common ownership and control be considered as one system only when they are either in contiguous communities or use the same headend (i.e., two unrelated operators sharing a single headend would not be treated as one system). *Id.* at 47. Believing that it lacked the authority to alter the definition of cable system as established in Section 111, the Copyright Office suggested that Congress amend the Copyright Act in accordance with its recommendations. Id at 46.

B. Cable System Ownership and Operations

To obtain economies of scale, multiple system cable operators (''MSOs'') strategically acquire systems in close proximity to each other. At the end of 2004, there were 118 clusters with approximately 51.5 million subscribers compared to 108 clusters and approximately 53.6 million subscribers at the end of 2003. During that same time frame, there were 29 cable clusters in the United States with over 500,000 subscribers each.[2] In 2006, the FCC approved the sale of substantially all of the cable systems and assets of Adelphia Communications Corporation to Time Warner Inc. and Comcast Corporation as well as the exchange of certain cable systems and assets between affiliates or subsidiaries of Time Warner and Comcast.[3] The FCC has determined that when Adelphia's systems are fully integrated with either Time Warner's or Comcast's systems, the number and size of clusters in the United States (including, but not limited to systems in California, Ohio, Florida, Texas, and Pennsylvania) will increase significantly.[4] While not specifically mentioned in NCTA's petition, which was filed in 2005, the merger of cable systems resulting from these transactions likely has led to an increase in phantom signals.

II. NCTA Petition

A. The Phantom Signal Problem Explained

At the outset, it is necessary to discuss when and how the phantom signal phenomena has arisen in the past. The circumstance usually has occurred when two or more cable systems (large or small) merge and where each of the former systems carried a unique set of distant broadcast signals. Consequently, a portion of the newly merged cable system's subscriber base may not receive certain distant signals for a certain period of time. Based on our analysis of SOAs on file, we find that there are three possible phantom signal scenarios: (1) when two larger cable systems (those that use the Form 3 statement of account form) with different channel line–ups merge; (2) when a larger cable system and a smaller cable system (those that use the Form 1–2 Statement of Account form), with different channel line–ups, merge; and (3) when a smaller cable system merges with another smaller cable system, with different channel line–ups, resulting in a Form–3 cable system.[5] Phantom signals may arise because the systems are not yet technically integrated and thus an operator is incapable of retransmitting the distant signals to all subscribers it serves after a merger. That is, the distant signals cannot be made available to certain subscriber groups. However, if over time, the cable systems become technically integrated, and the signals are apparently available to all subscribers, then the phantom signal problem would disappear. The new integrated system would be considered like any cable system that decides to offer a complement of distant signals to one subscriber group, but not another. In these circumstances, and under present regulations, the operator would be required to pay a statutory royalty based on the gross receipts of all subscribers served by the cable system even if certain subscribers are not offered certain distant signals.

In its Petition, NCTA describes the circumstances giving rise to phantom signals in a different manner. It states that where two independently built and operated systems subsequently come under common ownership due to a corporate acquisition or merger, the Copyright Office's rules require that the two systems be reported as one. Similarly, where a system builds a line extension into an area contiguous to another commonly–owned system, the

associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. . . .'').

[2] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 (2006) at ¶155.

[3] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corporation, (and subsidiaries, debtors–in–possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation, (and subsidiaries, debtors–in–possession), Assignors and Transferors, to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, 21FCC Rcd 8203 (2006).

[4] *See id.* at ¶ 2. It has been reported that, due in part to the Adelphia transactions, the 100 largest cable systems now serve over 54 million subscribers. *See* George Winslow, *Big Deals, Changes for Markets,* Multichannel News, January 22, 2007.

[5] A description of Form 1, 2, and 3 cable systems under Section 111, is provided below.

line extension can serve as a ''link'' in a chain that combines several commonly–owned systems into one entity for copyright purposes. NCTA asserts that, in either of these cases, phantom signals may be present and an increased royalty obligation may result. The NCTA, however, does not discuss whether there are any technological obstacles to providing all distant broadcast signals carried by a cable system to all subscribers served by that cable system.

B. History of the Phantom Signal Problem

NCTA states that, in 1983, it filed its first Petition asking the Copyright Office to resolve royalty payment issues arising from the definition of cable system. NCTA states that it argued that the Copyright Office's interpretation of the cable system definition was ''unreasonable in practice'' in that it ''frequently result[ed] in the unjustified combination of separate cable entities into one system.'' *See* NCTA 1983 Petition at 2–3. At that time, NCTA proposed that the Copyright Office modify its regulatory definition so that two or more systems would be treated as a single entity only if the system served contiguous communities, were under common ownership or control, **and** operated from a single headend. According to NCTA, the motivation behind this proposed change was the fact that mergers were resulting in a growing number of separate systems being treated as one because they were under common ownership and contiguous, even though the system facilities were not technically integrated.

NCTA notes that the Copyright Office formally recognized the phantom signal issue in 1989, *see Compulsory License for and Merger of Cable Systems*, 54 FR 38390,[6] but did not discuss it again until 1997, when it adopted an amendment to its rules to permit cable systems to calculate the 3.75 fee on a ''partially permitted signal'' basis under certain circumstances.[7] Cable Compulsory License: Merger of Cable Systems and Individual Pricing of Broadcast Signals, 62 FR 23360 (Apr. 30, 1997). NCTA notes that in the same proceeding, the Copyright Office decided to terminate the pending ''phantom signals'' docket in light of a study it was preparing for the Senate Judiciary Committee concerning the functioning of Section 111 of the Copyright Act. *Id.* at 23361 (stating that the ''very issues of merger and acquisition of cable systems involved in [the terminated proceeding] will likely be discussed and analyzed [in the study], and the [Copyright Office] may ultimately propose legislative solutions to solve the problems addressed in this proceeding.''). As noted earlier, the Copyright Office submitted recommendations to Congress in 1997 to address the phantom signal phenomenom.

Congress, however, did not act on the Copyright Office's suggestions to fix Section 111(f). According to NCTA, the need to resolve the treatment of contiguous systems has heightened dramatically during the intervening years. Since 1998, an increasing number of cable operators have merged and acquired systems in relatively close proximity to each other. Similarly, there has been a trend of headend consolidation for the past twelve years. NCTA states, for example, that between Fall 1994 and June 2000, the number of cable headends has declined by nearly 23% (from 11,620 to 8,971). *See* NCTA Petition at 9, citing Nielsen Media Research, CODE database. NCTA also notes the trend toward cable system clustering, as described above.

C. Proposed Solutions to the Phantom Signal Problem

NCTA has proposed a three part remedy to rectify the phantom signal problem as it sees it. First, it urges the Copyright Office to change its cable system regulatory definition. Second, it requests that the Copyright Office adopt a new rule permitting cable operators that operate a cable system serving multiple communities with varying complements of distant broadcast signals to use a community–by–community approach when determining the royalties due from that system, seemingly without regard to whether a phantom signal problem exists. NCTA, in short, advocates the creation of ''subscriber groups'' for cable royalty purposes where the operator pays royalties only where distant signals are actually received by a particular household. Finally, NCTA urges the Copyright Office to announce that it would not challenge Statements of Account on which the cable operator has used a community–by–community approach for determining Section 111 royalties.

It appears that NCTA's proposals are not limited only to those situations where two or more systems have recently merged. Rather, its expansive proposals likely cover any situation where a cable operator provides a different set of distant signals to different subscriber groups served by the same cable system.[8] This regulatory proposal is much different from the matter the Copyright Office raised and addressed in its 1989 and 1997 rulemaking proceedings on cable system mergers and acquisitions. We seek comment on our interpretation of NCTA's proposals. On the other hand, NCTA does not discuss the issue of whether phantom signals may be present when two or more different cable operators share a common headend. We seek comment on whether phantom signals may arise in this instance. If so, is this a problem we should address in this proceeding?

1. Cable System Definition

NCTA proposes that Section 201.17(b)(2) of the Copyright Office's rules be amended so that the last sentence reads as follows: ''For these purposes, two or more cable facilities are considered as one individual cable system if the facilities are in contiguous communities, under common ownership or control, and operating from one headend.'' Stated another way, under NCTA's proposed rule change, cable facilities serving multiple communities would be treated as a single system for statutory license purposes only when three distinct conditions are satisfied: (1) the facilities are in contiguous communities; (2) the facilities are under common ownership or control; and (3) the facilities are operating from the same headend. The

[6] We note that eleven parties filed comments, and three parties filed reply comments, in response to the 1989 Notice of Inquiry in Docket No. RM 89–2. Cable operators, at that time, proposed the following options to resolve the phantom signal problem: (1) combine gross revenues of commonly owned contiguous systems to determine which royalty fee to apply, but otherwise allow them to report the carriage of stations and gross receipts as if the merger had not occurred; (2) combine gross receipts in the same manner as Option 1 and allow the calculation of royalties to be based on subscriber groups; (3) combine gross receipts in the same manner as Options 1 and 2, but allow the calculation of the royalties to be based on cable communities; (4) do not consider two contiguous systems to be one system unless all subscribers are served from a single headend and are under common ownership or control; (5) consider systems to be contiguous only if they share a common border rather than within bordering political subdivisions; and (6) allow a grace period for cable systems that, because of a merger, find that they have created contiguous cable systems. The Program Suppliers supported Option 1, but the Joint Sports Claimants opposed any changes to the current system.

[7] The 3.75% is discussed in more detail, *infra*.

[8] We note that our rules permit cable operators to create subscriber groups based on television signals that are partially–distant or partially–permitted (*i.e.*, distant or permitted in only a portion of the communities served by the cable system). NCTA's proposal extends further and proposes the creation of new subscriber groups based on the ''partial carriage'' of distant broadcast signals within a cable system.

significant change NCTA suggests is that the word ''or'' be replaced by the word ''and'' before the clause ''operating from one headend.'' NCTA asserts that this regulatory change would help resolve the phantom signal issue because it would base royalty payments on signals that are carried throughout the cable system and made available to all subscribers. According to NCTA, a cable operator would still be deterred from ''artificially fragmenting'' its facility under this approach because any operator who attempts to do so would lose the operational efficiencies concomitant with a single headend. NCTA also states that while its proposed definition is narrower than the existing definition, it would ensure that facilities, which were truly technically and managerially distinct from one another, would not be artificially joined together for purposes of the statutory license.

NCTA's proposed rule change, however, raises significant statutory interpretation issues. We recognize that the United States Court of Appeals for the D.C. Circuit has found that the Copyright Office has the authority to interpret the Act so long as it is not inconsistent with the statute or Congressional intent. The D.C. Circuit stated that ''Congress recognizes that it can only legislate, not administer, so it necessarily relies on agency action to make 'common sense' responses to problems that arise during implementation, so long as those responses are not inconsistent with congressional intent.'' *Cablevision Systems Development Co. v. Motion Picture Association of America*, 836 F.2d 599, 612 (D.C. Cir. 1988), *cert. denied*, 487 U.S.1235 (1988). NCTA argues that the Copyright Office has the authority to adopt a new cable system definition. On this point, we note that the regulatory definition of the term ''cable system'' is virtually identical to the definition found in Section 111(f) of the Copyright Act. As such, we do not believe that we have the authority to adopt a regulatory definition that fundamentally alters the statute, even though the language of Section 111 may be one of the root causes of the phantom signal problem. *See* 1997 Report at 46. Nevertheless, we seek comment on NCTA's proposal to change the regulatory definition of cable system.

2. Subscriber Groups

In addition to arguing for a change in the Copyright Office's cable system definition, NCTA also advocates the adoption of a new paragraph (g) in Section 201.17 of the Copyright Office's rules. NCTA's proposed rule amendment would create subscriber groups, based on cable communities and partial carriage, for the purpose of calculating royalties in a manner that would eliminate phantom signals. Specifically, the NCTA proposes that: (1) ''A cable system serving multiple communities shall use the system's total gross receipts from the basic service of providing secondary transmissions of primary broadcast transmitters to determine which of the Statement of Account forms identified in paragraph (d)(2) is applicable to the system;'' and (2) ''Where the complement of distant stations actually available for viewing by subscribers to a cable system is not identical in all of the communities served, the royalties due for the system may be computed on a community–by–community basis by multiplying the total distant signal equivalents derived from signals actually available for viewing by subscribers in a community by the gross receipts from secondary transmissions from subscribers in that community.''[9] NCTA adds that the total copyright royalty fee for a system to which this rule would apply must be equal to the larger of (1) the sum of the royalties computed for the system on a community–by–community basis or (2) 1.013 percent of the systems' gross receipts from all subscribers[10] (which is the current minimum royalty fee payment for SA–3 systems beginning with the July 1–December 31, 2005, accounting period). We seek comment on the overall structure and formulation of NCTA's ''combined revenues/community–specific royalty determination'' proposal.

NCTA states that the Copyright Act does not prohibit the computation of royalties on a community–by–community basis. It believes that the Copyright Act sanctions this approach because it incorporates the FCC's community–specific signal carriage rules as the basis for determining a signal's copyright status. See NCTA Petition at 13, citing NCTA 1989 Comments at 10–12. NCTA also asserts that allowing cable operators to compute royalties on a community–by–community basis would fairly compensate copyright owners for the use of their works. *Id.*

Referencing comments filed with the Copyright Office seventeen years ago, NCTA states that the importance of actual signal carriage is further underscored by the legislative history accompanying the Copyright Act. It notes that the House Report states that distant signal equivalents ''are determined by adding together the values assigned to the actual number of distant television stations carried by the cable system.... Pursuant to the foregoing formula, copyright payments as a percentage of gross receipts increase as the number of distant television signals carried by a cable system increases.'' NCTA Petition at 14, citing Joint Comments of Cable Operators in Docket No. RM 89–2 (filed Dec. 2, 1989, and citing H.R. Rep. No. 94–1476, 94th Cong. 2d Sess. at 96 (1976)).

We seek comment on many aspects of NCTA's proposal. First, does the Act's legislative history support NCTA's proposed rule change? In this instance, we note that the passage cited above does not explicitly support NCTA's suggestions nor is it obvious how this language is relevant to the subscriber group proposal outlined above.[11] Second, assuming that subscriber groups are legally permissible under Section 111 of the Act, how would the adoption of NCTA's methodology for the carriage of stations affect the royalties collected on behalf of the copyright owners? Would NCTA's proposed solution avoid the concern over the artificial fragmentation of cable systems? Lastly, noting that we recently sought comment on changes to the definition of ''community'' as that term is used in Section 201.17 of the Copyright Office's rules,[12] we ask how any changes to the ''community'' definition would affect the changes proposed by NCTA here.

On a separate but related subject, NCTA notes that in the past, it has urged the Copyright Office to announce that it would not challenge Statement of Account forms (''SOAs'') on which the cable operator has used a subscriber group approach for determining the

[9] This proposed rule was not part of NCTA's August 2005 Petition, but was later submitted by letter to the Copyright Office. *See* letter to Tanya M. Sandros, Associate General Counsel, U.S. Copyright Office, from Daniel Brenner, Senior Vice President, Law & Regulatory Policy, NCTA (dated October 10, 2006), at Appendix A (proposing a new paragraph (g) to be added to Section 201.17). NCTA's proposed rule will be made available at the Copyright Office's website (www.copyright.gov).

[10] *See id.*

[11] We recognize that NCTA has cited to this passage to support its stance that the Office has the authority to address the phantom signal problem, but then it conflates this argument with the proposition that ''the entire statutory scheme established by Congress contemplated that copyright fees were to be calculated based upon distant signals that were actually carried on a cable system and made available to subscribers.'' *See* NCTA's Petition at 14, 15.

[12] *See Cable Compulsory License Reporting Practices,* 71 FR 45749 (Aug. 10, 2006) (seeking comment on the suggestion proposed by the MPAA and others that a cable community for Section 111 purposes should be co–extensive with the political boundary of the area for which a cable system has been granted a franchise to operate).

royalties due to the retransmission of particular signals. Under such an approach, the SOA filed by a cable operator serving multiple communities from a single headend would reflect any differences in the signal complement delivered to each community. *See* NCTA Petition at 11–12. We cannot adopt NCTA's approach to examining SOAs. We are bound by our existing rules regarding examination procedures. Thus, we will continue to question an operator if it appears that there is an error, anomaly, or omission in the SOA form in accordance with our regulations. If, however, the regulations are amended as a result of this proceeding, our practices will be adjusted to accommodate those changes.

D. Application of NCTA's Proposals

Background. At this point, it is useful to illustrate how the royalties are currently calculated under Section 111 and our regulations and how we believe royalties would be calculated under NCTA's proposals. We also raise some issues of concern that require close scrutiny from the stakeholders in this proceeding.

To understand how the statutory royalties are derived, it is necessary to describe the statutory methodology used to segregate cable systems. Cable operators pay royalties based on mathematical criteria established in Section 111(d)(1)(B), (C), and (D) of the Copyright Act. Section 111 splits cable systems into three separate categories according to the amount of revenue, or ''gross receipts,''[13] a cable system receives from subscribers for the retransmission of broadcast signals. These categories are: (1) systems with gross receipts between $0–$263,800 (under Section 111(d)(1)(C)); (2) systems with gross receipts more than $263,800 but less than $527,600 (under Section 111(d)(1)(D)); and (3) systems with gross receipts of $527,600 and above (under Section 111(d)(1)(B)).[14]

As is common knowledge to those familiar with Section 111, the Copyright Office's SOA forms must be submitted by cable operators on a semi–annual basis for the purpose of paying statutory royalties under Section 111. There are two types of cable system SOAs currently in use. The SA1–2 Short Form is used for cable systems whose semi–annual gross receipts are less than $527,600.00. There are three levels of royalty fees for cable operators using the SA1–2 Short Form: (1) a system with gross receipts of $137,000 or less pays a flat fee of $52.00 for the retransmission of all broadcast station signals; (2) a system with gross receipts greater than $137,000.00 and equal to or less than $263,800.00, pays between $52.00 to $1,319.00; and (3) a system grossing more than $263,800.00, but less than $527,600.00 pays between $1,319.00 to $3,957.00. Cable systems falling under the latter two categories pay royalties based upon a fixed percentage of gross receipts. The SA–3 Long Form is used by larger cable systems grossing $527,600.00 or more semi–annually. These systems must pay at least a ''minimum fee'' that is calculated at 1.013% of aggregate gross receipts (*e.g.*, $527,600.00 x 1.013%). The minimum fee is paid by operators for the privilege of retransmitting distant broadcast signals even if none are carried. The vast majority of SA–3 systems pay more than the minimum fee because they carry distant television signals.

Alternatively, a cable system would pay a ''base rate fee'' if it carries any distant television stations regardless of whether or not the system is located in an FCC–defined television market area SA–3 systems calculate base rate fees according to the number of permitted distant signal equivalents (''DSEs'') carried: (1) 1st DSE =1.013% of gross receipts; (2) 2nd, 3rd & 4th DSE= .668% of gross receipts; and (3) 5th, etc., DSE .314% of gross receipts. Form SA–3 cable systems that carry only local broadcast signals do not pay the base rate fee, but do pay the minimum fee. Cable systems carrying distant television signals after June 24, 1981, that would not have been permitted under the FCC's former rules in effect on that date, must also pay a royalty fee of 3.75% of gross receipts using a formula based on the number of relevant DSEs. The cable operator would pay either the sum of the base rate fee and the 3.75% fee, or the minimum fee, whichever is higher. In addition, cable systems located in whole or in part within a major television market (as defined by the FCC), must calculate a syndicated exclusivity surcharge (''SES'') for the carriage of any commercial VHF station that places a Grade B contour, in whole or in part, over the cable system which would have been subject to the FCC's syndicated exclusivity rules in effect on June 24, 1981. If any signals are subject to the SES surcharge, an SES fee is added to the foregoing larger amount to determine the system's total royalty fee.[15]

Royalty Calculations Under NCTA's Proposals. We have developed a series of scenarios, based on actual SOA filings, to illustrate the practical consequences of adopting NCTA's proposals. The examples show how cable royalties are calculated under our current regulations and how they likely would be calculated under the NCTA's proposals where subscriber groups have been created. The following sets and scenarios are found in the Appendix to this NOI.

Set 1 illustrates the merger of SA–2 and SA–3 cable systems. Scenario 1 depicts the royalties generated by two separate cable systems *before* a merger and under current Copyright Office regulations. Scenario 2 shows the royalties generated by one cable system *after* a merger of the two systems depicted in Scenario 1 and under current Copyright Office regulations. Scenario 3 depicts the royalties generated by one system *after* a merger, under current Copyright Office regulations, where differing sets of signals are received by subscribers. Scenario 4 shows the royalties generated by one cable system *after* a merger, but under the NCTA's proposed regulations (reflecting the former two separate systems in Scenario 1). Scenario 5 shows one system *after* a merger and the royalties generated under the NCTA's proposed regulations (with signals being carried in only portions of the merged system).

Set 2 illustrates the merger of two SA–3 cable systems. Scenario 1 shows the royalties generated by two separate SA–3 cable systems *before* a merger and under current Copyright Office regulations. Scenario 2 depicts the royalties collected by one system *after* a merger and under current Copyright Office regulations. Finally, Scenario 3 shows the royalties generated by one system *after* a merger, but under NCTA's subscriber group proposal.

Set 3 depicts scenarios involving SA–3 system mergers where partially–distant signals are being carried. Scenario 1 shows the royalties generated by two separate SA–3 systems *before* a merger, with one partially distant signal that is carried on only one system, under current Copyright Office

[13] For purposes of calculating the royalty fee cable operators must pay under Section 111, gross receipts include the full amount of monthly (or other periodic) service fees for any and all services (or tiers) which include one or more secondary transmissions of television or radio broadcast stations, for additional set fees, and for converter (''set top box'') fees. Gross receipts are not defined in Section 111, but are defined in the Copyright Office's rules. *See* 37 CFR 201.17(b)(1).

[14] The numerical figures found in the statute are different from those delineated above due to inflation adjustments adopted by the old Copyright Royalty Tribunal and the Copyright Arbitration Royalty Panel.

[15] The above gross receipts threshold levels, royalty fees, and rates are effective for accounting periods beginning July 1, 2005.

regulations. Scenario 2 depicts the royalties generated by one system *after* a merger, under current Copyright Office regulations, where one partially distant signal is being carried. Lastly, Scenario 3 shows the royalties collected by one system *after* a merger under NCTA's subscriber group proposal and reflects the carriage of a partially distant signal.

As would be expected, the scenarios show there would be a change in cable royalties under NCTA's proposed regulations, with some of the examples illustrating a large decrease in royalties. Are there other fact patterns that involve phantom signals? If so, we ask commenters to submit such examples so that we may be able to determine if NCTA's proposed rule changes offer a workable solution to the phantom signal problem in all situations, from the perspectives of cable operators and copyright owners alike.

SES Royalty Fee Payments. The syndicated exclusivity surcharge is another longstanding cable royalty policy that may be affected by NCTA's proposals. For example, some SA–3 cable systems that would use subscriber groups may have a total calculated royalty less than the statutory minimum fee. In these cases, the minimum fee would apply. In addition, there are some distant signals, however limited in number, that are subject to the SES. When a SES is calculated, it must always be added to the minimum fee to arrive at the total royalty fee given the foregoing scenario.

This matter, illustrated in the table below, was not addressed by NCTA in its petition.

Subgroup 1 ($550,000 gross receipts) No distant signals	Subgroup 2 ($325,000 gross receipts) 1 permitted distant signal (1.00 DSE) Base Rate Fee = $3,292.25 SES = $1,946.75

The minimum fee for the whole system would equal $8,863.75 ($550,000 + $325,000 x 1.013%). The total royalty fee would equal $10,810.50 (minimum fee=$8,863.75 + SES=$1946.75). It is important to note here that instead of adding the calculated base rate and SES in Subgroup 2 to arrive at Subgroup 2's fee, the SES must be added on top of the entire system's minimum fee. In other words, when the calculated base rate fee ($325,000.00 x 1 DSE x .01013 [for first DSE]=$3,292.25) is compared against the minimum fee ($8,863.75), the greater amount is then added to the SES ($325,000 x 1 DSE x .00599 [for first DSE in top 50 market]=$1,946.75). The statutory royalty fee then equals $10,810.50. We point out that if subgroup 1 carried 1 DSE (whether the same or a different signal), then the base rate fee would at least equal the minimum fee because the minimum fee is total gross receipts x 1 DSE x .01013. Hence, the total royalty fee would still be at least $10,810.50 (minimum fee =$8,863.75 + SES =$1,946.75). This scenario illustrates the complexities of determining royalty calculations under NCTA's proposals. We anticipate some possible accounting issues associated with the SES and minimum fee calculations if NCTA's proposals were adopted. We seek comment on whether our supposition is valid in this context.

Minimum Fee. The minimum fee paid by cable operators could also be affected by NCTA's proposals. For example, would a Form 1 system merging with a Form 3 system pay less than the $52 minimum fee if gross revenues are less than $5,133 (assuming that the Form 1 system carries no DSEs)? That is, a former Form 1 system grossing $3,000 would apply the 1.013% minimum royalty rate for Form 3 systems, resulting in a possible royalty fee of $30.39. According to our records, there are about 500 cable systems with gross revenues less than $5,133 that filed for the 2006/1 accounting period.

Single Filers/Shared Headends. SOA filing and royalty payment issues emerge as well under NCTA's proposal. For example, systems A and B merge, but both have been filing a single SOA because they operated from a shared single headend. After their merger, the systems would still file a single SOA. However, since they were under separate ownership, should they be allowed to compute their royalties separately under NCTA's proposed definition as if they were separate systems? Are there any other processing and procedural issues, similar to this one, that may arise under NCTA's approach, but that we have not yet identified?

E. The Market Quota Rules

The FCC does not currently restrict the kind and quantity of distant signals a cable operator may retransmit. Nevertheless, the FCC's former market quota rules, which did limit the number of distant station signals carried and were part of the FCC's local and distant broadcast carriage rules in 1976, are still relevant for Section 111 purposes. These rules are integral in determining: (1) whether broadcast signals are permitted or non–permitted; (2) the applicable royalty fee category; and (3) a station's local or distant status for copyright purposes. Broadcast station signals retransmitted pursuant to the former market quota rules are considered permitted stations and are not subject to a higher royalty rate.

To put these rules in context, a cable system in a smaller television market (as defined by the FCC) was permitted to carry only one independent television station signal under the FCC's former market quota rules. Currently, a cable system in a smaller market is permitted to retransmit one independent station signal for copyright purposes. A cable system located in the top 50 television market or second 50 market (as defined by the FCC) was permitted to carry more independent stations under the former market quota rules. The former market quota rules did not apply to cable systems located ''outside of all markets'' and these systems under Section 111 are currently permitted to retransmit an unlimited number of television stations without incurring the 3.75% fee (although these systems still pay at least a minimum copyright fee or base rate fee for those stations).

There are other bases of permitted carriage under the current copyright scheme that are tied to the FCC's former carriage requirements. They include: (1) specialty stations; (2) grandfathered stations; (3) commercial UHF stations placing a Grade B contour over a cable system; (4) noncommercial educational stations; (5) part time or substitute carriage; and (6) a station carried pursuant to an individual waiver of FCC rules. If none of these permitted bases of carriage are applicable, then the cable system pays a relatively higher royalty fee for the retransmission of that station.

NCTA does not seem to address the fact that all of the FCC's old rules and regulations would be applicable when reporting information and determining the permitted basis of carriage of partially carried stations (*i.e.* subscriber groups) on the SA–3 Form. In our view, when two cable systems located in a top–50 major television market (as defined by FCC regulations) merge and

the operator then creates subscriber groups based on differing signal carriage complements, the merged system's allotment of independent market quota stations would not increase or change. That is, if each of the former systems had two distant independent stations as their market quota, the newly merged system's market quota remains two distant independent stations, regardless of whether those two stations were identical or different. Suppose, for example, that System A previously reported on its SOA that WGN and WSBK were its distant independent market quota signals while System B previously reported WPIX and WWOR were its distant independent market quota signals. Under the subscriber group approach, and based on the FCC rules in existence in 1976, the new merged system would still have a market quota of two distant independent signals. Hence, two of the signals above would be subject to the 3.75% fee unless another basis of permitted carriage is applicable. See supra. We seek comment on whether this would be the appropriate application of the market quota rules under NCTA's subscriber group proposal.

F. The 3.75% Fee and Phantom Signals

Issue. In addition to the market quota issue described above, there is an additional outstanding question regarding the permitted versus non–permitted treatment of phantom signals. The Copyright Office has historically accepted the retransmission of phantom signals at the permitted rate (''base rate fee''). However, some cable operators have raised concern that the Copyright Office might find, at some point in the future, that the retransmission of a phantom signal should be treated as if it were actually carried and thus subject to the 3.75% fee as a non–permitted signal. In the absence of a clear policy statement on this matter, the Copyright Office has not stipulated payment of the 3.75% fee and has left the decision as to which rate applies to the operator's discretion.

Historical Context. In 1982, the Copyright Royalty Tribunal made two types of royalty rate adjustments in response to FCC deregulatory actions at that time. One adjustment was the surcharge on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June, 24, 1981 (former 47 CFR 76.151 et seq.). The second adjustment raised the royalty rate to 3.75% of gross receipts per additional distant signal equivalent resulting from carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981.

In late 1982 and early 1983, the Copyright Office received numerous requests from cable operators for advice or interpretive rulings regarding the application of the 3.75% fee in specific instances. The Copyright Office initiated a proceeding (Docket RM 83–3) by publishing a Notice of Inquiry, 48 FR 6372 (Feb. 11, 1983), in which it summarized the issues presented for guidance and requested public comment on four general issues: (1) substitution of nonspecialty independent stations for specialty stations; (2) carriage of the same signal in expanded geographic areas; (3) expanded temporal carriage of signals carried on a part–time or substitute basis under the former FCC rules before June 25, 1981; and (4) signals for which waivers were pending with the FCC on June 24, 1981, and later dismissed as mooted by FCC deregulation.

Under the former FCC rules, some cable systems were permitted to carry specified distant signals only within certain communities of the system. For example, under paragraph (a) of the FCC's former Section 76.55, a community unit was generally not required to delete any television broadcast signal which it was authorized to carry or was lawfully carrying prior to March 31, 1972 (''grandfathered'' signals). The system was generally not permitted, however, to expand the grandfathered signals into other communities within the system. Also, under the former rules, a cable system located partly within a market and partly outside of all markets was allowed to transmit an unlimited number of distant signals, but the system would not have been permitted to transmit all of those signals to subscriber groups located in a smaller or top 100 television market if the number of signals exceeded the applicable FCC carriage restrictions.

In applying the 3.75% rate, the following questions arose: (1) if the cable system after FCC deregulation expanded the geographic coverage of a ''grandfathered'' signal into previously restricted communities within the same system, does the 3.75% fee apply to the new subscriber groups, and (2) if a cable system that is located partly without and partly within a television market expanded the geographic coverage of a signal previously permitted only in the area outside of all television markets, does the 3.75% rate apply to part or all of the subscribers to the system? *See Compulsory License for Cable Systems*, 49 FR 14944 (Apr. 16, 1984).

The Copyright Office's interpretation of the Copyright Act in these instances in the early 1980s had been that, unless the signal is partly distant only to some subscribers, copyright royalty fees for distant signals carried to any part of a cable system as defined in the Copyright Act must be computed on the basis of total, aggregated gross receipts from all subscribers to the system. This position, at the time, was based upon the lack of any express provision allowing allocation of gross receipts, except for partially distant–partially local signals. *Id.*

The Copyright Office had stated that the different communications and copyright law definitions of the term ''cable system'' had meant that the Copyright Act requires payment of copyright fees even though not all subscribers of the cable system were eligible to receive a particular distant signal because of FCC restrictions. To the extent the Copyright Office was aware that a cable system failed to report total gross receipts from all subscribers, the Licensing Division questioned the correctness of the Statement of Account and attempted to obtain an amended filing and additional payment of copyright fees. In an unknown number of cases, the Copyright Office was not made aware of under–reporting of gross receipts. Some cable systems accepted the Copyright Office's interpretation and paid copyright fees accordingly. In other cases, cable systems refused to accept the Copyright Office's interpretation of the Act and made an allocation of gross receipts to reflect only those subscribers who actually received the signal. *Id.*

In 1984, the Copyright Office agreed with those cable systems asserting that the 3.75% rate does not apply to carriage of the same signal on an expanded geographic basis. The Copyright Office stated that the Copyright Royalty Tribunal did not have the authority or the intention to apply the 3.75% rate in any case where additional distant signal equivalents do not result from the FCC deregulation, and no additional DSE's accrue from expanded geographic coverage of the same signal. The Copyright Office held that since no additional DSE's accrued, the fact that the FCC's rules formerly restricted carriage to certain communities within the system was irrelevant. *Id.*

In 1989, the Copyright Office reiterated and clarified its position regarding the expanded geographic carriage rule. The Copyright Office stated that cable systems may pay the

non–3.75% rate in some cases where expanded geographic carriage of certain signals occurs. The Office clarified that Section 201.17(h) of the Copyright Office's rules was specifically limited to the situation in which a signal was actually carried in only part of a system due to the pre–June 25, 1981, FCC carriage restrictions. In adopting that regulation as part of the implementation of the CRT's 1982 rate adjustment, the Office stated that the ''expanded geographic carriage'' which resulted directly from the FCC's 1980 deregulation order does not represent any ''additional DSE'' because before deregulation the system had to pay royalties system–wide for FCC restricted signals. *See* 49 FR 14944 (Apr. 16, 1984) and 49 FR 26722 (June 29, 1984). The Copyright Office commented that, in 1984, it addressed issues relating to the CRT's 1982 rate adjustment, and it did not have before it any evidence or comment regarding merger or acquisition of cable systems. The Copyright Office stated that the regulation therefore only applied to the expansion of signal coverage within a system resulting from the FCC's 1980 deregulation. It did not cover situations where expanded carriage of a signal results from the creation of a new system through merger or acquisition, which operates in contiguous communities. *See Compulsory License for and Merger of Cable Systems*, 54 FR 38390 (Sept. 18, 1989).

In 1997, the Copyright Office further clarified its position regarding the imposition of the 3.75% fee. At that time, the Copyright Office amended its rules with respect to the application of the CRT's 3.75% fee decision to partially permitted/partially non–permitted distant signals. When the Copyright Office first adopted regulations in 1984 to implement the 3.75% fee, the proper treatment of signals that were partially permitted/non–permitted was raised, and the Copyright Office deferred giving guidance. *Compulsory License for Cable Systems*, 49 FR 26722, 26726 (June 29, 1984). As a result, some cable systems had reported those signals as entirely permitted and have paid the current base rates. Others had reported those signals as entirely non–permitted and have paid the 3.75% fee. After much consideration, the Copyright Office decided that where a signal is partially permitted/partially non–permitted, the current base rates would apply to those subscribers in communities where the signal would have been permitted on or before June 24, 1981, and the 3.75% fee would apply to those subscribers in communities where the signal would not have been permitted before 1981. The effect of the Copyright Office's 1997 decision was that cable systems would no longer be able to elect whether to consider the signal entirely permitted or entirely non–permitted. *See Cable Compulsory License: Merger of Cable Systems and Individual Pricing of Broadcast Signals*, 62 FR 23360 (Apr. 30, 1997).

Questions. The extended discussion of the history of the 3.75% fee, above, reveals that while most questions involving its application have been resolved, the Copyright Office has never directly addressed and discussed its application to phantom signals. On one hand, the 3.75% fee could be applied to non–permitted phantom signals because there is no specific statutory provision, copyright policy, or Copyright Office regulation exempting such payment. On the other hand, the cable industry generally has, for nearly three decades, reported and paid royalties under the assumption that the 3.75% fee would not be applied to non–permitted phantom signals. To wit, our review of the statements of account indicate that most cable systems have paid either the Base Rate Fee or no fee for phantom signals while very few cable systems have paid the 3.75% fee for these signals. We seek comment on the appropriate policyin this context. Should a cable operator pay a 3.75% fee for the retransmission of phantom signals? If so, what are the policy rationales for adopting such a policy? If not, what factors weigh against the levy of such a fee on phantom signals? If we adopted NCTA's subscriber group approach, would this controversy be rendered moot? If so, why?

Forms 1 and 2 Cable System Issues. The NCTA's Petition for Rulemaking, and the discussion herein, has, so far, focused on matters related to Form 3 cable systems. However, to provide a comprehensive analysis of NCTA's proposals, we find it necessary to examine royalty issues related to small cable systems that file Form 1 and Form 2 statements of accounts. We note that the Form 1, 2, and 3 classifications have been the preferred way of categorizing cable systems for royalty purposes over the last thirty years, but the forms are only administrative implementations of the law, and not the law itself. In fact, cable operators pay royalties based on their gross receipts under mathematical formulas established in Section 111(d)(1)(B), (C), and (D) of the Act. Form 1 is actually only half of Section 111(d)(1)(C). Form 2 is actually the other half of Section 111(d)(1)(C) and all of Section 111(d)(1)(D). Form 3 is Section 111(d)(1)(B). Stated otherwise, Form 1 is for cable systems with gross receipts of $0–$137,100, Form 2 is for cable systems with gross receipts of more than $137,100 but less than $527,600 and Form 3 is for cable systems with gross receipts of $527,600 and above. Under the statute (and based on adjusted gross receipt threshold levels), however, Section 111(d)(1)(C) targets cable systems with gross receipts of $0–$263,800, Section 111(d)(1)(D) is directed at cable systems with gross receipts of more than $263,800 but less than $527,600, and Section 111(d)(1)(B) is meant for cable systems with gross receipts of $527,600 and above.

We seek comment on the effect, if any, of NCTA's subscriber group proposal on smaller cable systems that use the Form 1 and 2 SOAs. We specifically ask how royalty rates would be affected and how NCTA's proposal may eliminate or alleviate the phantom signal problem. Based on NCTA's submissions, it appears that its proposals would not have any net effect because two smaller operators (that have merged and have previously filed Form 1 or Form 2 SOAs) would pay the same royalties, with or without phantom signals, if they still fall below the $527,600 threshold, as delineated above. It also appears, based on the information before us, that NCTA's proposals would not provide any type of regulatory relief for smaller systems that file Forms 1 and 2 because those elements of the statute that lend to the creation of phantom signals under Section 111(*e.g.*, DSEs, permitted and non–permitted signals, market quotas and other intricacies pertinent to larger cable systems) are inapplicable. We seek comment on these conclusions and whether our interpretations of NCTA's proposals are accurate.

G. Section 109 Report

On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004, a part of the Consolidated Appropriations Act of 2004. See Pub. L. No. 108–447, 118 Stat. 3394 (2004) (hereinafter SHVERA). Section 109 of the SHVERA requires the Copyright Office to examine and compare the statutory licensing systems for the cable and satellite television industries under Sections 111, 119, and 122 of the Copyright Act and recommend any necessary legislative changes no later that June 30, 2008. Under Section 109, Congress indicated that the report shall include, inter alia, an analysis of whether the licenses under such sections are still justified by the bases upon which they were originally

created. A Notice of Inquiry expansively addressing the statutory licenses was recently published in the Federal Register. *See* 72 FR 19039 (Apr. 16, 2007) (''Section 109 NOI''). We understand our responsibilities under SHVERA to closely examine the continued relevancy of Section 111 and its many provisions, and in fact, the phantom signal issue was one of the issues raised for comment in the Section 109 NOI.[16] However, we believe the matters raised herein deserve consideration, sooner rather than later. Therefore, we shall continue the rulemaking process in this docket while working on recommendations to Congress on the Section 109 Report.

III. Conclusion

We hereby seek comment from the public on issues associated with the definition of a cable system and the creation of subscriber groups (based on the carriage of distant television signals) under Section 111 of the Act and Section 201.17 of the Copyright Office's rules. If there are any other issues relevant to the phantom signal problem not raised or identified in this NOI, interested parties are encouraged to bring those matters to the attention of the Copyright Office.

Dated: November 19, 2007

Marybeth Peters,

Register of Copyrights

APPENDIX

SET 1 – MERGER OF SA–2 AND SA–3 CABLE SYSTEMS

Scenario 1: Two separate systems before a merger under current Copyright Office regulations. System 1 is a Form SA3 and System 2 is a Form SA1–2.

System 1	**System 2**
$550,000.00 gross receipts	$325,000.00 gross receipts
Top 50 Major Market 1 non–permitted distant independent signal (C) Base rate = $9,245.50+ 3.75% fee = $20,625.00	
Royalty fee = $29,870.50	**Royalty fee = $1,931.00**

Table 1a: Two separate systems before a merger using current CO regulations.

Scenario 2: One system after a merger under current Copyright Office regulations. All subscribers are receiving the same set of signals.

$875,000.00 gross receipts 2 permitted signals (A & B) 1 non–permitted signal (C) Minimum fee = $8,863.75 or Base rate fee = $14,708.75+ 3.75% fee = $32,812.50 **Royalty fee = $47,521.25**

Table 1b: One system after a merger using current CO regulations (all subscribers are receiving the same signals).

Scenario 3: One system after a merger reflecting differing sets of signals received by subscribers applying current Copyright Office regulations. Former SA1–2 system in scenario 1 above (System 2) carried a different independent signal and network signal (D and E below) which are carried in only a portion of this new merged SA–3 system.

$875,000.00 gross receipts 2 permitted independent distant signals (A & B) 1 permitted distant network signal (E) 2 non–permitted distant independent signals (C & D) Minimum fee = $8,863.75 or Base rate fee = $16,170.00+ 3.75% fee = $65,625.00 **Royalty Fee = $81,795.00**

Table 1c: One system after a merger reflecting differing sets of signals to subscribers using current Copyright Office regulations.

[16] Several parties commented on phantom signals in response to the Section 109NOI. *See, e.g.*, ACA comments at 10–13, NCTA comments at 18–19, Joint Sports reply comments at 11, NAB comments at 11, and Program Suppliers comments at 6.

Scenario 4: One system after a merger under the NCTA's proposal and reflecting the former two separate systems in scenario 1 – All subscribers are treated as receiving the same set of signals as before the merger. Both former systems would use the rates of a Form SA–3 system. Former System 2 below (the former SA1–2 system) would likely pay the ''minimum fee'' rate with the presumption that no DSEs would apply to the former SA1–2 system's gross receipts.

Former System 1	**Former System 2**
Same as System 1 under scenario 1	Minimum fee = $3,292.25 ($325,000 x 1.013%)
Royalty fee =$29,870.50	**Royalty Fee = $3,292.25**
Combined Royalty Fee $33,162.75	

Table 1d: One system after a merger under the NCTA's proposal to use subscriber groups to reflect the former two separate systems.

Scenario 5: One system after a merger under the NCTA's subscriber group proposal– signals being carried in only portions of the merged system. All subscribers are not receiving the same set of signals. This scenario presumes that DSEs would apply to the gross receipts of the former SA1–2 system.

Former System 1	**Former System 2**
$550,000.00 gross receipts Top 50 Major Market 2 permitted distant independent signals (A/B) 1 non–permitted distant independent signal (C)	$325,000.00 gross receipts Top 50 Major Market 1 Permitted distant network signal (E) 1 permitted distant indep. signal (D)
Minimum fee = $5,571.50 or Base rate = $9,245.50+ 3.75% fee = $20,625.00	Minimum fee = $3,292.25 Base rate = $3,835.00
Royalty fee = $29,870.50	**Royalty fee = $3,835.00**
Combined Royalty fee = $33,705.50	

Table 1e: system after a merger under the NCTA's subscriber group proposal.

As illustrated above, the cable system's total royalty fee obligation would be considerably less under the NCTA subscriber group proposal (Table 1e) when compared with the Copyright Office's existing methodology (Table 1c) which does not currently permit calculations based on subscriber groups and partial carriage.

The following examples concern situations where a cable system straddles two television markets. Like the examples illustrated above, there is a difference in royalty fee amounts if the NCTA's subscriber group proposal were in effect.

SET 2 – MERGER OF TWO SA–3 SYSTEMS

Scenario 1: Two separate SA–3 systems before a merger under current Copyright Office regulations. Each system is retransmitting different distant signals.

System 1	**System 2**
Top 50 major market; $550,000.00 gross receipts 3 distant independent signals (A, B, & C) 2 permitted signals (A & B) 1 non–permitted signal (C)	Second 50 major market; $550,000.00 gross receipts 3 distant independent signals (D, E, & F) 2 permitted signals (D & E) 1 non–permitted signal (F)
Minimum fee = $5,571.50 Base rate fee= $9,245.50 3.75 % fee= $20,625.00	Minimum fee = $5,571.50 Base rate fee= $9,245.50 3.75 % fee= $20,625.00
Royalty fee = $29,870.50	**Royalty fee = $29,870.50**

Table 2a: Two separate SA–3 systems before a merger under current Copyright Office regulations.

Scenario 2: One system after a merger under current Copyright Office regulations.

Top 50 major market and second 50 major market

$1,100,000.00 gross receipts

3 wholly permitted independent signals (A, B, & D)
3 non–permitted independent signals (C, E, & F)

Minimum fee =$11,143.00
Base rate fee =$25,839.00
3.75% fee =$123,750.00

Royalty Fee = $149,589.00

Table 2b: One system after a merger under Copyright Office regulations.

Scenario 3: One system after a merger under NCTA's subscriber group proposal. All signals carried in the former separate SA–3 systems in scenario 1 above are not carried throughout the new merged cable system. This merged scenario reflects two (or more) subscriber groups patterned after the differing pre–merger signal carriage line–ups (see scenario 1, above).

ROYALTY FEE SAME AS COMBINED AMOUNT IN SCENARIO 1 ABOVE $59,741.00

Hence, if two subscriber groups are used, calculation of the royalty fee results in the same royalty fee as above in scenario 1 when they were still separate systems (all else being equal). Other off-shoot scenarios arising from the merger include permutations of the number and makeup of sub-groups to reflect partial carriage of certain stations to some subscribers. Notwithstanding such, the royalty fee would still be less than the CO calculated fee in scenario 2 above.

Table 2c: One system after a merger using NCTA's approach of subscriber groups for phantom signals.

SET 3 –SA–3 SYSTEM MERGER AND PARTIALLY–DISTANT SIGNALS

Scenario 1: Two separate SA–3 systems before a merger with one partially distant signal that is carried in only one system under current Copyright Office regulations.

System 1: 1 partially distant independent permitted signal (A).

Group I

Top 50 major market
Gross receipts = $550,000.00
No distant signals

Group II

Top 50 major market
Gross receipts = $550,000.00
1 permitted distant independent signal (A)
Base rate fee = $5,571.50

MINIMUM FEE = $11,143.00

Royalty fee = $11,143.00

System 2:

Group I

Top 50 major market
Gross receipts $1,800,000.00
2 distant independent permitted signals (B & C)

Minimum fee = $18,234.00 or
Base rate fee = $30,258.00

Royalty fee = $30,258.00

Table 3a: Two separate SA–3 systems before a merger with one partially–distant signal.

Scenario 2: One system after a merger under current Copyright Office regulations with one partially distant signal. Former system 1 above now pays for two additional permitted signals (B and C) in the merged system that it did not previously carry. Former system 2 above now pays for an additional permitted signal (A) in the merged system that it did not previously carry.

System gross receipts = $2,900,000.00	
Minimum fee = $29,377.00	
For purposes of calculating the base rate fee, the merged system has two subgroups because of the partially distant signal (A) which is local in Group I.	
Group I	*Group II*
Gross receipts = $550,000.00	Gross receipts = $2,350,000.00
2 distant independent permitted signals (B & C)	3 distant independent permitted signals (A, B, C)
Base rate fee = $9,245.50	Base rate = $55,201.50
ROYALTY FEE = $64,447.00	

Table 3b: One system after a merger under current Copyright Office regulations with a partially–distant signal.

Scenario 3: One system after a merger under NCTA's subscriber group proposal to reflect the carriage of a partially distant signal (A). There would apparently be three subscriber groups rather than two subgroups based on the partially–distant scenario involved above in scenario 2. Signal A is local in Group I, distant in Group II, and not carried in Group III. Signals B and C are not carried in Groups I and II.

SYSTEM GROSS RECEIPTS = $2,900,000.00		
Minimum Fee = $29,377.00		
Group I	Group II	Group III
$550,000.00 gross receipts	$550,000.00 gross receipts	$1,800,000.00 gross rec.
	1 distant indep. permitted signal (A)	2 distant indep. permitted signals (B and C)
	Base Rate = $5,571.50	Base Rate = $30,258.00
ROYALTY FEE =$35,829.50		

Table 3c: One system after a merger under NCTA's subscriber group proposal to reflect the carriage of a partially–distant signal.

Similar to the scenarios illustrated in Sets 1 and 2, the above royalty fee under the NCTA's subscriber group proposal in Table 3c is less than under the Copyright Office's current methodology.

[FR Doc. E7–24079 Filed 12–11–07; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0806; FRL–8504–6]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on December 8, 1997, May 28, 2003, and August 25, 2004. The December 8, 1997 submittal revised the Administrative Rules of Montana (ARM) Chapter 8, Subchapter 3, Section 17.8.316 (Incinerators) by adding Subsection (6). ARM 17.8.316(6) excludes incinerators from having to comply with the other provisions of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75–2–215, Montana Code Annotated (MCA), and ARM 17.8.770, which pertain to permitting of solid or hazardous waste incinerators. The August 25, 2004 submittal made a minor editorial revision to ARM 17.8.316(5). The May 28, 2003 submittal made minor editorial revisions to ARM 17.8.316(6). This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Comments must be received on or before January 11, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0806, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: daly.carl@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0806. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6416, *daly.carl@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Summary of SIP Revision
III. Proposed Action
IV. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Summary of SIP Revision

On December 8, 1997, the State of Montana submitted to EPA a SIP revision request. The revision added Subsection (6) to Section 17.8.316 (Incinerators) of the Administrative Rules of Montana (ARM), Chapter 8 (Air Quality), Subchapter 3 (Emission Standards). Subsection (6) exempts incinerators from the requirements of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75–2–215, MCA, and ARM 17.8.706(5).[1] [2]

The revision also included wording changes to ARM 17.8.316. Most are minor editorial or technical corrections and do not change the substance of the rule. One of the changes was to substitute the words ''solid and hazardous waste'' for the word ''refuse'' in the rule. The effect of this change was to extend the rule requirements to incinerators burning solid or hazardous waste, not just refuse. The full text of the changes can be found in our Technical Support Document (TSD), which is contained in the Docket for this action.

We interpret ARM 17.8.316(6) to allow terms of a permit to override a requirement that has been approved as part of the SIP (i.e., the provisions in ARM 17.8.316(1)–(5)). Therefore, this revision requires an analysis showing that this new rule will not interfere with

[1] Montana Code Annotated (MCA) 75–2–215 (Solid or hazardous waste incineration—Additional permit requirements)

[2] ARM 17.8.706(5) was recodified to ARM 17.8.770 effective on December 6, 2002. This provision has not been submitted by the State to be incorporated into the federally aproved SIP. ARM 17.8.770 (ARM 17.8.706(5)) requires applicants for a preconstruction permit for an incineration facility to submit a human health risk assessment protocol and a human health risk assessment.

compliance with the National Ambient Air Quality Standards (NAAQS) or Prevention of Significant Deterioration (PSD) increments. Section 110(l) of the CAA states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in Section 171 of the CAA, or any other applicable requirements of the CAA. Montana did not provide any demonstration in its December 8, 1997 SIP revision submittal that ARM 17.8.316(6) meets these criteria. Subsequent to the State's submittal, EPA requested information from the Montana Department of Environmental Quality (DEQ) in order to conduct its own analysis on the impact of ARM 17.8.316(6) on the attainment and maintenance of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to 10 and 2.5 micrometers (PM–10 and PM–2.5) and compliance with the PSD PM–10 increments. Based on this analysis, EPA has determined that this specific change to a SIP requirement will not adversely impact the attainment and maintenance of the PM–10 and PM–2.5 NAAQS, or compliance with the PM–10 increments, in Montana. EPA's analysis of this revision's impact is contained in the TSD for this action. In addition, the TSD discusses EPA's verification that ARM 17.8.316(6) will not impact compliance with, or the ability to enforce, the federal New Source Performance Standards (NSPS) or Maximum Achievable Control Technology (MACT) regulations. Based on a letter from the Montana DEQ dated October 2, 2007, and its own consideration of the rule change, EPA has determined that ARM 17.8.316(6) will not interfere with, supersede, or replace any NSPS or MACT requirements for sources, or affect in any way the State's, EPA's, or any other person's ability to enforce such NSPS or MACT requirements. The TSD and the DEQ letter are available for review as part of the Docket for this action.

On August 25, 2004, the State of Montana submitted to EPA a SIP revision request that, in part, revised Subsection (5) to ARM 17.8.316 (Incinerators). This revision makes a minor change to the third sentence of Subsection (5) from: ''Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Testing Protocol and Procedures Manual''; to: ''Testing shall be conducted in accordance with ARM 17.8.106 and the Montana Source Test Protocol and Procedures Manual.''

On May 28, 2003, the State of Montana submitted to EPA a SIP revision request that, in part, revised ARM 17.8.316(6). This revision makes minor changes to Subsection (6) from: ''This rule does not apply to incinerators for which an air quality preconstruction permit has been issued under 75–2–215, MCA, and ARM 17.8.706(5)''; to: ''This rule does not apply to incinerators for which a Montana air quality permit has been issued under 75–2–215, MCA, and ARM 17.8.770.''

EPA's review of the revisions to ARM 17.8.316 indicates that they are consistent with the CAA, and we are proposing to approve the revisions to ARM 17.8.316 into the Montana SIP. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to approve the revisions to ARM 17.8.316, submitted on December 8, 1997, May 28, 2003, and August 25, 2004, into the Montana SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 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.*). 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).

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). 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. 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 approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 4, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E7–24093 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2007–0211; FRL–8505–1]

RIN 2060–AO16

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production); National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production; National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards (Acetal Resins Production and Hydrogen Fluoride Production)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule requests public comment on the residual risk and technology reviews for eight industrial source categories regulated by four national emission standards for hazardous air pollutants (HAP). The eight industrial source categories and the four national emission standards are listed in Table 3 of this preamble. The underlying national emission standards that are under review in this action limit and control HAP.

We are proposing that no revisions to the national emission standards regulating the eight source categories listed in Table 3 of this preamble are required at this time under section 112(f)(2) or 112(d)(6) of the Clean Air Act.

DATES: *Comments.* Comments must be received on or before February 11, 2008.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 27, 2007, a public hearing will be held on January 11, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0211, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (2822T), Docket ID No. EPA–HQ–OAR–2007–0211, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0211. If commenting on the data in the Risk and Technology Review (RTR) database, please format your comments as described in section III and IV of this preamble. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 EPA Docket Center, Docket ID No. EPA–HQ–OAR–2007–0211, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Mary Tom Kissell, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4516; fax number: (919) 685–3219; and e-mail address: *kissell.mary@epa.gov.* For specific information regarding the modeling methodology, contact Ms. Elaine Manning, Office and Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5499; fax number: (919) 541–0840; and e-mail address: *manning.elaine@epa.gov.* For information about the applicability of these four national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1.—LIST OF EPA CONTACTS FOR GROUP I POLYMERS AND RESINS, GROUP II POLYMERS AND RESINS, ACETAL RESINS PRODUCTION, AND HYDROGEN FLUORIDE PRODUCTION

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Polymers and Resins, Group I	Scott Throwe (202) 564–7013, *throwe.scott@epa.gov*	David Markwordt (919) 541–0837, *markwordt.david@epa.gov.*

TABLE 1.—LIST OF EPA CONTACTS FOR GROUP I POLYMERS AND RESINS, GROUP II POLYMERS AND RESINS, ACETAL RESINS PRODUCTION, AND HYDROGEN FLUORIDE PRODUCTION—Continued

NESHAP for:	OECA Contact [1]	OAQPS Contact [2]
Polymers and Resins, Group II ...	Scott Throwe (202) 564–7013, *throwe.scott@epa.gov*	Randy McDonald (919) 541–5402, *mcdonald.randy@epa.gov.*
Acetal Resins Production	Marcia Mia (202) 564–7042, *mia.marcia@epa.gov*	David Markwordt (919) 541–0837, *markwordt.david@epa.gov.*
Hydrogen Fluoride Production	Marcia Mia (202) 564–7042, *mia.marcia@epa.gov*	Bill Neuffer (919) 541–5435, *Neuffer.bill@epa.gov.*

[1] OECA stands for the EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for EPA's Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The eight regulated industrial source categories that are the subject of today's proposal are listed in Table 2 to this preamble. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action for the source categories listed. These standards, and any changes considered in this rulemaking, would be directly applicable to sources as a Federal program. Thus, Federal, State, local, and tribal government entities are not affected by this proposed rule. The regulated categories affected by this action include:

TABLE 2.—NESHAP FOR EIGHT INDUSTRIAL SOURCE CATEGORIES

Category	NAICS [1] Code	MACT [2] Code
Butyl Rubber Production	325212	1307
Ethylene-Propylene Rubber Production	325212	1313
Polysulfide Rubber Production	325212	1332
Neoprene Production	325212	1320
Epoxy Resins Production	325211	1312
Non-nylon Polyamides Production	325211	1322
Acetal Resins Production	325211	1301
Hydrogen Fluoride Production	325120	1409

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.

To determine whether your facility would be affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any of these NESHAP, please contact the appropriate person listed in Table 1 of this preamble in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting Comments/CBI. Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0211. If commenting on changes to the RTR database, please submit your comments in the format described in sections III and IV of this preamble. Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Instead, send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2007–0211. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to Mr. Morales, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI.

In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disc that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN(s policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

As discussed in more detail in sections III and IV of this preamble, additional information is available on the Risk and Technology Review Phase II webpage at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Mary Tom Kissell, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–4516.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What is the statutory authority for this action?
B. Overview of the Four NESHAP
C. How did we estimate risk posed by the eight source categories?
D. What are the conclusions of the risk review?
E. What are the conclusions of the technology review?
II. Proposed Action
III. How do I access and review the facility-specific data?
IV. How do I submit suggested data corrections?
V. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a comprehensive regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In accordance with CAA section 112(c), EPA identifies categories and subcategories of major sources that emit one or more of the HAP listed in CAA section 112(b). CAA section 112(d) then calls for EPA to promulgate national technology-based emission standards for each listed category or subcategory of sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. The source categories listed in Table 3 to this preamble are eight source categories for which we have promulgated MACT standards.

In what we refer to as the technology review, CAA section 112(d)(6) then requires EPA to review the CAA section 112(d) technology-based standards and to revise them ''as necessary, taking into account developments in practices, processes, and control technologies,'' no less frequently than every 8 years. If we conclude a revision is necessary, we must revise the standards.

The residual risk review is described in section 112(f) of the CAA. CAA section 112(f)(2) requires us to promulgate standards for each category or subcategory of CAA section 112(d) sources ''if promulgation of such standards is required in order to provide an ample margin of safety to protect public health * * * or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.[1] If standards promulgated pursuant to CAA section 112(d) and applicable to a category or subcategory of source emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million, the Administrator shall promulgate standards under this subsection'' for the source category (or subcategory). EPA's framework for making ample margin of safety determinations under CAA section 112(f)(2) is provided in the Benzene NESHAP (54 FR 38044, September 14, 1989) and was codified by Congress in CAA section 112(f)(2)(B).

B. Overview of the Four NESHAP

The eight industrial source categories and four NESHAP that are the subject of today's proposal are listed in Table 3 to this preamble. NESHAP limit and control HAP that are known or suspected to cause cancer or have other serious human health or environmental effects. The NESHAP for these eight source categories generally required implementation of technologies such as steam strippers and incineration.

TABLE 3.—LIST OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY TODAY'S PROPOSAL

Title of NESHAP	Source categories affected by today's proposal	Promulgated rule reference	Compliance date	NESHAP as referred to in this preamble
NESHAP for Group I Polymers and Resins[1].	Polysulfide Rubber Production Ethylene Propylene Rubber Production. Butyl Rubber Production. Neoprene Production.	61 FR 46905 (09/05/1996)	07/31/1997	Polymers and Resins I.
NESHAP for Epoxy Resins Production and Non-nylon Polyamides Production.	Epoxy Resins Production ..... Non-nylon Polyamides Production.	60 FR 12670 (03/08/1995)	03/03/1998	Polymers and Resins II.
NESHAP for GMACT[2]	Acetal Resins Production ..... Hydrogen Fluoride Production.	64 FR 34853 (06/29/1999)	06/29/2002	GMACT.

[1] The Polymers and Resins I NESHAP regulates nine source categories. We are performing the residual risk and technology review for four of them in this proposal. We will address the remaining five source categories in a separate risk and technology review rulemaking.
[2] The source categories subject to the standards in the GMACT NESHAP are Acetal Resins Production and Hydrogen Fluoride Production.

[1] Adverse environmental effect is defined in CAA section 112(a)(7) as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

1. Polymers and Resins I

The Polymers and Resins I NESHAP applies to major sources and regulates HAP emissions from nine source categories. In today's proposal, we address four of the Polymer and Resins I sources categories—Polysulfide Rubber Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, and Neoprene Production. HAP emissions from these processes can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

These four source categories involve the production of elastomers (i.e., synthetic rubber). An elastomer is a synthetic polymeric material that can stretch at least twice its original length and then return rapidly to approximately its original length when released. Elastomers have long, flexible, chainlike molecules that are able to undergo rapid rotation (i.e., flex) as a result of thermal agitation. Elastomers are produced via a polymerization process, in which monomers undergo intermolecular chemical bonds to form an insoluble, three-dimensional network (i.e., a polymer). Generally, the production of elastomers entails four processes: (1) Raw material (i.e., solvent) storage and refining; (2) polymer formation in a reactor (either via the solution process, where monomers are dissolved in an organic solvent, or the emulsion process, where monomers are dispersed in water using a soap solution); (3) stripping and material recovery; and (4) finishing (i.e., blending, aging, coagulation, washing, and drying processes).

a. *Polysulfide Rubber Production.* Polysulfide rubber is a synthetic rubber produced by the reaction of sodium sulfide and p-dichlorobenzene (1,4-dichlorobenzene) at an elevated temperature in a polar solvent. Polysulfide rubber is resilient, resistant to solvents, and has low temperature flexibility, facilitating its use in seals, caulks, automotive parts, rubber molds for casting sculpture, and other products.

During the development of the NESHAP, we identified one polysulfide rubber production facility as a major source and subject to the Polymers and Resins I NESHAP. This facility consisted of raw material storage vessels and was designated as a major source because it was co-located with another source. This polysulfide facility has been dismantled and we are not aware of any other facilities currently subject to the NESHAP. (Even though no polysulfide rubber facilities are currently in operation, we completed a risk analysis based on the available information on this facility as of 2002.) The only HAP reported for this category in the 2002 National Emissions Inventory (NEI) was methylene diphenyl diisocyanate.

b. *Ethylene Propylene Rubber Production.* Ethylene propylene elastomer is an elastomer prepared from ethylene and propylene monomers. Common uses for these elastomers include radiator and heater hoses, weather stripping, door and window seals for cars, construction plastics blending, wire and cable insulation and jackets, and single-ply roofing membranes.

We believe five ethylene propylene rubber production facilities are currently subject to the Polymers and Resins I NESHAP. Hexane, which is the HAP used as the solvent at three of the plants, accounts for the majority of the HAP emissions from these facilities (over 95 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of ethyl chloride, ethylene glycol, and hydrogen chloride. Two facilities do not use hexane in their processes. One facility uses toluene instead of hexane as a solvent and the other facility uses a gas-phase process where methanol is the only HAP emitted.

c. *Butyl Rubber Production.* The Butyl Rubber Production source category includes any facility that manufactures copolymers of isobutylene and isoprene. Butyl rubber is very impermeable to common gases and resists oxidation. A specialty group of butyl rubbers are halogenated butyl rubbers, which are produced commercially by dissolving butyl rubber in hydrocarbon solvent and contacting the solution with gaseous or liquid elemental halogens such as chlorine or bromine. Halogenated butyl rubber resists aging to a higher degree than the nonhalogenated type and is more compatible with other types of rubber. Uses for butyl rubber include tires, tubes, and tire products; automotive mechanical goods; adhesives, caulks, and sealants; and pharmaceutical uses.

We believe two butyl rubber production facilities are currently subject to the Polymers and Resins I NESHAP. The primary HAP emitted from butyl rubber production facilities are methyl chloride (53 percent of the total HAP emissions by mass) and hydrochloric acid (34 percent). Hexane is also emitted from the production of halobutyl rubber, and it makes up around 13 percent of the total HAP emissions from the category.

d. *Neoprene Production.* Neoprene is a polymer of chloroprene. Neoprene was originally developed as an oil-resistant substitute for natural rubber, and its properties allow its use in a wide variety of applications including wetsuits, gaskets and seals, hoses and tubing, plumbing fixtures, adhesives, and other products.

We believe that one neoprene production facility is currently subject to the Polymers and Resins I NESHAP. The primary HAP emitted by production are chloroprene and toluene, with chloroprene accounting for over 80 percent of the total emissions.

2. Polymers and Resins II

The Polymers and Resins II NESHAP applies to major sources and regulates HAP emissions from two source categories—epoxy resins production and non-nylon polyamides production. HAP emissions from these source categories can be released from storage tanks, process vents, equipment leaks, and wastewater operations.

a. *Epoxy Resins Production.* The Epoxy Resins Production source category generates HAP emissions from the manufacture of basic liquid epoxy resins used in the production of glues, adhesives, plastic parts, and surface coatings. This source category does not include specialty or modified epoxy resins.

We believe three epoxy resins production facilities are currently subject to the Polymers and Resins II NESHAP. The HAP emitted in the greatest quantity by mass from these facilities are epichlorohydrin (referred to by its synonym 1-chloro-2,3-epoxypropane in the NEI and in the accompanying emissions summary table) and chlorobenzene. The total emissions for these two HAP account for approximately 87 percent of the total HAP mass emitted by the facilities regulated by the NESHAP. Epichlorohydrin is emitted in the greatest quantity and is reported as an emission of all three facilities. Other HAP such as phenol, xylenes, ethyl benzene, propylene dichloride, allyl chloride, 1,3-dichloropropene, glycol ethers, methyl chloride, toluene, acrolein, benzyl chloride, and ethyl acrylate are emitted in smaller quantities. All the other HAP are reported as emissions by only one or two of the facilities.

b. *Non-nylon Polyamides Production.* The Non-nylon Polyamides Production source category generates HAP emissions from the manufacture of epichlorohydrin cross-linked non-nylon polyamides used primarily by the paper industry as an additive to paper products. Natural polymers, such as those contained in paper products, have

little cross-linking, which allows their fibers to change position or separate completely when in contact with water. The addition of epichlorohydrin cross-linked non-nylon polyamides to these polymers causes the formation of a stable polymeric web among the natural fibers. Because the polymeric web holds the fibers in place even in the presence of water, epichlorohydrin cross-linked non-nylon polyamides are also referred to as wet-strength resins.

We believe four non-nylon polyamides production facilities are currently subject to the Polymers and Resins II NESHAP. Epichlorohydrin (64 percent) and hydrochloric acid (36 percent) are the only HAP emitted from this category.

3. GMACT—Acetal Resins Production

The GMACT set national emission standards for certain source categories consisting of five or fewer facilities. The basic purpose of the GMACT approach was to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in the MACT standards development.

Emission sources from acetal resin production include storage vessels that hold process feed materials, process vents, process wastewater treatment systems, and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, valves, connectors, and instrumentation systems. The storage vessels associated with acetal resin production are primarily used for storage of solvents. Back end process vent emissions occur from reactor units, mixing vessels, solvent recovery operations, and other operations.

Acetal resins are characterized by the use of formaldehyde in the polymerization process to manufacture homopolymers or copolymers of alternating oxymethylene units. Acetal resins, also known as polyoxymethylenes, polyacetals, or aldehyde resins, are a type of plastic possessing relatively high strength and rigidity without being brittle. They have good frictional properties and are resistant to moisture, heat, fatigue, and solvents. Acetal resins are used as parts in a variety of industrial applications, e.g., gears, bearings, bushings, and various other moving parts in appliances and machines, and in a range of consumer products, e.g., automotive door handles, seat belt components, plumbing fixtures, shaver cartridges, zippers, and gas tank caps.

We believe three facilities are currently subject to the acetal resins production provisions in the GMACT. The primary HAP emitted by acetal resin production are formaldehyde and methanol, which make up 92 percent of the total HAP emissions by mass.

4. GMACT—Hydrogen Fluoride Production

The Hydrogen Fluoride Production source category includes any facility engaged in the production and recovery of hydrogen fluoride by reacting calcium fluoride with sulfuric acid. Potential sources of HAP emissions at hydrogen fluoride production facilities include: Process vents on hydrogen fluoride recovery and refining equipment, storage vessels used to store hydrogen fluoride, bulk loading of tank trucks and tank rail cars, leaks from hydrogen fluoride handling equipment, and reaction kiln seal leaks. The only HAP emitted from the processes in this source category is hydrogen fluoride. We believe two facilities are currently subject to the hydrogen fluoride production provisions in the GMACT.

C. How did we estimate risk posed by the eight source categories?

To support the proposed decisions presented in today's notice, EPA conducted an inhalation risk assessment [2] that provided estimates of maximum individual cancer risk, cancer risk distribution within the exposed populations, cancer incidence, hazard indices for chronic exposures to HAP with non-cancer health effects, and hazard quotients (HQ) for acute exposures to HAP with non-cancer health effects. The risk assessment consisted of six primary activities: (1) Establishing the nature and magnitude of emissions from the sources of interest, (2) identifying the emissions release characteristics (e.g., stack parameters), (3) conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (4) estimating long-term and short-term inhalation exposures to individuals residing within 50 km of the modeled sources, (5) estimating individual and population-level risks using the exposure estimates and quantitative dose-response information, and (6) characterizing risk. In general the risk assessment followed a tiered, iterative approach, beginning with a conservative screening-level analysis and, where the screening analysis indicated the potential for non-negligible risks, following that with more refined analyses. The following sections summarize the results of these efforts.

1. Emissions Data

For the Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene Production, Epoxy Resins Production, and Non-nylon Polyamides Production source categories, we relied primarily on emissions data and emissions release characteristic data we collected directly from industry. We reviewed these data and consider them to be the best emissions and emissions release characteristic data available for these five source categories.

For the remaining three source categories, Polysulfide Rubber Production, Acetal Resins Production, and Hydrogen Fluoride Production, we relied primarily on data in the 2002 NEI Final Inventory,[3] Version 1 (made publicly available on February 26, 2006). For the Polysulfide Rubber source category, the data in the 2002 NEI were used without further investigation because the only facility in the source category closed in 2002. For the Acetal Resins and Hydrogen Fluoride source categories, the 2002 NEI data were supplemented with information from industry and, for one hydrogen fluoride facility, with information from the State permitting agency.

In response to an advanced notice of proposed rulemaking [4] we published on March 29, 2007, we received comments on emissions data and emissions release characteristics data for an acetal resins production facility, two ethylene propylene production facilities, and a neoprene production facility. We will include these comments in the docket for this proposal (docket ID EPA–HQ–OAR–2007–0211) and will evaluate them with other comments we receive in response to today's proposal. The data files for the eight source categories, which are posted on the RTR webpage and are described in Section III of this preamble, will include the new data provided by the commenters.

Emissions data and emissions release characteristics data for these eight source categories are documented in the docket in ''Documentation of Emissions Data and Emissions Release

[2] For more information on the risk assessment inputs and models, see ''Residual Risk Assessment for Eight Source Categories,'' available in the docket.

[3] The National Emission Inventory (NEI) is a database that contains information about sources that emit criteria air pollutants and their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. EPA collects this information and releases an updated version of the NEI database every 3 years.

[4] Risk and Technology Review, Phase II, Group 2 at 72 FR 29287.

Characteristics Data Used for the RTR Group 1.'' We specifically request comment on whether the facilities listed in our emissions data set accurately reflect the universe of sources within the source categories. For example, are there records remaining in the data set that are not part of the relevant source category or any missing emissions data that should be included for the relevant source category?

2. Risk Assessment

Both long-term and short-term inhalation exposure concentrations and health risk from each of the eight source categories addressed in today's proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 model performs three main operations: Dispersion modeling, estimation of population exposure, and estimation of human health risks. The dispersion model used by HEM–3 is AERMOD, which is one of EPA's preferred models for assessing pollutant concentrations from industrial facilities.[5]

To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which are used for dispersion calculations. This library includes 1 year of hourly surface and upper air observations for 130 meteorological stations, selected to provide thorough coverage of the U.S. and Puerto Rico. A second library of U.S. Census Bureau census block internal point locations and populations provides the basis of human exposure calculations (Census, 2000). In addition, the census library includes the elevation and controlling hill height for each census block, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by EPA for HAP and other toxic air pollutants, and are discussed in more detail below. These values are available at *http://www.epa.gov/ttn/atw/toxsource/summary.html.*

The risk assessment for chronic exposures used the estimated annual average ambient air concentration of each HAP emitted by each source for which we have emissions data in the source category at each nearby census block[6] centroid as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the maximum individual risk for each facility as the risk associated with a lifetime (70-year) exposure to the maximum concentration at the centroid of an inhabited census block. Individual cancer risks were calculated as the lifetime exposure to the ambient concentration of each HAP multiplied by its Unit Risk Estimate (URE); total cancer risks were the sum of the risks of each carcinogenic HAP (including known, probable, and possible carcinogens) emitted by the modeled source. Air concentrations of HAP from sources other than the modeled source were not estimated. Total cancer incidence and the distribution of individual cancer risks across the population within 50 kilometers of any source were also estimated as part of these assessments by summing individual risks. We are using 50 kilometers to be consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion modeling.

To assess risk of noncancer health effects from chronic exposures, we summed the HQ for each HAP that affects a common target organ system to obtain the hazard index (HI) for that target organ system (or target organ-specific hazard index, TOSHI), where the HQ is the estimated exposure divided by the chronic reference level (e.g., the U.S. EPA Reference Concentration (RfC) which is provided through the Integrated Risk Information System (IRIS)).

Health protective screening estimates of acute exposures and risks were also evaluated for each HAP at any location off-site of each facility (i.e., not just the census block centroids) assuming the combination of a peak (hourly) emission rate and hourly dispersion conditions for the 1991 calendar year that would tend to maximize exposure. In each case, acute HQ were calculated using best available short-term health indices. We assumed that 10 times the average annual hourly emission rate represented a health protective emissions estimate to evaluate acute exposures and risks for these initial screens. The factor of 10 is intended to cover routinely variable emissions and startup, shutdown, and malfunction emissions. We chose to use a factor of 10 based on: (1) Engineering judgment, and (2) a review of short-term emissions data that compared hourly and annual emissions data for volatile organic compounds for all facilities in a heavily-industrialized 4-county area (Harris, Galveston, Chambers, and Brazoria Counties, TX) over an 11-month time period in 2001.[7] Most peak emission events were less than twice the annual average hourly emission rate and the highest peak emission event was 8.5 times the annual average hourly emission rate. We request comment on the interpretation of these data and the appropriateness of using a factor of 10 times the average annual hourly emission rate in these acute exposure screening assessments.

In cases where acute HQ values from the screening step were less than or equal to one, acute impacts were deemed negligible and no further analysis was performed. In the cases where an acute HQ from the screening step was greater than one, site-specific data were sought to develop a more refined estimate of the potential for acute impacts of concern. These data refinements included using a better representation of the peak-to-mean hourly emissions ratio (instead of using the default factor of 10) and using the site-specific facility layout to distinguish facility property from an area where the public could be exposed. The screening analysis resulted in an HQ less than or equal to one for all of the source categories except Acetal Resins Production and Hydrogen Fluoride Production. The specific refinements used for acetal resins production and hydrogen fluoride production are described in the results section for the two source categories.

We engaged in a consultation with a panel from the Science Advisory Board (SAB) on the ''Risk and Technology Review (RTR) Assessment Plan'' in December of 2006. The results of this consultation were transmitted to us in June 2007 in a letter from the SAB which also contained a summary listing of the key messages from the panel. The letter is available from the docket and from *http://www.epa.gov/sab/pdf/sab-07-003_response_04-20-07.pdf.* In developing the risk assessments for the eight source categories covered by this proposal, we followed the RTR Assessment Plan, addressing the key recommendations from the panel, where appropriate and relevant to these assessments, but not the individual recommendations from each panel member. Our responses to each of the SAB's key recommendations are summarized in an appendix to the

[5] Environmental Protection Agency. Revision to the Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions (70 FR 68218). November 9, 2005.

[6] A typical census block is comprised of approximately 40 people or about 10 households.

[7] See *http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

''Residual Risk Assessment for Eight Source Categories,'' available in the docket.

3. Noncancer Inhalation Reference Values

The most appropriate noncancer inhalation reference values for chronic durations in the Residual Risk Program are in order of preference: (1) The RfC which is provided through the IRIS; (2) the Agency for Toxic Substances and Disease Registry Chronic Minimal Risk Levels; or (3) California Office of Environment and Human Health Assessment's chronic Reference Exposure Level (REL).

No such hierarchy was developed for acute noncancer reference values. Instead, we use acute inhalation values from multiple sources because the various assessments are based on methods that are different enough to render them not directly comparable, nor does any one set of reference values provide coverage across the majority of chemicals. We looked to reference values developed for other purposes, such as Reference Exposure Levels (REL), Acute Exposure Guideline Levels (AEGLs), and Emergency Response Planning Guideline (ERPGs).

The acute REL (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration. The REL incorporates factors to address data gaps, uncertainty, and to protect the most sensitive individuals in the population, and exceeding the REL does not automatically indicate an adverse health impact.

The AEGL–1 is ''the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.'' The AEGL values are designed to be applicable to the general population, including sensitive subgroups; however, as stated in the AEGL guidelines and the definitions, ''it is recognized that certain individuals, subject to unique and idiosyncratic responses, could experience effects at concentrations below the corresponding AEGL.'' The National Research Council states that ''[t]he primary purpose of the AEGL program and the NAC/AEGL Committee is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' [8]

The ERPG–1, developed specifically for emergency response situations, is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or perceiving a clearly defined, objectionable odor. The ERPG documentation also states that ''in all populations there are hypersensitive individuals who will show adverse responses at exposure concentrations far below levels where most individuals normally would respond.''

The AEGL and ERPG values include three levels of severity generally referred to as mild, severe, and lethal. In contrast, the REL represents an exposure at which no adverse effects are expected. For many chemicals (e.g., ethylene oxide and phosgene) the available information does not allow development of a mild effect AEGL or ERPG. AEGL and ERPG values are usually established at higher exposure levels than Acute California REL reference values. Exceedances of REL, AEGL, or ERPG values in the context of a residual risk assessment should be interpreted on a case-by-case basis.

4. Consideration of Actual and Allowable Emissions

Generally, the emissions values in our data set represent actual emission levels. We discussed the use of both allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP (HON) residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively). In those previous actions, we noted that modeling the allowable levels of emissions (i.e., the highest emission levels that could be emitted while still complying with the MACT requirements) is inherently reasonable since they reflect the maximum level sources could emit and still comply with national emission standards. But we also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the Benzene NESHAP analysis. Doing so avoids overestimating emissions and their associated health risks and accounts for how sources typically strive to perform better than required by standards to allow for process variability and to prevent exceeding standards due to emissions increases on individual days. Failure to consider these data in risk assessments, we said, would unrealistically inflate actual risk levels. 71 FR at 76609.

For the eight source categories addressed in this package, we do not have information regarding allowable emissions. This is similar to the circumstance we faced in the HON. In the preamble to the HON proposed rule, we acknowledged that there is some uncertainty regarding the difference between actual and allowable emissions. We also explained in the HON preamble that it was not possible to estimate allowable emissions for all emission points from the available information, but that for equipment leaks, which represent the most significant impact on cancer risk at HON facilities, the actual and allowable emissions are likely the same. We further concluded that there was no evidence of substantial overcontrol, such that actual emissions would not be a reasonable approximation of allowable emissions, and that there was no evidence that the sources subject to the HON could make changes that would result in a substantial increase of emissions, and thus risk, while still complying with the MACT. Therefore, we concluded for the HON final rule that basing the analysis on actual emissions provided an acceptable method for determining the remaining risks to public health and the environment after application of the MACT standards.

The production processes for polymers and resins use the same process equipment and air pollution control equipment as HON processes. Thus, we believe we can draw the same conclusions for polysulfide rubber production, ethylene propylene rubber production, butyl rubber production, neoprene rubber production, epoxy resins production, non-nylon polyamides production, and acetal resins as we did for the HON—that estimating risk using actual emissions will reasonably reflect the risk after application of the relevant MACT standards.

For the Hydrogen Fluoride Production source category, we expect actual and allowable emissions to be similar, if not the same. Hydrogen fluoride facilities employed stringent controls prior to the development of the MACT standards (we based the MACT standards on these pre-MACT controls) and we have no

[8] See *Standing Operating Procedures for Developing Acute Exposure Guideline Levels for Hazardous Chemicals* (2001, National Academies Press, Washington, DC, page 21, PURPOSE AND OBJECTIVES OF THE AEGL PROGRAM AND THE NAC/AEGL COMMITTEE; *http://books.nap.edu/openbook.php?record_id=10122&page=21*).

reason to believe control performance will decline.

We believe the differences between actual and allowable emissions are likely insignificant for these eight source categories and that using the actual emission levels results in a reasonable approximation of the allowable emissions. Therefore, we conclude that the risk assessment results using actual emissions closely approximate those for an assessment using allowable emissions and that the difference would not be likely to substantially affect the estimated risk associated with exposure to HAP emitted by any of the eight source categories. Nevertheless, if commenters have data that demonstrate that allowable emissions could be higher or lower than actual emissions for these eight source categories we request the submission of this data.

5. Adverse Environmental Effects Assessment

None of the eight source categories emit persistent or bioaccumulative HAP; therefore, EPA's assessment of environmental effects evaluated only non-persistent and non-bioaccumulative HAP.[9] For animal populations, the potential for significant direct adverse environmental effects due to non-persistent and non-bioaccumulative HAP was evaluated implicitly by checking for exceedances of any human health inhalation dose-response limit values near the assessed facilities.[10] Because these values generally reflect the inclusion of uncertainty factors[11] (often 100 or 1,000), the human threshold values are generally believed to be significantly lower than any levels which have been shown to cause an adverse effect in an exposed animal. Therefore, if the maximum inhalation hazard in an ecosystem is below the level of concern for humans, we have concluded that, in general, environmental receptors should be at little risk of adverse effects due to airborne exposures.

One possible exception is pollutants that may directly impact various species of vegetation. For the seven polymers and resins production source categories affected by today's proposal, we have no scientific data, informal observations or other information that would indicate any concern for adverse environmental effects of HAP on vegetation at the expected air concentrations.

For the two facilities in the Hydrogen Fluoride Production source category (both of which emit hydrogen fluoride), we have some general information on the possible effects of hydrogen fluoride on vegetation at ambient concentrations well below the California chronic REL value of 14 microgram per cubic meter ($\mu g/m^3$). In separate and unrelated studies, air concentrations of hydrogen fluoride greater than about 1 $\mu g/m^3$ have been shown to adversely affect specific sensitive plant species.[12] We note that responses to hydrogen fluoride are highly variable among plant species and responses may be influenced by co-exposures to other air pollutants. In this particular case, the maximum chronic ambient concentration estimated in the vicinity of the hydrogen fluoride production facilities was about 1.5 $\mu g/m^3$, meaning that concentrations of hydrogen fluoride in all areas other than the maximum point are lower than 1.5 $\mu g/m^3$, and perhaps substantially lower as the distance from the point of release increases. Because the spatially-averaged hydrogen fluoride concentration within several kilometers of each facility is likely well below 1 $\mu g/m^3$, we are led to the conclusion that any significant and widespread adverse environmental effects on plants due to hydrogen fluoride emissions are unlikely. Further, we have no information suggesting that there are currently observed adverse impacts of hydrogen fluoride emissions on plants surrounding the two facilities.

6. Uncertainties in Risk Assessments

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the eight source categories affected by today's proposal. We reduced some of these uncertainties by developing a new emissions data set, the RTR database, that is based on the NEI, but that includes more accurate replacement or supplemental data for the specific facilities in these eight source categories.

Although uncertainty exists, we believe the risk assessments performed for the eight source categories most likely overestimate the potential for risks due to the conservative (i.e., health-protective) assessment approach. Because these health protective risk assessments indicate little, if any, potential for significant risk, we believe they support our proposed decision not to issue residual risk standards for these eight source categories. A brief discussion of the uncertainties in the emissions data set, dispersion modeling, inhalation exposure estimates, and dose-response relationships is presented in this section of the preamble. A fuller discussion of these uncertainties is discussed in both the ''Residual Risk Assessment for Eight Source Categories'' (July 2007) and the ''Risk and Technology Review (RTR) Assessment Plan'' (November 2006), both of which are available in the docket.

a. *Uncertainties in the RTR Emissions Database*. Although the development of the RTR database involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data present, incomplete or missing data, errors in estimating emissions values, and other factors. The emission values considered in this analysis are annual totals that do not reflect actual fluctuations during the course of a year (2002) or variations from year to year. These annual emissions estimates do not consider operations such as startup/shutdown and malfunctions. The estimates of health protective short-term emission rates for the screening assessment were based on a health-protective default assumption applicable to these source categories (10 times the annual rate). More refined estimates were used for source categories where the screening estimates did not ''screen out'' all sources and more specific information was available.

Facilities in some of the seven polymers and resins source categories emit chlorinated compounds and use incineration devices, creating the possibility for the formation of polychlorinated dioxins. However, we have no test reports or measurements, conducted by manufacturers or anyone else, indicating the presence of dioxins in the emissions from any of these source categories and EPA's dioxins inventory[13] does not specifically link

[9] Persistent and bioaccumulative HAP are those which persist in the environment and which also may bioaccumulate or biomagnify in food chains.

[10] While environmental effects thresholds are often available for HAP in water and soil, very few are available for direct airborne exposures.

[11] The uncertainty factors account for various data methodological uncertainties, for example, most inhalation dose-response limit values are derived from studies of laboratory animals.

[12] 1 $\mu g/m^3$ was the lowest concentration for which adverse effects were observed in the most sensitive flora for which data exists. We note that the studies were limited to certain species and 1 $\mu g/m^3$ cannot be interpreted as an appropriate or definitive concentration level for all plant species. (See ''List of References for Effects of Hydrogen Fluoride on Vegetation'' in docket.)

[13] An Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States for the Years 1987, 1995, and 2000. (EPA/600/P–03/002f, Final Report, November 2006). The dioxins inventory (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=159286)* classifies ''rubber manufacturing'' as an unquantifiable dioxins emission source. A source was defined as unquantifiable if dioxins releases were possible, but the data were inadequate to support even rudimentary calculations of emissions. Furthermore, the process could be very different

dioxins emissions to any of these source categories. Furthermore, in our judgment, it is improbable that dioxins are emitted in measurable amounts from the seven polymers and resins source categories, especially given the low quantity of particulate matter present. Therefore, we did not consider dioxins in our assessment of the seven polymers and resins production source categories. Because no chlorinated compounds are emitted from the hydrogen fluoride production source category, we believe there is no possibility for dioxins to be emitted and we did not consider dioxins in our assessment of the source category.

Overall we believe that the emissions data considered in this assessment are the most accurate available representation of the eight source categories for the stated purpose. Nevertheless, we request comment on our emissions data set in general, and specifically on our approach to short-term emissions estimates and on the potential for dioxins emissions from the facilities in the seven polymers and resins production source categories affected by today's proposal.

b. *Uncertainties in Dispersion Modeling*. While the analysis employed EPA's suggested regulatory dispersion model, AERMOD, there is uncertainty in ambient concentration estimates associated with EPA's choice and application of the model. Where possible, model options (e.g., rural/urban, plume depletion, chemistry) were selected as to provide an overestimate of ambient air concentrations. However, because of practicality and data limitation reasons, some factors (e.g., meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991), and facility locations can be a significant distance from the site where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient concentrations.

c. *Uncertainties in Inhalation Exposure.* The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility[14] between census blocks in the modeling domain was not considered. As a result, this simplification will likely bias the assessment toward overestimating the highest exposures. In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. (On average census blocks are populated by approximately 40 people.) Using the census block centroid to predict chronic exposures tends to overpredict exposures for people in the census block who live further from the facility and underpredict exposures for people in the census block who live closer to the facility. Thus, in general, using the census block centroid to predict chronic exposures leads to a potential understatement or overstatement of maximum impact and an unbiased estimate of average risk and incidence.

The assessments evaluate the cancer inhalation risks associated with pollutant exposures over a 70-year period, the assumed lifetime of individuals. In reality, both the length of time that modeled emissions sources at facilities actually operate (i.e., more or less than 70 years), and the domestic growth or decline of the modeled industry (i.e., the increase or decrease in the number or size of U.S. facilities), will influence the risks posed by a given source category. Depending on the characteristics of the industry, these factors may result in an overestimate (or possibly an underestimate in the extreme case where a facility maintains or increases its emission levels beyond 70 years and residents live beyond 70 years at the same location) both in individual risk levels and in the total estimated number of cancer cases. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be the same, depending on characteristics of the pollutants modeled. For many HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[15]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that need to be highlighted. The accuracy of an acute inhalation exposure assessment depends on the joint occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and human activity patterns. In this assessment, we assume that individuals remain for one hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. These assumptions would tend to overestimate actual exposures since it is unlikely that a person would be located at the point of maximum exposure during the time of worst-case impact.

d. *Uncertainties in Dose-Response Relationships.* These assessments use toxicological dose-response values typically extrapolated from high-dose animal exposure or occupational exposures, to estimate risk. Consistent with EPA guidance, RfCs are developed by using order-of-magnitude factors to account for uncertainties in developing values protective of sensitive subpopulations. Most of the URE in this assessment were developed using linear low-dose extrapolation. Risks could be overestimated if the true dose-response relationship (which is usually unknown) is sublinear and underestimated when the dose-response curve is actually superlinear. Impacts have been extrapolated from short-duration, high-dose animal or occupational exposures to longer durations and lower doses, using uncertain interspecies scaling methods. In general, EPA considers these URE's to be upper bound estimates based on the method of extrapolation, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is therefore likely to be less, could be as low as zero, but also could be greater. As previously noted, benzene cancer risks were estimated from the reported URE range, which is considered to be based on maximum likelihood exposure and risk estimates.

Some HAP have no dose-response values for cancer, chronic non-cancer, and/or acute effects. Therefore, an understatement of risk for certain HAP at environmental exposure levels is possible if there are no health effects reference values available on which to

from the polymers and resins processes of concern in this proposal.

[14] Short-term mobility is movement from one microenvironment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[15] National-Scale Air Toxics Assessment for 1996. (EPA 453/R–01–003; January 2001; page 85.)

base an assessment of health risk. Additionally, some chronic dose-response values used in the assessments for these 8 source categories are currently under EPA IRIS review (e.g., formaldehyde and methanol) and revised assessments may determine that these HAP are more or less potent than currently thought. We will consider the outcome of new assessments and reevaluate residual risk if application of new dose-response values indicates the potential for unacceptable risks to human health and/or the environment.

e. *Uncertainties in the Adverse Environmental Effects Assessment.* As previously discussed, we generally believe that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. However, we recognize that this may not be the case for all HAP. Hydrogen fluoride in the air has the potential to adversely affect plant tissues, having been associated with necrosis (lesions) in plants and reduced plant growth and productivity. Determining the effects of hydrogen fluoride on vegetation is complicated by the high degree of variability among plant species in the extent of uptake and response to atmospheric hydrogen fluoride, and by co-exposure to other atmospheric pollutants, such as sulfur dioxide, that influences the impacts of hydrogen fluoride. (For references concerning the effects of hydrogen fluoride on plants, see docket item ''List of References for Effects of Hydrogen Fluoride on Vegetation''.)

EPA requests comment on this issue, including: Submissions of any data that should be considered; observations, if any, of impacts on vegetation near the two facilities in the hydrogen fluoride production source category; and suggestions of how EPA should assess the potential for adverse environmental effects as defined in CAA section 112(a)(7).[16]

D. What are the conclusions of the risk review?

The human health risks estimated for the eight source categories are summarized in this section of the preamble. Details of the assessment are located in the docket, especially see ''How to Reproduce Modeling of Group 1 Source Categories'' (May 2007). We believe that our assessment covers all potential health risks associated with HAP emissions from the eight source categories affected by today's proposal. We further believe that the reported emissions are consistent with the expected constituents and amounts for these source categories. The sections below provide more detailed discussions about the human health risk assessment results for each of the eight source categories.

TABLE 4.—SUMMARY OF ESTIMATED INHALATION RISKS FOR THE EIGHT SOURCE CATEGORIES

Source category	Number of facilities[1]	Maximum individual cancer risk (in a million)[2] and HAP of most concern	Estimated annual cancer incidence and HAP of most concern	Max. HI[3] and HAP of most concern	Maximum off-site acute HQ and HAP of most[4] concern
Polysulfide Rubber Production.	1	0[6]	0[6]	<0.01 (MDI[5])	0.0004[AEGL–1] (MDI[4]).
Ethylene Propylene Rubber Production.	5	0[6]	0[6]	0.5 (hexane)	0.3[REL] (toluene).
Butyl Rubber Production	2	0[6]	0[6]	0.2 (methyl chloride)	0.1[AEGL–2](methyl chloride[7]).
Neoprene Production	1	0[6]	0[6]	0.8 (chloroprene)	0.4[REL] (toluene).
Epoxy Resins Production.	3	0.1 (epichlorohydrin)	0.00002 (epichlorohydrin).	0.1 (epichlorohydrin)	0.6[REL] (epichlorohydrin).
Non-nylon Polyamides Production.	4	0.4 (epichlorohydrin)	0.00003 (epichlorohydrin).	0.3 (epichlorohydrin)	0.2[REL] (epichlorohydrin).
Acetal Resins Production.	3	0.3 (allyl chloride)	0.00004 (allyl chloride)	0.2 (chlorine)	1.7[REL] (formaldehyde).
Hydrogen Fluoride Production.	2	0[6]	0[6]	<0.01 (hydrofluoric acid).	0.3[REL] (hydrofluoric acid).

[1] Number of facilities believed to be in the source category and used in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum hazard index (HI) is maximum respiratory HI for all except two source categories. Maximum HI for butyl rubber production is based on neurological effects. Maximum HI for hydrogen fluoride production is based on skeletal effects.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. These include RELs and AEGL–1 and AEGL–2 values. The acute REL is an exposure that is not likely to cause adverse effects in a human population, including sensitive subgroups, exposed to that concentration for one hour on an intermittent basis. AEGL–1 is the airborne concentration (expressed as ppm or mg/m^3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure. AEGL–2 is the airborne concentration (expressed as ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.
[5] MDI is methylene diphenyl diisocyanate.
[6] No HAP which are known, probable, or possible human carcinogens.
[7] For methyl chloride, REL and AEGL–1 were not available.

As shown in Table 4, we estimate that the residual risk remaining from HAP emissions from these eight source categories affected by today's proposal do not pose cancer risks equal to or greater than 1-in-1 million to the individual most exposed, do not result in meaningful rates of cancer incidence, and do not result in a concern regarding either chronic or acute noncancer health effects for the individual most exposed.

No chronic inhalation human health thresholds were exceeded at ecological receptors for any of the eight source

[16] CAA section 112(a)(7) defines ''adverse environmental effect'' as meaning ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

categories; therefore, we believe there is low potential for adverse environmental effects due to direct airborne exposures. We also believe that there is no potential for an adverse effect on threatened or endangered species or on their critical habitat within the meaning of 50 CFR 402.13(a) because our screening analyses indicate no potential for any adverse ecological impacts. Thus, we conclude that a consultation with the Fish and Wildlife Service is not necessary for any of the eight source categories.

Human health multipathway risks were determined not to be a concern for the eight source categories addressed in today's proposal due to the absence of persistent and bioaccumulative (PB) [17] HAP emissions at all of these sources. The lack of PB HAP emissions also provides assurance that there will be no potential for adverse ecological effects due to indirect ecological exposures (i.e., exposures resulting from the deposition of PB HAP from the atmosphere).

1. Polymers and Resins I—Polysulfide Rubber Production

The only HAP emitted by the Polysulfide Rubber Production source category in 2002 was 4,4'-methylene diphenyl diisocyanate (MDI), whose carcinogenic potential was evaluated in EPA's IRIS in 1998, and characterized as ''cannot be determined, but for which there is suggestive evidence that raises concern for carcinogenic effects.''

The maximum chronic noncancer TOSHI associated with emissions from polysulfide rubber production is less than 0.01, indicating that chronic noncancer risks are negligible. Further, our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts. Combining these results with the lack of information on potential cancer risks and the additional fact that no sources in this category are currently in operation, we conclude that there is no reason to modify the existing standard.

2. Polymers and Resins I—Ethylene Propylene Rubber Production

Because none of the HAP emitted are known, probable, or possible human carcinogens, we currently believe there are no cancer risks associated with exposures to the HAP emissions from this source category. The maximum chronic noncancer TOSHI value associated with emissions from ethylene propylene rubber production is 0.5. No adverse noncancer health effects associated with the modeled acute or chronic inhalation exposures are expected from the Ethylene Propylene Rubber Production source category. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

3. Polymers and Resins I—Butyl Rubber Production

Because none of the HAP emitted are known, probable, or possible human carcinogens, we currently believe there are no cancer risks associated with exposures to the HAP emissions from this source category. The maximum chronic noncancer TOSHI value associated with emissions from butyl rubber production is 0.2. We saw no exceedances of any available acute thresholds. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

A source of uncertainty unique to this source category is the lack of certain acute dose-response values (REL and AEGL) for methyl chloride. Since the only acute dose-response value available is for methyl chloride is the ERPG2 [18] value which doesn't account for possible mild transient effects, there is some uncertainty regarding the conclusion that there are no possible acute impacts of concern.

4. Polymers and Resins I—Neoprene Production

Because none of the HAP emitted are known, probable, or possible human carcinogens, we currently believe there are no cancer risks associated with exposures to the HAP emissions from this source category. The maximum chronic noncancer TOSHI value associated with emissions from neoprene production is 0.8. There are no expected adverse noncancer health effects associated with the modeled acute or chronic inhalation exposures from the Neoprene Production source category. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

5. Polymers and Resins II—Epoxy Resins Production

All lifetime cancer risks associated with emissions from the three epoxy resins production facilities are estimated to be less than 1-in-1 million. The highest maximum lifetime individual cancer risk was estimated at 0.1-in-1 million. The total estimated cancer incidence from these facilities is 0.00002 excess cancer cases per year. The maximum chronic noncancer TOSHI value associated with emissions from epoxy resins production is 0.1. We saw no exceedances of any available acute thresholds. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

6. Polymers and Resins II—Non-Nylon Polyamides Production

All lifetime cancer risks associated with emissions from the four non-nylon polyamides production facilities are estimated to be less than 1-in-1 million. The highest maximum lifetime individual cancer risk was estimated at 0.4-in-1 million. The total estimated cancer incidence from these facilities is 0.00003 excess cancer cases per year. The maximum chronic noncancer TOSHI value associated with emissions from non-nylon polyamides production is 0.3. There are no expected adverse noncancer health effects associated with the modeled acute or chronic exposures from the neoprene production source category. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

7. GMACT—Acetal Resins Production

All lifetime cancer risks associated with emissions from the three acetal resins production facilities are estimated to be less than 1-in-1 million. The highest maximum lifetime individual cancer risk was estimated at 0.3-in-1 million. The total estimated cancer incidence from these facilities is 0.00004 excess cancer cases per year. The maximum chronic noncancer TOSHI value associated with emissions from acetal resins production is 0.2. Our analysis, based on available information, indicates this source category poses no potential for adverse environmental impacts.

The initial screening assessment for acute impacts suggested that short-term formaldehyde concentrations at the three modeled facilities could exceed acute thresholds if worst-case meteorological conditions are present and if maximum hourly emissions of formaldehyde exceed the average hourly

[17] Persistent and bioaccumulative (PB) HAP are the list of 14 HAP that have the ability to persist in the environment for long periods of time and may also have the ability to build up in the food chain to levels that are harmful to human health and the environment.

[18] ERPG–2 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.

emission rate by a factor of 10. One of the facilities showed potential exceedances of the REL only, and two facilities showed potential exceedances of both the REL and the AEGL–1. Therefore, we performed further site-specific analysis and mapped the screening results as a series of concentration isopleths overlaid against the aerial photograph of the facility in question. The results of this exercise for the first facility were that the isopleths that exceeded the REL did not extend off the facility site. Therefore, acute exposures to HAP emitted by this facility are not expected to pose any public health concerns. We further refined the assessments using better site-specific data for the other two facilities. Discussions with a plant engineer for one facility revealed that the acetal resins processes operate continuously and that a reasonable worst-case emissions multiplier would be 1.5 instead of our default multiplier of 10. We performed more refined modeling (AERMOD) for these two facilities using the emissions multiplier of 1.5. The results for the second facility indicated no potential for exceeding the AEGL–1 and showed that the potential for exceedances of the REL did not extend off-site, except for a small extension over a river to the north of the facility. The maximum off-site REL HQ corresponding to these locations is 1.7 (HQ = 0.14 using the AEGL–1). The analysis showed that meteorological conditions resulting in exceedances of the REL may occur up to 2 hours per year along the river. We believe the potential for adverse acute health effects surrounding this facility is low. The results for the third facility showed potential for exceeding the REL in an area immediately adjacent to the facility along a roadway. The maximum off-site HQ for this facility is 1.6 for the REL (HQ = 0.13 using the AEGL–1). The analysis showed that meteorological conditions resulting in exceedances of the REL may occur up to 46 hours per year along the roadway. Additionally, the third facility reports that current actual emissions for this facility are significantly less than those used for this assessment because one of the higher emission sources listed for this facility in the 2002 NEI data has been shut down. Based on this new information, we believe that the actual projected maximum off-site HQ for this facility is less than 1.0. We request interpretation and comment on this as well as any additional data regarding the potential acute impacts of these facilities.

A source of uncertainty that is unique to this source category is associated with annual emissions of HAP and the relationship between annual emissions and maximum hourly emissions. One facility reports emissions of benzene and allyl chloride, which are two relatively toxic HAP not expected to be emitted from this source category. Since the risk assessment shows allyl chloride to be the cancer risk driver for the source category, this indicates a potential overestimate of the cancer risks

8. GMACT—Hydrogen Fluoride Production

Because hydrogen fluoride, the only HAP emitted from the source category, is not a known, probable, or possible human carcinogen, we currently believe there are no cancer risks associated with exposures to the HAP emissions from this source category. The maximum chronic noncancer TOSHI value associated with emissions from hydrogen fluoride production is less than 0.01.

The initial screening assessment for acute impacts suggests that short-term hydrofluoric acid concentrations at the two modeled facilities could exceed acute thresholds if worst-case meteorological conditions are present and if maximum hourly emissions of hydrofluoric acid exceed the average hourly emission rate by a factor of 10. Since one of the facilities showed potential exceedances of the REL only, and one facility showed potential exceedances of both the REL and the AEGL–1, we performed additional site specific assessments. We contacted the permitting agency and a process engineer at one of the facilities to gather additional source specific information. Based on discussions with the permitting agency and the process engineer, we determined that these facilities operate continuously and that the peak hourly emissions are not expected to exceed twice the hourly average. By adjusting the short-term emission rate to more accurately represent the true facility operating conditions (from 10 to 2), no offsite impacts above the REL were predicted from the first facility. For the second facility that exceeded both the REL and AEGL–1, we remodeled using the AERMOD model to more accurately predict the worst case acute impacts. By adjusting the short-term emission rate to more accurately represent facility operating conditions (from 10 to 2), exceedances of the REL and AEGL–1 were predicted to occur within the facility property boundary, but not offsite.

A source of uncertainty unique to this source category involves the adequacy of our screening for potential adverse environmental effects for the pollutant hydrogen fluoride, as discussed in section I.C.6.e of this preamble. Indeed, there is a significant lack of scientific understanding and assessment methodologies for such potential adverse environmental effects. However, we believe acute and chronic noncancer assessment results (maximum chronic TOSHI less than 0.01 and maximum acute HQ of 0.3 for REL and 0.09 for AGEL–1) support our conclusion that no adverse environmental impacts are expected for this source category.

E. What are the conclusions of the technology review?

For seven of the source categories affected by today's proposal (all except the Hydrogen Fluoride Production source category), we relied on the technology review conducted for the HON, which did not identify any significant developments in practices, processes, or control technologies since promulgation of the original HON standards in 1994.[19] These seven source categories are similar to those under the HON because they use the same kinds of process and pollution control equipment and are subject to similar control requirements.[20] For the seven HON-like source categories affected by today's proposal, we conclude that imposing additional controls under any control option would achieve, at best, minimal emission and risk reductions. Furthermore, elimination of all HAP, if it were possible, from all seven of these source categories combined would reduce estimated cancer incidence by less than 0.0002 cases per year. For HAP with available dose-response values, the maximum HI for these facilities are all below one and the cancer risks are all below 1-in-1 million.

Elimination of all HAP[21] emissions from the Hydrogen Fluoride source category, if it were possible, would reduce HAP emissions by 8 tons per year and would not affect cancer incidence, which is 0 (hydrogen fluoride is not a known, probable, or possible human carcinogens). The noncancer risk is low (the maximum HI is less than 0.01 with the current level of emissions achieved by the GMACT)

[19] Discussed in the proposed and final HON residual risk preambles (71 FR 34428, June 14, 2006, and 71 FR 76603, December 21, 2006, respectively).

[20] Process equipment, pollution control equipment, and control requirements are summarized in the proposal BID.

[21] Hydrogen fluoride is the only HAP emitted from the Hydrogen Fluoride source category.

and further emissions reductions would provide insignificant, if any, health benefits. In addition, all hydrogen fluoride emissions are from control device vents equipped with control devices that achieve 99 percent reductions. Improvements in hydrogen fluoride controls are not feasible.

We conclude that the existing MACT standards effectively address HAP emissions for all eight source categories: Cancer risks and incidence to humans, chronic and acute exposure noncancer risks to humans, and adverse environmental effects from these facilities are insignificant based on available health benchmarks, and no advancements in practices, processes, or control technology that make additional controls cost-effective are known.

II. Proposed Action

Section 112(f) of the CAA requires that EPA promulgate standards for a category if promulgation of such standards is required to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The approach we use is that set forth in the preamble to the Benzene NESHAP. First we exclusively evaluate health risk measures and information in determining whether risks are acceptable. Second, we may consider costs and other factors in deciding whether further emission reductions are necessary to protect public health with an ample margin of safety. The Benzene NESHAP preamble explained that in protecting public health with an ample margin of safety under CAA section 112, EPA strives to provide maximum feasible protection against risks to health from HAP by protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million.

EPA is not required to promulgate standards for a source category under section 112(f) if public health is protected with an ample margin of safety and adverse environmental effects are prevented. For the eight source categories that are the subject of today's notice, we have concluded (based on the results of risk assessments) that the existing MACT standards protect public health with an ample margin of safety and prevent an adverse environmental effect. In making this conclusion, we determined that the source categories addressed in today's proposal that emit one or more HAP which are known or potential carcinogens pose cancer risks less than or equal to 1-in-1 million to the individual most exposed. In addition, we also determined that emissions from these source categories result in chronic noncancer target organ-specific HI less than or equal to 1 for the individual most exposed, are unlikely to result in health effects under acute scenarios and are not anticipated to pose any significant and widespread adverse environmental effects. In reaching this conclusion, we did not consider costs.

Furthermore, as explained in section I.E. of this preamble, there have been no significant developments in practices, processes, or control technologies since promulgation of the MACT standards. Because there have been no such significant developments and because public health is protected with an ample margin of safety, we conclude that no further revisions to the standards affected by today's proposal are needed under section 112(d)(6) of the CAA.

Therefore, we propose no revisions to the standards for the eight source categories: Butyl Rubber Production, Ethylene-Propylene Rubber Production, Polysulfide Rubber Production, Neoprene Production, Epoxy Resins Production, Ethylene-Propylene Rubber Production, Acetal Resins Production, and Hydrogen Fluoride Production.

III. How do I access and review the facility-specific data?

The facility-specific data for each source category are available for download on the RTR webpage at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The eight source categories affected by today's proposal are referred to as Group 1 of RTR Phase 2. These data files include detailed information for each emissions release point at each facility in the source category. For large integrated facilities with multiple processes representing multiple source categories, it is often difficult to clearly distinguish the source category to which each emission point belongs. For this reason, the data available for download for each source category include all emission points for each facility in the source category, though only the emission points marked as belonging to the specific source category in question were included in the analysis for that source category.

The data files for each source category must be downloaded from the RTR Web page to be viewed (*http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*). These are Microsoft® Access files, which require Microsoft® Access to be viewed (if you do not have Microsoft® Access, contact us by e-mail at *RTR@epa.gov*). Each file contains the following information from the NEI for each facility in the source category:

Facility data	Emissions data
EPA Region	Pollutant Code.
Tribal Code	Pollutant Code Description.
Tribe Name	HAP Category Name.
State Abbreviation	Emissions (TPY).
County Name	MACT Code.
State County FIPS	MACT Source Category Name.
NEI Site ID	MACT Flag.
Facility Name	MACT Compliance Status Code.
Location Address	SCC Code.
City Name	SCC Code Description.
State Name	Emission Unit ID.
Zip Code	Process ID.
Facility Registry	Emission Release Point ID.
State Facility Identifier	Emission Release Point Type Code.
SIC Code	Emission Release Point Type.
SIC Code Description	Stack Default Flag.
NAICS Code	Stack Default Flag Description.
Facility Category Code	Stack height.

Facility data	Emissions data
Facility Category	Exit Gas Temperature. Stack Diameter. Exit Gas Velocity. Exit Gas Flow Rate. Fugitive Length. Fugitive Width. Fugitive Angle. Longitude. Latitude. Location Default Flag. Data Source Code. Data Source Description. HAP Emissions Performance Level Code. HAP Emissions Performance Level Description. Start Date. End Date.

More information on these NEI data fields can be found in the NEI documentation at *http://www.epa.gov/ttn/chief/net/2002inventory.html#documentation.*

IV. How do I submit suggested data corrections?

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide improved data if available. When submitting data, we ask that you provide documentation of the basis for the revised values to support any suggested changes.

To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions in the data fields appropriate for that information. The data fields that may be revised include the following:

Facility data	Emissions data
REVISED Tribal Code	REVISED Emissions (TPY).
REVISED County Name	Emissions Calculation Method Code.
REVISED Facility Name	REVISED MACT Code.
REVISED Location Address	REVISED SCC Code.
REVISED City Name	REVISED Emission Release Point Type.
REVISED State Name	REVISED Start Date.
REVISED Zip Code	REVISED End Date.
REVISED Facility Registry Identifier	Revised Pollutant Code.
REVISED Facility Category Code	REVISED Stack height.
	REVISED Exit Gas Temperature.
	REVISED Stack Diameter.
	REVISED Exit Gas Velocity.
	REVISED Exit Gas Flow Rate.
	REVISED Longitude.
	REVISED Latitude.
	REVISED HAP Emissions Performance Level.

2. Fill in the following commenter information fields for each suggested revision:
- Commenter Name.
- Commenter Organization.
- Commenter E-Mail Address.
- Commenter Phone Number.
- Revision Comments.

3. Gather documentation for any suggested emissions revisions (e.g., performance test reports, material balance calculations, etc.).

4. Send the entire downloaded file with suggested revisions in Microsoft(®) Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2007–0211 (through one of the methods described in the **ADDRESSES** section of this preamble). To answer questions on navigating through the data and to help expedite review of the revisions, it would also be helpful to submit revisions to EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility with multiple source categories, you need only submit one file for that facility, which should contain all suggested changes for all source categories at that facility.

We strongly urge that all data revision comments be submitted in the form of updated Microsoft(®) Access files, which are provided on the *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* webpage. Data in the form of written descriptions or other electronic file formats will be difficult for EPA to translate into the necessary format in a timely manner.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been

documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action is proposing no changes to the existing regulations affecting the eight source categories affected by today's proposal and will impose no additional information collection burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed action on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed action will not impose any requirements on small entities. We are proposing no further action at this time to revise the NESHAP. Today's proposed action requests public comments on the residual risk and technology review.

We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or to the private sector in any one year. The rule imposes no enforceable duty on State, local, or tribal governments, or the private sector. Thus, today's proposed action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that the proposed action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will 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. Thus, Executive Order 13132 does not apply to this proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications.'' This proposed action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed action.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because EPA's risk assessment demonstrates that the existing regulations are health protective.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed action does not involve technical standards. Therefore, EPA is not considering the use of any VCS. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this proposed action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule would not relax the control measures on sources regulated by the rule and, therefore, would not cause emissions increases from these sources.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 6, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–24076 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 72, No. 238

Wednesday, December 12, 2007

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: United States Agency for International Development.

ACTION: Notice of proposed general routine use.

SUMMARY: The United States Agency for International Development (USAID) is providing notice to alter each of its system of records by adding a new general routine use subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The new general routine use will permit disclosure of USAID records protected by the Privacy Act when reasonably necessary to respond, prevent, minimize or remedy harm that may result from an agency data breach. This notice complies with subsection (e)(11) of the Privacy Act (5 U.S.C. 552a), which requires agencies to publish advance notice of any new routine use of information in a system of records.

DATES: Written comments must be received on or before December 12, 2007. The proposed general routine use will be effective January 11, 2008 unless the Agency receives comments which would result in a contrary determination.

ADDRESSES: You may submit comments to:

E-mail: privacy@usaid.gov.

Mail: Philip M. Heneghan, Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW., Office 2.12–003, Washington, DC 20523–2120.

FOR FURTHER INFORMATION CONTACT: For general questions regarding this notice, please contact: Rhonda L. Turnbow, Deputy Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue, NW., Office 7.6–06A, Washington, DC 20523–2120 or by e-mail: *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) notice is hereby given that USAID proposes to modify all of its Privacy Act system of records to include a new general routine use permitting disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach or compromise of data contained in a system of records. USAID is publishing notice of this new general routine use and giving the public a 30 day period to comment before adopting it as final. The purpose and intent of publishing the routine use is to give individuals full and fair notice of the extent of potential disclosures, consistent with the Privacy Act's requirement that individuals be made aware of how their records may be disclosed.

USAID is following recommendations from the Office of Management and Budget (OMB) memorandum M–07–16 ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information'' and the President's Identity Theft Task Force's Strategic Plan, which advised all federal agencies to publish a routine use for their systems of records allowing for the disclosure of information in the course of responding to a breach of data maintained in a system of records. The routine use will facilitate an effective response to a confirmed or suspected breach by allowing for the disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the Agency's response efforts, either by a role in preventing, minimizing or remedying harms from the breach.

The Privacy Act authorizes the Agency to adopt routine uses that are consistent with the purpose for which information is collected and subject to the Privacy Act. OMB guidance also recognizes cases in which routine uses are necessary and proper for the efficient conduct of the government and in the best interest of both the individual and the public. A routine use to provide for disclosure in connection with response and remedial efforts in the event of a breach of federal data would qualify as a necessary and proper use of information.

A report of the proposed new general routine use has been sent to Congress and to the Office of Management and Budget for their evaluation.

Accordingly, USAID proposes to amend its Privacy Act general routine uses, as published by adding the following new routine use at the end of the existing routine uses set forth:

Statement of General Routine Uses

* * * * *

15. To appropriate agencies, entities, and persons when (1) USAID suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) USAID has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the USAID or another Agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Dated: December 5, 2007.

Philip M. Heneghan,

Chief Privacy Officer.

[FR Doc. E7–24062 Filed 12–11–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of System of Records and Proposed New Routine Uses

AGENCY: Department of Agriculture (USDA).

ACTION: Notice of revision to the Privacy Act System of Records.

SUMMARY: The United States Department of Agriculture gives notice that it is proposing to revise its Privacy Act System of Records, USDA/FSA–2 entitled ''Farm Records File (Automated).''

DATES: *Effective Date:* The revised system notice and the proposed routine uses will become effective 40 days after

publication, on January 22, 2008, unless modified by a subsequent notice to incorporate public comments.

Comment date: Comments on this notice must be received on or before January 22, 2008 to be assured consideration. Although the Privacy Act requires only that the portion of the system which describes the ''routine uses'' of the system be published for comment, USDA invites comment on all portions of this notice.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Deputy Director, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, by telephone at (202) 720–3463, or via e-mail at *Dan.McGlynn@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Farm Service Agency (FSA) proposes to revise some existing routine uses, remove an unnecessary routine use, establish new routine uses, and update and clarify the notice. Routine uses identify individuals, groups, and entities to which the information may be disclosed.

FSA proposes to: (1) Remove routine use 13 and redesignate the routine uses currently designated numbers 14 through 21 as numbers 13 through 20, respectively; (2) revise routine uses numbers 1, 10, and newly designated 16 and 20; (3) add five new routine uses to be designated as routine uses numbers 21, 22, 23, 24, and 25, respectively, for the USDA/FSA–2, Farm Records File; and (4) correct, revise, and add information in the following categories: System Location, Categories of Individuals Covered by the System, Categories of Records in the System, Authority for Maintenance of the System, Purpose(s), System Manager(s) and Address, and Record Source Categories in USDA/FSA–2.

Revise Routine Use 1

FSA is revising routine use number 1 to add designated marketing associations (DMAs) and loan servicing agents (LSAs) as entities approved to carry out Commodity Credit Corporation (CCC) marketing assistance loan and loan deficiency payment programs and also to list the types of data that will be made available. These entities were authorized to conduct business on behalf of FSA by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) and prior legislation.

Revise Routine Use 10

FSA is revising routine use number 10 to remove obsolete references to information about producers participating in the peanut production control and quota programs. Those programs were ended by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) and the use of such information is thus no longer needed. Once revised, routine use 10 would read as follows:

(10) To the Peanut Board with respect to producers of peanuts and their participation in the peanut price support program.

Remove Routine Use 13

FSA is deleting routine use number 13 and renumbering the remaining routine uses. Current routine use 13 regards disclosure of information to tobacco analysis laboratories of producers' names and addresses as well as crop-specific data regarding tobacco being analyzed prior to the marketing of such tobacco. This disclosure was needed for the Tobacco Quota and Price Support Programs, which were repealed by sections 611 through 613 of the American Jobs Creation Act of 2004 (Pub. L. 108–357), and thus is no longer needed.

Revise Routine Use 16 (formerly 17):

FSA proposes to revise the routine use currently designated number 17 and redesignated as number 16, to add farm numbers and cotton yields to the data currently received by cotton ginners. Cotton ginners already receive information relating to names, addresses, and cotton acreage. If disaster programs are enacted similar to recent disaster programs for cottonseed, the additional data will allow cotton ginners to more efficiently deliver disaster programs.

Revise Routine Use 20 (formerly 21):

FSA proposes to revise the routine use currently designated number 21 and redesignated as number 20, to reflect changes to information disclosed to State-certified or State-licensed appraisers and employees of Federal agencies other than USDA who are qualified to perform real estate appraisals. This revision is necessary due to changes in program names and/or designations within FSA. Specifically, Production Flexibility Contract Acres would be changed to read ''Direct and Counter-cyclical Program (DCP) Contract Base Acres.'' Further, a reference to ''DCP cropland acres'' would be added to agricultural use acres and cropland acres, a category already listed in routine use number 21, to replace the obsolete term ''agricultural use acres.''

Once revised, newly designated routine use 20 would read as follows:

(20) To State-certified or State-licensed appraisers and employees of Federal agencies other than USDA qualified to perform real estate appraisals. The specific information that may be disclosed to such appraisers consists of:

—Direct and Counter-Cyclical Program (DCP) Contract Base Acres.
—Payment yields.
—DCP cropland and cropland acres.
—Copies of aerial photography.
—Conservation Reserve Program (CRP) acres.
—Highly erodible land (HEL) delineations.
—Wetland classifications.

Proposed New Routine Use 21

The first proposed new routine use, designated as number 21, would provide for disclosure of certain hard copy or electronic records in this system to cooperating Federal, State, and local agencies, as necessary for implementation of conservation programs. This limited disclosure falls within FSA's mandate to promote a viable agriculture economy and is essential for effective implementation of conservation programs. Cooperating Federal, State, and local agency employees are bound by ethical standards and State or local regulations not to further disclose such information without the permission of the client.

The specific information to be disclosed to the cooperating Federal, State, and local agencies employees consists of:

—Producer name/address/tax identification number.
—Digital imagery, including Common Land Unit (CLU) boundaries, calculated acreage, and farm, tract, and field identifiers.
—Environmental resources and disaster data.
—Conservation Reserve Program (CRP) data.
—Highly erodible land (HEL) delineations and data.
—Conservation Producer payment history.
—Wetlands classifications.

Proposed New Routine Use 22

The second proposed new routine use, designated as number 22, permits disclosure of certain electronic records in this system through incorporation of these records into the Comprehensive Information Management System (CIMS) in accordance with the Farm Security and Rural Investment Act of 2002, section 10706.

CIMS is a system of computer programs and databases, physically

located in Kansas City, Missouri, that is jointly maintained by FSA and the Risk Management Agency (RMA) utilizing the services of an information technology contractor. CIMS contains producer, program, and land information from FSA, RMA, and approved insurance providers (AIPs), as defined in section 502(b) of the Federal Crop Insurance Act (7 U.S.C.1502(b)). CIMS acts as a repository of data and also combines, reconciles, defines, translates, and formats data in such a manner so it can be used by entities that have authorized access to CIMS.

CIMS will be used to help RMA and FSA administer their programs by allowing the agencies to discover and correct errors in reporting and assist the producer to provide consistent information to FSA, RMA, and AIPs.

The electronic information contained in CIMS will be disclosed to RMA and AIPs under contract with RMA and further disclosed to the AIP's insurance agents and loss adjusters. The electronic information may also be disclosed to any contractor engaged in the development or maintenance of CIMS. Such disclosures are necessary to administer and enforce requirements of the Federal crop insurance program, an integral part of the USDA farm program system. To ensure that AIPs, and their insurance agents and loss adjusters, are only receiving information related to their specific insureds, all requests for information provided through CIMS will be automatically validated by CIMS software. Validation is accomplished by checking producer information provided directly to CIMS by data requestors against an RMA maintained database of accepted policies incorporated into CIMS. AIPs will be required to sign a non-disclosure statement before accessing CIMS to preclude them from using the information for an unauthorized purpose or releasing the information to an unauthorized person or the public.

RMA and any contractor engaged in the development or maintenance of CIMS will have access to all FSA data incorporated into CIMS. FSA data will only be disclosed to the AIPs, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies. The FSA data disclosed through access to CIMS data consist of:

—Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file.

—Current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers.

—Electronic production data/information used by both FSA and RMA to establish program benefits. This data/information is the basis for determination of accurate monetary benefits.

—Digital imagery and geospatial data layer containing CLU boundaries, calculated acres, State and county codes, and unique identifiers for those States in which the AIPs have contracted with RMA to sell crop insurance. This will enable AIPs to associate farm, tract, and CLU numbers to geospatial data for their insured producers. A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association.

Proposed New Routine Use 23

The third proposed new routine use, designated as number 23, permits disclosure of certain hard-copy records from this system of records to AIPs (excluding their insurance agents) and loss adjusters for their respective insured producers. This includes copies of their insured producer's form FSA–578, Producer Print Acreage Reports and photocopies of maps for associated land to be used for the purpose of fulfilling loss adjustment obligations as well as for audits and reviews of claims. Limited disclosure of this hard-copy information assists USDA in effectively administering and enforcing the national crop insurance program. The specific hard copy information to be disclosed to the AIPs (excluding their insurance agents) and loss adjusters for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies, consists of:

—Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file.

—Current and prior crop year acreage report information reported to FSA by producers, acreage determined by FSA, and associated maps.

—Production data/information used by both FSA and RMA to establish program benefits. This data/information is the basis for determination of accurate monetary benefits.

Proposed New Routine Use 24

The fourth proposed new routine use, designated as number 24, would permit disclosure of certain records in this file to cooperating Federal, State, and local agencies, including State universities, and sugar cane processors as necessary for implementation of hurricane disaster programs and other studies related to the sugar industry.

Limited sharing of data with cooperating Federal, State, and local agencies, including State universities, and sugar cane processors permits FSA to tailor its hurricane sugar cane disaster programs to specific local needs. In 2002 and 2005, hurricanes decimated the Louisiana sugar industry and FSA was directed to provide assistance. The sugar cane industry requested the assistance of Louisiana State University (LSU) in developing and implementing a program specifically designed to meet the needs of Louisiana. LSU requires limited data from FSA files to accomplish their role.

The hurricane sugar cane disaster programs are statutorily required to be administered through the sugar cane processing companies. Sugar cane processing companies pay growers for their sugar cane based on the revenue from the sugar extracted from the growers' sugar cane. Most of the Federal assistance for the hurricane sugar cane damage is statutorily required to be treated as sugar revenue lost to the processors and growers. Thus, FSA makes payments to the processors, who share the payments to growers as they would sugar revenue. LSU requires FSA grower acreage data to make the sugar loss calculations required as part of the processor's application for assistance under the hurricane sugar cane disaster programs.

This system of records is being amended to add a routine use allowing the limited disclosure of producer and farm information to employees of cooperating Federal, State, and local agencies, including State universities who are qualified to assist in the development and implementation of hurricane sugar cane disaster programs. The specific information to be disclosed to the employees of cooperating Federal, State, and local agencies, including State universities consists of:

- Producer name/address.
- Acreage and farm, tract, and field identifiers.
- Environmental resources and disaster data.

Proposed New Routine Use 25

The fifth proposed new routine use, designated as number 25, would permit disclosure of certain records in this file to appropriate agencies, entities, and persons as necessary to respond to suspected or confirmed compromise of the security or confidentiality of information in the system of records and to prevent, minimize, or remedy such harm.

A Federal agency's ability to respond quickly and effectively in the event of a breach of Federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

This routine use will allow the disclosure of information in the course of responding to a breach of Federal data. This routine use will serve to protect the interests of the individuals whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response, thereby improving their ability to prevent, minimize, or remedy any harm resulting from a compromise of data maintained in their systems of records.

This system of records is being amended to add a routine use allowing the limited disclosure to appropriate agencies, entities, and persons when (1) the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Proposed Revisions to Other Categories of Information

FSA proposes to make changes to seven categories of information in the system of records because of agency reorganization, new programs, and advanced technologies. These changes have been made to the following: correction of the names and addresses listed in the categories of System Location and System Manager(s) and Address; the addition of another group of persons covered in the Categories of Individuals Covered by the System; the addition of types of files/records/materials collected and maintained due to new Congressionally approved programs and advanced technology in the Categories of Records in the System; the addition of new statutes listed in the Authority for Maintenance of the System, and to revise the reasons for collecting and maintaining information in this system of records in the Purpose(s).

Report

A ''Report on Revised System,'' required by 5 U.S.C. 552a(r) as implemented by the Office of Management and Budget (OMB) Circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform and Oversight, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on December 4, 2007.

Signed at Washington, DC, on December 4, 2007.

Charles F. Conner,

Acting Secretary of Agriculture.

USDA/FSA–2

SYSTEM NAME:

Farm Records File (Automated), USDA/FSA–2.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator for Farm Programs FSA, USDA, Stop 0539, P.O. Box 2415, Washington, DC 20250. The data will be maintained at the county FSA office which services the particular farm, the State FSA Office of the State where the particular county FSA office is located; the FSA Aerial Photography Field Office, 2222 West 2300 South, Salt Lake City, Utah 84119–2020; the Kansas City Administrative Office, 6501 Beacon Drive, Kansas City, Missouri 64133; the Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133, and the FSA National Office. The address of each county and State FSA office can be found in the local telephone directory under the heading ''United States Government, Department of Agriculture, Farm Service Agency.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farm owners, operators, borrowers, and other producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of electronic and hard copy documentation of participation in the active programs as well as discontinued programs. This includes names and addresses of producers and is not necessarily limited to farm allotments, quotas, bases, and history; compliance data; producer entity data; combined producer data; production and marketing data; lease and transfer of allotments and quotas; appeals; new grower applications; conservation program documents; program participation and payment documents; appraisals, leases, and data for farm reconstitution; and, for payment limitation and conservation compliance purposes, financial statements, and other applicable farm information such as tax statements, wills, trusts, partnership agreements, and corporate charters. Geospatial (GIS) data set, containing producer boundaries of Common Land Units (CLUs), farms, tracts, field identifiers and attributes used to identify the location of land that can be traced back to a producer's crops and benefits. By definition, a CLU identifies a farm's subdivisions and boundaries and is recommended as the common location identifier for reporting acreage. GIS Crop Reporting Layer, consisting of tabular crop acreage data and including producer share, location of land where a crop is planted, and crop acreage compliance data. Digital renditions of farm record boundaries, including farm, tract, CLUs (fields), and personal attributes of that property such as, but not limited to, cropland designation, wetland location, program participation designation (*e.g.*, Conservation Reserve Program or CRP), and presence of structures located on a property (*e.g.*, buildings, well heads, or other identifying structures). Crop Acreage Data used to promote a viable agriculture economy essential to effectively administering and enforcing the national crop insurance program and for the purpose of fulfilling loss adjustment obligations as well as audits and reviews of claims.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 135b, 450j, 450k, 450l, 1281–1393, 1421–1449, 1461–1469, 1471–1471i; 15 U.S.C. 714–714p; 16 U.S.C. 590a-590q, 1301–1311, 1606, 2101–2111, 2201–2205, 3501, 3801–3847, 4601, 26 U.S.C. 6109; 40 U.S.C. 14101, 14505, and 43 U.S.C. 1592.

PURPOSE(S):

To deliver Federal farm program benefits and loans legislated by Congress to farm and ranch owners and operators to support farms and ranches, protect the environment, and enhance the marketing of agriculture products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed:

(1) To a cooperative marketing association (CMA), designated marketing association (DMA), or loan servicing agent (LSA) approved to carry out CCC price support loan and marketing programs. Records that will be disclosed include only data that is necessary for the CMA, DMA, or LSA, to make producer eligibility determinations, reasonable quantity determinations, producer payment limitations, and denied benefit determinations;

(2) To the appropriate agency, whether Federal, State, local, or foreign charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any records within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto;

(3) To a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery to the extent that records sought are relevant to the subject of the proceeding;

(4) To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual;

(5) To the Internal Revenue Service to establish the tax liability of individuals as required by the Internal Revenue Code;

(6) To State or local tax authorities having an agreement with CCC to withhold taxes or fees from loan proceeds;

(7) To the Bureau of Reclamation (BOR), but only that data necessary for the BOR to administer the Reclamation Act of 1982, as amended;

(8) To boards or other entities authorized by State statute to collect commodity assessments;

(9) To the Food Safety and Inspection Service;

(10) To the Peanut Board, with respect to producers of peanuts and their participation in the peanut price support program;

(11) To the Bureau of Indian Affairs the name and address of producers to assist in the distribution of funds to Native American Indians;

(12) To candidates for FSA county and/or community committee positions the names and addresses of producers in the county for the purpose of county committee elections;

(13) To the public who may inspect farm allotment and quota data for marketing quota crops, as required by the Agricultural Act of 1938, as amended;

(14) To State Foresters the names and addresses of producers and crop-specific data regarding their operations with respect to forestry conservation practices;

(15) To cotton buyers the names of cotton producers;

(16) To cotton ginners the names, addresses, farm numbers, cotton yields and cotton acreages;

(17) To members of Congress the names and addresses of producers;

(18) To the public when they need to obtain the names and addresses of producers who have loans with FSA or CCC to prevent such individual from purchasing a commodity that has been placed under CCC loan.

(19) To State or local taxing authorities or their contracted appraisal companies the name of and address of producers for tax appraisal purposes;

(20) To State-certified or State-licensed appraisers and employees of Federal agencies other than USDA qualified to perform real estate appraisals. The specific information to be disclosed to the appraiser is:

—Direct and Counter-cyclical Program (DCP) Contract Base Acres.

—Payment yields.

—DCP cropland and cropland acres.

—Copies of aerial photography.

—Conservation Reserve Program (CRP) acres.

—Highly erodible land (HEL) delineations.

—Wetland classifications;

(21) To cooperating Federal, State, and local agencies' employees who are qualified to implement conservation programs. The specific information to be disclosed to the cooperating Federal, State, and local agencies employees consists of:

—Producer name/address/tax identification number.

—Digital imagery, including Common Land Unit (CLU) boundaries, calculated acreage, and farm, tract, and field identifiers.

—Environmental resources and disaster data.

—Conservation Reserve Program (CRP) data.

—Highly erodible land (HEL) delineations and data.

—Conservation Producer payment history.

—Wetlands classifications;

(22) To RMA and any contractor engaged in the development or maintenance of CIMS, access to all FSA data incorporated into CIMS. To AIPs, their insurance agents and loss adjusters, for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies, access to CIMS data consist of:

—Electronic Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file.

—Current and prior crop year electronic report acreage information reported to FSA by producers, and acreage determined by FSA, as applicable, and farm and producer identifiers.

—Electronic production data/information used by both FSA and RMA to establish program benefits. This data/information is the basis for determination of accurate monetary benefits.

—Digital imagery and geospatial data layer containing CLU boundaries, calculated acres, State and county codes, and unique identifiers for those States in which the AIPs have contracted with RMA to sell crop insurance. This will enable AIPs to associate farm, tract, and CLU numbers to geospatial data for their insured producers. A CLU is an electronic representation of the boundaries of a piece of land, represented in latitudes and longitudes. It is the smallest unit of land that has a permanent, contiguous boundary; common land cover and land management; common owner; and common producer association.

(23) To the AIPs (excluding their insurance agents) and loss adjusters for information associated with their insured producers and only with regard to such producers' farming operations contained in counties covered by their policies consists of:

—Producer and Member Entity Information, including a common producer name, address, tax identifier, identity type, and entity file.

—Current and prior crop year acreage report information reported to FSA by

producers, acreage determined by FSA, and associated maps.

—Production data/information used by both FSA and RMA to establish program benefits.

(24) To employees of cooperating Federal, State, and local agencies, including State universities who are qualified to implement hurricane disaster programs or analyze the sugar industry. The specific information to be disclosed to the employees of cooperating Federal, State, and local agencies, including State universities consists of:

—Producer name/address.

—Acreage and farm, tract, and field identifiers.

—Environmental resources and disaster data.

(25) To appropriate agencies, entities, and persons when: (1) The agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and Department computer systems at applicable locations as set out above under the heading ''System Location.''

RETRIEVABILITY:

Records may be indexed by individual name, farm number, tax identification number, Social Security Number, or loan number.

SAFEGUARDS:

Records are kept in locked Government office buildings. Access to these records is limited to authorized FSA personnel and representatives. Records stored in computer files are protected by passwords and other electronic security systems. Additionally, any negotiable documents, such as warehouse receipts, are kept in a fireproof cabinet.

RETENTION AND DISPOSAL:

Program documents are destroyed within 6 years after end of participation, except for conservation program documents, which are retained for periods sufficient to insure compliance equal to the life of the practice. Other documents, such as powers of attorney or leases, are destroyed after such document is no longer valid. Original loan notes are returned to producers after liquidation of loan.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator for Farm Programs, FSA, USDA, Stop 0539, P.O. Box 2415, Washington, DC 20013.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to the individual from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system which pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: Name, address, ZIP code, name of system of record, year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system is submitted by county and State Committees and their representatives, the Office of Inspector General and other investigatory agencies, the Office of the General Counsel, the Kansas City Commodity Office, the Kansas City Management Office, the Natural Resources and Conservation Service, by third parties, and by the individual who is the subject of the file.

[FR Doc. E7–24056 Filed 12–11–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No.: AMS–ST–07–0144; ST–07–02]

Notice of Request for New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Agricultural Marketing Service (AMS) is requesting approval from the Office of Management and Budget of a new information collection ''Laboratory Approval Programs'' in support of U.S. agricultural commodities.

DATES: Comments received by February 11, 2008 will be considered.

Additional Information or Comments: Interested persons are invited to submit comments on this proposal to Jane Ho, Technical Services Branch, Science and Technology, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0272 Washington, DC 20250–0272; Phone 202–690–0621, Fax 202–720–4631. Comments should be submitted in triplicate. Comments may also be submitted electronically through *http://www.regulations.gov.* All comments should reference the docket number and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours and may be viewed at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Laboratory Approval Programs.

OMB Number: 0581–New.

Expiration Date of Approval: 3 years from date of OMB approval.

Type of Request: New Information Collection.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), AMS provides analytical testing services that facilitate marketing and allow products to obtain grade designations or meet marketing or quality standards. Pursuant to this authority, AMS develops and maintains laboratory certification and approval

programs as needed by the agricultural industry, to support domestic and international marketing of U.S. products. These programs have been small in the past and not subject to the information collection approval provisions of the Paperwork Reduction Act. Changes in the import requirements of foreign countries and proposed regulatory changes make it likely that requests for laboratory certification will increase so that products may be tested at the processing site. The laboratory certification and approval programs will remain voluntary and fee for service.

To ensure that a laboratory is capable of accurately performing the specified analyses, it must adhere to certain good laboratory practices and show technical proficiency in the required areas. Checklist and form have been developed that ask the laboratory for information concerning procedures, the physical facility, employees, and their training. The laboratory must also provide Standard Operating Procedures (SOPs) for the analyses and quality assurance. Most of the laboratory programs will include an on-site laboratory review. AMS will not approve a laboratory unless there is assurance that the laboratory is capable of performing accurate analyses.

Interested parties can obtain a copy of the form (ST–212) by calling or writing to the point of contact listed above. The information collection requirements in this request are essential to examine laboratories for entrance into the following programs:

(1) *Analyst and Laboratory Certification Program for the Detection of Trichinae in Pork* (An export program requested by Food Safety and Inspection Service).

(2) *Laboratory Verification Program for Poultry Exported from the United States to Russia* (An export program requested by Food Safety and Inspection Service).

This program contains the possibility of performing 12 different analyses in support of the exportation of poultry to Russia. Laboratories choose how many and which analyses for which they wish to be approved. Each of microbiological/chemical analyses has its own methodology and the time necessary to perform the analyses.

(3) *Aflatoxin in Pistachios Program* (A High Performance Liquid Chromatography method for exporting pistachios to European Union requested by the California Pistachio Committee) and the domestic program using a test kit analysis method (identified in the Pistachio Marketing Order); *Aflatoxin in Peanuts Program* (7 CFR part 996); and *Aflatoxin in Almonds Program* (requested by the Almond Board of California).

These programs are single analyte, single substrate programs, but the domestic pistachio, peanut, and almond programs have the option of using two different methods. The export pistachio program and export almond program must use the specified method.

(4) Any additional programs which may be requested in the future to facilitate the marketing of U.S. agricultural products.

All laboratory approval programs will follow the same general pattern. There would be a letter of intent, a form for identification of the analyses they intend to perform, an on-site laboratory review, analysis of known samples, and analysis of proficiency samples. The length of time required would depend on the complexity of the analysis, and the time necessary to perform the analysis.

The burden hours incurred for these laboratories to submit the initial letter requesting entrance, completion of a general laboratory checklist, and correctly analyzing the test samples is a one-time occurrence. Once a laboratory is accepted, the burden will decrease and is then based on the various laboratories analyzing test samples throughout the year to maintain its program status.

Form ST–212 (Alternate Payment Form) has been developed and is included in the submission to OMB for approval. This is an option for applicant/approved laboratories to pay for the services.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8.55 hours per response.

Respondents: Laboratories.

Estimated Number of Respondents: 82.

Estimated Total Annual Responses: 666.

Estimated Number of Responses per Respondent: 8.12.

Estimated Total Annual Burden on Respondents: 5695.3.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jane Ho, Technical Services Branch, Science and Technology, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0272 Washington, DC 20250–0272; Phone 202–690–0621, Fax 202–720–4631. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 6, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–24057 Filed 12–11–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–07–0100; FV–06–334]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on the proposed revision to the United States Standards for Grades of Frozen Okra. AMS received a petition from the American Frozen Food Institute (AFFI) requesting that USDA revise the standards for frozen okra from a ''score point'' grading system to an ''individual attribute'' grading system. The individual attribute grading system uses sample sizes and acceptable quality levels (AQL's), along with tolerances and acceptance numbers (number of allowable defects), to determine the quality level of a lot. This change was requested to bring the standards for frozen okra in line with the present quality levels being marketed today and to provide guidance in the effective utilization of frozen okra.

DATES: Comments must be submitted on or before February 11, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments may be sent to Gabriel W. Mangino,

Inspection and Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; Fax: (202) 690–1087. E-mail: *gabriel.mangino@usda.gov.* Comments may also be sent to *http://www.regulations.gov.* The United States Standards for Grades of Frozen Okra are available either through the address cited above, or by accessing the AMS, Fruit and Vegetable Programs Web site on the Internet at *http://www.ams.usda.gov/fv or http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Most of the United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the U.S. Standards for Grades of Frozen Okra using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Background

AMS received a petition from the American Frozen Food Institute (AFFI), requesting the revision of the standards for frozen okra. The petitioner represents AFFI's Western Technical Advisory Committee, which includes among its members almost all of the processors of frozen okra in the United States.

The petitioner requested that USDA change the grading system for frozen okra from a score point grading system to an individual attribute system. The petitioner believes that the change will bring the grading of frozen okra in line with current marketing practices and innovations with processing techniques.

The petitioner also specifically requested that AMS revise the definitions of the following terms: Extraneous vegetable material, small piece in whole style, and small piece or damaged piece in cut style. It proposes that extraneous vegetable material would be modified to include ''detached stems of any length.'' ''Small piece in whole style'' would be modified and no longer include ''very small tip ends'' as part of the definition. The term ''small or damaged piece in cut style,'' would be changed and separated into two unique definitions. The suggestion for the new terms to be used are ''small piece in cut style'' and ''mechanical damage'' respectively. The proposed revisions to the grade standards for frozen okra, including the changes to the definitions of terms, are available by accessing the AMS Fruit and Vegetable Programs Home Page on the Internet at: *http://www.ams.usda.gov/fv* or *http://www.regulations.gov.* AMS confirmed the revision at AFFI's annual conference in Monterey, CA, during a meeting on February, 24, 2007.

In addition to the requested changes by the petitioner, AMS is requesting comments on replacing the dual grade nomenclature with single letter grade designations. ''U.S. Grade A'' (or ''U.S. Fancy'') and ''U.S. Grade B'' (or ''U.S. Extra Standard'') would become ''U.S. Grade A'' and ''U.S. Grade B'' respectively. This would conform to recent changes in other grade standards. AMS is also proposing minor editorial changes to the standards for frozen okra that would provide a format consistent with recent revisions of other U.S. grade standards. This format is intended to provide industry personnel and agricultural commodity graders with simpler and more comprehensive standards. Definitions of terms and easy to read tables would be incorporated to facilitate a better understanding and uniform application of the standards.

The proposed revisions to the frozen okra standards would provide both a common language for trade and a means of measuring value in the marketing of frozen okra. The standards would also provide guidance in determining whether frozen okra should be utilized in its present state, or subject to reprocessing. The official grade of a lot of frozen okra covered by these standards is determined by the procedures set forth in the ''Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).''

This notice provides for a 60-day comment period for interested parties to comment on undertaking this revision.

Authority: 7 U.S.C. 1621–1627.

Dated: December 6, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–24058 Filed 12–11–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

DATES: Comments must be received in writing on or before February 11, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, U.S. Department of Agriculture, Fire and Aviation Management, 1400 Independence Ave., SW., Mail Stop 1107, Washington, DC 20250–1107.

Comments also may be submitted via facsimile to 202–205–1401 or by e-mail to: *mdoherty03@fs.fed.us.*

The public may inspect comments received at Forest Service, U.S. Department of Agriculture, Fire and Aviation Management, 201 14th St., SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–205–0985 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: John Nelson, Aviation Management Specialist, 208–387–5617. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

OMB Number: 0596–0015.

Expiration Date of Approval: June 30, 2008.

Type of Request: Revision of a currently approved collection.

Abstract: The Forest Service contracts with approximately 400 vendors a year for aviation services utilized in resource protection and project management. In recent years, the total annual use of contract aircraft and pilots has exceeded 100,000 hours. In order to maintain an acceptable level of safety, preparedness, and cost-effectiveness in aviation operations, Forest Service contracts include rigorous qualifications for pilots and specific condition, equipment, and performance requirements for aircraft as aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke-reduced visibility, minimally improved landing areas, and congested airspace around wildfires.

To ensure Agency contracting officers that pilots and aircraft used for aviation operations meet specific Forest Service qualifications and requirements for aviation operations, prospective contract pilots fill out one of the following Forest Service forms:

- FS–5700–20—Airplane Pilot Qualifications and Approval Record
- FS–5700–20a—Helicopter Pilot Qualifications and Approval Record

Contract Officers' Technical Representatives use forms:

- FS–5700–21—Airplane Data Record and
- FS–5700–21a—Helicopter Data Record when inspecting the aircraft for contract compliance.

Based upon the approval(s) documented on the form(s), each contractor pilot and aircraft receives an approval card. Forest Service personnel verify possession of properly approved cards before using contracted pilots and aircraft. Information collected on these forms includes:

- Name.
- Address.
- Certification numbers.
- Employment history.
- Medical Certification.
- Airplane/helicopter certifications and specifications.
- Accident/violation history.

Without the collected information, Forest Service contracting officers, as well as Forest Service pilot and aircraft inspections, cannot determine if contracted pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe, effective accomplishment of Forest Service specified flying missions. Without a reasonable basis to determine pilot qualifications and aircraft capability, exposure of Forest Service employees to hazardous conditions would result. The data collected documents the approval of contract pilots and aircraft for specific Forest Service aviation missions.

Information will be collected and reviewed by contracting officers or their designated representatives, including aircraft inspectors, to determine whether the aircraft and/or pilot(s) meet all contract specifications in accordance with FS Handbook 5709.16, chapter 10, section 16. Forest Service regional aviation pilot and aircraft inspectors maintain the collected information in Forest Service regional headquarters offices. The Forest Service, at times, shares the information with the Department of the Interior Aviation Management Directorate, as each organization accepts contract inspections conducted by the other.

Estimate of Annual Burden: 60 minutes.

Type of Respondents: Vendors/contractors.

Estimated Annual Number of Respondents: 2100.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1050.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: December 5, 2007.

Robin L. Thompson,

Associate Deputy Chief.

[FR Doc. E7–24031 Filed 12–11–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal from the Peoples' Republic of China; Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 2007, the Department of Commerce (''Department'') published a notice of initiation of administrative review of the antidumping duty order on magnesium metal from the Peoples' Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 29968 (May 30, 2007). The period of review is April 1, 2006, through March 31, 2007. The preliminary results of this administrative review are currently due no later than December 31, 2007.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The Department determines that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because this review involves examining a number of complex issues related to the factors of production and surrogate values. The Department requires additional time to issue and

analyze supplemental questionnaires regarding these issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of this administrative review until February 29, 2008, which is 305 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 4, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–24071 Filed 12–11–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose from Finland, Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 7, 2007, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order covering purified carboxymethylcellulose from Finland. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Determination of Antidumping Duty Administrative Review*, 72 FR 44106 (August 7, 2007) (*Preliminary Results*). The merchandise covered by this order is purified carboxymethylcellulose as described in the ''Scope of the Order'' section of this notice. The period of review (POR) is December 27, 2004, through June 30, 2006. In the *Preliminary Results*, we invited parties to provide comments. Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the Preliminary Results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of the Review.''

EFFECTIVE DATE: December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1121, and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department published the Preliminary Results of administrative review of the antidumping order covering purified carboxymethylcellulose from Finland. *See Preliminary Results*. The parties subject to this review are Noviant Oy, CP Kelco Oy, Noviant Inc., and CP Kelco U.S., Inc. (collectively, CP Kelco). The petitioner in this proceeding is The Aqualon Company, a division of Hercules Incorporated.

On August 1, 2007, we sent a supplemental questionnaire to CP Kelco, requesting certain information about factoring expenses. CP Kelco responded to this questionnaire on August 15, 2007. *See* Letter from CP Kelco, dated August 15, 2007 (CP Kelco's August 15, 2007, Questionnaire Response). On August 22, 2007, the Department released a verification report describing the May 14 to May 18, 2007, verification of CP Kelco Oy's and Noviant Oy's Export Price (EP) and Home Market (HM) sales of subject merchandise. *See* Memorandum to the File Regarding ''Verification of Sections A–C Questionnaire Responses submitted by CP Kelco Oy, Noviant Oy, CP Kelco U.S., Inc., and Noviant Inc., in the Antidumping Review of Purified Carboxymethylcellulose (CMC) from Finland,'' dated August 22, 2007.

In the *Preliminary Results* we invited parties to provide comments. In response, the Department received a case brief on September 10, 2007, from CP Kelco. On September 10, 2007, the Department also received a letter from Petitioner alleging programming errors in the calculation of the Preliminary Results dumping margin. Also, on September 17, 2007, Petitioner submitted a rebuttal brief. At CP Kelco's request, the Department held a public hearing on September 26, 2007.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in CP Kelco's case brief and in Petitioner's rebuttal brief are addressed in the Memorandum to David M. Spooner, Assistant Secretary for Import Administration, dated December 5, 2007 (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. The Issues and Decision Memorandum is on file in room B–099 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

In addition, Petitioner submitted a letter in which it alleged certain programming errors. *See* Letter from Edward M. Lebow regarding ''Purified Carboxymethylcellulose from Finland; Demonstration of Programming Errors in Lieu of Case Brief,'' dated September 10, 2007 (Petitioner's Allegation of Programming Errors) .

Successor–In-Interest Determination

In the *Preliminary Results*, we preliminarily determined that CP Kelco Oy is the successor–in-interest to the former Noviant Oy for purposes of this proceeding and application of the antidumping law. We did not receive comments on this issue and have no reason to change our findings from the *Preliminary Results*. For a complete discussion of our successorship analysis, *see Preliminary Results* at 44107 to 44108. As a result of our review, we determine that CP Kelco Oy is the successor–in-interest to Noviant Oy.

Changes Since the Preliminary Results

In the *Preliminary Results*, we made a direct adjustment to normal value and U.S. price for certain factoring expenses CP Kelco incurred in both the home market and in the United States. However, as we had not asked CP Kelco to report these expenses, we relied upon a sample of these expenses gathered at the CEP and HM/EP sales verifications as facts otherwise available. *See* the *Preliminary Results*. Therefore, in a questionnaire dated August 1, 2007, we asked CP Kelco to submit new U.S. and HM sales databases containing this information for all of its sales. CP Kelco responded to this questionnaire on August 15, 2007. See CP Kelco's August 15, 2007, questionnaire response. As a result we relied upon the U.S. and HM sales databases submitted August 15, 2007, in the final results. These databases include additional fields for per–unit factoring expenses and factoring rates, but are otherwise identical to those databases relied upon in the *Preliminary Results*. Accordingly, the programming language used to calculate factoring expenses as facts available has been removed from the margin calculation program for these final results, and other programming language has been added to deduct the reported factoring expenses from U.S. price and normal value. See Memorandum to the File from Tyler Weinhold Regarding ''Analysis of Data Submitted by Noviant Oy and CP Kelco Oy (Collectively, CP Kelco) in the Final Results of the 2004–2006 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose (CMC) from Finland,'' dated December 5, 2007 (Final Analysis Memorandum).

CP Kelco was not able to report the importer of record for some of its U.S. sales during the POR. Therefore, in order to allow for importer–specific assessment, we set the importer field for such sales equal to the consolidated customer codes reported by CP Kelco. This change is explained in detail in the Final Analysis Memorandum.

In addition, we made certain changes to our calculation of comparison market net price and certain other changes related to foreign currency conversions as a result of our analysis of the issues raised in Petitioner's Allegation of Programming Errors. The issues raised and the changes made to the margin calculation program since the Preliminary Results as a result of our analysis of these issues are explained in the Final Analysis Memorandum.

Final Results of the Review

We determine the following percentage weighted–average margin exists for the period December 27, 2004, through June 30, 2006:

Manufacturer/Exporter	Weighted Average Margin (percentage)
CP Kelco Oy	5.97
Noviant Oy	5.97

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise. CP Kelco has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate liquidation instructions directly to CBP within fifteen days of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified carboxymethylcellulose from Finland entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act):

1) The cash deposit rate for CP Kelco Oy and Noviant Oy will be the rate established in the final results of review; 2) if the exporter is not a firm covered in this review or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all–others rate of 6.65 percent from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These deposit requirements, when imposed, shall remain in effect until further notice.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act.

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

APPENDIX

Comments and Responses:
Issue 1:Amortization of Goodwill
Issue 2: Zeroing of Non–Dumping Margins

[FR Doc. E7–24072 Filed 12–11–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE24

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes IFQ standard prices for the individual fishing quota (IFQ) cost recovery program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2007 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2008.

DATES: Effective December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ programs are limited access systems authorized by section 303(b) of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson–Stevens Act was amended (by Public Law 104–297) to, among other things, require the Secretary of Commerce to ''collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual quota program.'' This requirement was further amended in 2006 (by Public Law 109–479) to include collection of the actual costs of data collection, and to replace the reference to individual quota program with a more general reference to ''limited access privilege program'' (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson–Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited.

On March 20, 2000, NMFS published regulations implementing the IFQ cost recovery program (65 FR 14919), which are set forth at § 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self–collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro–payments (e.g., bonuses, delayed partial payments, post–season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: ''actual'' and ''standard.'' ''Actual'' ex-vessel value is the amount of all compensation, monetary or non–monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. ''Standard'' ex-vessel value is the default value on which to base fee liability calculations. IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document it, otherwise the ''standard'' ex-vessel value is used.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish and headed and gutted net weight for halibut. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port–group. The standard prices for IFQ halibut and IFQ sablefish are listed in the tables that follow the next section. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

Section 304(d)(2)(B) of the Magnuson–Stevens Act provides for a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ Program. NMFS annually sets a fee percentage for sablefish and halibut IFQ holders that is based on the actual annual costs associated with certain management and enforcement functions, as well as the standard ex-vessel value of the catch subject to the IFQ fee for the current year. The method used by NMFS to calculate the IFQ fee percentage is described at § 679.45(d)(2)(ii).

Regulations at § 679.45(d) require NMFS to publish the IFQ fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during or before the last quarter of each year. For the 2007 sablefish and halibut IFQ fishing season, an IFQ permit holder is to use a fee liability percentage of 1.2 percent to calculate his or her fee for landed IFQ in pounds. The IFQ permit holder is responsible for submitting the fee liability payment to NMFS on or before January 31, 2008.

REGISTERED BUYER STANDARD EX–VESSEL PRICES BY LANDING LOCATION FOR 2007 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX–VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
CORDOVA	February 28	–	–
	March 31	–	–
	April 30	$4.05	$2.54
	May 31	$4.20	$2.61
	June 30	–	–
	July 31	$4.32	–
	August 31	$4.55	–
	September 30	$4.38	–
	October 31	$4.38	–
	November 30	$4.38	–
DUTCH HARBOR	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	–	–
	July 31	–	–
	August 31	$4.22	–
	September 30	$4.30	–
	October 31	$4.30	–
	November 30	$4.30	–
HOMER	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	$4.80	–
	July 31	$3.89	–
	August 31	–	–
	September 30	–	–
	October 31	–	–
	November 30	–	–
KETCHIKAN	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	–	–

REGISTERED BUYER STANDARD EX–VESSEL PRICES BY LANDING LOCATION FOR 2007 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX–VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	July 31	–	–
	August 31	–	–
	September 30	–	–
	October 31	–	–
	November 30	–	–
KODIAK	February 28	–	–
	March 31	$4.25	$2.68
	April 30	$4.13	$2.71
	May 31	$4.01	$2.53
	June 30	$3.91	$2.61
	July 31	$4.18	$2.42
	August 31	$4.29	$2.53
	September 30	$4.16	$2.47
	October 31	$4.16	$2.47
	November 30	$4.16	$2.47
PETERSBURG	February 28	–	–
	March 31	–	–
	April 30	$4.06	–
	May 31	$4.09	–
	June 30	$4.28	–
	July 31	$4.44	–
	August 31	$4.46	–
	September 30	$4.37	–
	October 31	$4.37	–
	November 30	$4.37	–
SEWARD	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	–	–
	July 31	–	–
	August 31	–	–
	September 30	–	–
	October 31	–	–

REGISTERED BUYER STANDARD EX–VESSEL PRICES BY LANDING LOCATION FOR 2007 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX–VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	November 30	–	–
SITKA	February 28	–	–
	March 31	$4.86	$2.60
	April 30	$4.02	$2.51
	May 31	$4.29	$2.54
	June 30	$4.46	$2.62
	July 31	$4.55	$2.59
	August 31	$4.52	$2.76
	September 30	$4.59	$2.92
	October 31	$4.59	$2.92
	November 30	$4.50	$2.92
YAKUTAT	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	$4.20	–
	June 30	–	–
	July 31	–	–
	August 31	–	–
	September 30	–	–
	October 31	–	–
	November 30	–	–

REGISTERED BUYER STANDARD EX–VESSEL PRICES BY PORT GROUP FOR 2007 IFQ SEASON

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX–VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
BERING SEA[1]	February 28	–	–
	March 31	–	–
	April 30	–	$2.28
	May 31	$3.89	$2.49
	June 30	$4.05	$2.96
	July 31	$4.18	$2.61
	August 31	$4.19	$2.60
	September 30	$4.31	$2.80

REGISTERED BUYER STANDARD EX–VESSEL PRICES BY PORT GROUP FOR 2007 IFQ SEASON—Continued

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX–VESSEL PRICE ($)	SABLEFISH STANDARD EX–VESSEL PRICE ($)
	October 31	$4.31	$2.80
	November 30	$4.31	$2.80
CENTRAL GULF OF ALASKA[2]	February 28	–	–
	March 31	$4.37	$2.61
	April 30	$4.13	$2.53
	May 31	$4.04	$2.54
	June 30	$4.15	$2.64
	July 31	$4.28	$2.70
	August 31	$4.46	$2.61
	September 30	$4.33	$3.19
	October 31	$4.33	$3.19
	November 30	$4.33	$3.19
SOUTHEAST ALASKA[3]	February 28	–	–
	March 31	$4.77	$2.60
	April 30	$4.12	$2.57
	May 31	$4.20	$2.66
	June 30	$4.36	$2.69
	July 31	$4.42	$2.88
	August 31	$4.47	$2.85
	September 30	$4.47	$2.87
	October 31	$4.47	$2.87
	November 30	$4.47	$2.87
ALL[4]	February 28	–	–
	March 31	$4.52	$2.60
	April 30	$4.12	$2.53
	May 31	$4.09	$2.57
	June 30	$4.21	$2.70
	July 31	$4.28	$2.71
	August 31	$4.38	$2.70
	September 30	$4.37	$2.95
	October 31	$4.37	$2.95
	November 30	$4.37	$2.95

[1] *Landing locations Within Port Group – Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska

[2] *Landing Locations Within Port Group – Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier

[3] *Landing Locations Within Port Group – Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat

[4] *Landing Locations Within Port Group – All:* FOR ALASKA: All landing locations included in 1, 2, and 3. FOR CALIFORNIA: Eureka, Fort Bragg, Other California. FOR OREGON: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. FOR WASHINGTON: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Rainier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. FOR CANADA: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada

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

Dated: December 5, 2007.

Emily H. Menashes,

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

[FR Doc. E7–24078 Filed 12–11–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Publication of North American Datum of 1983 State Plane Coordinates in Feet in Maine

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Geodetic Survey (NGS) will publish North American Datum of 1983 (NAD 83) State Plane Coordinate (SPC) grid values in both meters and U.S. Survey Feet (1 ft = 1200/3937 m) in Maine, for all well defined geodetic survey control monuments maintained by NGS in the National Spatial Reference System (NSRS) and computed from various geodetic positioning utilities. The adoption of this standard is implemented in accordance with NGS policy and a request from the Maine Department of Transportation, the Maine Society of Land Surveyors, and the Maine GIS Stakeholders.

DATES: Individuals or organizations wishing to submit comments on the Publication of North American Datum of 1983 State Plan Coordinates in feet in Maine, should do by January 11, 2008.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2) 1315 East-West Highway, Silvery Spring, Maryland, 20910, fax 301–713–4324, or via e-mail *Dave.Doyle@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD, 20910; Phone: (301) 713–3178.

SUPPLEMENTARY INFORMATION:

Abstract

IN 1991, NGS adopted a policy that defines the conditions under which NAD 83 State Plane Coordinates (SPCs) would be published in feet in addition to meters. As outlined in that policy, each state or territory must adopt NAD 83 legislation (typically referenced as Codes, Laws or Statutes), which specifically defines a conversion to either U.S. Survey or International Feet as defined by the U.S. Bureau of Standards in **Federal Register** Notice 59–5442. To date, 48 states have adopted the NAD 83 legislation however, for various reasons, only 33 included a specific definition of the relationship between meters and feet. This lack of uniformity has led to confusion and misuse of SPCs as provided in various NGS products, services and tools, and created errors in mapping, charting and surveying programs in numerous states due to inconsistent coordinate conversions.

Dated: December 3, 2007.

David B. Zilkoski,

Director, Office of National Geodetic Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 07–6026 Filed 12–11–07; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Defense Business Board (hereafter referred to as the Board).

The Board is a discretionary Federal advisory committee established by the Secretary of Defense to provide the Department of Defense independent advice and recommendations on effective strategies for the implementation of best business practices of interest to the Department of Defense. The ultimate objective of this advice is to enhance the efficiency and effectiveness of organizational support to the nation's warfighters.

The Board shall be composed of approximately twenty members, who are eminent authorities in the fields of management, production, logistics, personnel leadership and defense industrial base. The chairpersons of the Defense Policy Advisory Board and the Defense Science Board shall be appointed as non-voting ex-officio members of the Defense Business Board and their appointment shall not count toward the Board's total membership.

Board Members appointed by the Secretary of Defense, who are not Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Board Members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, they shall serve without compensation.

The Secretary of Defense may invite other distinguished Government officers to serve as non-voting Observers of the Board, and appoint consultants, with special expertise, to assist the Board on an ad hoc basis.

The Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal

officers or employees who are not Board Members.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the committee's Designated Federal Officer, in consultation with the Chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Business Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Business Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Business Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Business Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554, extension 128.

Dated: December 6, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E7–24059 Filed 12–11–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Idaho Technology, Inc., a corporation of the State of Idaho, an exclusive license under the following pending patent application, claiming the benefit of provisional Patent Application Serial No. 60/877017, filed November 28, 2006:

Applicant: McAvin.

Filed: November 21, 2007.

Title: Rapid Detection of Dengue Virus.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below, within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: All communications concerning this Notice should be sent to Paul D. Heydon, Patent Attorney, Commercial Law Division, Office of the Staff Judge Advocate, 311th Human Systems Wing, Air Force Materiel Command, 8010 Chennault Path, Brooks City-Base, TX 78235, (210) 536–5359.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–24046 Filed 12–11–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Record of Decision (ROD) for the Implementation of the Base Realignment and Closure (BRAC) 2005 and Transformation Actions at Fort Benning, GA

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of the ROD, which summarizes the decision for implementing BRAC actions as directed by the 2005 Base Closure and Realignment Commission and DoD Transformation Actions at Fort Benning, Georgia.

ADDRESSES: To obtain a copy of the ROD, contact Mr. John Brent, Fort Benning Directorate of Public Works, Environmental Management Division, Bldg #6 (Meloy Hall), Room 310, Fort Benning, GA 31905; via e-mail at *john.brent@benning.army.mil;* or via Web site at *http://www.hqda.army.mil/acsim/brac/nepa_eis_docs.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. John Brent at (706) 545–2180.

SUPPLEMENTARY INFORMATION: The Army has decided to proceed with implementing the Preferred Alternative (Alternative B) of the Proposed Action consistent with the analysis in the Environmental Impact Statement (EIS) (dated October 2007) and supporting studies and comments provided during formal comment and review periods. The Proposed Action includes the construction activities, personnel increases, and training activities associated with the BRAC Commission recommendations, the Global Defense Posture Realignment (GDPR) overseas restationing actions, Army Modular Force (AMF) initiatives, and other discretionary stationing activities at Fort Benning. As a result of the proposed action, Fort Benning will be receiving personnel, equipment, and missions from various realignment and closure actions. To implement the BRAC Commission recommended initiatives, the Army will provide the necessary facilities, infrastructure, training ranges and maneuver areas to support the changes. Permanent facilities will be constructed to house the Armor Center and School as well as several other minor unit relocations. Construction activities include administrative, supply/storage, maintenance, barracks, commercial services, community facilities, medical and dental, and recreation facilities focused on the cantonment areas. A combination of redevelopment (e.g., renovation), development, and expansion would occur at the four major cantonment areas: Main Post, Kelley Hill, Sand Hill, and Harmony Church. Activities to occur in the ranges and maneuver areas include construction of small- and large-caliber weapons ranges, heavy maneuver areas and corridors, a drivers' training course, off-road driver's training area, and vehicle recovery area to support the training range requirements. The largest-scale transformation activity is the BRAC action to relocate the Armor Center and School from Fort Knox, Kentucky, to Fort Benning. Once relocated to Fort Benning, the Armor Center and School would be combined with the existing Infantry Center and School to create a Maneuver Center of Excellence for ground forces training and doctrine development. Fort Benning also proposes to implement other transformation actions as the Army undergoes restructuring to meet the demands of the 21st century. The AMF

initiative involves the Army's transition from a division-centric design to a standard brigade organization. The reshaping of the military force structure also includes provision for the return of units currently based overseas to United States installations as part of the GDPR. Finally, discretionary stationing actions (activations, inactivations, realignments, and relocations) are proposed, which contribute to and are interrelated with the transformation process. All BRAC and other transformation actions will collectively result in an increase of approximately 16,600 military, civilian, student and contractor personnel. Alternative A would also meet the Army transformation purpose and need, but it is not the preferred option due to the magnitude of impacts on the Red-cockaded woodpecker (RCW) (*Picoides borealis*), federally-listed endangered species. The No Action Alternative would not meet the Army's purpose and need for the BRAC 2005 and transformation actions.

Special consideration was given to the effects of Alternative A and Alternative B (the Preferred Alternative) of the Proposed Action on the natural and human environment. Mitigation measures have been adopted to avoid or minimize environmental harm from the selected alternative. Mitigation measures, as described in the ROD, will be implemented to minimize, avoid, or compensate for the significant adverse effects identified in the EIS at Fort Benning for transportation, noise, water resources, geology and soils, biological resources, cultural resources, and safety. In addition, the Army evaluated national defense needs, the synergistic relationship between BRAC, AMF, GDPR, and stationing actions, as well as meeting the purpose and need for the BRAC 2005 recommendations to include the creation of the Maneuver Center of Excellence.

The ROD states that implementing the Preferred Alternative reflects a proper balance between initiatives for protection of the environment, appropriate mitigation, and actions to achieve the Army's requirements. There are no differences in impacts to resources such as aesthetics and visual, socioeconomics, transportation, utilities, noise, hazardous and toxic materials and waste, utilities, and safety between Alternatives A and B. Alternative A does impact fewer acres, thus disturbing a lesser area of soils (and indirectly producing less fugitive dust that impacts air quality). Biological resources such as vegetation, wildlife, aquatic habitats, and unique ecological areas would also be impacted to a lesser degree, and fewer cultural resources would be affected. Nevertheless, under Alternative A there would be a greater number of RCWs impacted if it were implemented. In the Biological Opinion, the U.S. Fish and Wildlife Service concurred that the preferred alternative is not likely to jeopardize the continued existence of the RCW and relict trillium. Moreover, the Preferred Alternative does not introduce any greater impacts to other resources that cannot be mitigated when compared to Alternative A.

Dated: December 3, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 07–6014 Filed 12–11–07; 8:45 am]

BILLING CODE 3710–08–M

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 January 11, 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: December 6, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Consolidation Loan Rebate Fee Report.

Frequency: Monthly.

Affected Public:

Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 12,000.

Burden Hours: 13,000.

Abstract: The Consolidation Loan Rebate Fee Report for payment by check or Electronic Funds Transfer (EFT) will be used by approximately 817 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

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 3485. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. 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*. 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. E7–24011 Filed 12–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 2, 2008. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before February 11, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Bridget Dooling, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 6, 2007.

Delores J. Barber,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New Collection.

Title: High School Longitudinal Study of 2009 (HSLS:09).

Abstract: This is a request for emergency clearance for field test sampling. The High School Longitudinal Study of 2009 (HSLS:09) is the most recent installment in the series of NCES' nationally representative longitudinal studies of high school students. The HSLS:09 will assess students in math and science during the fall of their 9th grade year and again in the spring of most participating students' 11th grade year. The study will also survey students, their parents, teachers, guidance counselors, and school administrators twice during the secondary school years and follow students into their postsecondary years. The study will focus on how students navigate the transition between high school and the postsecondary world; what courses, majors (or first job), and careers students decide to pursue, when, why, and how.

Additional Information: To meet the timeline for the HSLS:09, the Department is requesting an emergency clearance. This unanticipated event occurred since the contract was not awarded until July 6, 2007. The field test is slated to begin in Fall of 2008, which is only a year from now. The full-scale data collection is scheduled to commence in the Fall of 2009. To ensure that the study remains on track and on time, sampling must be completed in January 2008 and school recruiting for the field test must begin by February 2008 at the very latest. The field test is scheduled to start September of 2008, and the six-month lead time should be sufficient for review and revision of the instruments before we enter schools.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,138.

Burden Hours: 1,593.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3542. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–245–6623. 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*. 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. E7–24067 Filed 12–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–1–009]

Florida Gas Transmission Company, LLC; Notice of Compliance Filing

December 4, 2007.

Take notice that on November 30, 2007, Florida Gas Transmission Company, LLC (FGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2008:

First Revised Sheet No. 333

First Revised Sheet No. 335
First Revised Sheet No. 337
First Revised Sheet No. 338

FGT states that the filing is being made in compliance with the Commission's ''Order Issuing Certificates'' issued on June 15, 2006 in the above referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24030 Filed 12–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–14–000]

Black Oak Energy, LLC, EPIC Merchant Energy, LP, SESCO Enterprises, LLC, Complainants v. PJM Interconnection, Inc., Respondent; Notice of Complaint

December 4, 2007.

Take notice that on December 3, 2007, Black Oak Energy, LLC (Black Oak), EPIC Merchant Energy, LP and SESCO Enterprises, LLC (collectively, Financial Marketers), filed a formal complaint against PJM Interconnection, Inc. (PJM) pursuant to section 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2000), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2007), alleging that the PJM Tariff is improperly allocating physical transmission line losses to virtual transactions and also distributing over-collected transmission line losses in a manner that discriminates against virtual Market Participants.

Financial Marketers certify that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 December 26, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24028 Filed 12–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–13–000]

Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, El Segundo Power LLC, and Reliant Energy, Inc., Complainants v. California Independent System Operator Corporation, Respondents; Notice of Complaint

December 4, 2007.

Take notice that on November 30, 2007, Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, El Segundo Power LLC, and Reliant Energy, Inc. (Complainants), filed a formal complaint against the California Independent System Operator Corporation (Respondent) pursuant to sections 206 and 306 of the Federal Power Act, alleging that Respondent's application of the must-offer compensation provisions under its tariff commencing January 1, 2008, is unjust and unreasonable and unduly discriminatory. The Complainants have requested fast track processing.

Complainants certify that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 December 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24027 Filed 12–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–441–001]

Texas Gas Transmission, LLC; Notice of Compliance Filing

December 4, 2007.

Take notice that on November 30, 2007, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

Texas Gas states that the filing is being made in compliance with the Commission's ''Order Issuing Certificates and Granting Abandonment'' issued June 18, 2007 in Docket No. CP06–441–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24026 Filed 12–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR08–4–000]

Valero Marketing and Supply Company Complainant, v. Longhorn Pipeline Partners and Flying J, Inc. Respondents; Notice of Complaint

December 4, 2007.

Take notice that on November 30, 2007, Valero Marketing and Supply Company (VMSC), tendered for filing with the Federal Energy Regulatory Commission a complaint against Longhorn Pipeline Partners (Longhorn) and Flying J, Inc., (Flying J), for undue discrimination and unreasonable preferential treatment of an affiliate in the transportation of refined petroleum products on Longhorn's common carrier pipeline. VMSC alleges that Longhorn, acting in concert with its affiliate owner, Flying J, engaged in unduly preferential and abusive affiliate activity and unreasonably discriminated against VMSC, resulting in an undue economic advantage, by refusing to provide common carrier transportation services to VMSC in violation of the Interstate Commerce Act. VMSC therefore requests that the Commission set this complaint for investigation, discovery, and hearing and that reparations and damages be awarded to compensate VMSC for injuries incurred as a result of Longhorn's and Flying J's unlawful and illegal actions. In addition, VMSC requests the Commission order disgorgement of all improper profits and benefits obtained by Flying J as a result of the complained of activity.

VMSC states that copies of the complaint were served on Longhorn and Flying J.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 December 20, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24029 Filed 12–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 6, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00–70–017.
Applicants: Algonquin Gas Transmission, LLC
Description: Algonquin Gas Transmission, LLC submits First Revised Sheet 87 to FERC Gas Tariff, Fifth Revised Volume 1.
Filed Date: 12/03/2007.
Accession Number: 20071205–0105.
Comment Date: 5 p.m. Eastern Time on Monday, December 17, 2007.

Docket Numbers: RP07–478–003.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company's First Revised Sheet 333E *et al.* to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 11/30/2007.
Accession Number: 20071203–0251.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 12, 2007.

Docket Numbers: RP08–106–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits Sixteenth Revised Sheet 29 to its FERC Gas Tariff, Second Revised Volume 1, effective 1/1/08.
Filed Date: 12/03/2007.
Accession Number: 20071205–0106.
Comment Date: 5 p.m. Eastern Time on Monday, December 17, 2007.

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. E7–24039 Filed 12–11–07; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2778–035]

Idaho Power Company; Notice of Availability of Supplemental Environmental Assessment

December 4, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) issued the draft environmental assessment (EA) for the application for amendment of license on February 27, 2007, for the Shoshone Falls Project, located on the Snake River, Jerome and Twin Falls counties, Idaho. In addition, on March 2, 2007, pursuant to section 10(j) of the Federal Power Act, staff issued a notice the application has been accepted for filing and is ready for further environmental analysis and requested motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions. Staff reviewed all motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions comments filed pursuant to the issuance of the draft EA and prepared a supplemental EA for the project. In this supplemental EA, staff analyzes the potential environmental effects of the proposed amendment of license and concludes that the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the SEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library link. Enter the docket number (P–2778) in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY). Any comments should be filed by January 21, 2008, and should be addressed to Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference Shoshone Falls Project No. 2778–035, on all comments. For further information on this notice, please contact Rebecca Martin at (202) 502–6012, or at *Rebecca.martin@ferc.gov.*

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.
[FR Doc. E7–24025 Filed 12–11–07; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0558; FRL–8504–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); EPA ICR No. 0143.10, OMB Control No. 2070–0028

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501, *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 11, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2007–0558, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, EPA Docket Center, Mail Code: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robin Nogle, Office of Compliance/Agriculture Division, Mail Code: 2225A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4154; fax number: (202) 564–0085; e-mail address: *nogle.robin@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 20, 2007 (72 FR 46462), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2007–0558, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–0226.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Recordkeeping Requirements for Producers of Pesticides Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

ICR numbers: EPA ICR No. 0143.10, OMB Control No. 2070–0028.

ICR Status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Producers of pesticides must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR Part 169. This information collection is mandatory under FIFRA section 8. It is used by the Agency to determine compliance with the Act. The information is used by EPA Regional pesticide enforcement and compliance staffs, the Office of Enforcement and Compliance Assurance (OECA), and the Office of Pesticide Programs (OPP) within the Office of Prevention, Pesticides and Toxic Substances (OPPTS), as well as the U.S. Department of Agriculture (USDA), the Food and Drug Administration (FDA), and other Federal agencies, States under Cooperative Enforcement Agreements, and the public. 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Producers of pesticides for sale or distribution in the United States.

Estimated Number of Respondents: 13,400.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 26,800.

Estimated Total Annual Cost: $1,227,976. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Changes in the Estimates: There is an increase of 893 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is an adjustment due to a change in the number of respondents since the last ICR.

Dated: December 4, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24095 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8505–2]

Federal Advisory Committee To Examine Detection and Quantitation Approaches in Clean Water Act Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; FACA Committee Meeting Announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency is announcing a one-day meeting of the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act (CWA) Programs (FACDQ).

DATES: A meeting of the FACDQ will be held on Friday, December 21, 2007 via teleconference. The teleconference will be from 8 a.m. to 8 p.m., Eastern Time.

ADDRESSES: The teleconference is open to the public. The public may obtain the call-in number and access code for the teleconference lines from Meghan Hessenauer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability: The purpose of this meeting is described in the General Information section of this notice. The draft agenda may also be viewed on our Web site at *http://www.epa.gov/waterscience/methods/det.* Any member of the public interested in making an oral presentation at the Committee meeting may contact Richard Reding, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for making oral presentations will be accepted up to 2 business days prior to the meeting date. In general, each individual making an oral presentation will be limited to a total of three minutes.

Submitting Comments

Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in section I.B of the **SUPPLEMENTARY INFORMATION** section. Written comments will be accepted up to two business days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Meghan Hessenauer, Engineering and Analysis Division, MC4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone number: (202) 566–1040; Fax number: (202) 566–1053; E-mail address: *Hessenauer.Meghan@EPA.GOV;* Richard Reding, Designated Federal Officer, Environmental Protection Agency, Office of Water, Mail Code 4303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone number: (202) 566–2237; Fax number: (202) 566–1053; E-mail address: *Reding.Richard@EPA.GOV.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces one meeting of the FACDQ. The purpose of this meeting is to finalize the report document, ''Report of the Federal Advisory Committee on Detection and Quantitation Approaches and Uses in Clean Water Act Programs.'' The draft meeting agenda will be available on the Internet at *http://www.epa.gov/waterscience/methods/det.*

EPA acknowledges short advance notice of this meeting for the following reasons. The Committee members' letters of appointment expire at the end of December 2007, and thus, EPA needs to conclude deliberations and produce a final report within that timeframe. The goal of the Committee's last meeting, on December 5 and 6, 2007, was to finalize the Committee's report to the EPA Administrator, and the Committee agreed to most of the decisions needed for closure on the final report. Only a few additional discussions and decisions remain; those will be the focus of the December 21st meeting. In large part, the December 21 meeting is a minor add-on to the earlier December meeting. To accommodate the Committee members' calendars and the short number of weeks remaining in 2007, EPA is moving forward quickly to convene the final meeting and today provides as much notice as was possible.

Information on Services for Individuals With Disabilities

For information on access or services for individuals with disabilities, please contact Meghan Hessenauer at (202) 566–1040 or e-mail: *hessenauer.meghan@epa.gov* to request accommodation of a disability, at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies of Related Information?

1. Docket. EPA has established an official public docket for this committee under Docket ID No., EPA–HQ–OW–2004–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agendas may be viewed at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OW Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number (EPA–HQ–OW–2004–0041).

For those wishing to make public comments, it is important to note that EPA's policy is that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (EPA–HQ–OW–2004–0041) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *http://www.epa.gov,* select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. EPA–HQ–OW–2004–0041. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW.Docket@epa.gov,* Attention: Docket ID No. EPA–HQ–OW–2004–0041. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM mailed to the mailing address identified in section I.B.2 of this notice. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, OW Docket, EPA Docket Center (EPA/DC), Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2004–0041.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2004–0041 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in section I.A.1 of this notice.

Dated: December 7, 2007.

Mary T. Smith,

Director, Engineering and Analysis Division.

[FR Doc. E7–24154 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0994; FRL–8340–2]

Registration Review; Biopesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for dried blood. This pesticide is currently undergoing a voluntary cancellation process and is not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before February 11, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address

will be automatically captured and included as part of the comment that is placed in the 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 docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Regulatory Action Leader (RAL), as identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact Kennan Garvey, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7106; fax number: (703) 308–8090; e-mail address: *garvey.kennan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL–8080–4). You may also access the Procedural Regulations for Registration Review on the Agency's website at *http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm*. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Regulatory Action Leader (RAL), Telephone Number, E-mail Address
Nosema locustae, Case 4104	EPA–HQ–OPP–2007–0997	(703) 347–8920, *kausch.jeannine@epa.gov*

EPA is also announcing that it will not be opening a docket for dried blood because this pesticide is undergoing a voluntary cancellation. Dried blood (CAS No. 68911–49–9, PC Code 000611 and Registration Review Case No. 4030) was first registered by EPA in 1971. The Registrant of the last product containing this active ingredient has requested voluntary cancellation of the product's registration. The Agency will inform the public of the Registrant's intent to voluntarily cancel the product registration through a **Federal Register** notice which is expected to be published early in 2008. If the Agency receives no comments from the public during the public comment period, the registration will be cancelled. There is no tolerance or an exemption from the requirement of a tolerance for this active ingredient.

The Agency will take separate actions to cancel any remaining FIFRA section 24(c) Special Local Needs registrations with this or any other active ingredient in these dockets and to propose revocation of any affected tolerances that are not supported for import purposes only.

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

• An overview of the registration review case status.

• A list of current product registrations and registrants.

• **Federal Register** notices regarding any pending registration actions.

• **Federal Register** notices regarding current or pending tolerances or pending exemptions from tolerances.

• Risk assessments.

• Bibliographies concerning current registrations.

• Summaries of incident data.

• Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 4, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–24086 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0181; FRL–8341–7]

Notice of Hearing Concerning a Request to Reduce Pre-Harvest Interval for EBDC Fungicides on Potatoes; Amendment to Statement of Issues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is amending its July 11, 2007 Notice of Hearing (July Notice) document concerning a request to reduce the pre-harvest interval for the use of EBDC fungicides on potatoes. The July Notice set forth EPA's determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. EPA's determination in the July Notice that a hearing was appropriate was in response to the EBDC/ETU Task Force's (Task Force) petition requesting that the 1992 cancellation order be amended to allow for a 3–day pre-harvest interval (PHI) nationwide for use of EBDC pesticides on potatoes.

FOR FURTHER INFORMATION CONTACT: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 305–7070; e-mail address: *costello.kevin@epa.gov* or

Michele Knorr, Office of General Counsel, Pesticides and Toxic Substances Law Office (2333A),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–5631; fax number: (202) 564–5631; e-mail address: *knorr.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

In 1992, EPA issued a Notice of Intent to Cancel (NOIC) registrations containing EBDC's for use on certain crops. The crop at issue for this hearing is potatoes. The NOIC stated that use of EBDC's on potatoes would be canceled unless the registrants modified their pesticide product labels. For a product to remain registered for use on potatoes, the NOIC required that registrants amend their labels to incorporate certain directions for use, including maximum application rates, maximum number of applications per season, application interval, and PHI. For certain states, the NOIC required a minimum 14–day PHI and, for others, the NOIC allowed a minimum 3–day PHI due to disease pressures caused by late blight. (57 FR 7484, March 2, 1992).

In response to the NOIC, EBDC registrants and some non-registrants requested a hearing. However, there was never a formal hearing; the parties reached a settlement which included, among other things, an agreement to amend labels to extend the PHI to 14 days for EBDC use on potatoes in all states other than Connecticut, Delaware, Florida, Maine, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. In these named states, EPA agreed to allow a 3–day PHI because of the presence of late blight. This settlement was approved by Judge Harwood in an order issued June 16, 1992. FIFRA Docket number 646 *et al.* (Accelerated Decision and Order, June 16, 1992).

On December 26, 1996, the Task Force submitted its first request to modify the existing cancellation order for the use of three products containing EBDC on potatoes: Mancozeb, maneb, and metiram. In that petition, the Task Force requested that the PHI be reduced from 14 days to 3 days nationwide to address the spread of late blight disease (Phytophthora infestans) in potatoes. Late blight is a fungal disease that caused the infamous ''Irish Potato Famine'' in the 1840's. If not adequately controlled, this disease is capable of destroying the crop in the field (foliar blight phase) and/or in storage (tuber rot phase). EPA delayed acting on this petition because intervening statutory amendments required the Agency to reassess how it evaluated pesticide registration actions.[1]

Because EPA had not yet acted on the 1996 petition, on August 25, 2003, the Task Force resubmitted its request to the Agency as part of the EBDC reregistration process. Subsequently, the Agency informed the Task Force that EPA had to consider the impact of the Food Quality Protection Act of 1996 (FQPA) amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) before any action could be taken on the request.

Under 40 CFR part 164, subpart D, the Agency treated the Task Force submission as a petition to modify the final cancellation order concerning EBDC pesticide products. Such a petition may not be granted without an opportunity for a formal adjudicatory hearing in front of an Administrative Law Judge (ALJ). EPA concluded that the submissions by the Task Force could provide an adequate basis for a hearing. Therefore, in the **Federal Register** of July 11, 2007 (72 FR 37771) (FRL–8118–4), EPA issued a notice of hearing that set forth the Agency determination on the registrants' request to modify the 1992 cancellation order.

That Notice: (1) Announced that EPA has decided to hold a hearing regarding the petition to modify the existing cancellation order as it applied to the use of products containing EBDC's (mancozeb, maneb, and metiram) on potatoes and the allowance of a 3–day, rather than a 14–day PHI, nationwide, (2) specified the issues of fact and law to be considered at that hearing, (3) identified what steps interested persons need to take if they wish to participate in the hearing, and (4) established a schedule for the hearing. The Agency did not determine as part of the Notice that the new information in fact warrants an amendment to the previous cancellation order. That determination is the subject of the hearing provided for in 40 CFR part 164, subpart D.

In response to the July Notice, the Natural Resources Defense Council (NRDC) filed a request for hearing on August 10, 2007. EPA and the EBDC/ETU Task Force (Task Force) are automatically parties to this hearing. The National Potato Council (NPC) requested and was granted leave to intervene in the hearing on September 18, 2007.

The Honorable Susan L. Biro, Chief ALJ, was designated to preside over this proceeding. Judge Biro issued a Pre-Hearing Order on September 19, 2007, directing the parties, among other things, to file pre-hearing exchanges. EPA, the Task Force and NPC (Movants) filed a motion requesting an extension of time to file the pre-hearing exchanges as well as a request for a pre-hearing conference (Motion). NRDC contested a portion of the Movants' motion and Movants replied to NRDC's response. The Movant's Motion explained that there appeared to be a concrete disagreement among the parties as to the scope of the hearing. Two issues were discussed in the Movants' Motion and Reply. First, the July Notice incorrectly identified an issue of law to be adjudicated by the Court. Second, the Notice did not provide a sufficiently clear explanation of the scope of the issues to be considered in thehearing.[2]

In light of the two issues stated above, EPA is amending the Statement of Issues by consolidating the issues of fact and law into the two relevant questions that must be determined by the ALJ consistent with 40 CFR 164.132 and the 1992 cancellation action. EPA believes the amended statement of issues provides necessary clarifications that will allow for a more efficient and effective hearing.

This amendment does not alter EPA's previous determination under 40 CFR 164.131. (72 FR 37771) Additionally, NRDC does not need to file a new request for hearing.

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a party to this hearing process, however, it may also be of interest to the public in general, and a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0181. Publicly available

[1]The Food Quality Protection Act of 1996 amended FIFRA and the FFDCA.

[2]On October 29, 2007, Judge Biro issued an Order granting the extension of time to file pre-hearing exchanges, but deferred the request for a pre-hearing conference. Docket No. EPA–HQ–OPP–2007–0181.

docket materials are available either in the electronic docket at*http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 164.23(b), EPA is amending its statement of issues for the hearing that the Agency announced in the July 11, 2007 Notice. (See 72 FR at 37778, Unit VII.) In the July Notice, EPA identified among the facts to be adjudicated certain questions associated with late blight on potatoes. Among the issues to be adjudicated in the proceeding, EPA identified the question of whether the substantial new evidence could with due diligence have been discovered prior to issuance of the 1992 cancellation order and whether a nationwide PHI of 3 days for EBDC use on potatoes would meet the standard of section 2(bb) of FIFRA. EPA believes amending the statement of issues is necessary. Therefore, EPA is amending the July Notice by replacing all the issues for hearing identified in that Notice with the following issues to be adjudicated in this proceeding:

1. Is there substantial new evidence not considered in the 1992 cancellation that relates to whether the dietary risks associated with nationwide use of EBDCs on potatoes with a 3–day PHI satisfy the relevant statutory standard for registration under FIFRA? For the purposes of this hearing, the relevant portion of the FIFRA standard for registration is whether the human dietary risk meets the safety standard in section 408(b)(2) of FFDCA.

2. Does the substantial new evidence with respect to dietary risk require the modification of the existing cancellation order, i.e., does it support a finding that the dietary risks associated with nationwide use of EBDCs on potatoes with a 3–day PHI satisfy the relevant statutory standard for registration under FIFRA? In other words, do the residues that result from EBDCs on potatoes meet the safety standard in section 408(b)(2) of FFDCA?

B. Why is the Agency Taking this Action?

As required by 40 CFR 164.131(c), if the Administrator determines that a hearing is warranted, the Administrator must publish a notice in the **Federal Register**. The notice must set forth the issues of fact and law to be adjudicated at the hearing. Because the issues set forth by the Administrator in the notice of hearing establish the scope of the hearing, it is important that those issues be clear. After discussions with other parties to this proceeding and review of the ALJ's orders, EPA determined that its earlier notice contained an error concerning what factors are to be considered by the judge (i.e. ''due diligence'') and that other changes would clarify and better focus the relevant issues for this hearing.

First, EPA is amending the statement of issues to correct a misstatement by EPA in the July Notice. In that Notice, EPA identified as an issue of law to be adjudicated the following: ''If it is substantial new evidence, could the applicant, through due diligence, have discovered this information prior to the issuance of the cancellation order?'' (72 FR at 37778)

Whether or not the applicant met this ''due diligence'' test is an issue for the Administrator to determine before issuing the Notice of Hearing, not for the Court to determine at hearing. 40 CFR 164.131(a) sets forth the standard for determining whether, as a threshold matter, a petition to amend a cancellation order has merit. This regulation states that the Administrator will reconsider the merits of a prior cancellation order when the Administrator finds that:

> (1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and, (2) such evidence could not, *through the exercise of due diligence*, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order. [emphasis added]

In contrast, 40 CFR 164.132(a) sets forth the issues for the ALJ to decide in the hearing. The purpose of the hearing is not to determine whether to reconsider the earlier order, but rather to determine whether or not the earlier order should in fact be modified. The relevant subsection of this regulation states:

> The burden of proof in the hearing convened pursuant to § 164.131 shall be on the applicant and he shall proceed first. The issues in the hearing shall be whether: (1) substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order.

The regulation at 40 CFR 164.132(a) does not include the ''due diligence'' determination as one of the issues to be resolved at the hearing. Additionally, in the preamble to these regulations, EPA stated:

> For the following reasons, EPA is adopting a new Subpart D to the Rules of Practice (40 CFR Part 164) setting forth the procedures to be followed in the case of an application under FIFRA sections 3 or 18 which requests use of a pesticide on a site and on a pest for which registration has been finally cancelled or suspended. These revised procedures require that in any such case the *Administrator will initially determine*, on the basis of the application and supporting data, whether there is substantial new evidence which may materially affect the prior order and *whether such evidence could not have been discovered by due diligence* on the part of the parties to the original proceeding. If it is determined that there is no such evidence, then the application will be denied. If it is determined that there is such evidence, then a formal hearing will be convened to determine whether such evidence materially affects the prior order and requires its modification. This determination will be made on the basis of the record in the hearing and the recommendations of the administrative law judge presiding over the hearing, taking into account the human and environmental risks found by the Administrator in his prior order and the cumulative impact of past, present, and anticipated uses in the future. [emphasis added] (53 FR 12261, 12264).

As the preamble and regulatory text make clear, the determination of whether the petitioner could have discovered and submitted the information during the original proceeding is one for the Administrator to make before any hearing is convened. This ''due diligence'' provision prevents registrants from wasting Agency resources and continually relitigating cancellation cases by allowing the Administrator to summarily reject applications that are based on factual information that should have been presented in the earlier proceeding. In contrast, the focus of the subpart D hearing itself is on whether the earlier cancellation decision is still correct in light of the new information. This is similar to the focus of the original cancellation hearing—whether the pesticide at issue meets the applicable standard for registration under FIFRA.

Because the ''due diligence'' test is one to be determined before commencement of a subpart D hearing, EPA is amending the statement of issues to delete this issue.

Second, EPA is amending the statement of issues to reflect the fact

that risk issues unrelated to the dietary risk of EBDC use on potatoes are not relevant for this hearing. Typically, the scope of the subpart D hearing would be determined by a detailed cancellation order from the earlier proceeding. However, as described above, there was no prior hearing because the parties to the earlier proceeding agreed to a settlement. Had there been a hearing and subsequent detailed cancellation order, the scope of this subpart D hearing would have been determined by that order. Since there was no detailed cancellation order, EPA's 1992 NOIC (as it relates to EBDC use on potatoes) must be used to determine the issues to be considered in the present hearing because it is the best evidence of what issues would have been presented at the cancellation hearing had it taken place. (57 FR 7484, March 2, 1992).

The NOIC was the result of a regulatory process known as ''Special Review.''[3] The NOIC stated that the basis for the initiation of the Special Review for the uses of EBDC fungicides. Specifically, for potatoes, the following issues were of concern: ''carcinogenic, developmental, and thyroid effects caused by ethylenethiourea (ETU).'' (57 FR at 7487). Had a cancellation hearing been held, these would have been the issues for the hearing. Only information related to these three risks, or to dietary exposures associated with these three risks, is material to the issue of whether the 1992 cancellation order should be modified to allow for a shorter PHI than called for in theNOIC.

The relevant statutory standard for determining whether dietary risks are acceptable under FIFRA is not the same today as it was in 1992. At the time of the 1992 cancellation proceedings, the presence of late blight in the New England states was relevant to a reduced PHI of 3 days being allowed in those states. At this time, however, whether late blight has spread nationwide and whether EBDCs are necessary are not appropriate for consideration by the ALJ when determining whether the 1992 cancellation order must be modified.

The 1996 Food Quality Protection Act amendments to FIFRA and FFDCA require that dietary risks associated with a pesticide chemical's residue on food now be evaluated under the risk-only safety standard as set forth in FFDCA section 408(b). The safety determination that now must be made is whether there is a ''reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures.'' FFDCA section 408(b)(2)(A)(ii). Since this standard is a risk-only evaluation, EPA determined that it was necessary to amend the statement of issues to reflect the correct statutory standard and to eliminate the consideration of factual issues, such as the need for the pesticide, that are not relevant to the applicable standard.[4]

C. What is the Agency's Authority for Taking this Action?

EPA regulation at 40 CFR 164.132 states that the procedures for the hearing ''shall follow the Rules of Practice set forth in subparts A and B.'' In subpart B, specifically 40 CFR 164.23(b), the Administrator has the authority to amend the statement of issues EPA set forth in a Notice of Hearing at any time prior to the commencement of the public hearing. Pursuant to these provisions, and the fact that a public hearing has not yet commenced, EPA is amending the statement of issues it issued in its July 2007 Notice of Hearing to ensure that the hearing is focused on the issues that are relevant to the risk-only determination. In light of this amendment, the ALJ may determine that additional time is necessary to permit the parties to prepare for matters raised in this amendment; and, upon such determination, the hearing shall be delayed for appropriate period. See 40 CFR 164.23(b).

List of Subjects

Environmental protection, EBDC fungicides, Pesticides and pests.

Dated: November 30, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–23948 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–S

[3]The purpose of Special Review is to help the Agency determine whether to initiate procedures to cancel, deny, or reclassify registration of a pesticide product because uses of that product may cause unreasonable adverse effects on the environment. See 40 CFR part 154.

[4]The presence of late blight nationwide and the need for EBDC fungicides is not relevant to the risk-only finding that the court must make in order to determine whether the earlier cancellation order must be modified.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0937; FRL–8153–1]

Para-dichlorobenzene; Reregistration Eligibility Decision for Low-Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide para-dichlorobenzene, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low-risk pesticide para-dichlorobenzene through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 11, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0937, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0937. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and

included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; fax number: (703) 308–7070; e-mail address: *clayton.molly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low-risk pesticide, para-dichlorobenzene under section 4(g)(2)(A) of FIFRA. Para-dichlorobenzene is a fumigant insecticide, and is registered for use on indoor use sites only. It is used as a moth and beetle repellant in products which are applied to commercial and residential use sites such as closets and storage containers, and to repel lice and mites from bird cages. It is also used in empty bee supers (stored indoors), to repel wax moths. When formulated into varpal rope, it is used in attics to repel snakes, mice, rats, squirrels, and attic wombats. EPA has determined that the database to support reregistration is substantially complete and that products containing para-dichlorobenzene will be eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing para-dichlorobenzene.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like para-dichlorobenzene, which pose few risks of concern. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the para-dichlorobenzene RED.

The reregistration program is being conducted under congressionally mandated timeframes, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Para-dichlorobenzene,

however, poses few risks that require mitigation. The Agency therefore is issuing the para-dichlorobenzene RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for para-dichlorobenzene. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the para-dichlorobenzene RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 5, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–24082 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1063; FRL–8155–1]

Pesticide Registration Review; New Antimicrobials Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the following pesticides: Mineral bases, strong (known as Sodium Hydroxide), PC Code 075605, Case Number 4065; Coco Alkyl Amine, salts (known as Alkyl Amine Hydrochloride), PC Code 069152, Case Number 3051; and Capric Acid (known as Decanoic Acid), PC Code 128955, Case Number 5038. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before March 11, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available at regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For information about the pesticides included in this document, contact the specific Chemical Review Managers for

these pesticides as identified in the table in Unit III.A.

For general questions on the registration review program, contact Kennan Garvey, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7106; fax number: (703) 308–8090; e-mail address: *garvey.kennan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review published in the **Federal Register** of August 9, 2006, and effective on October 10, 2006 (71 FR 45719) (FRL–8080–4). You may also access the Procedural Regulations for Registration Review on the Agency's website at *http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm*. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be periodically reviewed. The goal is a review of a pesticide's registration every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is periodically reviewing pesticide registrations to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. The implementing regulations establishing the procedures for registration review appear at 40 CFR part 155. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Mineral bases, strong (Sodium Hydroxide) Case Number 4065	EPA–HQ–OPP–2007–0922	Nathan Mottl, (703) 305–0208 ottl.nathan@epa.gov
Coco Alkyl Amine, salts (Alkyl Amine Hydrochloride) Case Number 3051	EPA–HQ–OPP–2007–1039	Heather Garvie, (703) 308–0034 garvie.heather@epa.gov
Capric acid (Decanoic Acid) Case Number 5038	EPA–HQ–OPP–2007–1040	Melba Morrow, (703) 308–2716 morrow.melba@epa.gov

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.

• **Federal Register** notices regarding current or pending tolerances.
• Risk assessments.
• Bibliographies concerning current registrations.
• Summaries of incident data.
• Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
• Submitters must clearly identify the source of any submitted data or information.
• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
• As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection; Pesticides and pests; Antimicrobials; Mineral bases, strong; (Coco alkyl) amine salts; and Capric acid.

Dated: December 5, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–24085 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1140; FRL–8341–5]

Sodium Metasilicate; Notice of Receipt of Request to Voluntarily Cancel Uses of Sodium Metasilicate Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registration for Misty Quat-22, (EPA Reg. No. 10807–106) product containing the pesticide sodium metasilicate. The request would terminate sodium metasilicate use in or on floors, walls, counter tops in homes, schools, restaurants, hospitals, nursing homes, public rooms, food processing plants, and in other places where efficient cleaning and antimicrobial action is desired. The request would not terminate the last sodium metasilicate product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 11, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1140, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1140. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

James Parker, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; fax number: (703) 308–7070; e-mail address: *parker.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant Amreps, Inc. to cancel registration for a product (Reg. No. 10807–106) . In an email dated October 24, 2007 Amreps, Inc. requested EPA to cancel the affected product registration identified in this notice (Table 1). Misty Quat-22 (Reg. No 10807–106) is the last pesticide product registered in the United States for these uses; therefore, this request is also to terminate these uses for sodium metasilicate.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel and terminate uses of Misty Quat-22 (EPA Reg. No 10807–106) product registration. The affected product and the registrant making the request is identified in Table 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The Amreps, Inc. registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registration.

TABLE 1.—SODIUM METASILICATE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
10807-106	Misty Quat-22.	Amreps, Inc.

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
10807	Amreps, Inc., 990 Industrial Park Dr. Marietta, GA 30062

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may

at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Sodium Metasilicate

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before January 11, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation and use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 29, 2007.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–23901 Filed 12–11–07; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, December 12, 2007, 2 p.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

Matters to Be Considered:

Open Session

1. Announcement of Notation Votes, and
2. Noncompetitive Modification Extending Contract to Provide Temporary Interactive Voice Response (IVR) Hosting Services.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meeting. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: December 10, 2007.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 07–6042 Filed 12–10–07; 11:48 am]

BILLING CODE 6570–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2007, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- November 8, 2007.

B. New Business

1. *Other*
- Bookletter Review 2007.
2. *Reports*
- FCSBA Quarterly Report.

Closed Session*

- OSMO Supervisory and Oversight Activities.

Dated: December 6, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 07–6025 Filed 12–7–07; 1:21 pm]

BILLING CODE 6705–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board). Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 2007, from 10:30 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 13, 2007.

B. Business Reports

- FCSIC Financial Report—September 30, 2007.
- Report on Insured and Other Obligations.
- Quarterly Report on Annual Performance Plan.

C. New Business

- Board Meeting Schedule 2008.

Closed Session

- Confidential Report on System Performance.
- Audit Plan for Year Ended December 31, 2007.

Dated: December 6, 2007.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E7–24075 Filed 12–11–07; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, December 4, 2007, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich (Director, Office of Thrift Supervision), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director Thomas J. Curry (Appointive), Director John C. Dugan (Director, Comptroller of the Currency), and Chairman Shelia C. Bair, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: December 4, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–23993 Filed 12–11–07; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 012008–002.

Title: The 360 Quality Association Agreement.

Parties: NYKCool AB and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Ambassador Services, Inc. and SSA Marine, Inc. as parties to the agreement.

Dated: December 7, 2007.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–24098 Filed 12–11–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Deluxe Shipping Inc., 251–14 Northern Blvd., Little Neck, NY 11362, *Officers:* Daniel A. Recupero, Secretary (Qualifying Individual), Sharon R. Mestanza, Director.

Trans World Logistec, Inc., 1 SKC Drive, Covington, GA 30014, *Officers:* Seon Oh Kim, President (Qualifying Individual), Hong Il Kim, Secretary.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Tri-Best Logistics, Inc., 6131 Orangethorpe Avenue, Buena Park, CA 90620, *Officers:* Richard U. Cho, Secretary (Qualifying Individual), Paul Kim, President.

Amass International Group Inc., 1730 Park Lawn Road, Hacienda Heights, CA 91745, *Officers:* Danny Tam, Director (Qualifying Individual), Garrisun GE, President.

Sahara Cargo LLC, 5401 Rampart St., Houston, TX 77081, *Officers:* Hisham Mohamed Ahmed, Gen. Manager (Qualifying Individual), Mercedes C. Martinez, Asst. Manager.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Casalink dba Casalink Transit, 52 Southgate Road, Franklin, MA 02038, Nidal Brahimi, Sole Proprietor, American Export/Import and Purchasing dba Direct Shipping, 6834 NW 77th Court, Miami, FL 33166, *Officers:* Oswaldo Perez, President (Qualifying Individual), Gabriela Villalta, Secretary.

Dated: December 7, 2007.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E7–24096 Filed 12–11–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of the Parents Speak-Up National Campaign: Youth Survey. (New)—OMB No. 0990-New—Office of Adolescent Pregnancy Program .

Abstract: The Evaluation of the Parents Speak-Up National Campaign Youth Survey is designed to evaluate the Parents Speak-Up National Campaign, a campaign designed to encourage parents to talk with their children about sexual activity. The campaign includes paid and public service announcement (PSA)-type spots, as well as a Web site, 4parents.gov. As the campaign aims to increase parent-child communication about sex, the purpose of this information collection is to measure youth self-reported communication with parents, their related attitudes and beliefs about sex, and determine whether their parents' exposure to PSUNC affects the youth reports of communication. Parents of the youth in this study are participating in an OMB-approved, randomized controlled study of the behavioral effects of PSUNC message exposure.

This collection is follow-up of youth aged 13–15 whose parents participated in the parent efficacy study for the campaign. We are requesting a 2 year clearance; respondents will be 13–15 years old, who will be surveyed once, and the affected public will be individuals.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Youth Survey	13–15 year old youth	760	1	20/60	253

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–24054 Filed 12–11–07; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Training Ph.D.s: Faculty Views on Their Role and Their Institution's Role to Promote the Development of Responsible Researchers—OMB No. 0990–New—Office of Research Integrity.

Abstract: Preventing research misconduct and abuse is of paramount importance. The Institute of Medicine (IOM) has issued two reports in the last 10 years addressing this concern and clearly states that mentoring is a key factor in promoting the development of responsible researchers. However, little is actually known about the qualities and activities of effective mentors. The proposed project will focus on collecting descriptive information from faculty about their role as advisor and mentor and how faculty members perform these roles in their daily work with PhD candidates. In addition faculty members will be asked to describe how involved their institution is in promoting training or otherwise supporting research mentoring and advising.

The data will come from a random selection of 10,000 investigators drawn from the 2005 and 2006 National Institutes of Health or National Science Foundation grant recipients who have supervised doctoral students in the last five years and are faculty in two types of institutions: (1) Medical schools (within universities or stand alone) and (2) all other universities. We are requesting clearance for a one-time web

based survey which will be conduced over one year.

Respondents and Burden Estimates for the Training Ph.D.S Survey

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Faculty Survey Instrument	Faculty who advise a PhD candidate.	4,620	1	20/60	1,540

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–24055 Filed 12–11–07; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–115]

Notice of Public Meeting and Availability for Public Comment

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting and availability for public comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for public comment on the draft Current Intelligence Bulletin (CIB) entitled ''Interim Guidance on Medical Screening of Workers Potentially Exposed to Engineered Nanoparticles.'' The document and instructions for submitting comments can be found at *http://www.cdc.gov/niosh/review/public/115/*. Comments may be provided to the NIOSH docket, as well as given orally at the following meeting.

Public Comment Period: December 14, 2007 through February 15, 2008.

Public Meeting Time and Date: 9 a.m.–4 p.m., January 30, 2008.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose of Meeting: To discuss and obtain comments on the draft CIB ''Interim Guidance on Medical Screening of Workers Potentially Exposed to Engineered Nanoparticles.'' Special emphasis will be placed on discussion of the following:

(1) Do the data support the conclusions of the document?

(2) Are the conclusions appropriate in light of the current understanding of toxicological data?

(3) Is medical surveillance appropriate at this time for workers with potential exposure to engineered nanoparticles; if so, what form(s) of medical surveillance are specific for such workers?

(4) What are the potential benefits, adverse impacts, and limitations of medical screening of workers potentially exposed to engineered nanoparticles?

(5) What are the potential benefits, adverse impacts, and limitations of establishing an exposure registry for workers exposed to engineered nanoparticles?

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. The meeting room accommodates 80 people. Due to limited space and security clearance requirements, notification of intent to attend the meeting must be made to the NIOSH Docket Office no later than Friday, January 18, 2008. Persons wanting to provide oral comments at the meeting are requested to notify the NIOSH Docket Office no later than January 11, 2008 at 513/533–8611 or by e-mail at *nioshdocket@cdc.gov*. Priority for attendance will be given to those providing oral comments. Other requests to attend the meeting will then be accommodated on a first-come basis. Unreserved walk-in attendees will not be admitted due to security clearance requirements.

Persons wanting to provide oral comments will be permitted up to 20 minutes. If additional time becomes available, presenters will be notified. Oral comments given at the meeting will be recorded and included in the docket. Written comments will also be accepted at the meeting. Written comments may also be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226, telephone 513/533–8611. All material submitted to the Agency should reference docket number NIOSH–115 and must be submitted by February 15, 2008 (public review closing date) to be considered by the Agency. All electronic comments should be formatted as Microsoft Word. Please make reference to docket number NIOSH–115.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Background: Concerns have been raised about whether workers exposed to engineered nanoparticles will be at increased risk of adverse health effects and whether medical screening or some other type of occupational health surveillance is appropriate for these workers. Although increasing evidence indicates that exposure to some engineered nanoparticles can cause adverse health effects in laboratory animals, insufficient medical evidence exists to recommend the medical screening of workers potentially exposed to engineered nanoparticles. However, NIOSH will continue to assess the scientific evidence and periodically update the guidance on medical screening. Because occupational exposure to engineered nanoparticles is likely to become more common in the future, NIOSH has recommended that employers identify the presence of engineered nanoparticles in their workplace and implement effective efforts to minimize worker exposure to these materials [NIOSH 2006]. This guidance document does not have the force and effect of the law.

Contact Persons for Technical Information: Dr. Paul A. Schulte, M/S C–14, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8302, or Ralph Zumwalde, M/S C–32, Robert A. Taft Laboratories, 4676 Columbia

Parkway, Cincinnati, Ohio 45226, telephone 513/533–8320.

Reference:

NIOSH [2006]. Approaches to safe nanotechnology: an information exchange with NIOSH. Cincinnati, OH: Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, July 2006. Web address for this document: *http://www.cdc.gov/niosh/topics/nanotech/safenano/.*

Dated: December 5, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–24047 Filed 12–11–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0472]

Agency Emergency Processing Under the Office of Management and Budget Review; Certification to Accompany Drug, Biological Product, and Device Applications or Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the certification to accompany human drug, biological product, and device applications or submissions.

DATES: Fax written comments on the collection of information by December 17, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title, ''Certification to Accompany Drug, Biological Product, and Device Applications or Submissions.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. 301–827–4659.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The emergency processing was requested in order to comply with the provisions of Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85), which require this certification to be submitted to FDA beginning no later than December 26, 2007. This information will be needed immediately to implement these provisions of FDAAA, and it is essential to the agency's mission of protecting and promoting the public health. Since the statutory deadline for collecting the information is December 26, 2007, the lack of a form would result in confusion for the sponsors/applicants as the information necessary for FDA to carry out its future statutory responsibilities would not be obvious without the form. While some sponsors/applicants may submit information, it most likely would neither be complete nor provided in a systematic fashion so that it can be more easily retrieved.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Certification to Accompany Drug, Biological Product, and Device Applications or Submissions

The information required under section 402(j)(5)(B) of the Public Health Service Act (PHS Act) (42 U.S.C. 282(j)(5)(B)), will be submitted in the form of a certification with applications and submissions currently submitted to FDA under part 312 (21 CFR part 312) and 21 CFR part 314 (human drugs) approved under OMB control numbers 0910–0014 (expires May 31, 2009) and 0910–0001 (expires May 31, 2008), respectively, part 312 and 21 CFR part 601 (biological products) approved under OMB control numbers 0910–0014 and 0910–0338 (expires June 30, 2010) and 21 CFR parts 807 and 814 (devices) approved under OMB control numbers 0910–0120 (expires August 31, 2010) and 0910–0231 (expires November 30, 2010), respectively.

Title VIII of FDAAA amended the PHS Act by adding section 402(j) (42 U.S.C. 282(j)). The new provisions require additional information to be submitted to the clinical trials data bank (*ClinicalTrials.gov*) previously established by the National Institutes of Health/National Library of Medicine, including expanded information on clinical trials and information on the results of clinical trials. The provisions include new responsibilities for FDA as well as several amendments to the Federal Food, Drug, and Cosmetic Act (FD&C Act).

One new provision, section 402(j)(5)(B) of the PHS Act, requires that a certification accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 354, 360e, or 360j(m)), or under section 351 of the PHS Act (21 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification that all applicable requirements of section 402(j) of the PHS Act have been met. Where available, such certification must include the appropriate National Clinical Trial (NCT) numbers.

The proposed collection of information is necessary to satisfy the above statutory requirement.

The importance of obtaining these data relates to adherence to the legal requirements for submissions to the clinical trials registry and results data bank and ensuring that individuals and organizations submitting applications or reports to FDA under the listed provisions of the FD&C Act or the PHS Act adhere to the appropriate legal and regulatory requirements for certifying to having complied with those requirements. The failure to submit the certification required by section 402(j)(5)(B) of the PHS Act, and the knowing submission of a false certification are both prohibited acts under section 301 of the FD&C Act (21 U.S.C. 331). Violations are subject to civil money penalties.

Investigational New Drug Applications

FDA's Center for Drug Evaluation and Research (CDER) received 1,837 investigational new drug applications (INDs) and 24,581 new IND amendments in fiscal year (FY) 2004. CDER anticipates that IND and amendment submission rates will remain at or near this level in the near future.

FDA's Center for Biologics Evaluation and Research (CBER) received 227 new INDs and 6,689 new IND amendments in FY 2004. CBER anticipates that IND and amendment submission rates will remain at or near this level in the near future.

The estimated total number of submissions (new INDs and new submissions) subject to mandatory certification requirements under section 402(j)(5)(B) of the PHS Act is 26,418 for CDER plus 6,916 for CBER, or 33,334 submissions per year. The minutes per response is the estimated number of minutes that a respondent would spend preparing the information to be submitted to FDA under section 402(j)(5)(B) of the PHS Act, including the time it takes to type the necessary information.

Based on its experience reviewing INDs and consideration of the previously mentioned information, FDA estimated that approximately 15.0 minutes on average would be needed per response for certifications which accompany IND applications and submissions. It is assumed that most submissions to investigational applications will reference only a few protocols with NCT numbers prior to FDA submission. It is also assumed that the sponsor/applicant/submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

Marketing Applications/Submissions

CDER and CBER received 214 new drug applications (NDA)/biologics license applications (BLA)/ resubmissions and 8,535 NDA/BLA amendments in FY 2004. CDER and CBER received 259 efficacy supplements/resubmissions to previously approved NDAs/BLAs, 2,500 manufacturing submissions, and 1,273 labeling submissions in FY 2004. CDER and CBER anticipate that new drug/ biologic and efficacy supplement submission rates will remain at or near this level in the near future.

FDA's Center for Devices and Radiological Health (CDRH) received 51 new premarket approvals (PMA), 3,635 510(k) submissions, and 9 humanitarian device exemptions (HDE) or 3,695 new applications in FY 2004. CDRH received 2,267 PMA/510(k)/HDE amendments in FY 2004. CDRH received 2,705 PMA/ 510(k)/HDE supplements in FY 2004. CDRH anticipates that application, amendment, and supplement rates will remain at or near this level in the near future.

The estimated total number of new submissions (new marketing applications, amendments, and supplements) subject to the mandatory certification requirements under section 402(j)(5)(B) of the PHS Act is 12,781 for CDER and CBER plus 8,667 for CDRH or 21,448 new submissions per year.

The total burden estimate includes all submissions for possible inclusion in the clinical trials data bank (results). The minutes per response is the estimated number of hours that a respondent would spend preparing the information to be submitted to FDA under section 402(j)(5)(B) of the PHS Act, including the time it takes to type the necessary information and compile a list of relevant NCT numbers.

Based on its experience reviewing NDAs, BLAs, PMAs, HDEs, and 510(k)s, and consideration of the previously mentioned information, FDA estimated that approximately 45.0 minutes on average would be needed per response for certifications which accompany NDA, BLA, PMA, HDE, and 510(k) applications and submissions. It is assumed that the sponsor/applicant/ submitter has electronic capabilities allowing them to retrieve the information necessary to complete the form in an efficient manner.

Table 1 of this document provides an estimate of the annual reporting burden for the submission of information to satisfy the requirements of section 402(j)(5)(B) of the PHS Act.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	Investigational applications	Marketing applications	Hours per response	Total hours
CDER (new application)	1,837	----	.25	459
CBER (new application)	227	----	.25	57
CDER (amendment)	24,581	----	.25	6,145
CBER (amendment)	6,689	----	.25	1,672
CDER/CBER (new application/resubmission)	----	214	.75	161
CDRH (new application)	----	3,695	.75	2,771
CDER/CBER (amendment)	----	8,535	.75	6,401
CDRH (amendment)	----	2,267	.75	1,700
CDER/CBER (efficacy supplement/resubmission)	----	259	.75	194
CDER/CBER (manufacturing supplement)	----	2,500	.75	1,875
CDER/CBER (labeling supplement)	----	1,273	.75	955
CDRH (supplement)	----	2,705	.75	2,029
TOTAL				24,419

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe the estimate, 24,419 hours per year, accurately reflects the burden. We recognize that individuals or entities less familiar with FDA forms and the Clinical Trials Data Bank may require greater than 15 and 45 minutes (depending on the type of application/submission) per response.

Dated: December 6, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–6023 Filed 12–7–07; 1:06 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White HIV/AIDS Program Annual Data Report: Data Report Form: (OMB No. 0915–0253)—Revision

The Ryan White HIV/AIDS Program Annual Data Report, formerly called the CARE Act Data Report (CADR), was first implemented in 2002 by HRSA's HIV/AIDS Bureau. It has undergone revisions to incorporate the legislative changes that occurred in 2006. Grantees and their subcontracted service providers who are funded under Parts A, B, C, and D of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006, (Ryan White HIV/AIDS Program), fill out the report. All Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the providers receiving Ryan White HIV/AIDS Program Funding, the services provided, and the clients served, continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities. Ryan White HIV/AIDS Program Grantees are required to report aggregate data to HRSA annually. The Data Report form is filled out by grantees and their subcontracted service providers. The report has seven different sections containing demographic information about the service providers, as well as the clients served, information about the type of core and support services provided, as well as the number of clients served, information about counseling and testing services, clinical information about the clients served, demographic tables for Parts C and D, and information about the Health Insurance Program. The primary purposes of the Data Report are to: (1) Characterize the organizations where clients receive services; (2) provide information on the number and characteristics of clients who receive Ryan White HIV/AIDS Program Services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on the Data Report is critical for HRSA, State, and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of grantees	Number of responses	# of hours per response	Total hour response burden
Part A Only	56	1	40	2,240
Part B Only	59	1	40	2,360
Part C Only	361	1	20	7,220
Part D Only	90	1	20	1,800
Subtotal	566			13,620

The response burden for service providers is estimated as:

Program under which grantee is funded	Number of providers	Number of responses	# of hours per response	Total hour response burden
Part A Only	792	1	26	20,592
Part B Only	653	1	26	16,978
Part C Only	108	1	44	4,752
Part D Only	75	1	42	3,150
Funded under more than one program	703	1	50	35,150
Subtotal	2,331			80,622
Total for Both Grantees & Providers	2,897			94,242

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: December 6, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–24022 Filed 12–11–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of receipt of permit application, request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), invite the public to comment on the following application to conduct certain activities with an endangered species.

DATES: We must receive comments on this permit application on or before January 11, 2008.

ADDRESSES: Submit written data or comments to the Chief, Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (telephone: 413–253–8615; fax: 413–253–8482). Please refer to the permit number when submitting comments.

FOR FURTHER INFORMATION CONTACT: Martin Miller, at the above address.

SUPPLEMENTARY INFORMATION: The following applicant has applied for a scientific research permit to conduct specific activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We solicit review and comment from local, State, and Federal agencies and the public on the following permit request:

Permit No. 166622

Applicant: U.S. Fish and Wildlife Service, Southwest Virginia Field Office, Abingdon, Virginia. The applicant requests a permit to take (capture and kill) the Lee County Cave isopod (*Lirceus usdagalun*) for the purpose of defining populations genetically and determining the degree of genetic separation between populations.

Public Review of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Authority: The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*)

Dated: November 8, 2007.

Thomas J. Healy,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. E7–24084 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for Hackelia venusta (Showy Stickseed)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Recovery Plan for *Hackelia venusta* (Showy Stickseed).

ADDRESSES: Copies of the final recovery plan are available by request from the U.S. Fish and Wildlife Service, Central Washington Field Office, 215 Melody Lane, Wenatchee, Washington 98801. Requests for copies of the final recovery plan and materials regarding this plan should be addressed to the Supervisor, Central Washington Field Office, at the above Wenatchee address. An electronic copy of the final recovery plan will also be made available online at *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Printed copies of the recovery plan will be available for distribution in 4 to 6 weeks.

FOR FURTHER INFORMATION CONTACT: Tim McCracken, Fish and Wildlife Biologist, at the above address, by calling 509–665–3508, extension 17, or by electronic mail to: *Tim_McCracken@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. The Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

Section 4(f) of the ESA requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The Draft Recovery Plan for *Hackelia venusta* (Showy Stickseed) was available for public comment from March 13 through May 12, 2006 (71 FR 12711). All information presented during the public comment period has been considered prior to approval of this final recovery plan, and is summarized in an appendix to the recovery plan. Some substantive technical comments resulted in changes to the recovery plan. Some substantive comments regarding recovery plan implementation did not result in changes to the recovery plan, but were forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments were not provided.

Hackelia venusta is an attractive perennial plant with showy white or blue-tinged flowers in the forget-me-not family (Boraginaceae). The species is a narrow endemic, being known from only 1 population of roughly 600 individuals in Chelan County, Washington. It occurs primarily on Federal lands, but a very small portion of the population is on private lands. Within its limited range, *Hackelia venusta* is found in open areas of steeply sloping, highly unstable granitic sand and granite cliffs. The common feature to its habitat appears to be the relatively sparse cover of other vascular plants and low canopy cover.

Hackelia venusta was listed as an endangered species in 2002 (67 FR 5515). The major threats to *Hackelia venusta* include: collection and physical disturbance to the plants and habitat by humans; mass wasting (landslides); nonnative noxious weeds; competition and shading from native trees and shrubs due to fire suppression; some highway maintenance activities; and low seedling establishment. The small population size and limited geographic extent of the species exacerbates all of these threats, and renders *Hackelia venusta* highly vulnerable to extirpation or extinction from either human-caused or random natural events.

The objective of the recovery plan is to reduce the threats to *Hackelia venusta* sufficient to accomplish increases in population size and geographic distribution across its estimated historical range so that the species is no longer in danger of

extinction. The first step in the recovery strategy for the species is to protect and stabilize the existing population. This includes management to maintain an open habitat; noxious weed control; minimizing the damage of collection and trampling within the population; seed collection and long-term seed banking to protect the genetic resources of the species; and the development and implementation of management plans. In addition, to reduce the potential for extinction due to loss of the single population, recovery actions will likely require establishing additional populations within the estimated historical range of the species.

The recovery of *Hackelia venusta* is complicated by the very small size and limited distribution of the single population, as well as by the extreme instability of the habitat where it occurs. Monitoring activities have the potential to destabilize the habitat and damage or even kill plants, particularly young germinants; therefore the need for monitoring and data collection must be carefully weighed against the possible negative impacts of such actions.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 15, 2007.

Ren Lohoefener,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 07–5974 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6676–F, AA–6676–J, AA–6676–L, AA–6676–A2; AK–964–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Koliganek Natives Limited. The lands are in the vicinity of Koliganek, Alaska, and are located in:

Seward Meridian, Alaska

T. 5 S., R. 45 W., Secs. 30, 31, and 34.
Containing approximately 1,283 acres.
T. 5 S., R. 46 W., Secs. 21 and 25.
Containing 1,260.86 acres.
T. 3 S., R. 48 W., Sec. 33.
Containing approximately 18 acres.
T. 5 S., R. 48 W., Secs. 16 and 17.
Containing 776.00 acres.
T. 5 S., R. 49 W., Secs. 7, 8, 17, and 18.
Containing 2,487.92 acres.
Aggregating approximately 5,826 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Koliganek Natives Limited. Notice of the decision will also be published four times in the Bristol Bay Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 11, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E7–24048 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

MMS Information Collection Activities: 1010–0082 (30 CFR 282), Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a reinstatement of an information collection (1010–0081).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 282, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by January 11, 2008.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior (1010–0081). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; *Attention:* Cheryl Blundon; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@mms.gov*. Reference Information Collection 1010–0081 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 282, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulphur.

OMB Control Number: 1010–0081.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1334 and 43 U.S.C. 1337(k)), authorizes the Secretary of the Interior (Secretary) to implement regulations to grant to the qualified persons, offering the highest cash bonus on a basis of competitive bidding, leases of any mineral other than oil, gas, and sulphur. This applies to any area of the Outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease. This regulation governs mining operations within the OCS for minerals other than oil, gas and sulphur and establishes a comprehensive leasing and regulatory program for such minerals. These regulations have been designed to (1) recognize the differences between the OCS activities associated with oil, gas, and sulphur discovery and development, and those associated with

the discovery and development of other minerals; (2) facilitate participation by States directly affected by OCS mining activities; (3) provide opportunities for consultation and coordination with other OCS users and uses; (4) balance development with environmental protection; (5) insure a fair return to the public; (6) preserve and maintain free enterprise competition; and (7) encourage the development of new technology.

Regulations implementing these responsibilities are under 30 CFR part 282. Responses are mandatory. No questions of a ''sensitive'' nature are asked. We protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), and 30 CFR 282.5, 282.6, and 282.7 and applicable sections of 30 CFR parts 280 and 281.

The MMS would use the information required by 30 CFR 282 to determine if lessees are complying with the regulations that implement the mining operations program for minerals other than oil, gas, and sulphur. Specifically, MMS would use the information:

- To ensure that operations for the production of minerals other than oil, gas, and sulphur in the OCS are conducted in a manner that will result in orderly resource recovery, development, and the protection of the human, marine, and coastal environments.
- To ensure that adequate measures will be taken during operations to prevent waste, conserve the natural resources of the OCS, and to protect the environment, human life, and correlative rights.
- To determine if suspensions of activities are in the national interest, to facilitate proper development of a lease including reasonable time to develop a mine and construct its supporting facilities, or to allow for the construction or negotiation for use of transportation facilities.
- To identify and evaluate the cause(s) of a hazard(s) generating a suspension, the potential damage from a hazard(s) and the measures available to mitigate the potential for damage.
- For technical and environmental evaluations which provide a basis for MMS to make informed decisions to approve, disapprove, or require modification of the proposed activities.

There has been no activity in the OCS for minerals other than oil, gas, and sulphur for many years and no information collected since we allowed the OMB approval to expire in 1991. However, because these are regulatory requirements, the potential exists for information to be collected and we are requesting that OMB reinstate this collection of information.

Frequency: Monthly, and as a result of situations encountered.

Estimated Number and Description of Respondents: There are no active respondents; therefore, we estimated the potential annual number of respondents to be one.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual hour burden for this information collection is a total of 201 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 282	Reporting or recordkeeping requirement	Non-hour cost burden		
		Hour burden	Average nunber of annual responses	Annual burden hours
Subpart A—General				
4(b); 12(b)(2)(ii); 12(f)(l), (2); 13(d), (e)(2); 21; 22; 25; 26; 28.	Submit delineation plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications.	40	1	40
4(c); 12(c)(2)(ii); 12(f)(l), (2); 13(d), (e)(2); 21; 23; 25; 26; 28.	Submit testing delineation plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications.	40	1	40
4(d); 12(d)(2)(ii); 12(f)(1), (2); 13(d), (e)(2); 21; 24; 25; 26; 28.	Submit mining delineation plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications.	40	1	40
5	Request non-disclosure of G&G info	10	1	10
Subtotal			4	130
Subpart B—Jurisdiction and Responsibilities of Director				
11(c); 12(c)	Apply for right-of-use and easement	30	1	30
11(d); 12(d)	Request consolidation of two or more OCS mineral leases or portions.	1	1	1
12(f)(1), (h); 20(g), (h)	Request approval of operations or departure from operating requirements.	Burden included with applicable operation		0
13(b), (f)(2); 31	Request suspension or temporary prohibition or production or operations.	2	1	2
13(e)(1)	Submit site-specific study plan and results; request payment	8	1	8

Citation 30 CFR 282	Reporting or recordkeeping requirement	Non-hour cost burden		
		Hour burden	Average nunber of annual responses	Annual burden hours
		1 study × $100,000 = $100,000		
14	Submit "green" response copy of Form MMS–1832 indicating date violations (INCs) corrected.	2	1	2
Subtotal			5	43
Subpart C—Obligations and Responsibilities of Lessees				
20(a), (g); 29(i)	Make available all mineral resource or environmental data and information; submit reports and maintain records.	Burden included with applicable operation		0
20(b) thru (e)	Submit designation of payor, operator, or local representative; submit changes.	1	1	1
21(d)	Notify MMS of preliminary activities	1	1	1
27(b)	Request use of new or alternative technologies, techniques, etc.	1	1	1
27(c)	Notify MMS of death or serious injury; fire, exploration, or other hazardous event; submit report.	1	1	1
27(d)(2)	Request reimbursement for furnishing food, quarters, and transportation for MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	2	1	2
27(e)	Identify vessels, platforms, structures, etc. with signs	1	1	1
27(f)(2)	Log all drill holes susceptible to logging; submit copies of logs to MMS.	3	1	3
27(h)(3), (4)	Mark equipment; record items lost overboard; notify MMS	1	1	1
29(a)	Submit monthly report of minerals produced	1	1	1
29(b), (c)	Submit quarterly status and final report on exploration and/or testing activities.	5	1	5
29(d)	Submit results of environmental monitoring activities	5	1	5
29(e)	Submit marked and certified maps annually or as required	1	1	1
29(f)	Maintain rock, minerals, and core samples for 5 years and make available upon request.	1	1	1
29(g)	Maintain original data and information and navigation tapes as long as lease is in effect and make available upon request.	1	1	1
29(h)	Maintain hard mineral records and make available upon request.	1	1	1
Subtotal			15	26
Subpart D—Payments				
40	Submit surety or personal bond	2	1	2
Subpart E—Appeals				
50; 15	File an appeal	Burden exempt under 5 CFR 1320.4(a)(2), (c)		0
Total Burden			25	Hour
			$100,000 Non-Hour Cost Burden	

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified one cost burden; § 282.13(e)(1), would require a site-specific study to determine and evaluate hazards that result in a suspension of operation. Since a study has never been done previously, MMS estimates that this study would cost approximately $100,000. There are no other non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a

collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 8, 2007, we published a **Federal Register** notice (72 FR 44570) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 282.0 provides the OMB control number for the information collection requirements imposed by the 30 CFR 282 regulations. The PRA (5 U.S.C. 1320) informs the public that they may comment at any time on the collection of information and MMS provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 11, 2008.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: October 12, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E7–23991 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: This notice announces the revision to the boundary of Big Thicket National Preserve to include 33 tracts of land that were acquired by the United States of America between 1977 and 2006 listed as follows: Tract 102–10, 16.94 acres; Tract 104–17, 34.33 acres; Tract 126–27, 0.43 acre; Tract 143–28, 0.63 acre; Tract 143–29, 4.67 acres; Tract 143–30, 1.60 acres; Tract 145–41, 20.16 acres; Tract 158–42, 0.34 acre; Tract 158–43, 0.81 acre; Tract 158–44, 1.35 acres; Tract 158–45, 1.46 acres; Tract 158–46, 1.74 acres; Tract 158–47, 27.50 acres; Tract 158–48, 15.63 acres; Tract 159–59, 0.08 acre; Tract 159–60, 0.80 acre; Tract 164–50, 8.39 acres; Tract 172–05, 0.03 acre; Tract 173–08, 0.04 acre; Tract 173–10, 0.22 acre; Tract 174–05, 28.45 acres; Tract 176–19, 1.11 acres; Tract 189–30, 9.65 acres; Tract 191–27, 19.93 acres; Tract 201–11, 149.08 acres; Tract 206–06, 3.95 acres; Tract 221–11, 48.46 acres; Tract 223–07, 141.78 acres; Tract 223–08, 27.19 acres; Tract 223–10, 25.10 acres; Tract 223–12, 54.30 acres; Tract 223–13, 720.37 acres; and Tract 228–01, 6.25 acres.

The National Park Service has determined that this boundary revision will make a significant contribution to the purpose for which the preserve was created and will allow the National Park Service to maintain managerial and law enforcement jurisdiction over these tracts.

FOR FURTHER INFORMATION CONTACT: National Park Service, Glenna F. Vigil, Chief Land Resources Program Center, Intermountain Region, P.O. Box 728, Santa Fe, New Mexico 87504.

Note: When contacting this office or any government office, before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DATES: The effective date of this boundary revision is December 12, 2007.

SUPPLEMENTARY INFORMATION: The Act of October 11, 1974, as amended, established the Big Thicket National Preserve and provides that after notifying the House Committee on Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. This action will add 33 tracts of land comprised of 1,372.77 acres of land to the Big Thicket National Preserve. The acquisition of these parcels was required to maintain the ecology and the present rural character for which the preserve was created. The above referenced Tracts are depicted on land acquisition segment maps as follows: Segment Map 102, having drawing number 175/30,002, sheet 2 of 5, dated December, 1975; Segment Map 104, having drawing number 175/30,002, sheet 4 of 5, dated November, 2004; Segment Map 126, having drawing number 175/30,005, sheet 8 of 11, dated December, 1977; Segment Map 143, having drawing number 175/30,007, sheet 7 of 33, dated October, 1976; Segment Map 145, having drawing number 175/30,007, sheet dated October, 2006; Segment 158, having drawing number 175/30,007, sheet 22 of 33, dated October, 1976; Segment 159, having drawing number 175/30,007, sheet 23 of 33 dated October, 1976; Segment 164, having drawing number 175/30,007, sheet 28 of 33, dated October, 1976; Segment 172, having drawing number 175/30,008, sheet 4 of 8, dated August, 1977; Segment 173, having drawing number 175/30,008, sheet 5 of 8, dated August, 1977; Segment 174, having drawing number 175/30,008, sheet 6 of 8, dated August, 1977; Segment 176, having drawing number 175/30,008, sheet 8 of 8, dated August, 1977; Segment 189, having drawing number 175/30,009, sheet 2 of 8, dated October 1977; Segment 191, having drawing number 175/30,009, sheet 4 of 8, dated October 1977; Segment 201, having drawing number 175/30,012, sheet 7 of 8, dated May 1978; Segment 206, having drawing number 175/30,011, sheet 5 of 15, dated September, 1978; Segment 221, having drawing number 175/80,010, sheet 4 of 10, dated March, 2005; Segment 223, having drawing number 175/80,010, sheet 6 of 10, dated January, 2006; and Segment 228, having drawing number 175/80,013, sheet 1 of 1, dated March, 2006. These maps are on file at the National Park Service Land Resources

Program Center, Intermountain Region, Santa Fe, New Mexico, and at the Office of the Superintendent at Big Thicket National Preserve, Beaumont, Texas.

Note: This document was received at the Office of the Federal Register, National Archives and Records Administration, Washington, DC on December 7, 2007.

Dated: July 12, 2007.

Michael D. Snyder,

Director, Intermountain Region.

[FR Doc. E7–24065 Filed 12–11–07; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of Boundary Revision.

SUMMARY: Notice is hereby given that the boundary of Big Thicket National Preserve is modified to include two tracts of land adjacent to the park. This revision is made to include privately owned property that the landowners wish to donate to the United States. The National Park Service has determined that these boundary revisions will make significant contributions to the purpose for which the park was created and will allow the National Park Service complete managerial and law enforcement jurisdiction over these tracts once acquired.

FOR FURTHER INFORMATION CONTACT: National Park Service, Glenna F. Vigil, Chief Land Resources Program Center, Intermountain Region, P.O. Box 728 Santa Fe, New Mexico 87504.

Note: When contacting this office or any government office, before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

DATES: The effective date of this boundary revision is December 12, 2007.

SUPPLEMENTARY INFORMATION: The Act of October 11, 1974, Pub. L. No. 93–439, 88 Stat. 1254, codified as amended 16 U.S.C. 698 through 698e (2006), established the Big Thicket National Preserve and provides that after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make these boundary revisions. This action will add two tracts comprising 577.59 acres of land to the Big Thicket National Preserve. The acquisition of these tracts is required to maintain the preserve's natural and ecological integrity. Tract 229–01 containing 562.09 acres and Tract 229–02 containing 15.50 acres are depicted on Segment 229 having drawing no. 175/80,016 dated January 26, 2007.

Dated: August 15, 2007.

Michael D. Snyder,

Director, Intermountain Region.

[FR Doc. E7–24066 Filed 12–11–07; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App.2).

DATES: Saturday, January 19, 2008, 9 a.m. Snow/Inclement Weather Date: Saturday, January 26, 2008, 9 a.m.

ADDRESSES: Fernwood Hotel & Resort, Route 209 & River Road, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members including committees such as Cultural and Historical Resources, and Natural Resources. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: November 14, 2007.

John J. Donahue,

Superintendent.

[FR Doc. E7–24094 Filed 12–11–07; 8:45 am]

BILLING CODE 4312–J6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting via Teleconference.

SUMMARY: The Native American Graves Protection and Repatriation Review Committee will conduct a meeting via teleconference on Tuesday, January 8, 2008 to provide comments on the proposed rule regarding the disposition of culturally unidentifiable human remains [43 CFR 10.11].

DATES: The teleconference will take place on Tuesday, January 8, 2008 from 2 p.m. to 5 p.m. Eastern Standard Time. This teleconference may conclude early if all business is finished.

ADDRESSES: Telephone conference call only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to listen to the teleconference may obtain the call-in number and access code by sending an e-mail to nagpra_info@nps.gov, with ''January 8th teleconference'' in the subject line, and your full name and organizational affiliation in the body of the e-mail. Registration for the teleconference closes at 5 p.m. Eastern Standard Time, Friday, January 4, 2008.

SUPPLEMENTARY INFORMATION: Authority. Native American Graves Protection and Repatriation Act (NAGPRA, 25 U.S.C. 3001 *et seq.*), and Federal Advisory Committee Act (FACA, 5 U.S.C. Appendix).

General Information. The Review Committee was established by NAGPRA and appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human

remains and recommending actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to nagpra__info@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Website, *http://www.nps.gov/history/nagpra/*; for the Review Committee's meeting protocol, select ''Review Committee,'' then select ''Procedures.''

Agenda for the teleconference meeting. The January 8, 2008 teleconference provides the Review Committee with an opportunity to comment on the proposed rule regarding the disposition of culturally unidentifiable human remains [43 CFR 10.11]. A copy of the proposed rule is available at: *http://www.nps.gov/history/nagpra/*

Procedures for Providing Public Comments. Interested members of the public may submit comments on the proposed rule through January 14, 2008, identified by the number RIN 1024–AD68, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.

—Mail to: Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, Docket No. 1024–AC84, 1201 Eye Street, NW (2253), Washington, DC 20005.

—Hand deliver to: Dr. Sherry Hutt, 1201 Eye Street, NW, 8th floor, Washington, DC.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 7, 2007

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E7–24060 Filed 12–11–07; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–613]

In the Matter of Certain 3G Mobile Handsets and Components; Notice of Commission Decision Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 10) of the presiding administrative law judge (''ALJ'') granting complainants' motion to amend the complaint and notice of investigation with respect to ''certain Samsung entities'' in the above-captioned investigation. The above-captioned investigation has been consolidated with Inv. No. 337–TA–601, *Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof*.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3107. 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 subject initial determination concerns investigations which have now been consolidated: Inv. No. 337–TA–601 and Inv. No. 337–TA–613. The Commission instituted Inv. No. 337–TA–601 on April 27, 2007, based on a complaint filed by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, ''InterDigital'') on March 23, 2007. 72 *FR* 21049. The complaint, as amended, alleged 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 3G wideband code division multiple access (WCDMA) handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,674,791; 6,693,579; 7,117,004; and 7,190,966. The notice of investigation named Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America LLC of Richardson, Texas (collectively, ''Samsung'') as respondents.

The Commission instituted Inv. No. 337–TA–613 on September 11, 2007, based on a complaint filed by InterDigital on August 7, 2007. 72 *FR* 51838. The complaint, as amended, alleged 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 3G mobile handsets and components by reason of infringement of certain claims of U.S. Patent Nos. 6,693,579; 7,117,004; and 7,190,966. The notice of investigation named Nokia Corporation of Finland and Nokia Inc. of Irving, Texas (collectively, ''Nokia'') as respondents.

On October 24, 2007, the ALJ consolidated Inv. No. 337–TA–601 with Inv. No. 337–TA–613.

On November 2, 2007, InterDigital moved to amend the complaint and notice of investigation to add allegations of infringement of claims 1–3 and 5–11 of U.S. Patent No. 7,286,847 (''the '847 patent'') with respect to ''certain Samsung entities.'' Neither the motion nor the supporting memorandum specify which entities are being referred to. The Commission understands the proposed amended complaint, however, as accusing all current Samsung respondents of infringement of the '847 patent. The Commission investigative attorney filed a response supporting the motion; Samsung opposed the motion. On November 14, 2007, the ALJ issued

the subject ID granting InterDigital's motion, finding that there was good cause to amend the complaint and notice of investigation. No petitions for review were filed. The Commission has determined not to review the subject ID.

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 in sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

By order of the Commission.

Issued: December 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24014 Filed 12–11–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AGOA–003]

Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Pursuant to section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(c)(2)(B)(ii)), the Commission has instituted investigation No. AGOA–003, *Denim Fabric: Commercial Availability in AGOA Countries During Fiscal Year 2009*, for the purpose of gathering information and making the determinations required concerning whether certain denim fabric will be available in commercial quantities during fiscal year 2009 for use by lesser developed beneficiary (LDB) sub-Saharan African (SSA) countries in the production of apparel articles receiving preferential treatment under AGOA, and if so, the quantity that will be available.

DATES: December 5, 2007: Institution of investigation.

March 18, 2008: Deadline for filing request to appear at the public hearing.

March 21, 2008: Deadline for filing pre-hearing briefs and statements.

April 9, 2008: Public hearing.

April 23, 2008: Deadline for filing post-hearing briefs and statements.

April 28, 2008: Deadline for filing all other written submissions.

August 1, 2008: Transmittal of Commission report to the President and U.S. Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: Project leader Kimberlie Freund (202–708–5402 or *kimberlie.freund@usitc.gov*) or deputy project leader Andrea Boron (202–205–3433 or *andrea.boron@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

Background: On December 20, 2006, the President signed into law amendments to section 112 of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721), included in Public Law 109–432. Section 112(c)(2)(A)–(B)(i) of the amended statute requires the Commission to determine, following receipt of a petition, whether regional SSA fabric or yarn is available in commercial quantities for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment, and, if so, the quantity of fabric or yarn that will be so available in the following fiscal year (October 1–September 30). Once a fabric or yarn has been determined to be so available, section 112(c)(2)(B)(ii) of AGOA requires the Commission, in each subsequent year through fiscal year 2012, to determine whether such fabric or yarn will be so available in the following fiscal year, and if so, the quantity that will be available in that following fiscal year.

Section 112(c)(2)(C) of AGOA deemed denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule of the United States to be available in commercial quantities in the amount of 30 million square meter equivalents during the period October 1, 2006–September 30, 2007 (fiscal year 2007) as if a petition had been filed and the Commission had made an affirmative determination and determined such denim fabric to be available in that quantity. In September 2007, the Commission determined, pursuant to section 112(c)(2)(B)(ii), that such denim fabric will be available in commercial quantities during fiscal year 2008, and will be available in the amount of 21,303,613 square meter equivalents. The Commission transmitted its determination and report in that investigation to the President on September 25, 2007 (Commission investigation No. AGOA–07–001, now re-designated as investigation No. AGOA–001, *Commercial Availability of Fabric & Yarns in AGOA Countries: Certain Denim*, Commission Publication 3950, September 2007).

The Commission is required, before the end of fiscal year 2008, to make determinations concerning whether certain denim fabric will be so available during fiscal year 2009 and, if so, the quantity that will be available. The Commission has instituted investigation No. AGOA–003 for the purpose of gathering the information necessary to make these determinations. The Commission expects to transmit its determinations and report in this investigation to the President and the U.S. Trade Representative on or before August 1, 2008.

It should be noted that the Commission is currently conducting a separate investigation, investigation No. AGOA–002, to determine the extent to which the denim fabric deemed to be available during fiscal year 2007 for use in LDB SSA countries in the production of apparel articles receiving U.S. preferential treatment was so used. As indicated below, the Commission will hold a consolidated public hearing for both investigations.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC, beginning at 9:30 a.m. on April 9, 2008. To facilitate attendance at the hearing by parties also interested in attending the hearing in investigation No. AGOA–002, the Commission will hold a consolidated hearing for both investigations. Requests to appear at the public hearing should be filed with the Secretary not later than 5:15 p.m., March 18, 2008, in

accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., March 21, 2008; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., April 23, 2008. In the event that, as of the close of business on March 18, 2008, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after March 18, 2008, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary. All written submissions (except for requests to appear at the hearing and pre- and post-hearing briefs and statements with earlier due dates) should be received not later than 5:15 p.m., April 28, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the President and the U.S. Trade Representative. After transmitting its report, the Commission intends to publish a public version of its report, with any confidential business information deleted. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in the public version of the report in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: December 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24017 Filed 12–11–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–619]

In the Matter of: Certain Flash Memory Controllers, Drives, Memory Cards, and Media Players and 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 October 24, 2007, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of SanDisk Corporation of Milpitas, California. A supplement to the complaint was filed on November 7, 2007. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash memory controllers, drives, memory cards, and media players and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,426,893, 6,763,424, 5,719,808, 6,947,332, and 7,137,011. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is 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: Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3052.

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 (2007).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 4, 2007, *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)(B) 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 flash memory controllers, drives, memory cards, and media players and products containing same by reason of infringement of one or more of claims 12–14, 17, 25, 27, 30, 36, 37, 39, 41, and 58 of U.S. Patent No. 6,426,893; claims 17, 18, 24, and 30 of U.S. Patent No. 6,763,424; claims 11, 14–17, 20, and 21 of U.S. Patent No. 5,719,808; claims 5 and 10 of U.S. Patent No. 6,947,332; and claim 8 of U.S. Patent No. 7,137,011, and whether an industry in the United States exists

as required by subsection (a)(2) of section 337;

(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—

SanDisk Corporation, 601 McCarthy Boulevard, Milpitas, California 95035.

(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:

Phison Electronics Corporation, 2F, No. 669, Sec. 4, Zhongxing Road, Zhudong Town, Hsinchu County, Taiwan.

Silicon Motion Technology Corporation, Silicon Motion Inc., No. 8F–1, No. 36, Taiyuan Street, Zhubei City, Hsinchu County, Taiwan.

Silicon Motion, Inc., Silicon Motion International, Inc., 1591 McCarthy Blvd., Milpitas, California 95035.

USBest Technology, Inc., 7F, No. 1, Jinshan 8th Street, East District, Hsinchu City, Taiwan.

Skymedi Corporation, 5F, No. 6, Dusing 1st Road, Hsinchu Science Park, Hsinchu, 300, Taiwan.

Chipsbrand Microelectronics (HK) Co., Ltd., 31/F The Landmark Gloucester Road, 11 Pedder St., Central District, Hong Kong Island, Hong Kong, Chipsbank Technology (Shenzhen) Co., Ltd.

Chipsbank Microelectronics Co., Ltd., No. 201–205, 2/F, Bldg. No. 4, Keji Central Road 2, Software Park, South Area High-Tech Industrial Park, Shenzhen, China 518057.

Zotek Electronic Co., Ltd., Dba Zodata Technology Limited, Rm 2502, 25/F, EW International Tower, 120 Texaco Road, Tsuen Wan, Hong Kong.

Infotech Logistic, LLC, Dba Supertron Memory, c/o USA Corporate Services Inc., 46 State Street, 3rd Floor, Albany, New York 12207.

Power Quotient International Co., Ltd., 14F, No. 16, Jian 8th Road, Zhonge City, Taipei County, Taiwan.

Power Quotient International (HK) Co., Ltd., Flat F. 4/F, Yeung Yiu Chung (No. 8) Industrial, Building, 20 Wang Hoi Road, Kowloon Bay, Kowloon, Hong Kong.

Syscom Development Co., Ltd., c/o Insigner Corporation Services (BVI) Ltd., Palm Grow Service House, PO Box 438, Road Town, Tortola, British Virgin Islands.

PQI Corporation, 46539 Fremont Blvd., Fremont, California 94538.

PNY Technologies, Inc., 299 Webro Road #2, Parsippany, New Jersey 07054–0218.

Kingston Technology Company, Inc., Kingston Technology Corporation, 17600 Newhope St., Fountain Valley, California 92708.

Payton Technology Corporation, 17600 Newhope St., Ste. B, Fountain Valley, California 92708.

MemoSun, Inc., 17600 Newhope St., Fountain Valley, California 92708.

Melco Holdings, Inc., 4–11–50, Osu, Naka-Ku, 460–0011 Nagoya, Aichi, Japan.

Buffalo, Inc., 15, Shibata hondori 4-chome, Minami-ku, Nagoya, 457–8520, Japan.

Buffalo Technology (USA), Inc., 11100 Metric Blvd., Suite 750, Austin, Texas 78758.

Verbatim Corporation, 1200 West W.T. Harris Blvd., Charlotte, North Carolina 28262.

Transcend Information Inc., No. 70, Xing Zhong Road, Nei Hu Dist., Taipei 11494, Taiwan.

Transcend Information Inc., 1645 North Brian St., Orange, California 92867.

Transcend Information Maryland, Inc., Suites Q & R, 514 Progress Drive, Linthicum, Maryland 21090.

Imation Corp., Imation Enterprises Corp., 1 Imation Place, Oakdale, Minnesota 55128.

Memorex Products, Inc., Imation Consumer Division, 17777 Center Court Drive, Suite 800, Cerritos, California 90703.

Add-On Computer Peripherals, Inc., Add-On Computer Peripherals, LLC, Dba Acp-Ep Memory, Dba Ep Memory, 34 Mauchly, Suite A, Irvine, California 92618.

Add-On Technology Co., 1F, No. 11, Lane 206, Da-An, Road Sec. 1, Taipei, Taiwan.

A-Data Technology Co., Ltd., 18F, No. 25, Liancheng Road, Zhonghe City, Taipei County, Taiwan.

A-Data Technology (USA) Co., Ltd., 3149 Skyway Court, Fremont, California 94539.

Acer, Inc., 8F, 88, Sec. 1, Xintai 5th Road, Xizhi City, Taipei County, Taiwan.

Apacer Technology Inc., 9F, 100, Sec. 1, Xintai 5th Road, Xizhi City, Taipei County, Taiwan.

Apacer Memory America, Inc., 380 Fairview Way, Milpitas, California 95035.

Behavior Tech Computer Corp., 20F–B, No. 98, Sec. 1, Xintai 5th Road., Xizhi City, Taipei County, Taiwan.

Emprex Technologies Corp., 20F, 108 Xintai 5th Road, Sec. 1, Xizhi City, Taipei County, Taiwan.

Behavior Tech Computer (USA) Corp., Dba BTC USA, 4180 Business Center Dr., Fremont, California 94538.

Corsair Memory, Inc., 46221 Landing Parkway, Fremont, California 94538.

Dane-Elec Memory S.A., 149–165 Avenue Gallieni, 93171 Bagnolet, France.

Deantusaiocht Dane-Elec TEO, Dba Dane-Elec Manufacturing, Spiddal Industrial Estate, Spiddal, Galway, Ireland.

Dane Elec Corp. USA, Dba Intervalle Corporation, Dba Dane-Elec Manufacturing USA, 15770 Laguna Canyon Road, #100, Irvine, California 92618.

EDGE Tech Corporation, Dba Peripheral Enhancements Corporation, 1310 North Hills Center, Ada, Oklahoma 74820.

Interactive Media Corp., Dba Kanguru Solutions, 3 Christina Center, 120 Jeffrey Ave, Holliston, Massachusetts 01746.

Kaser Corporation, 46711 Fremont Blvd., Fremont, California 94538.

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul, Seoul 150875, Republic of Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Ave., Englewood Cliffs, New Jersey 07632.

TSR Silicon Resources Inc., 16 West 30th Street, New York, New York 10001.

Welldone Company, 1F., No. 181, Anmei Street, Neihu District, Taipei City, Taiwan.

(c) The Commission investigative attorney, party to this investigation, is Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401P, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as 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 cease and desist order or both directed against a respondent.

By order of the Commission.

Issued: December 6, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24016 Filed 12–11–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation, And Liability Act

Notice is hereby given that on November 29, 2007, a proposed Consent Decree in *United States* v. *Creftcon Industries,* Civil Action No. 07–07812, was lodged with the United States District Court for the Central District of California.

The consent decree resolved claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''DTSC'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (''Site'') in Los Angeles County, California.

The proposed Consent Decree requires Defendant to reimburse the United States $1,750,000 and DTSC $12,000, to resolve defendant's liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in EPA's 1998 Interim Record of Decision.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Creftcon Industries,* D.J. Ref. 90–11–2–354/20.

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usjdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $*12.25* (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–6029 Filed 12–11–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 3, 2007, a proposed Consent Decree in *United States of America* v. *Essroc Cement Corporation*, Civil Action No. 4:07–cv–157 was lodged with the United States District Court for the Southern District of Indiana.

The proposed Consent Decree resolves the United States' claims against Essroc Cement Corporation (''Essroc'') under section 113 of the Clean Air Act as amended, 42 U.S.C. 7413 (the ''Act''), in connection with Essroc's operation of a portland cement manufacturing facility in Speed, Indiana (''Speed Facility'' or ''Facility''). Under the proposed Consent Decree, Essroc would be required to: (1) Pay $750,000 in civil penalties for alleged violations of the National Emissions Standard for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry codified at 40 CFR part 63, subpart LLL, the Indiana State Implementation Plan adopted pursuant to section 110 of the Act, and provisions of the federally enforceable operating permit for the Speed Facility; and (2) certify test results that demonstrate that a newly installed fabric filter baghouse will consistently control emissions from the main stack at one of the Facility's kilns. Also under the proposed Consent Decree, Essroc would be required to perform two supplementary environmental projects (''SEP'') that are designed to eliminate or minimize fugitive particulate emissions from specified areas of the Facility. One SEP involves construction of an air curtain and ventilation system with dust collectors and ductwork to prevent emissions of fugitive dust from the facility's clinker storage entrance hall. The second SEP involves paving some 900 linear feet of roads at the Facility that are heavily trafficked by trucks bringing raw materials to production areas. The SEPs are valued, collectively, at $900,000.

For a period of thirty days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and National Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Essroc Cement Corporation*, D.J. Reference No. 90–5–2–1–2090/1.

The proposed Consent Decree may be examined at the Offices of the United States Attorney for the Southern District of Indiana at 10 West Market Street, Suite 2100, Indianapolis, IN 46204 (317–226–6333), and at the Office of the Regional Counsel, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604 (contact Associate Regional Counsel Susan Perdomo (312–886–0557). During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.75 for the Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward

a check in that amount to the Consent Decree Library at the stated address.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–6028 Filed 12–11–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 5, 2007 a proposed Consent Decree in the case of *United States* v. *Liberty Property Limited Partnership,* Docket No. 07–cv–5119, was lodged with the United States District Court for the Eastern District of Pennslyvania.

In this proceeding, the United States filed a claim pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for the performance of response work at a portion of the Crater Resources Superfund site, in Upper Merion Township, Montgomery County, Pennsylvania, and reimbursement of response costs. Pursuant to the consent decree the defendants will perform cleanup work on property owned by Liberty Property, within the Crater Resources Site. Liberty Property will also reimburse U.S. EPA for future response costs related to the work being performed.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdog.gov,* or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *U.S.* v. *Liberty Property Limited Partnership,* D.J. Ref. 90–11–2–1283/2.

The Consent Decree may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029, c/o Patricia Miller. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site: *http://www.usdog.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdog.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $25.75 for the Consent Decree only (25 cents per page reproduction cost), or $90.50 for the Consent Decree and all of the attached exhibits, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–6027 Filed 12–11–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Year 2007 Form M–1 With Electronic Filing Option, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice on the Availability of the Year 2007 Form M–1 with Electronic Filing Option.

SUMMARY: This document announces the availability of the Year 2007 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. It is substantively identical to the 2006 Form M–1. The Form M–1 may again be filed electronically over the Internet.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the Form M–1 filing requirement, contact Amy Turner or Beth L. Baum, Office of Health Plan Standards and Compliance Assistance, at (202) 693–8335. For inquiries regarding how to obtain or file a Form M–1, see the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2007 Form M–1

This document announces the availability of the Year 2007 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). This year's Form M–1 is substantively identical to the Year 2006 Form M–1. The electronic filing option has been retained and filers are encouraged to use this method. The Year 2007 Form M–1 is due March 3, 2008, with an extension until May 2, 2008 available.

The Employee Benefits Security Administration (EBSA) is committed to working together with administrators to help them comply with this filing requirement. Copies of the Form M–1 are available on the Internet at *http://www.dol.gov/ebsa/forms_requests.html.* In addition, after printing, copies will be available by calling the EBSA toll-free publication hotline at 1–866–444–EBSA (3272). Questions on completing the form are being directed to the EBSA help desk at (202) 693–8360. For questions regarding the electronic filing capability, contact the EBSA computer help desk at (202) 693–8600.

Statutory Authority: 29 U.S.C. 1021–1024, 1027, 1029–1031, 1059, 1132, 1134, 1135, 1181–1183, 1181 note, 1185, 1185a–b, 1191, 1191a–c; Secretary of Labor's Order No. 1–2003, 68 FR 5374 (February 2, 2003).

Signed at Washington, DC this 6th day of December, 2007.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7–24040 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,090]

ABN AMRO Services Co., Inc., A Wholly Owned Subsidiary of Lasalle Bank Corporation, Chicago, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked October 18, 2007, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 17, 2007 and published in the **Federal Register** on October 3, 2007 (72 FR 56385).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of ABN Amro Services Co., Inc., a wholly owned subsidiary of LaSalle Bank Corporation, Chicago, Illinois was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm are engaged in information technology support. The investigation further revealed that no production of article(s) occurred within the firm or appropriate subdivision within the ABN Amro Services Co., Inc. and LaSalle Bank Corporation during the relevant time period.

The petitioner contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner acknowledges that the workers of the subject firm are ''employees of the services sector supporting staff for the bank,'' but further alleges that the workers of the subject firm ''produced output on regular basis''. The petitioner describes these outputs as loans, wire transfer data, account reconciliation statements, billing statements, various statistical data, programs, reports, electronic files, etc.

The investigation revealed that all of the above ''outputs'' are information and documents used by the subject firm as incidentals to the purpose of the services provided by ABN Amro Services Co., Inc., a wholly owned subsidiary of LaSalle Bank Corporation. The investigation revealed that workers of ABN Amro Services Co., Inc., a wholly owned subsidiary of LaSalle Bank Corporation, Chicago, Illinois are engaged in IT applications support, maintenance and development. These services, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act. No production took place at the subject facility and the workers did not support production of articles at any affiliated firm in the relevant time period.

The petitioner also alleges that the positions have been shifted from the subject firm to India and China.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of ABN Amro Services Co., Inc., a wholly owned subsidiary of LaSalle bank Corporation, Chicago, Illinois do not produce an article within the meaning of Section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 5th day of December, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24023 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,330]

Gerdau Ameristeel, Perth Amboy, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 19, 2007 in response to a worker petition filed by a company official on behalf of workers of Gerdau Ameristeel, Perth Amboy, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 5th day of December, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24020 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,976]

Intel Corporation, Mobile Wireless Networking Manufacturing/Operations Division, Hillsboro, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 23, 2007, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 24, 2007 and published in the **Federal Register** on October 12, 2007 (72 FR 58131).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Intel Corporation, Mobile Wireless Networking Manufacturing/Operations Division, Hillsboro, Oregon engaged in production of wireless cards for notebook computers was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The investigation revealed that worker separations at the subject firm are attributed to worldwide restructuring of the company to increase efficiencies. The investigation also revealed that production of wireless cards for notebook computers was shifted from the subject firm to Taiwan, which is not a party to a Free Trade Agreement with the United States or a beneficiary country. The subject firm did not import wireless cards for notebook computers and is not planning to import these products in the future.

The petitioner alleges that ''activities were not restructured across the company'', but were rather outsourced to suppliers in Asia. The petitioner also alleges that production from the subject firm was shifted to China, not Taiwan.

The initial investigation did reveal that production was shifted from Intel Corporation, Mobile Wireless Networking Manufacturing/Operations Division, Hillsboro, Oregon to Taiwan and further to China. Neither Taiwan nor China are countries that are a party to Free Trade Agreements with the United States or beneficiary countries. Thus a shift in production to either China or Taiwan does not qualify workers of the subject firm eligible for TAA.

The subject firm reported no imports of wireless cards for notebook

computers and there are no plans to import wireless cards for notebook computers from China or Taiwan.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 5th day of December, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–24021 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Training Center Located at 4000 Airport Road Approximately Two Miles Northwest of Riverton, WY

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Training Center to be Located at 4000 Airport Road Approximately Two Miles Northwest of Riverton, WY.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Training Center to be located in Riverton, Wyoming, and that the proposed plan for a new Job Corps Training Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by January 9, 2008.

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Unit Chief of Facilities, U.S. Department of Labor, Office of the Secretary, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Environmental Assessment (EA) summary addresses the proposed construction of a new Job Corps Training Center in Riverton, Wyoming. The subject property for the proposed Job Corps Training Center is an approximately 124.4-acre undeveloped parcel of land owned by the City of Riverton, Wyoming.

The Job Corps Training Center project would include construction of the academic/vocational training center, residential housing, single parent housing, child care facility, medical/dental facilities, cafeteria, recreation, storage and maintenance areas, administrative support facilities, and site utilities. The new facility will be able to accommodate 250 to 300 residential students and 15 non-residential students.

The Job Corps Training Center will have a positive affect on the Riverton area. This conclusion is based upon the fact the Riverton area has been actively pursuing the Job Corps Training Center by bringing the community together to achieve the goal of the Job Corps Training Center development. This was the sentiment shared by Wind River Reservation, City, County and State officials, when they learned Riverton was selected as a Job Corps Training Center for Wyoming. It is important to note that Wyoming and New Hampshire are the only states that do not currently have a Job Corps Training Center. The city of Riverton has given a 99 year lease for $1/year on the proposed property near Airport Road for the Job Corps Training Center. The Job Corps Training Center may be the largest employer to move into Riverton since Wal-Mart arrived in 1990. Support was also provided by Fremont County School District No. 25 and the school district will be a partner in the project.

The proposed project will not have any significant adverse impact on any natural systems or resources. No state or federal threatened or endangered species (proposed or listed) have been identified on the subject property.

The Job Corps Center construction will not affect any existing historic structures, as there are no historic or archeologically sensitive areas on the proposed property parcel.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a significant source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations.

The development of the Job Corps Training Center will result in an increase in vehicular traffic, primarily because of staff required for the center and public transportation for the Job Corps Training Center students. The Job Corps Training Center development anticipated street entrance on Airport Road in Riverton does not currently have an operating traffic signal utilized for traffic control, and this may be required when the Job Corps Training Center is constructed. New primary access will also be required because the Job Corps Training Center is currently undeveloped property.

The Job Corps Training Center will not degrade existing water ways. The new Job Corps Training Center will be in an arid area of Wyoming with minimal rainfall. The development of the parcel will involve construction of potable water, sanitary sewer and storm sewer lines. The new buildings to be constructed for the proposed Job Corps Center will be tied in to the existing Riverton, Wyoming Department of Public Works Water and Sewer distribution system. The Job Corps Training Center expected contribution to waste water treatment will be well within the capacity of the Riverton Sewage Treatment Plant.

Electric services would be provided by Rocky Mountain Power. Natural gas would be provided by Source Gas, which is delivered through Source Gas pipelines. Telecommunications would be provided by Qwest and Bresnan Communications. This is not expected to create any significant impact to the regional utility infrastructure.

No significant adverse affects to local medical, emergency, fire and police services are anticipated. The primary medical provider is the Riverton Hospital located two miles southeast of the development at 2100 West Sunset Drive in Riverton. The hospital maintains emergency/trauma services and outpatient services for the Riverton area.

The Job Corps Center will have a small medical and dental facility on-site for use by the residents as necessary. Security services at the Job Corps will be provided by the center's security staff. Law enforcement services are provided by the Riverton Police Department located at 816 North

Federal Blvd. in Riverton. The Riverton Fire Department is a volunteer department, which runs two local fire stations in the city of Riverton. Forty-seven (47) volunteer fire fighters are available 24 hours a day to provide fire protection and emergency medical services to city residents and businesses.

The proposed project will not have a significant adverse sociological affect on the surrounding community. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Training Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Training Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Training Center on the subject property, the ''Continue Project as Proposed'' alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Training Center Site. The construction of the Job Corps Training Center at 4000 Airport Road in Riverton, Wyoming will not create any significant adverse impacts on the environment.

Dated: December 7, 2007.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E7–24036 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Revision of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Report of Changes that May Affect Your Black Lung Benefits (CM–929 and CM–929P). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 11, 2008.

ADDRESSES: Mr. Steven Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, E-mail *andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION: I. Background: The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 936, 30 U.S.C. 941 and 20 CFR 725.533(e) authorizes the Division of Coal Mine Workers' Compensation (DCMWC) to pay compensation to coal miner beneficiaries. Once a miner or survivor is found eligible for benefits, the primary beneficiary is requested to report certain changes that may affect benefits. To ensure that there is a review and update of all claims paid from the Black Lung Disability Trust Fund, and from Social Security cases transferred to the Department of Labor under the Black Lung Consolidation of Administrative Responsibilities Act of 2002, and to help the beneficiary comply with the need to report certain changes, the CM–929 is sent to all appropriate primary beneficiaries. The CM–929 is printed by the Division of Coal Mine Workers' Compensation (DCMWC) computer system with information specific to each beneficiary, such as name, address, number of dependents on record, state workers' compensation information, and amount of current benefits. The beneficiary reviews the information and certifies that the information is current, or provides updated information. The form includes a warning about potential consequences of failure to report changes. DCMWC uses Information Collection OMB 1215–0173, Forms CM–623 and CM–623S, to monitor a representative payee's use of funds paid on a beneficiary's behalf. This is an annual reporting requirement and, while the information collected on OMB 1215–0084 and 1215–0173 is different, the same payees complete both forms, and the same DCMWC claims examiner reviews them. Therefore, DCMWC proposes to incorporate the CM–929 into the CM–623 and CM–623S in those cases that appropriately are now sent both forms. This new, composite form is entitled CM–929P, and will allow respondents to verify information to DCMWC once annually instead of twice, as is now required. This information collection is currently approved for use through June 30, 2008.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks approval for the revision of this currently approved information collection in order to verify the accuracy of information in the beneficiary's claims file, to identify changes in the beneficiary's status, and to ensure that the amount of compensation being paid the beneficiary is accurate.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Report of Changes That May Affect Your Black Lung Benefits.

OMB Number: 1215–0084.

Agency Number: CM–929 and CM–929P.

Affected Public: Individuals and Not-for-profit institutions.

Title	Form number	Number of respondents	Number of responses	Avg. time per response	Burden hours
Reporting Burden:.					
Report of Changes That May Affect Your Black Lung Benefits.	CM–929	60,900	60,900	5–8 min.	5,489
Report of Changes That May Affect Your Black Lung Benefits.	CM–929P 9,100	9,100	6–80 min.	9,889.	
Total	70,000	70,000	13 min.	15,378.	

Total Respondents: 70,000.

Total Annual responses: 70,000.

Average Time per Response: 13 minutes.

Estimated Total Burden Hours: 15,378.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 12, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–24041 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposal to extend OMB approval of the information collection: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act (WH–520). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 11, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION: I. *Background:* The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) at 29 U.S.C. 1823(b)(1) and its regulations at 29 CFR 500.135(b) provide that any person who owns or controls a facility or real property to be used for housing migrant agricultural workers cannot permit any such worker to occupy the housing unless a copy of a certificate of occupancy from the state, local, or federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. Form WH–520 is both an information gathering form and the certificate of occupancy that the Wage and Hour Division (WHD) of the Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL) issues when the WHD is the agency conducting the safety and health inspection. This information collection is currently approved for use through June 30, 2008.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to inspect and certify a migrant housing facility is meeting applicable safety and health standards under the law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1215–0158.

Agency Number: WH–520.

Affected Public: Farms.

Total Respondents: 100.

Total Annual Responses: 100.

Estimated Time per Response: 3 minutes.

Reporting: 1 minute (Recordkeeping burden for posting and filing).

Estimated Total Burden Hours: 7.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 7, 2007.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E7–24042 Filed 12–11–07; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, December 13, 2007.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Strategic Plan 2009–2014.
2. NCUA's Policy for Setting the Operating Level and Monitoring the National Credit Union Share Insurance Fund (NCUSIF).
3. National Credit Union Share Insurance Fund (NCUSIF) Investment Policy.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 07–6015 Filed 12–10–07; 2:37 pm]

BILLING CODE 7535–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Leadership Conference on Medical Education in Substance Abuse

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: A conference of leaders in the field of medical education and healthcare policy will be held on Wednesday, January 16th, 2008 at the Hyatt Regency Hotel, Washington, DC on Capitol Hill, New Jersey Ave., NW., and Washington DC, starting at 8 a.m. and concluding at 5:30 p.m. The overall objectives of the Leadership Conference are to advance widespread use of screening and brief intervention procedures designed to identify and promote behavioral change in populations engaged in risky, problematic substance use, or that have a diagnosis of abuse/addiction. Abuse of illicit drugs, alcohol, or prescription drugs adversely affects the health of millions of Americans. Wide-spread implementation of screening and brief intervention procedures can have a major, positive impact on public health. The specific conference objectives are: (1) To share with medical educators and other contributors to improving in public health, the positive benefits of screening and brief interventions; (2) To devise strategies to implement and sustain Screening, Brief Intervention and Referral to Treatment (SBIRT) procedures for substance abuse in various healthcare settings; (3) To promote adoption and use of new reimbursable healthcare procedural codes (screening and brief intervention) and examine cost-effectiveness of implementing the codes; (4) To address best practices for performing these procedures in various healthcare settings; (5) To identify challenges to implementation of these procedures in various healthcare settings and conceptualize strategies to address these challenges; (6) To generate business models for the procedures applicable to specific heath care environments; (7) To address training and educational needs for the medical community and devise efficient methods for widespread dissemination of these practices. Members of the public who wish to attend the meeting should telephone ONDCP's Leadership Conference on Medical Education telephone line at (202) 395-6750 to arrange building access.

FOR FURTHER INFORMATION CONTACT: June Sivilli at (202) 395–5526.

Dated: December 6, 2007.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. E7–24024 Filed 12–11–07; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that 11 meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

State & Regional/Arts Education (State Arts Agency Partnership Agreement review): January 8–9, 2008 in Room 716. This meeting, from 9 a.m. to 10:15 a.m. and from 12:30 p.m.–5:30 p.m. on Tuesday, January 8th, and from 9 a.m. to 2 p.m. on January 9th, will be open. A policy discussion will be held from 11:30 a.m.—12:30 p.m. on January 9th.

American Masterpieces: Visual Arts Touring (application review): January 11, 2008 in Room 716. This meeting, from 9 a.m. to 4 p.m., will be closed.

NEA National Folk Heritage Fellowships (review of nominations): January 15–18, 2008 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on January 15th and 16th, from 9 a.m. to 5:30 p.m. on January 17th, and from 9 a.m. to 3:30 p.m. on January 18th, will be closed.

Media Arts (application review): January 17–18, 2008 in Room 730. This meeting, from 9 a.m. to 5:45 p.m. on January 17th and from 9 a.m. to 5 p.m. on January 18th, will be closed.

State & Regional (State Arts Agency Partnership Agreement review): January 23–24, 2008 in Room 716. This meeting, from 9 a.m. to 6 p.m. on Wednesday, January 23rd and from 9 a.m. to 4 p.m. on January 24th, will be open. A policy discussion will be held from 2 p.m.–4 p.m. on January 24th.

American Masterpieces: Chamber Music (application review): January 23–24, 2008 in Room 714. A portion of this meeting, from 4:15 p.m. to 5:15 p.m. on Thursday, January 24th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on January 23rd and from 9 a.m. to 4:15 p.m. and 5:15 p.m. to 5:30 p.m. on January 24th, will be closed.

State & Regional/Folk Arts Infrastructure (State Arts Agency Partnership Agreement review): January 25, 2008 in Room 716. This meeting, from 9 a.m. to 5:30 p.m., will be open. A policy discussion will be held from 4:30 p.m.—5 p.m.

American Masterpieces: Chamber Music (application review): January 25, 2008 in Room 714. This meeting, from 8:30 a.m. to 5:15 p.m., will be closed.

American Masterpieces: Presenting (application review): January 29–31, 2008 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on January 29th and 30th and from 9 a.m. to 12 p.m. on January 31st, will be closed.

NEA Jazz Masters Fellowships (review of nominations): January 29, 2008 (by teleconference). This meeting, from 12 p.m. to 1:30 p.m. (EST), will be closed.

NEA Jazz Masters Fellowships (review of nominations): January 29, 2008 (by teleconference). This meeting, from 2 p.m. to 3 p.m. (EST), will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: *December 7, 2007.*

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–24070 Filed 12–11–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Project 0741]

Notice of Receipt and Availability of Application for a Combined License Dominion Virginia Power—North Anna Unit 3

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Combined License Application.

FOR FURTHER INFORMATION CONTACT: Thomas Kevern, Senior Project Manager, ESBWR/ABWR Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–0224; fax: (301) 415–5199; e-mail: *tak@nrc.gov.*

SUPPLEMENTARY INFORMATION: On November 26, 2007, Dominion Virginia Power (Dominion, or the applicant) filed with the U.S. Nuclear Regulatory Commission (NRC, or the Commission) pursuant to section 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 52, Subpart C, an application for a combined license (COL) for an economic simplified boiling water reactor (ESBWR) to be located at the North Anna Power Station (NAPS) site in Louisa County, Virginia, and designated as North Anna Unit 3. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 50.33, and an agreement to limit access to sensitive information submitted pursuant to 10 CFR 50.37.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML073320913. Future publicly available documents related to the application will also be posted in ADAMS. 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 staff by telephone at 1–800–397–4209 or 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.html.*

Dated at Rockville, Maryland, this 6th day of December, 2007.

For the Nuclear Regulatory Commission.

Thomas A. Kevern,

Senior Project Manager, ESBWR/ABWR Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E7–24089 Filed 12–11–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; FERMI 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 74, section 74.19(c), for Facility Operating License No. NPF–43, issued to Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed ACTION:

The proposed action would exempt the licensee from the requirement in 10 CFR 74.19(c) to conduct a physical inventory of all special nuclear material (SNM) at intervals not to exceed 12 months. Specifically, the request is for exemption from the physical inventory requirements for those fuel assemblies that are stored under the Holtec Overhead Platforms (HOPs) when the HOPs are installed in the spent fuel racks.

The proposed action is in accordance with the licensee's application dated April 27, 2007, as supplemented by letter dated November 9, 2007.

The Need for the Proposed Action

The proposed action would allow the licensee to not have to perform physical inventory of fuel assemblies below the HOPs when the HOPs are installed. Therefore, the licensee would not have to empty and remove the HOPs to perform the annual SNM physical inventory.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that exempting the licensee from performing a physical inventory of fuel assemblies under the HOPs when the HOPs are installed is acceptable.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Fermi 2, NUREG–0769, dated August 1981 and NUREG–0769, Addendum No. 1 dated March 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on December 4, 2007, the staff consulted with the Michigan State official, Thor Strong of the Michigan Department of Environmental Quality, Radiological Protection Section, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 27, 2007, as supplemented by letter dated November 9, 2007. The licensee requested that the enclosures to both letters be withheld from public disclosure because they contain security-related sensitive information. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet 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 the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.* 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.

Dated at Rockville, Maryland, this 5th day of December 2007.

For the Nuclear Regulatory Commission.

Adrian Muñiz,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24087 Filed 12–11–07; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for approval.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval. Comments were solicited in the 60-day notice, posted on October 2, 2007, and no comments were received.

DATES: This 30-day notice is to inform the public, that this collection is being submitted to OMB for approval.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Application for Political Risk Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 9 hours per project.

Number of Responses: 100 per year.

Federal Cost: $24,300.00.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for insurance underwriting analysis.

Dated: December 7, 2007.

John Crowley III,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 07–6030 Filed 12–11–07; 8:45 am]

BILLING CODE 3210–01–M

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–4; OMB Control No. 3235–0279; SEC File No. 270–198.

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 17a–4 (17 CFR 240.17–4)—Records to be preserved by certain exchange members, brokers and dealers.

Rule 17a–4 requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made by Rule 17a–3 (17 CFR 240.17a–3). In addition, Rule 17a–4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

There are approximately 5,791 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4

is 254 hours per broker-dealer per year. Thus the staff estimates that the total compliance burden for 5,791 respondents is 1,470,914 hours.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a compliance manager is $245 per hour.[1] Based upon these numbers, the total cost of compliance for 5,791 respondents is approximately $360.4 million (1,470,914 yearly hours × $245).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, 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: December 5, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24034 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[1] This figure is based on the SIFMA Report on Office Salaries In the Securities Industry 2006 (Compliance Manager).

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 701; OMB Control No. 3235–0522; SEC File No. 270–306.

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 701(17 CFR 230.701) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires issuers conducting employee benefit plan offerings in excess of $5 million in reliance on the rule to provide the employees covered by the plan with risk and financial statement disclosures. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Approximately 300 companies annually rely on the Rule 701 exemption. The Rule 701 disclosure takes an estimated 2 hours per response to prepare for a total annual burden of 600 hours. We estimate that 25% of the 2 hours per response (.5 hours) is prepared by the company for a total annual reporting burden of 150 hours (.5 hours per response × 300 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (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 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.

Please direct your written comments to R. Corey Booth, 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*.

Dated: December 4, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24035 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56904; File No. SR–CTA–2007–02]

Consolidated Tape Association; Notice of Filing of the Eleventh Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan

December 5, 2007.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on November 5, 2007, the Consolidated Tape Association (''CTA'') Plan Participants (''Participants'')[3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the Second Restatement of the CTA Plan (the '' CTA Plan''). The proposal represents the eleventh substantive amendment to the Plan (''Eleventh Substantive Amendment'') and reflects changes unanimously adopted by the Participants. The proposed amendment would permit Participants to report to the Processor under the CTA Plan the actual number of shares for each transaction (exclusive of odd-lots), rather than to report the number of round lots for each transaction. The Commission is publishing this notice to solicit comments from interested persons on the proposed Eleventh Substantive Amendment to the CTA Plan.

I. Rule 608(a)

A. Description and Purpose of the Amendment

The Plan currently requires Participants to include in their transaction reports to the CTA Plan's processor the stock symbol of the Eligible Security, the price at which the transaction was executed, and the volume, in round lots, involved in the transaction.

The Eleventh Substantive Amendment proposes to replace the requirement that Participants report each transaction's volume in round lots with a requirement that each Participant

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC; Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority); National Stock Exchange, Inc.; New York Stock Exchange LLC.; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc.

report the actual number of shares for each transaction, exclusive of odd-lots.

The Participants believe that reporting transactions in the actual number of shares traded rather than round lots will add greater transparency to the marketplace. The Participants also believe that it remains appropriate to exclude odd lots from CTA trade reporting because the small size of odd-lot trades adds little to marketplace transparency and because the number of odd-lot trades would merely serve to clutter data feeds and make it more difficult for investors to obtain a true view of the markets for Eligible Securities. The text of the proposed Amendment is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendment

The Participants propose to implement the change soon after receipt of Commission approval of the Amendment, but no earlier than January 1, 2008.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The amendment will impose no burden on competition.

5. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to interpretation of the CTA Plan as a result of the amendment.

6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each Plan Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. *Terms and Conditions of Access*
Not applicable.
b. *Method of Determination and Imposition, and Amount of, Fees and Charges*
Not applicable.
c. *Method of Frequency of Processor Evaluation*
Not applicable.
d. *Dispute Resolution*
Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Eleventh Substantive Amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CTA–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA–2007–02. 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 Plan amendment that are filed with the Commission, and all written communications relating to the Plan amendment 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the CTA Plan amendment also will be available for inspection and copying at the principal office of the CTA. 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–CTA–2007–02 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23966 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56805; File No. SR–Amex–2007–122]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Liability for the Actions or Omission of Amex Book Clerks

November 16, 2007.

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 November 16, 2007, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the

[4] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 996—ANTE providing for the limited liability of the Exchange in connection with the actions of Amex Book Clerks (''ABCs''). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit members, member organizations, and associated persons of member organizations to bring a claim or claims against the Exchange, in limited circumstances, for the actions of an ABC. The Commission, in April 2007, published for public comment in the **Federal Register** the Exchange's proposal to eliminate the agency obligations of specialists and establish ABCs.[5] In connection with the approval of the ABC proposal, the Exchange submits this filing relating to the liability of the Exchange for the actions of ABCs.

The ABC will be an Exchange employee or independent contractor designated by the Exchange to be responsible for: (i) Maintaining and operating the customer limit order book and display book for assigned options classes; and (ii) effecting proper executions of orders placed in the customer order limit book. The ABC will be prohibited from having an affiliation with any member that is approved to act as a specialist, registered options trader (''ROT''), remote registered options trader (''RROT'') and supplemental registered options trader (''SROT'') on the Exchange. In addition, ABCs are also responsible for handling Linkage Orders [6] in all appointed options classes. As a result, the ABC will have the means to: (1) Utilize an options specialist's account to route P/A Orders and Satisfaction Orders to away markets based on prior instructions that must be provided by the options specialist to the ABC, and (2) handle all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed. The ABC also would have the means to utilize the options specialist's account to fill Satisfaction Orders that result from a trade-through that the Exchange effects.

Article IV, Section 1(e) of the Amex Constitution provides that the Exchange, its affiliates, officers, Governors, committee members, employees or agents shall not be liable to a member, member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority. However, Article IV, Section 1(e) does permit the Board of Governors of the Exchange to provide, by rule, Exchange liability with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the floor of the Exchange or between the floor of the Exchange and other markets. Accordingly, proposed Rule 996—ANTE would permit Exchange liability, in limited circumstances, relating to the actions of ABCs for: (i) Maintaining and operating the customer limit order book and display book; and (ii) effecting proper executions of orders placed in the customer order limit book.

Limitation of Liability. The liability of the Exchange for claims arising out of errors or omissions made by ABCs will be limited as follows:

- As to any one or more claims made by a single member on a single trading day, the Exchange shall not be liable in excess of the larger of $75,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members on a single trading day, the Exchange shall not be liable in excess of the larger of $100,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.
- As to the aggregate of all claims made by all members during a single calendar month, the Exchange shall not be liable in excess of the larger of $250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

If all of the claims arising out of errors or omissions by an ABC cannot be fully satisfied because they exceed the applicable maximum amount of liability provided for above, then the maximum amount will be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such claim bears to the sum of all such claims.

Exchange liability will also be limited if a member, member organization or the Exchange fails to close out an uncompared trade as set forth in Rule 960.[7] In such a case, the opposing

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55583 (April 5, 2007), 72 FR 18695 (April 13, 2007) (notice of filing of SR–Amex–2006–107).

[6] ''Linkage Order'' means an immediate or cancel order routed through the Linkage as permitted under the Linkage Plan. There are three types of Linkage Orders: (i) ''Principal Acting as Agent (''P/A'') Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker (or equivalent entity on another Participant Exchange) and is not a P/A Order; and (iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[7] Commentary .01(b) to Rule 960 provides that all rejected options transaction notices (''ROTNs'') must be ''OK'd'' or ''DK'd'' not later than one-half

Continued

party's liability with respect to any claims arising from such trade will be limited to the lesser of: (1) The loss which would have been experienced by the claimant if the uncompared trade had been closed out at the opening of trading on the next business day as provided in Rule 960; or (2) the actual loss realized by the claimant.

Furthermore, the Exchange's potential liability is also limited if any damage is caused by an error or omission of an ABC which is the result of any error or omission of a member organization. Under such circumstances, the member organization will be required to indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

Procedure. Absent reasonable justification or excuse, any claim by a member, member organization, or persons associated with a member or member organization for losses arising from errors or omissions of an ABC, and any claim by the Exchange for indemnification under paragraph (g) of Proposed Rule 996—ANTE, must be presented in writing to the opposing party within ten (10) business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out but within ten (10) business days following such resolution of the unmatched trade.

For purposes of proposed Rule 996—ANTE, the term ''transaction'' means any single order or instruction which is placed with an ABC, or any series of orders or instructions, which is placed with an ABC at substantially the same time by the same member and which relates to any one or more series of options of the same class. All errors and omissions made by an ABC with respect to or arising out of any transaction will give rise to a ''single claim'' against the Exchange. The Exchange will retain any defenses to such claim or claims that it may have. In addition, no claim will be permitted to arise as to errors or omissions which are found to have resulted from any failure by a member or by any person acting on behalf of a member, to enter or cancel an order with such ABC on a timely basis or clearly and accurately to communicate to such ABC:

(i) The description or symbol of the security involved; or

(ii) The exercise price or option contract price; or

(iii) The type of option; or

(iv) The number of trading units; or

(v) The expiration month; or

(vi) Any other information or data which is material to the transaction.

Arbitration. Pursuant to proposed Rule 996—ANTE, all disputed claims will be referred to binding arbitration with the decision of a majority of the arbitrators selected to hear and determine the controversy deemed final. There will be no appeal right to the Board of Governors from any decision of an arbitration panel. The arbitration panel will be composed of an odd number of panelists. Each of the parties to the dispute will select one Exchange member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are members of the Exchange and that no member of the arbitration panel may have any direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist(s), such additional panelist(s) shall be appointed by a Floor Official chosen by a random draw who has no direct or indirect financial interest in the claim. The NASD Code of Arbitration Procedure for Industry Disputes (Article VIII of the Amex Constitution) shall apply to any arbitration proceeding.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [8] in general and furthers the objectives of Section 6(b)(5) of the Act [9] in particular in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to the Chicago Board Options Exchange's (''CBOE'') rules regarding limitation of exchange liability for acts and omission of CBOE Par Officials,[13] previously published for comment and approved by the Commission,[14] and the Exchange's

hour prior to the opening of trading on the first business day following the trade date unless an agent (including a specialist) was involved in the execution of a transaction, where the time limit shall be extended to fifteen minutes prior to such opening (these time limits may be extended by a Floor Official).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] The Exchange has satisfied the requirement under Rule 19b–4(f)(6)(iii) that it give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing.

[13] *See* CBOE Rules 6.7, ''Exchange Liability,'' and 7.11, ''Liability of Exchange for Actions of Order Book Officials, and PAR Officials.''

[14] *See* Securities Exchange Act Release Nos. 52017 (July 12, 2005), 70 FR 41453 (July 19, 2005) (notice of filing of SR–CBOE–2005–46) and 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (order approving SR–CBOE–2005–46).

proposal raises no new issues of regulatory concern. Waiving the operative delay will allow the proposal to become effective simultaneously with Amex's proposal to establish ABCs, which we are approving separately today.[15] Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Amex–2006–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–122. 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 Commissions 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–122 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23967 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Securities Exchange Act Release No. 56804 (November 16, 2007) (order approving SR–Amex–2006–107).

[16] For purposes only of waiving the operative delay of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56901; File No. SR–Amex–2007–20]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Related To Amending Complex Orders Procedures

December 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 15, 2007, the American Stock Exchange LLC (''Amex'' 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 substantially prepared by the Amex. On November 28, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend complex orders procedures to allow the adjustment of the options leg of the order if market conditions prevent the execution of the non-option leg at the price agreed upon.

The text of the proposed rule change is available at *http://www.amex.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 1 makes revisions to the 19b–4, as originally filed, and replaces and supersedes the original filing in its entirety.

Complex orders involving orders consisting of stock or securities futures and option legs are effective hedging strategies that would permit Members to initially offset the risk of price movements in an option position, with a corresponding purchase or sale of stock underlying the option position or securities futures. The Exchange recently adopted language to allow for the execution of stock-option orders and security future-option orders.[3] These rules currently provide that complex orders consisting of stock or security futures and options legs that fall within their proposed definition will be afforded the same priorities as spread, straddle, ratio, and combination orders.[4]

Amex Rule 953–ANTE provides the execution procedures for stock-option orders and security future-options orders. Currently, under Amex Rule 953–ANTE, if the security or security

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 53588 (April 3. 2006), 71 FR 18122 (April 10, 2006).

[4] *See* Commentary .01 to Rule 950–ANTE(d).

futures leg of the order cannot be executed at the price(s) agreed upon due to market conditions, a trade representing the execution of the options leg of the transaction may be cancelled at the request of any member that is a party to that trade.

The Exchange proposes to amend Rule 953—ANTE (b)(ii) to provide that if the security or security futures leg of the order cannot be executed at the price agreed upon due to market conditions, the price of a trade representing the execution of the options leg of the transaction may be adjusted to be consistent with the net debit or credit price [5] of the original order, if market conditions in any of the non-Exchange markets prevent the execution of the non-option leg at the price agreed upon

For example, a floor broker walks into the ABC options crowd to sell 20 November ABC calls at $2.00 against 1000 shares of ABC stock at $50.00, the price where the stock is presently trading. The net debit price for this transaction would be $46,000.[6] A member/members agrees to the trade. The broker then goes to cross the stock at $50.00, but is unable to because of movement in the stock price, and crosses it at $50.10. The price of the options would be adjusted and the broker would print the options at $2.05 to maintain the net debit or credit price of the original order.[7]

The Exchange notes that the orders are presented as crosses and the counterparty acknowledges the adjustment. When agreeing to the trade, the counterparty is aware that the price of the trade representing the options leg of the transaction may be adjusted. Lastly, the Exchange notes that the re-pricing of the options leg must be consistent with the Amex's priority and parity rules.[8] If the transaction does not satisfy the Exchange's priority and parity rules by the end of the trading day, then the transaction would be cancelled.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) [9] of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5) [10] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Amex consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Amex-2007–20. 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2007–20 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24032 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[5] The net debit or credit will remain the same. The calculation of the net debit or credit is not subject to interpretation.

[6] The original net price for the transaction: 1000 shares at $50.00 ($50,000) less 20 calls at $2.00 ($4,000) equals a net price of $46,000.

[7] The adjusted net price for the transaction: 1000 shares at $50.10 ($50,100) less 20 calls at $2.05 ($4,100) equals a net price of $46,000.

[8] *See* Commentary .01 and .02 to Rule 950–ANTE(c). As noted in the aforementioned example, if there was a public customer order on the book for $2.05 at the time of the trade, the member would not be permitted to trade through the customer's order.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56900; File No. SR–CHX–2007–22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Amend Rules Relating to the Execution of Odd Lot Market Orders

December 5, 2007.

On October 2, 2007, the Chicago Stock Exchange, Inc. (''CHX'' 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 amend rules relating to the execution of odd lot market orders. The proposed rule change was published for comment in the **Federal Register** on October 31, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Under CHX's existing rules, odd lot orders execute in the Matching System without regard to the protected quotations of other markets.[4] The Exchange states that this is because such orders are not subject to the Regulation NMS Order Protection Rule [5] and can trade through better prices in other markets.[6] Through this filing, the Exchange proposes to amend its rules to provide that market odd lot orders would execute like round lot orders (*i.e.*, they would execute as if they were subject to the Regulation NMS Order Protection Rule), while odd lot limit orders and odd lot crosses could continue to execute through better prices on other markets.[7]

The Exchange believes that this proposal will provide appropriate protections to odd lot market orders, while allowing participants to choose to have odd lot limit orders and odd lot crosses executed at other prices.[8]

After a careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange,[9] in particular, Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change promotes just and equitable principles of trade and will benefit investors and the public interest by providing additional trade-through protection, beyond the requirements of the Order Protection Rule, for investors' odd lot market orders that are submitted to the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2007–22) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23965 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 56703 (October 25, 2007), 72 FR 61696.

[4] *See* CHX Rules, Article 20, Rule 5(b).

[5] 17 CFR 242.611.

[6] The Exchange states that its handling of the execution of odd lot orders is consistent with the requirements of Regulation NMS. *See* Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 7.03 (confirming that Rule 611 does not apply to odd lot orders).

[7] The Exchange believes that a participant that submits an odd lot cross seeks to have that order executed at a particular price, without regard to prices in other markets. Similarly, if a participant submits an odd lot limit order, that participant likely only seeks the protection of the order's limit price and does not anticipate that the order would be protected against better prices in other markets.

[8] Odd lot market orders that would trade through the protected quotations of other markets would be rejected from the Exchange's Matching System and either routed to another appropriate market or, if designated as ''do not route,'' automatically cancelled. *See* CHX Rules, Article 20, Rule 5(a).

[9] In approving the proposed rule change, the Commission notes that it as considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–56916; File No. SR–NASD–2007–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority Inc.); Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Expand the Class of Entities Permitted To Use the Delta Hedging Exemption From Equity Options Position Limits

December 6, 2007.

On June 29, 2007, the National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc.) 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 amend Rule 2860 to expand the class of entities permitted to use the delta hedging exemption from equity options position limits.[3] The Commission published the proposed rule change for comment in the **Federal Register** on August 13, 2007.[4] On October 15, 2007, FINRA filed Amendment No. 1 to the proposed rule change.[5] The Commission received one comment letter on the proposed rule change.[6] This order approves the proposed rule change as modified by Amendment No. 1.

In 2004, the Commission approved amendments to Rule 2860 that provide a delta hedging exemption from stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

[4] *See* Securities Exchange Act Release No. 56207 (August 6, 2007), 72 FR 45284.

[5] In Amendment No. 1, FINRA made technical revisions to the proposal. This is a technical amendment and is not subject to notice and comment. In Amendment No. 1, FINRA noted that the effective date of the proposal will be February 1, 2008, or such later date as may be necessary to ensure completion of the required technology changes by the Options Clearing Corporation and the Securities Industry Automation Corporation.

[6] *See* letter to Nancy M. Morris, Secretary, Commission, from John R. Vitha, Esq., Chairman, Derivative Products Committee, Securities Industry and Financial Markets Association, dated September 25, 2007. The commenter supported the proposed rule change.

options position and exercise limits [7] for positions held by affiliates of FINRA members approved by the Commission as ''OTC derivatives dealers.'' [8] Under the proposal, FINRA would expand eligibility for its delta hedging exemption beyond OTC derivatives dealers by allowing members and certain non-member affiliates [9] to rely on this exemption if its position in standardized and/or conventional equity options is delta neutral under a ''Permitted Pricing Model.'' [10] The options contract equivalent of the net delta [11] of a hedged options position still would be subject to the position limits in Rule 2860 (subject to the availability of any other position limit exemptions).[12] A member that intends to employ, or whose non-member affiliate intends to employ, this exemption would be required to provide a written certification to FINRA stating that the member and/or its affiliate will use a Permitted Pricing Model, and that if an affiliate ceases to hedge stock options positions in accordance with such systems and models, it will provide immediate written notice to the member.[13] Furthermore, any member or designated aggregation unit would be required to report any aggregate position of 200 or more contracts on the same side of the market and the options contract equivalent of the net delta of a position representing 200 or more contracts.[14] In addition, the options positions of a non-member relying on this exemption would be required to be carried by a member with which it is affiliated.[15]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[16] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NASD–2007–044), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24044 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[7] The proposed rule change does not expressly amend FINRA's options exercise limits in Rule 2860(b)(4) because such exercise limits apply only to the extent Rule 2860(b)(3) imposes position limits. Thus, as delta neutral positions would be exempt from position limits under the proposed rule change, such positions also would be exempt from exercise limits. *See* NASD *Notice to Members* 94–46 (June 1994) at 2 (''* * * exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise * * * only the number of options contracts set forth as the applicable position limit for those options classes.''). Similarly, for positions held that are not delta neutral, only the option contract equivalent of the net delta of such positions would be subject to exercise limits.

[8] *See* Securities Exchange Act Release No. 50748 (November 29, 2004), 69 FR 70485 (December 6, 2004) (SR–NASD–2004–153).

[9] The Commission notes that only those non-member affiliates identified in the definition of ''Permitted Pricing Model'' would be eligible to rely on the delta hedging exemption. *See infra* note 10.

[10] ''Permitted Pricing Model'' for purposes of this exemption would be a pricing model used by: (1) A member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3-1 under the Act (*i.e.,* a consolidated supervised entity or ''CSE''); (2) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; (3) a Commission registered OTC derivatives dealer; (4) a national bank under the National Bank Act; and (5) a member, or non-member affiliate (that is part of a CSE or FHC), using a pricing model maintained and operated by the Options Clearing Corporation. *See* proposed Rule 2860(b)(3)(A)(vii)(b)(1).

[11] ''Net delta'' would be defined to mean ''the number of shares that must be maintained (either long or short) to offset the risk that the value of an equity options position will change with incremental changes in the price of the security underlying the options position.'' *See* proposed changes to Rule 2860(b)(2)(GG).

''Options Contract Equivalent of the Net Delta'' would be defined to mean the net delta divided by the number of shares underlying the options contract. *See* proposed Rule 2860(b)(2)(LL).

[12] *See* proposed Rule 2860(b)(3)(A)(vii)(b). The Commission notes that Rule 2860(b)(3)(A)(vii) provides for multiple, independent hedge exemptions. Of course, to the extent that a position is used to hedge for the purpose of one exemption from position limit requirements, such as the delta hedge exemption, such position cannot be used to take advantage of another exemption from position limit requirements.

[13] *See* proposed Rule 2860(b)(3)(A)(vii)(b)(3).

[14] *See* proposed Rule 2860(b)(3)(A)(vii)(b)(4).

[15] *See* proposed Rule 2860(b)(3)(A)(vii)(b)(3).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78o-3(b)(6).

[18] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (File No. S7–30–97) (adopting rules relating to OTC derivatives dealers).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56910; File No. SR–NASDAQ–2007–071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Generic Listing and Trading Rules for Securities Linked to the Performance of Indexes, Commodities, and Currencies

December 5, 2007.

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 3, 2007, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On October 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On November 29, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. On December 4, 2007, the Exchange filed Amendment No. 3 to the proposed rule change. This order provides notice of and approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (1) Amend NASDAQ Rule 4420(m) to (a) permit the listing and trading of commodity-linked securities (''Commodity-Linked Securities,'' and, together with Equity Index-Linked Securities,[3] collectively, ''Linked Securities''), and (b) conform

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, NASDAQ Rule 4420(m) relates only to the listing and trading of ''Index-Linked Securities'' that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities. *See* NASDAQ Rule 4420(m). For purposes of the proposed rule change, however, the Exchange seeks to modify the name of such securities to be ''Equity Index-Linked Securities,'' among other proposed changes described herein.

the rule with changes to defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges; [4] and (2) make conforming changes to the quantitative maintenance criteria under NASDAQ Rule 4450(c). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://nasdaq.complinet.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (1) Amend NASDAQ Rule 4420(m) to (a) permit the listing and trading of Commodity-Linked Securities pursuant to Rule 19b–4(e) under the Act,[5] and (b) conform the rule with changes to defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges; and (2) make conforming changes to the quantitative maintenance criteria under NASDAQ Rule 4450(c).

Generic Listing Standards for Commodity-Linked Securities

NASDAQ's rules currently permit the listing and trading of Equity Index-Linked Securities pursuant to Rule 19b–4(e) under the Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1),[6] if the Commission has approved, pursuant to Section 19(b) of the Act,[7] the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. As a result, the Exchange seeks Commission approval to adopt generic listing standards under amended NASDAQ Rule 4420(m), pursuant to which it would be able to continue to list and trade Equity Index-Linked Securities and list and trade Commodity-Linked Securities, in each case, without individual Commission approval of each such product. The Exchange states that any securities it considers to list and/or trade pursuant to NASDAQ Rule 4420(m), as amended, must satisfy the applicable standards set forth therein.

Commodity-Linked Securities are proposed to be defined as securities that provide for payment at maturity of a cash amount based on the performance of one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities,[8] or a basket or index of any of the foregoing (the ''Reference Asset'').[9] The Exchange proposes that each Reference Asset be must be subject to one of the following requirements:

- The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act [10] and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; [11] or
- The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an Intermarket Surveillance Group (''ISG'') member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (1) The generally accepted spot price for the currency exchange rate in question; or (2) derived from a market which (a) is an ISG member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement, and (b) is the pricing source for a Currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the foregoing requirements; however, no single component subject to this exception may exceed 7% of the dollar weight of the Reference Asset.[12]

In addition, the value of the Reference Asset must be calculated and widely disseminated on at least a 15-second basis during NASDAQ's Regular Market Session, and, in the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during NASDAQ's regular market session.[13] In the case of Commodity-Linked Securities, if the Reference Asset value or indicative value (if required to be disseminated) is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the course of the day on which such

[4] See, *e.g.*, Section 703.22 of the New York Stock Exchange LLC Listed Company Manual; Sections 107D, 107E, 107F of the American Stock Exchange LLC *Company Guide*; Rule 5.2(j)(6) of NYSE Arca Equities, Inc.; and Rule 2130 of the International Securities Exchange, LLC.

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4(c)(1).

[7] 15 U.S.C. 78s(b).

[8] Under the proposal, the Exchange defines the terms ''Commodity-Related Security'' and ''Commodity'' by cross referencing NASDAQ Rule 4630. NASDAQ Rule 4630 defines ''Commodity-Related Security'' as a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. In addition, under NASDAQ Rule 4630, the definition of ''commodity'' adopts the same meaning of such term as it is defined in Section 1(a)(4) of the Commodity Exchange Act.

[9] As described in more detail herein, the Exchange proposes to include one or more ''Currencies'' as possible components of a Reference Asset. The Exchange defines ''Currency'' as one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities (if any underlying Commodities are currencies or currency derivatives), or a basket or index of any of the foregoing. See proposed NASDAQ Rule 4420(m)(8)(B).

[10] 15 U.S.C. 78s(b)(1).

[11] *See* proposed NASDAQ Rule 4420(m)(8)(A).

[12] *See* proposed NASDAQ Rule 4420(m)(8)(B).

[13] *See* proposed NASDAQ Rule 4420(m)(9). E-mail from Alex Kogan, Associate General Counsel, NASDAQ, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2007 (confirming that the Information Circular will advise that additional risks may exist with respect to trading Linked Securities on the Exchange during NASDAQ's Pre-Market and Post-Market Sessions, when the index or Reference Asset values or indicative values may not be disseminated).

interruption occurs and, in any event, will halt trading by the time trading begins on the following trading day if the interruption persists at such time.[14]

Conforming Changes to NASDAQ Rule 4420(m)

The Exchange also proposes to conform NASDAQ Rule 4420(m) to reflect the changes made to newly defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges.[15] Specifically, the Exchange proposes to make the following material changes:

- Currently, NASDAQ Rule 4420(m)(1) provides that the minimum number of holders shall not apply if the Linked Security issue is traded in $1,000 denominations. The Exchange seeks to amend NASDAQ Rule 4420(m)(1) such that, if the Linked Security is traded in $1,000 denominations or is redeemable at the option of the holders thereof on at least a weekly basis, then the minimum number of holders and the minimum public distribution of trading units requirements shall not apply.[16]
- The Exchange seeks to change the maximum term of a Linked Security from 10 years to 30 years.[17]
- The proposal modifies the rebalancing requirement for indexes underlying Equity Index-Linked Securities based on the equal-dollar or modified equal-dollar weighting method from at least quarterly to at least semiannually.[18]
- With respect to Equity Index-Linked Securities, the Exchange proposes to establish an exception to the requirement that 90% of the underlying index's numerical value and at least 80% of the total number of its components meet the then-current criteria for standardized options trading. Under the proposal, this requirement would no longer be applicable if (a) no underlying component security represents more than 10% of the dollar weight of the index, and (b) the index has a minimum of 20 components.[19]
- With respect to Equity Index-Linked Securities, the Exchange seeks to clarify the eligibility requirements of components comprising the underlying index. Specifically, all component securities in an index must either be (A) securities (other than securities of a foreign issuer and American Depository Receipts (''ADRs'')) that are (i) issued by a reporting company under the Act or an investment company registered under the Investment Company Act of 1940, which, in each case, has securities listed on a national securities exchange, and (ii) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS),[20] or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of ISG or a party to a comprehensive surveillance sharing agreement with NASDAQ may not, in the aggregate, represent more than 20% of the dollar weight of the index.[21]

Finally, the Exchange proposes to modify NASDAQ Rule 4420(m)(4) to clarify that the payment at maturity may or may not provide for a multiple of the direct or inverse performance of any underlying index, indexes, or Reference Asset, provided that, in no event may a loss (negative payment) at maturity be accelerated by a multiple that exceeds the performance of an underlying index, indexes, or Reference Asset. Under this proposal, it will be possible for positive payment at maturity to be a multiple of the index or Reference Asset performance (including both a multiple of the direct performance and a multiple of the inverse of the actual performance). However, the proposal continues to maintain that, under NASDAQ's proposed generic listing and trading rules for Linked Securities, a negative payment at maturity may not be accelerated by a multiple that exceeds the performance of an underlying index or Reference Asset.

Proposed Changes to the Quantitative Maintenance Criteria of NASDAQ Rule 4450(c)

The Exchange also seeks to amend NASDAQ Rule 4450(c) which governs the maintenance criteria for securities listed pursuant to NASDAQ Rule 4420(f) and Linked Securities. Specifically, the proposal provides that, with respect to a Commodity-Linked Security listed pursuant to new NASDAQ Rule 4420(m), delisting or removal proceedings would be commenced (unless the Commission approved the continued trading of the subject security) if any of the listing requirements set forth in new NASDAQ Rule 4420(m) that were applicable at the time of the initial listing of the security are no longer being met.[22] Notwithstanding the foregoing, a Commodity-Linked Security will not be delisted due to the lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and NASDAQ has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.[23] In addition, under the proposal, delisting or removal proceedings would also be commenced if: (1) the value of the Reference Asset is no longer calculated or widely disseminated as required; or (2) the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of new NASDAQ Rules 4420(m) and 4450(c).[24]

Surveillance and Information Circular

The Exchange states that the Financial Industry Regulatory Authority, Inc. (''FINRA,'' f/k/a the National Association of Security Dealers, Inc.), under a regulatory services contract with NASDAQ, will continue to monitor transactions in Linked Securities to identify and discipline any improper trading activity in such securities. The Exchange notes that FINRA's surveillance procedures are adequate to properly monitor the trading of Linked Securities. To the extent applicable, NASDAQ and/or FINRA will also be able to obtain trading and beneficial holder information from the primary trading markets for the components comprising the Reference Asset, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG.

In addition, as currently provided in NASDAQ Rule 4420(m)(8),[25] if the underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index, and the index must be calculated by a third party who is not a broker-dealer. The required firewall must be structured and maintained in a form satisfactory to NASDAQ in order to prevent the flow of information regarding the index from

[14] *See* proposed NASDAQ Rule 4420(m)(10).

[15] *See* supra note 4.

[16] *See* proposed NASDAQ Rule 4420(m)(1).

[17] *See* proposed NASDAQ Rule 4420(m)(2).

[18] *See* proposed NASDAQ Rule 4420(m)(7)(B)(iii).

[19] *See* proposed NASDAQ Rule 4420(m)(7)(B)(vi).

[20] *See* 17 CFR 242.600(b)(47).

[21] *See* proposed NASDAQ Rule 4420(m)(7)(B)(vii).

[22] *See* proposed NASDAQ Rule 4450(c)(4).

[23] *See id.*

[24] *See* proposed NASDAQ Rule 4450(c)(5).

[25] Under the proposal, NASDAQ Rule 4420(m)(8) has been re-numbered to be NASDAQ Rule 4420(m)(9). *See* proposed NASDAQ Rule 4420(m)(9).

the index production personnel to sales and trading personnel.

NASDAQ represents that it will continue its current practice of evaluating the nature and complexity of each Linked Security, and distributing, if appropriate, an Information Circular that describes the Linked Security to members, highlighting the particular structure and corresponding risks of the Linked Security.[26] The Information Circular would also reference the suitability requirements for members recommending a transaction in Linked Securities (NASDAQ Rule 2310), indicate that NASDAQ's equity trading rules would apply to the trading of Linked Securities, and note that the registration statement or prospectus for the Linked Security ought to be consulted and delivered, if required, in connection with a Linked Security transaction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[27] in general, and furthers the objectives of section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–071. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NASDAQ–2007–071 and should be submitted on or before January 2, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[29] and, in particular, the requirements of section 6 of the Act.[30] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[31] 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.

To list and trade Commodity-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act[32] and Rule 19b-4 thereunder.[33] However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Commodity-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements. The Exchange's ability to rely on Rule 19b-4(e) to list and trade Commodity-Linked Securities that meet the applicable requirements of proposed NASDAQ Rule 4420(m) should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards for such securities that are substantively identical to the Exchange's current proposal.[34] The Commission believes

[26] *See* Securities Exchange Act Release. No. 53142 (January 19, 2006), 71 FR 4180 (January 25, 2006) (approving NASDAQ's current listing standards for Linked Securities and describing, among other things, the information to be included in the Information Circular). *See also supra* note 13 and accompanying text.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 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).

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(5).

[32] 15 U.S.C. 78s(b)(1).

[33] 17 CFR 240.19b-4.

[34] *See supra* note 4; Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR–Amex–2007–45) (approving, among other things, generic listing standards for Commodity-Linked Securities and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27) (approving

Continued

that the proposed generic listing standards for Commodity-Linked Securities, in addition to the proposed conforming changes to the generic listing standards applicable to all Linked Securities and Equity Index-Linked Securities, should fulfill the intended objective of Rule 19b–4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.[35]

The Commission notes that any Linked Securities approved for listing and trading would be subject to the FINRA's surveillance procedures to monitor the trading in such securities. The Exchange has represented that, to the extent applicable, NASDAQ and/or FINRA will be able to obtain trading and beneficial holder information from other primary trading markets either pursuant to information sharing agreements with such markets or because such markets are members or affiliate members of ISG.

The Exchange has represented that it will distribute, as appropriate, an Information Circular to members describing the product, the particular structure of the product, and the corresponding risks of trading Linked Securities, including the risks involved in trading such securities during markets sessions other than NASDAQ's Regular Market Session, when an updated index or Reference Asset value, or indicative value, if required, is not calculated or publicly disseminated.[36] In addition, the Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Linked Securities to customers and the registration statement or prospectus delivery requirements. The Information Circular will also note that the Exchange's equity trading rules will be applicable to the trading of Linked Securities.

Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Exchange's proposed conforming changes to the generic listing standards that apply to all Linked Securities, proposed changes to the generic listing standards for Equity Index-Linked Securities, and the proposed generic listing standards for Commodity-Linked Securities are based on previously approved listing standards for such securities.[37] The Commission is presently not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[38] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NASDAQ–2007–071), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23973 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities). NASDAQ's proposal also takes into account certain modifications recently made by other national securities exchanges to the various types of Linked Securities, as applicable. *See, e.g.,* 107A of the American Stock Exchange LLC *Company Guide* (reflecting exceptions to the minimum public distribution requirements for certain types of securities, including Linked Securities); Securities Exchange Act Release Nos. 56879 (December 3, 2007) (SR–NYSEArca–2007–110) (approving certain proposed changes to the initial listing and trading standards for Equity Index-Linked Securities); 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR–NYSEArca–2007–118) (approving certain modifications made to the requirements relating to the indexes underlying Equity Index-Linked Securities); and 56525 (September 25, 2007), 72 FR 56114 (October 2, 2007) (SR–NYSE–2007–76) (approving certain exceptions to the requirement relating to pricing information of components comprising Commodity-Linked Securities and Currency-Linked Securities).

[35] The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

[36] *See supra* note 13 and accompanying text.

[37] *See supra* notes 4 and 34.

[38] 15 U.S.C. 78s(b)(2).

[39] *Id.*

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56917; File No. SR–NASDAQ–2007–085]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified By Amendment No. 1 Thereto, Amending Nasdaq's Membership Application Rules

December 6, 2007.

I. Introduction

On October 30, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq's membership application procedures. The proposed rule change was published for comment in the **Federal Register** on November 6, 2007.[3] On December 4, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

Nasdaq is proposing to amend its 1000 Series rules governing its membership application process to tailor the rules to proprietary trading firms. Under the proposed rule, a ''proprietary trading firm'' is defined as an applicant: (1) That is not required to become a member of the Financial Industry Regulatory Authority (''FINRA'') by section 15(b)(8) of the Act[5] but is a member of another registered securities exchange not registered solely under section 6(g) of the Act; (2) whose source of funds or proposed source of funds to be used for trading are the applicant's own capital, traded through the applicant's own accounts; (3) that does not, and will not have ''customers''[6]; and (4) whose principals and representatives acting or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56722 (October 31, 2007), 72 FR 62709 (''Notice'').

[4] In Amendment No. 1, Nasdaq corrected typographical errors and clarified that in Rule 1013(a)(1), an applicant should file an amendment to its membership application no later than 15 days after the applicant ''knew or should have known'' about facts and circumstances that gave rise to the need for the amendment. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

[5] 15 U.S.C. 78*o*(b)(8).

[6] The term ''customer'' does not include a broker or dealer. *See* Nasdaq Rule 0120(g).

to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.[7]

A. Required Information in the Application

Under the new application process, an applicant would be required to submit certain information in its application.[8] This information includes the following:

- A copy of the applicant's current Form BD;
- an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to Rule 17f–2 under the Act and for whom a fingerprint card has not been filed with another SRO;
- Nasdaq's application fee;
- a description of the applicant's proposed trading activities on Nasdaq;
- a copy of the applicant's most recent audited financial statements and a description of any material changes in the applicant's financial condition since the date of the financial statements;
- an organizational chart;
- the intended location of the applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under the Nasdaq Rules, and the names of the persons who will be in charge of each office;[9]
- a description of the communications and operational systems the applicant will employ to conduct business and the plans and procedures the applicant will employ to ensure business continuity;
- a copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the applicant or an Associated Person;
- a statement indicating whether the applicant is currently or has recently been the subject of any investigation or disciplinary proceeding;
- a statement indicating whether any person listed on Schedule A of the applicant's Form BD (*i.e.*, the direct owners and executive officers of the applicant) is currently or has recently been the subject of any investigation or disciplinary proceeding;
- a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the applicant with services regarding the execution or clearance and settlement of transactions effected on Nasdaq;
- if the applicant proposes to make markets on Nasdaq, a description of the source and amount of applicant's capital to support its market making activities on Nasdaq, and the source of any additional capital that may become necessary;
- a description of the financial controls to be employed by the applicant with respect to Nasdaq Rule 3011, which governs anti-money laundering controls;
- a copy of the applicant's written supervisory procedures with respect to the applicant's proposed trading activities on Nasdaq;
- a list of the persons conducting the applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD number (if applicable) or a copy of Form U4 for each such person;
- unless previously provided to FINRA, a FINRA Entitlement Program Agreement and Terms of Use and an Account Administration Entitlement Form;
- a copy of the applicant's most recent ''FOCUS Report'' (Form X–17A–5) filed with the Commission;
- all examination reports and corresponding responses regarding the applicant for the previous two years from the SROs of which it is a member;
- An agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules;
- An agreement to pay such dues, assessments, and other charges; and
- Other reasonable information with respect to the applicant as Nasdaq may require.

Applicants must keep their application current by submitting amendments if facts and circumstances change.[10] Nasdaq proposes to amend Rule 1013(a)(1) to require applicants to file amendments with Nasdaq no later than 15 business days after the applicant or Nasdaq member knew or should have known about the facts or circumstances giving rise to the need for the amendment. Nasdaq also amended Rule 1013(a)(1) to add that an applicant must promptly notify the Nasdaq Membership Department (''Department'')[11] of any material adverse change in financial condition.

B. Membership Admission Standard

Nasdaq proposes to amend the admission standard in Rule 1014. Currently, the Department must make specific findings in order to admit an applicant as a Nasdaq member. The proposed rule would allow the Department to approve an application unless there is a basis for denying or conditioning approval.[12] The proposed rule further provides that the Department may deny (or condition) approval of an applicant for the same reasons that the Commission may deny or revoke a broker-dealer's registration and for those reasons required or allowed under the Act. The proposed rule lists specific bases upon which the Department may deny (or condition) approval of an applicant which include:[13] (1) inability of the applicant to satisfactorily demonstrate the capacity to adhere to applicable Nasdaq and Commission policies, rules, and regulations, including, those concerning record-keeping, reporting, finance, and trading procedures; (2) past rule violations by the applicant and a reasonable likelihood that the applicant will again engage in acts or practices that violate any Nasdaq or Commission policies, rules, or regulations; (3) behavior in which the applicant engaged and the existence of a reasonable likelihood that the applicant will again engage in, acts or practices inconsistent with just and equitable principles of trade; (4) factors indicative of financial difficulties, such as not being in compliance with the Commission's net capital rule or having financial difficulties involving an amount that is more than 5% of the applicant's net worth; (5) the applicant is the subject of a current or recent bankruptcy proceeding; (6) the applicant has an established pattern of failure to pay just debts; (7) failure to have required governmental and SRO registrations; or (8) inability to demonstrate reasonably adequate systems capability and capacity.

The proposed rule would provide the Department with the discretion to conduct a membership interview if it determines an interview is necessary to clarify aspects of an application.[14] The proposed rule change also reduces the time allotted for various aspects of review, both for initial applications and for changes of ownership, control and

[7] *See* proposed Nasdaq Rule 1011(o).

[8] *See* proposed Nasdaq Rules 1013(a)(1)(A)–(V). A more detailed description of the required information is described in the Notice, *supra* note 3.

[9] Nasdaq believes that most proprietary trading firms will only have one office.

[10] *See* Nasdaq Rule 1013(a)(1).

[11] The term includes FINRA staff acting on Nasdaq's behalf.

[12] A similar change would be made in Nasdaq Rule 1017(g)(1)(A), providing that an application for a material change in business operations will be approved unless there is a basis for denying it under the standards in Rule 1014.

[13] *See* proposed Nasdaq Rule 1014(a)(2).

[14] *See* proposed Nasdaq Rule 1013(b)(1).

business operations under Nasdaq Rule 1017.

C. Material Change in Business Operations

Currently, Nasdaq Rule 1017(a) provides that if there is a material change in business operations, the member will be required to file an application for approval that describes in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change. The proposed rule change amends the definition of ''material change in business operations'' in Nasdaq Rule 1011(g) to include ''adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term. * * *'' If a proprietary trading firm seeks to expand its activities to include dealings with customers, the member would be required to undergo an assessment and obtain approval of this change under Nasdaq Rule 1017.

If a firm is required to become a FINRA member due to a change in ownership, control, or business operations, the amended rule provides that the Department is not required to take action on an application for approval under Rule 1017 until FINRA has acted on the application under its rule or the firm has become a FINRA member, as applicable.[15]

E. Other Changes

In addition, Nasdaq proposes to (1) amend Rule 1021 to provide that a proprietary trading firm with 25 or fewer registered representatives is required to have only one, rather than two registered principals; (2) eliminate the requirement that traders for proprietary trading firms register as equity traders under Nasdaq Rule 1032(f); (3) amend Rule 1150 to require that a firm's executive representative under Nasdaq rules be the same as its executive representative under FINRA rules; and (4) amend Nasdaq Rule 1130 to provide that the names and addresses of executive representatives will not be available to members or the general public. Finally, the proposed rule change also makes conforming changes to provisions of Nasdaq rules 1014, 1015, and 1017 that refer to the standards for admission in Nasdaq Rule 1014.

[15] *See* proposed Nasdaq Rule 1017(g)(4).

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[16] and, in particular, the requirements of section 6 of the Act.[17] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[18] 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, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission has reviewed the provisions of the proposed rule change and believes that they are consistent with the requirements of the Act. In particular, the Commission believes that the proposed rule under which Nasdaq may deny or condition membership is reasonable and consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade and, in general, serves to protect investors and the public interest, and is also consistent with the grounds upon which an exchange may deny or condition membership under section 6(c)(3) of the Act. The circumstances described in the proposed rule under which the Exchange may deny or condition membership address situations in which an applicant has failed to demonstrate the ability to comply with the financial and regulatory responsibilities necessary for Exchange membership. The Commission notes that these bases for denial of membership are similar to those of NYSE Arca, Inc. (''NYSE Arca'') and the International Securities Exchange, LLC (''ISE'') which were approved by the Commission.[19] The Commission also notes that an applicant who has been denied membership would always have the right to appeal that decision.[20]

In addition, the Commission believes that the proposal to amend the current membership application requirements which focus on a member's relationship with its customers is appropriate because a proprietary trading firm, by definition, does not handle customer orders. Because Nasdaq's rules provide that all applicants must already be a member either of FINRA, if they transact business with the public, or of another national securities exchange, which acts as an Examining Authority for purposes of Rule 15c3–1 under the Act,[21] the Commission believes the level of information required in the amended membership application is reasonable. As stated in the Nasdaq rules, if a Nasdaq member undergoes a material change in ownership, control, or business operations, the member will be required to file an application for approval and may need to register as a member of FINRA. Further, based on Nasdaq's representation that the proposal to reduce time allotted to review applications (for both initial applications and for changes of ownership, control and business operations) is due to centralizing the review of applications as well as the less complex nature of the applicant firms (*i.e.*, proprietary trading firms and members of other SROs), the Commission believes that the reduction in review time is reasonable.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–NASDAQ–2007–085), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24045 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

[16] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); and 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004). *See also* ISE Rule 302 (Denial of and Conditions of Becoming a Member); NYSE Arca Equities Rule 2.4 (Denial of or Conditions to ETPs).

[20] *See* 15 U.S.C. 78s(f).

[21] 17 CFR 240.15c3–1.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56918; File No. SR–NYSEArca–2007–125]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Continued Listing Standards for Equity Index-Linked Securities

December 6, 2007.

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 December 5, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a), which sets forth the Exchange's continued listing criteria for Equity Index-Linked Securities.[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove from NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a) the continued listing requirement for Equity Index-Linked Securities that prohibits the number of components comprising the underlying index from increasing or decreasing by 33 ⅓ from the original number of index components at the time of initial listing of such securities (the ''33 ⅓ Requirement'').[4] The Exchange states that its listing standards for exchange-traded funds under NYSE Arca Equities Rule 5.2(j)(3) and those of other national securities exchanges do not impose this same limitation regarding the change in the number of components comprising the underlying index. The Exchange believes that, in the case of Equity Index-Linked Securities, investors purchase such securities because they believe that the underlying index methodology is accurately described in the offering documentation, and that the index sponsor will maintain the index methodology appropriately, so that the index will continue to represent the sector, geographic region, or other investment characteristics the index is designed to track. As such, rather than buying Equity Index-Linked Securities on the basis of the current contents of the index, the Exchange states that investors rely on the index sponsor to define and manage the index selection rules so that the index over time is sustainable in response to changing market conditions.

In addition, because Equity Index-Linked Securities may have terms that endure for as long as 30 years, the Exchange states it is likely that the underlying index for such securities will ultimately change in ways that will render them non-compliant with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii), and as a result, the Exchange believes that the 33⅓% Requirement penalizes Equity Index-Linked Securities with such long-term maturities. Specifically, Equity Index-Linked Securities based on total industry/country composite indexes are at risk of being delisted prior to the stated maturity date. In addition, new issues of Equity Index-Linked Securities may not be launched because of issuer concerns regarding the negative impact of the possible delisting of such securities due to index component changes that reflect expanding or retracting industry sectors or changes in the geographical business environment. The Exchange does not believe that it is protective of investors to require the delisting of those Equity Index-Linked Securities in such event.

Under the proposal, the Exchange seeks to maintain the 10-component minimum requirement in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii) as a continued listing standard by moving reference to this requirement to Rule 5.2(j)(6)(B)(I)(2)(a), which would make reference to Rule 5.2(j)(6)(B)(I)(1)(a), as proposed. NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(a) requires that each underlying index have at least 10 component securities of different issuers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities to be securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities.

[4] *See* NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(ii).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

(ii) as to which NYSE Arca consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–125. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–125 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24033 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56906; File No. SR–NYSEArca–2007–103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Initial Listing Standards for Other Securities

December 5, 2007.

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 October 3, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On November 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of and approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's initial listing standards for ''Other Securities.'' The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(1), the Exchange's initial listing standards for ''Other Securities,''[3] to provide for greater flexibility in the listing criteria for such securities, as set forth below. Under NYSE Arca Equities Rule 5.2(j)(1), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, warrants, contingent value rights, and unit investment trusts.[4] The Exchange, like certain other national securities exchanges, refers to such securities as ''Other Securities.'' This proposed rule change is designed to generally conform to the rules of the American Stock Exchange LLC (''Amex'') relating to ''Other Securities.''[5]

The introductory paragraph in NYSE Arca Equities Rule 5.2(j)(1) states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rules 5.2(c) through (h), provided the issue is suited for auction market trading.[6] The Exchange proposes to delete the reference to the specific subsections ((c) through (h)) of NYSE Arca Equities Rule 5.2 to include all products with listing standards under

---

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (August 1, 1994) (SR–PSE–93–12) (approving, among other things, the initial listing standards for ''Other Securities'').

[4] NYSE Arca Equities Rule 5.2(j)(1) currently states that the Exchange will consider listing any security not otherwise covered by the requirements of NYSE Arca Equities Rules 5.2(c) through (h). *See* NYSE Arca Equities Rule 5.2(j)(1); *see, e.g.*, NYSE Arca Equities Rules 5.2(c) (listing criteria for common stock); 5.2(d) (listing criteria for preferred stock and similar issues and secondary classes of common stock; 5.2(e) (listing criteria for bonds and debentures); 5.2(f) (listing criteria for warrants); 5.2(g) (listing criteria for contingent value rights); and 5.2(h) (listing criteria for unit investment trusts).

[5] Amex's initial listing standards for ''Other Securities'' are set forth in Section 107A of the Amex *Company Guide. See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR–Amex–89–29) (approving the initial listing criteria for ''Other Securities'').

[6] *See* supra note 4.

such rule. The Exchange proposes this change to avoid the administrative burden of updating NYSE Arca Equities Rule 5.2(j)(1) each time a new subsection is added to NYSE Arca Equities Rule 5.2. In addition, the Exchange proposes to delete the reference to ''auction market'' trading to provide that an issue of ''Other Securities'' must simply be suited for listing and trading on the Exchange. The Exchange believes that this change would allow greater flexibility in the listing of ''Other Securities,'' without impacting the protection of investors.

NYSE Arca Equities Rule 5.2(j)(1)(A) currently provides that an issue of ''Other Securities'' must have at least one million publicly held trading units and a principal amount/market value of at least $20 million. The Exchange proposes to add exceptions to this standard such that, if the issue is traded in $1,000 denominations or is redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of publicly held trading units will be required. This proposed change comports to Section 107A(b) of the Amex *Company Guide.*[7] The Exchange notes that, without the exception to the one million publicly held trading unit requirement, the Exchange would be unable to list issues in $1,000 dollar denominations having a market value of less than $1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in $1,000 denominations.

The Exchange also proposes to reduce the minimum principal amount/market value requirement from at least $20 million to at least $4 million. This change corresponds to current NYSE Arca Equities Rule 5.2(j)(2)(B)(i)(c) (Equity Linked Notes) and current NYSE Arca Equities Rule 8.3(a)(3) (Listing of Currency and Index Warrants), as well as Section 107A(c) of the Amex *Company Guide.*[8] The Exchange proposes this change in order conform NYSE Arca Equities Rule 5.2(j)(1) with other NYSE Arca Equities rules and similar rules of other exchanges for the same type of securities, while still protecting the interests of investors.

NYSE Arca Equities Rule 5.2(j)(1)(B) currently provides that an issue of ''Other Securities'' have at least 400 public beneficial holders, or if traded in $1,000 denominations, a minimum of 100 public beneficial holders. The Exchange proposes to amend this standard to provide that: (a) If an issue is traded in $1,000 denominations, then no minimum public holder number will be required;[9] and (b) if the securities are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum public holder number will be required.[10] These proposed changes correspond to section 107A(b) of the Amex *Company Guide* and are similar to the minimum distribution requirements for Index-Linked Securities of the Exchange and other national securities exchanges.[11] Although the 100 minimum public beneficial holder requirement would be eliminated as a result of this proposal, the Exchange would continue to require that the issue of the security have a minimum market value of $4 million. The Exchange believes that the overall rule should ensure that issuances in $1,000 denominations are large enough to support a sufficiently liquid market.

The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of ''Other Securities'' and the performance of the underlying asset, such as a single security or basket of securities and/or securities index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to redeem such securities for their full value. In addition, in the case of certain ''Other Securities'' with a weekly redemption feature, the issuer may have the ability to issue new ''Other Securities'' from time to time at market prices prevailing at the time of sale, at prices related to market prices, or at negotiated prices. This feature provides a ready supply of new ''Other Securities,'' thereby lessening the possibility that the market price of such securities will be affected by a scarcity of available ''Other Securities'' for sale. The Exchange believes that it also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire ''Other Securities'' from the issuer at that price.

The Exchange further believes that the ability to list ''Other Securities'' without a minimum number of publicly held trading units or public beneficial holders, subject to certain conditions, is important to the successful listing of such securities. Issuers issuing these types of ''Other Securities'' generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange-traded fund issuance, in that the issue is launched without any significant distribution event, and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. The Exchange states that investors would generally seek to purchase such securities at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it would be difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of at least one million trading units to at least 400 public holders on the listing date is not indicative of a likely long-term lack of liquidity in such securities or, for the reasons set forth herein, of a difficulty in establishing a pricing equilibrium in the securities or a successful two-sided market.

In addition, the Exchange proposes to amend the language in NYSE Arca Equities Rule 5.2(j)(1)(C) to clarify that it is the issuer of ''Other Securities'' that is subject to the financial requirements set forth therein. Finally, the Exchange proposes to delete NYSE Arca Equities Rule 5.2(j)(1)(D), which provides that settlements must be made in U.S. dollars for those issues with cash settlement provisions, and NYSE Arca Equities Rule 5.2(j)(1)(E), which provides that the redemption price must be at least $3.00 per unit for those issues that contain redemption provisions. The Exchange proposes to delete these provisions in order to bring the NYSE Arca Equities rules in line with those of other exchanges and, therefore, to

[7] *See* Section 107A(b) of the Amex *Company Guide; see also* Securities Exchange Act Release Nos. 56629 (October 9, 2007), 72 FR 58689 (October 16, 2007) (SR–Amex–2007–87) (approving an exception to the initial minimum public distribution listing requirement of one million trading units for certain derivative products) and 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR–Amex–2007–34) (approving certain other exceptions to the initial distribution requirements for ''Other Securities'').

[8] *See* Section 107A(c) of the Amex *Company Guide; see also* Securities Exchange Act Release No. 34765 (September 30, 1994), 59 FR 51220 (October 7, 1994) (SR–Amex–94–36) (approving, among other changes, the proposal to reduce the minimum principal amount/aggregate market value requirement from $20 million to $4 million and to eliminate the minimum public holder requirement if the issue of ''Other Securities'' are traded in $1,000 denominations).

[9] *See id.*

[10] *See supra* note 7.

[11] *See* NYSE Arca Equities Rule 5.2(j)(6)(A)(a); *see also* Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR–NYSEArca–2007–96) (approving amendments to the initial distribution requirements for Index-Linked Securities, which are designated as ''Other Securities,'' and other conforming changes); *see, e.g.*, Rule 2130 of the International Securities Exchange, LLC.

remain competitive in the marketplace.[12]

The Exchange believes that the proposed revisions would provide the Exchange with the flexibility necessary to evaluate the suitability of ''Other Securities'' for listing and trading. The Exchange states that such securities have special appeal for various investors, including institutions, in particular, and believes that securities admitted to listing under NYSE Arca Equities Rule 5.2(j)(1) benefit investors by providing important investment, hedging, and market timing opportunities, as well as benefiting those issuers that offer such securities as a means of raising capital at an advantageous cost.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–103. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEArca–2007–103 and should be submitted on or before January 2, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[15] and, in particular, the requirements of section 6 of the Act.[16] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] 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. The Commission believes that the proposal is reasonable and should benefit issuers and investors by allowing for the listing and trading of certain ''Other Securities'' that would otherwise not be able to be listed and traded on the Exchange, particularly in light of the manner in which such rule, as proposed, comports with the rules of other national securities exchanges that govern the initial listing standards for such securities.[18]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that it has approved similar proposals amend the initial distribution requirements of other national securities exchanges for ''Other Securities.''[19] The Commission does not believe that this proposal raises any novel regulatory issues. Accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for ''Other Securities.'' Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[20] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NYSEArca–2007–103), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

[12] *See* Securities Exchange Act Release No. 37165 (May 3, 1996), 61 FR 21215 (May 9, 1996) (SR–Amex–96–15) (eliminating the U.S. dollar cash settlement and minimum redemption price requirements for ''Hybrid Securities'' in Section 107A of the Amex *Company Guide*).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 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).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* notes 5, 7, 8, 11, and 12.

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2).

[21] *Id.*

[22] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23970 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56908; File No. NYSEArca–2007–121]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Rule 6.37B and the Quoting Obligations of Lead Market Makers

December 5, 2007.

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 November 27, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared substantially by NYSE Arca. 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

NYSE Arca proposes to amend Exchange Rule 6.37B in order to update the quoting obligations of Lead Market Makers (''LMMs''). The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nysearca.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 purpose of this rule change is to update the quoting obligations for LMMs, contained in NYSE Arca Rule 6.37B.

In 2003, the Exchange established a continuous quoting obligation for LMMs,[3] in conjunction with the introduction of its electronic trading system then known as PCX Plus.[4] This obligation called for an LMM to provide continuous two sided-quotations throughout the trading day in its appointed issues. The quoting obligation was subsequently amended in 2005 [5] so that an LMM needed only to supply continuous quotations for 99% of the time that the Exchange is open for trading in each issue.

Under the PCX Plus system, in addition to LMMs, there were three other categories of Market Makers: Remote Market Makers, Floor Market Makers, and Supplemental Market Makers. Of these three, only Remote Market Makers had a minimum continuous quoting obligation. Given that fact that not all Market Makers had minimum quoting requirements, coupled with the fact that the Exchange had a relatively small number of registered Remote Market Makers,[6] the Exchange believed that a 99% continuous quoting obligation for LMMs would serve as a mechanism to help ensure that there would be adequate liquidity in any issue, throughout the trading day.

With the introduction of the Exchange's current electronic trading platform, the OX system, in 2006, the Exchange reclassified the Remote Market Maker, Supplemental Market Maker, and Floor Market Maker into one classification, simply called Market Maker. Under rules adopted by the Exchange in conjunction with the implementation of the OX system, all Market Makers now have minimum continuous quoting obligations.[7] Due to the fact that all Market Makers now have some minimum quoting obligations, coupled with an increase in the number of Market Makers providing quotations on a continuous basis,[8] the Exchange no longer believes that it necessary for an LMM to be held to a 99% quoting obligation in order for there to be adequate liquidity in a given issue. Therefore, the Exchange is proposing to update Rule 6.37B(b) by reducing an LMMs continuous quoting obligation from 99% to 90%.

The Exchange also seeks to add certain exemptions to Rule 6.37B. Specifically, when determining whether a LMM has met its 90% quoting obligation, the Exchange would not consider the duration of any periods where a technical failure on the part of the Exchange prevents the LMM from providing continuous quotations. Also, the Exchange would retain the discretion to consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. Finally, the Exchange proposes to amend the review period for this obligation, from a quarterly basis to a monthly basis. The shorter time period would allow the Exchange to better monitor an LMMs performance.

The Exchange does not believe that lowering the LMM quoting obligation would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes its current market structure with its high rate of participation by LMMs and Market Makers permits the lowering of the quoting obligation without fear of losing liquidity.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR–PCX–2002–36).

[4] PCX Plus was replaced in 2006 by the OX system, NYSE Arca's present electronic trading platform.

[5] *See* Securities Exchange Act Release No. 51740 (May 25, 2005), 70 FR 32686 (June 3, 2005) (SR–PCX–2005–64).

[6] At the time PCX Plus was introduced in October 2003, in addition to LMMs, there were five registered Remote Market Makers subject to continuous quoting obligations.

[7] NYSE Arca Rule 6.37B(c) states that a Market Maker must provide continuous two sided quotations throughout the trading day in its appointed issues for 60% of the time the Exchange is open for trading in each issue.

[8] As of October 31, 2007, in addition to Lead Market Makers, there were fifty-five registered Market Makers subject to continuous quoting obligations.

[9] Also, the Exchange notes that NYSE Arca Rule 6.37B(d), which states that in the interest of maintaining a fair and orderly market, a Market Maker may be called upon by a Trading Official to maintain continuous quotes in one or more series of an option issue, shall continue to apply.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 NYSE Arca consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–121 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–121. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–121 and should be submitted on or before January 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23972 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56907; File No. SR–NYSEArca–2007–122]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Certain Modifications to the Initial Listing Standards for Index-Linked Securities

December 5, 2007.

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 November 28, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6), the Exchange's listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities (collectively, ''Index-Linked Securities'').[3] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend one of the requirements of NYSE Arca Equities Rule 5.2(j)(6)(A), which sets

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities to be securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (an ''Equity Reference Asset''). Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201), or a basket or index of any of the foregoing (a ''Commodity Reference Asset''). Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202), or a basket or index of any of the foregoing (a ''Currency Reference Asset,'' and together with Equity Reference Asset and Commodity Reference Asset, collectively, a ''Reference Asset'').

forth the listing requirements applicable to all types of Index-Linked Securities to be listed and traded on the Exchange, to provide for greater flexibility in the listing criteria for such securities. Currently, NYSE Arca Equities Rule 5.2(j)(6)(A)(d) provides that the payment at maturity of a cash amount for Index-Linked Securities may or may not provide for a multiple of the positive performance of an underlying Reference Asset, and in no event will payment at maturity be based on a multiple of the negative performance of an underlying Reference Asset.

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(A)(d) to: (a) Allow the Exchange to consider for listing and trading Index-Linked Securities that provide for payment at maturity based on a multiple of the direct or inverse performance of an underlying Reference Asset; and (b) provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds twice the performance of an underlying Reference Asset. The Exchange proposes these changes in order to permit the listing and trading of Index-Linked Securities that employ investment strategies similar or analogous to certain exchange-traded funds like the Short Funds and UltraShort Funds of the ProShares Trust and the Inverse Funds and Leveraged Inverse Funds of the Rydex ETF Trust, each of which trade on the Exchange pursuant to unlisted trading privileges (''UTP'') under NYSE Arca Equities Rule 5.2(j)(3).[4] 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 respective 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 respective underlying indexes.

The Exchange believes that these changes will allow greater flexibility in the listing and trading of Index-Linked Securities and offer investors additional investment options. The Exchange believes that investors will continue to be protected because the payment at maturity cannot be based on a multiple that exceeds twice the inverse performance of an underlying Reference Asset.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that 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 NYSE Arca consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–122. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–122 and should be submitted on or before January 2, 2008.

[4] *See* Securities Exchange Act Release Nos. 56763 (November 7, 2007), 72 FR 64103 (November 14, 2007) (SR–NYSEArca–2007–81) (approving the trading of shares of funds of the Rydex ETF Trust pursuant to UTP); 56601 (October 2, 2007), 72 FR 57625 (October 10, 2007) (SR–NYSEArca–2007–79) (approving the trading shares of eight funds of the ProShares Trust based on international equity indexes pursuant to UTP); 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR–NYSEArca–2006–87) (approving the trading of shares of 81 funds of the ProShares Trust pursuant to UTP); and 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115) (approving the trading of shares of certain other funds of the ProShares Trust pursuant to UTP).

[5] *See id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–23971 Filed 12–11–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6023]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR Parts 120 to 130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778).

DATES: *Effective Date:* Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2980.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. In implementing this provision, section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of their AECA conviction:

(1) L&M Manufacturing Corporation, May 22, 2007, U.S. District Court, District of Connecticut, Case #3:04CR125;
(2) Nesco NY, Inc., May 22, 2007, U.S. District Court, District of Connecticut, Case #3:04CV125;
(3) Alejandro Felix-Canez, January 13, 2006, U.S. District Court, District of Arizona, Case #CR05–00965–002–PHX–ROS;
(4) Yssouf Diabate, May 9, 2007, U.S. District Court, Southern District California, Case #06CR2161–LAB;
(5) Ronald W. Wiseman, November 1, 2006, U.S. District Court, District of Columbia, Case #05–0152–01(JR);
(6) Gustavo Gonzalez, Jr., November 3, 2006, U.S. District Court, Southern District of Texas, Case #1:06CR00529–001;
(7) Carlos Ivan Deblas, February 6, 2007, U.S. District Court, Southern District of Texas, Case #1:06CR00663–001;
(8) Francisco Jimenez Briceno, February 6, 2007, District Court, Southern District of Texas, Case #1:06CR00663–002;
(9) Balbina Morales-Oscoy, February 21, 2007, District Court, Southern District of Texas, Case #7:06CR00776–001;
(10) Pedro Martinez-Carrillo, June 21, 2007, District Court, Southern District of Texas, Case #1:07CR00039–001;
(11) Lorenzo Sanchez-Castruita, January 19, 2007, District Court, Western District of Texas, Case #P–06–CR–213 (01) RAJ;
(12) Ovet Chavira, March 5, 2007, District Court, Western District of Texas, Case #4:06–CR–00220–001 RAJ;
(13) Miguel Loya, May 29, 2007, District Court, Western District of Texas, Case #4:06–CR–00279–001; and
(14) Jeffrey Roll, June 8, 2007, District Court, Southern District of Indiana, Case #1:07CR00014–001.

As noted above, at the end of the three-year period following the date of conviction, the above named persons remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under section 127.1(c) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom, or have a direct or indirect interest therein.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in

[8] 17 CFR 200.30–3(a)(12).

activities regulated by the ITAR, including any brokering activities, and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above, and by citing the court case number provided.

Dated: October 29, 2007.

Stephen D. Mull,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E7–24068 Filed 12–11–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting, Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

SUMMARY: The FAA is issuing this notice to advise the public of RTCA Special Committee 212, Helicopter Terrain Awareness and Warning System (HTWAS).

DATES: The meeting will be held January 11, 2008, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 212 meeting. The agenda will include:

- January 11:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- Approve the minutes from the 4th Plenary Meeting (December 5, 2007).
- Discuss/Resolve comments from the final review and comments (FRAC) of the draft HTAWS MOPS Document.
- Approve the draft HTAWS MOPS document for RTCA PMC consideration.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. Pre-Registration for this meeting is not required for attendance but is desired and can be done through the RTCA secretariat. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 5, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–6020 Filed 12–11–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35105]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant temporary overhead trackage rights to UP, to expire on or about March 18, 2008, over BNSF's lines between Hobart, CA (milepost 144.5), and Riverside, CA (milepost 10.6), a total distance of approximately 55 miles.[1]

The transaction is scheduled to be consummated on January 2, 2008. The purpose of the temporary overhead trackage rights is to allow UP to facilitate maintenance work on its lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

[1] UP states that the total mileage does not correspond to the milepost designations of the endpoints because the trackage rights involve BNSF subdivisions with non-contiguous mileposts.

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the transaction. Any stay petition must be filed on or before December 19, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35105, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 5, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–23916 Filed 12–11–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (LGY Surveys)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine veterans and lenders satisfaction with VA Loan Guaranty Service.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before February 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–New (LGY Surveys)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Survey of Veterans Satisfaction with the VA Home Loan Guaranty Process.

b. Loan Guaranty Service, Lender Survey.

c. VA Specially Adapted Housing Program Survey.

d. VA Specially Adapted Housing Program Survey: Eligible Non-Grantee Survey.

OMB Control Number: 2900–New (LGY Surveys).

Type of Review: New collection.

Abstract: The surveys will be used to gather information from veterans and lenders about the VA Loan Guaranty Program. The information collected will allow the VA to determine customer satisfaction with the VA's processes and to make improvements so that the program best serves the needs of eligible veterans. Additionally, VA will use the information collected from eligible users and non-users of the Specially Adapted Housing Grant Program to determine the satisfaction of grant recipients and understand the reasons why certain eligible veterans have not used this benefit.

Affected Public: Individual or Households, and Business or other for-profit.

Estimated Annual Burden:

a. Survey of Veterans Satisfaction with the VA Home Loan Guaranty Process—1,688 hours.

b. Loan Guaranty Service, Lender Survey—250 hours.

c. VA Specially Adapted Housing Program Survey—100 hours.

d. VA Specially Adapted Housing Program Survey: Eligible Non-Grantee Survey—84 hours.

Estimated Average Burden per Respondent:

a. Survey of Veterans Satisfaction with the VA Home Loan Guaranty Process—15 minutes.

b. Loan Guaranty Service, Lender Survey—15 minutes.

c. VA Specially Adapted Housing Program Survey—15 minutes.

d. VA Specially Adapted Housing Program Survey: Eligible Non-Grantee Survey—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Survey of Veterans Satisfaction with the VA Home Loan guaranty Process—6,750.

b. Loan Guaranty Service, Lender Survey—1,000.

c. VA Specially Adapted Housing Program Survey—400.

d. VA Specially Adapted Housing Program Survey: Eligible Non-Grantee Survey—700.

Dated: December 5, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–24013 Filed 12–11–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (Omnibus)]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (Omnibus)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (Omnibus).''

SUPPLEMENTARY INFORMATION:

Title: Omnibus Medication Survey.

OMB Control Number: 2900–New (Omnibus).

Type of Review: Extension of a currently approved collection.

Abstract: The survey will enable VA Pharmacy Benefits Management Strategy Health Care Group (PMB) in gathering patients' perspective in the formulary decisions involving the safety and effectiveness of medications used in the VA system. PBM will use the data collected to determine how medications used in the VA system impact the patient's quality of care; frequency of side-effects of specific medication and drug combination; and the patient's satisfaction with the overall drug therapy benefit package and process within VHA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2007, at pages 55857–55858.

Affected Public: Individuals or Households.

Estimated Annual Burden: 6,667 hours.

Estimated Average Burden per Respondent: 40 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 10,000.

Dated: December 5, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–24018 Filed 12–11–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0702]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 11, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0702'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0702.''

SUPPLEMENTARY INFORMATION:

Title: Request for National Provider Identification Number, VA Form 10–0449A.

OMB Control Number: 2900–0702.

Type of Review: Extension of a currently approved collection.

Abstract: Health care providers for veterans in the private sector (non-VA providers) are requesting local VA medical centers to provide National Provider Identifier (NPI) numbers for VA facilities and VA clinicians who have referred patients to them. NPI numbers are used by non VA providers to request reimbursement for medical care provided to veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2007 at pages 55860–55861.

Affected Public: Business or other for profit.

Estimated Total Annual Burden: 10 hours.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200.

Dated: December 5, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–24019 Filed 12–11–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
December 12, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (Branchinecta sandiegonensis); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV37

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (Branchinecta sandiegonensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating revised final critical habitat for the San Diego fairy shrimp *(Branchinecta sandiegonensis)* under the Endangered Species Act of 1973, as amended (Act). Approximately 3,082 acres (ac) (1,248 hectares (ha)) of habitat in Orange and San Diego counties, California, are being designated as critical habitat for the San Diego fairy shrimp. This revised final designation constitutes a reduction of 943 ac (382 ha) from the 2000 designation of critical habitat for the San Diego fairy shrimp.

DATE: This rule becomes effective on January 11, 2008.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this revised final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011. The revised final rule, economic analysis, and maps are available on the Internet at *http://www.fws.gov/carlsbad/*.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the San Diego fairy shrimp in this revised final rule. For more information on the taxonomy, biology, and ecology of the San Diego fairy shrimp, please refer to the final listing rule published in the **Federal Register** on February 3, 1997 (62 FR 4925), the original proposed and final critical habitat rules published in the **Federal Register** on March 8, 2000 (65 FR 12181) and October 23, 2000 (65 FR 63438), respectively, and the proposed rule to revise critical habitat published in the **Federal Register** on April 22, 2003 (68 FR 19888).

The San Diego fairy shrimp *(Branchinecta sandiegonensis)* is a small aquatic crustacean in the order Anostraca, generally restricted to vernal pools and other ephemeral (lasting a short time) basins in coastal Orange and San Diego Counties in southern California and in northwestern Baja California, Mexico. Vernal pools in southern California typically contain water in the winter and are dry in the summer. The San Diego fairy shrimp is a habitat specialist found in shallower pools that range in depth from 2 to 12 inches (in) (5 to 30 centimeters (cm)) (Simovich and Fugate 1992, p. 111; Hathaway and Simovich 1996, p. 670). San Diego fairy shrimp feed on algae, diatoms, and particulate organic matter (Parsick 2002, pp. 37–41, 65–70). Male San Diego fairy shrimp are distinguished from males of other species of *Branchinecta* by differences in the distal (located far from the point of attachment) tip of the second antennae. The females carry their eggs or cysts in an oval or elongate ventral brood sac (Eriksen and Belk 1999, pp. 20–24; Fugate 1993, p. 301). Females are distinguishable from females of other species of *Branchinecta* by the shape and length of the brood sac, the length of the ovary, and the presence of paired dorsolateral (located on the sides, toward the back) spines on five of the abdominal segments (Fugate 1993, p. 301).

San Diego fairy shrimp occur in groups of vernal pools referred to as vernal pool complexes (Keeler-Wolf *et al.* 1998, p. 9). Vernal pool complexes tend to include between 5 and 50 vernal pools, although some contain as few as two vernal pools and some contain several hundred vernal pools. Vernal pools within a complex are generally hydrologically connected, meaning that water flows over the surface from one vernal pool basin to another and/or water flows and collects below ground such that the soil becomes saturated with water, and the vernal pool basins fill with water (Hanes *et al.* 1990, pp. 51–56). For this reason the vernal pool ecosystems, on which the San Diego fairy shrimp depend, are best described from a watershed perspective (Service 1998a, p. 59). The vernal pool watershed includes all areas around a vernal pool complex needed to collect rainfall and adequately fill the vernal pool basins within the vernal pool complex. In rainy years, California's vernal pools begin to fill following the onset of fall and winter rains. Some pools in a complex have substantial watersheds that contribute to filling the vernal pools, while others fill almost entirely from rainfall (Hanes *et al.* 1990, pp. 51–54; Hanes and Stromberg 1998, pp. 38, 47–49). Subsurface inflows from surrounding soils may also be an important factor in the filling of some vernal pools (Hanes *et al.* 1990, pp. 55–56; Hanes and Stromberg 1998, pp. 41–42).

A recent mitochondrial DNA (genetic sequence) study sampled 223 San Diego fairy shrimp from 24 vernal pool complexes (Bohonak 2004, p. 2). Researchers identified 39 unique alleles; each unique allele was found only at specific vernal pool complexes or within isolated geographic areas (Bohonak 2004, pp. 2–9). This indicates that fairy shrimp within a vernal pool complex or in limited geographic areas are more closely related to each other than to those at more distant locations. This analysis of mitochondrial DNA also indicates that there are two distinct genetic clades (genetic groups within a taxa) among populations of San Diego fairy shrimp, referred to as Group A and Group B (Bohonak 2004, p. 3; Bohonak 2007, p. 1). The difference in the alleles within either of the clades is less that one percent divergence; however, between the two groups there is a 2.5 percent divergence between pairs of alleles. Bohonak states that ''this means individuals from Group A and B have been isolated from one another biologically for tens of thousands or perhaps millions of years with little or no dispersal or hybridization (2004, p. 3).'' The distribution of the two clades is unusual because with the degree of difference between the two clades one would expect them to be geographically separate; however, the two clades are somewhat intermixed geographically.

The extant range of the San Diego fairy shrimp is restricted to San Diego and Orange Counties in the United States, and in northwestern Baja California in Mexico. San Diego County supports the largest number of remaining vernal pools occupied by the San Diego fairy shrimp. Scientists estimate vernal pool soils historically covered 200 square miles (mi) (518 square kilometers (km)) in San Diego County; habitat losses have been extensive, only remnants of most vernal pool landscapes remain (Bauder and McMillan 1998, p. 66). The majority of vernal pool habitat in coastal Orange County has also been lost; currently there are only five vernal pool complexes in Orange County known to

support the San Diego fairy shrimp (Riefner and Pryor, p. 300; Keeler-Wolf *et al.* 1998, p. 63; Mattoni and Longcore 1997, pp. 71, 89; CNDDB 2004, pp. 9, 11, 12, 29–32).

Previous Federal Actions

On October 23, 2000, we published a final rule designating approximately 4,025 ac (1,629 ha) of critical habitat for the San Diego fairy shrimp in Orange and San Diego Counties, California (65 FR 63438). Following publication of the final rule, a lawsuit was filed against the Service challenging the critical habitat designation by multiple parties, including the Building Industry Association of Southern California, the National Association of Home Builders, and the Foothill/Eastern Transportation Corridor Agency (*Building Industry Association of Southern California et al.* v. *Norton*, CV 01–7028 (D.C.C., filed 1/17/01) (venue subsequently transferred to C.D.Cal. and case assigned CV 01–07028). On June 11, 2002, the U.S. District Court for the Central District of California granted our request for a remand of the San Diego fairy shrimp critical habitat designation so that we could reconsider the economic impact of designating any particular area as critical habitat. The Court ordered us to submit a new proposed rule to the **Federal Register** by April 11, 2003.

On April 22, 2003, we published a proposed rule to designate approximately 6,098 ac (2,468 ha) of land within Orange and San Diego counties, California, as critical habitat for the San Diego fairy shrimp in the **Federal Register**, and we accepted public comments on the proposed revision until June 23, 2003 (68 FR 19888). On April 8, 2004 (69 FR 18516), we published a notice in the **Federal Register** announcing: (1) The availability of the draft economic analysis (DEA) of the proposed rule to revise critical habitat for public review; (2) the reopening of the public comment period on the proposed rule; and (3) the scheduling of public hearings on the proposed critical habitat designation and DEA. Public hearings were conducted on April 29, 2004, in Carlsbad, California. The second public comment period closed on May 10, 2004.

The Service initiated work on the revised final critical habitat rule for the San Diego fairy shrimp, but because of other court-ordered priorities we did not complete the rule. On February 8, 2007, a motion was filed by the Plaintiffs requesting the Court to direct us to finalize the revised critical habitat designation for the San Diego fairy shrimp. We reached an agreement with the Plaintiffs whereby a revised final designation would be completed on or before November 1, 2007. On April 3, 2007, we published a notice in the **Federal Register** announcing the reopening of the public comment period for the April 22, 2003, proposed rule to revise critical habitat for the San Diego fairy shrimp, and we accepted comments and information until May 3, 2007 (72 FR 15857). This rule is being finalized in compliance with the court order.

Summary of Comments and Recommendations

As discussed in the Previous Federal Actions section above, we have opened three public comment periods associated with the 2003 proposed rule to revise critical habitat for the San Diego fairy shrimp; the second and third comment periods also sought public comment on the associated DEA. During these comment periods, we requested all interested parties to submit comments or information related to the proposed revision to the critical habitat designation, including, but not limited to, the following: Unit boundaries; species occurrence information and distribution; land use designations that may affect critical habitat; potential economic effects of the proposed designation; benefits associated with critical habitat designation; areas considered but not proposed for designation and the associated rationale for the non-inclusion/exclusion of these areas; and methods used to designate critical habitat.

We informed all appropriate entities of the opening of these comment periods, including State and Federal agencies, County governments, elected officials, and other interested parties through telephone calls, letters, and news releases sent by facsimile, by U.S. mail, and/or by electronic mail. During the April 22 to June 23, 2003, comment period, we also invited public comment through the publication of notices in the following newspapers: Los Angeles Times, Orange County Register, The Press-Enterprise, San Bernardino Sun, and the San Diego Union-Tribune. During the April 8 to May 10, 2004, comment period, we announced the date and times of two public hearings that were held on the 2003 proposed revision to designated critical habitat and DEA. Hearings were held on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. Transcripts of these hearings are available for inspection (see **FOR FURTHER INFORMATION CONTACT** section above).

During the comment period that opened on April 22, 2003, and closed on June 23, 2003, we received 43 comments directly addressing the proposed critical habitat designation: 4 from peer reviewers, 3 from Federal agencies, 3 from local jurisdictions, and 33 from organizations or individuals. During the comment period that opened on April 8, 2004, and closed on May 10, 2004, we received 11 comments directly addressing the proposed critical habitat designation and the DEA. Of these latter comments, one was from a State agency, 5 were from local jurisdictions, and 5 were from organizations or individuals. During the comment period that opened on April 3, 2007, and closed May 3, 2007, we received 12 comments directly addressing the proposed revision to critical habitat and the DEA. Of these comments, 3 were from Federal agencies, 3 were from local jurisdictions, and 6 were from organizations or individuals.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight individuals with scientific expertise that included familiarity with the species, the geographic region where the species occurs, and conservation biology principles. We received responses from four of the peer reviewers. The peer reviewers were generally supportive of the designation of critical habitat. However, they stressed the importance of the genetic uniqueness of each population of San Diego fairy shrimp and the need to identify and preserve all remaining populations of the species.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the San Diego fairy shrimp. All comments received were grouped into general issue categories relating to the proposed rule to revise critical habitat for San Diego fairy shrimp and are addressed in the following summary and incorporated into this revised final rule as appropriate.

Peer Review Comments

Comment 1: Three peer reviewers stated we should take the genetic information on the San Diego fairy shrimp into consideration when designating critical habitat. The peer reviewers stated that allozyme (enzyme) studies (citing Davies *et al.* 1997) and mitochondrial DNA (genetic sequence) studies (citing Bohonak 2004) indicate that within pool complexes, there is a low degree of genetic variation, but

between vernal pool complexes there is a high degree of genetic variation. The analysis of mitochondrial DNA indicates that there are two distinct genetic clades (genetic groups within a taxa) among populations of San Diego fairy shrimp (Bohonak 2004, p. 3). The peer reviewers indicated that the two distinct genetic clades are important for the conservation of the San Diego fairy shrimp.

Our Response: We agree with the peer reviewers that the preservation of the genetic diversity of the San Diego fairy shrimp across its range is important to the conservation of this species, and we believe that we have captured the two distinct genetic clades referenced by the peer reviewers and described in the background section of this revised final rule in our designation. The distribution of the two clades is unusual because the two clades are not geographically separate across the extant range of the species. Our final designation captures a range of vernal pool complexes within each identified clade. Vernal pool complexes sampled in Fairview Park (subunit 1B) (Bohonak 2007, p. 1), Del Mar Mesa (subunit 4A/B), Carmel Mountain (subunit 4E and 4F), Lopez Ridge (subunit 4H), Winterwood (subunit 4I), Otay Mesa (subunit 5F), Lower Otay Reservoir (subunit 5H), and Marron Valley (subunit 5I) are in ''Group A'' (Bohonak 2004, pp. 3–9). These sites represent 10 of 16 sites in ''Group A'' sampled by researchers (Bohonak 2004, pp. 7–9). Vernal pool complexes sampled at San Onofre State Beach (subunit 2A) (Bohonak 2007, p. 1), Ramona (subunits 3E.1–3E.4), SANDER (subunit 4K), Montgomery Field (subunit 4M), Murphy Canyon (subunit 4C), and Chollas Heights (subunit 4D) are in ''Group B'' (Bohonak 2004, pp. 3–9). These sites represent 6 of 12 sites in ''Group B'' sampled by researches (Bohonak 2004, pp. 7–9; Bohonak 2007, p. 1).

Comment 2: Three peer reviewers expressed concern that Habitat Conservation Plans (HCPs) and Integrated Natural Resource Management Plans (INRMPs) may not provide the same level of protection for the San Diego fairy shrimp as critical habitat, and therefore can not be substituted for the designation of critical habitat.

Our Response: Where a Federal nexus exists, lands designated as critical habitat are protected from destruction or adverse modification under section 7 of the Act. However, to be successful, the conservation of the San Diego fairy shrimp relies on proactive conservation and management of vernal pool complexes rather than mere avoidance of certain habitat impacts under section 7 of the Act. Habitat conservation plans and INRMPs typically incorporate on-going management and protection for the San Diego fairy shrimp that will benefit, and is critical to, the long-term conservation of the species. This type of long-term management would not necessarily result from a section 7 consultation on an area where critical habitat has been designated. In addition, the protection and management afforded San Diego fairy shrimp habitat under HCPs extend to private lands that may otherwise lack a Federal nexus triggering consultation under section 7 of the Act.

Comment 3: One peer reviewer stressed the importance of viewing vernal pools as ecosystems with several important components, such as intact upland habitat and functional watersheds that contribute to the health and productivity of the vernal pool ecosystem and to the conservation of the San Diego fairy shrimp.

Our Response: We have addressed this comment by providing a more detailed description of the primary constituent elements (PCEs) in this revised final rule. The boundaries of each critical habitat subunit generally correspond to the boundaries of functional watersheds surrounding the included vernal pool complexes. We have attempted to incorporate all of the features that the peer reviewer described that we have determined to be essential to the conservation of the San Diego fairy shrimp (see the Primary Constituent Elements section for further discussion of this topic).

Public Comments

INRMPs and Department of Defense Lands

We received several comments related to the exclusion and exemption of Department of Defense (DOD) lands from the revised final critical habitat. We received comments from the U.S. Navy (Navy) regarding the proposed designation of critical habitat on Marine Corps Base Camp Pendleton (MCB Camp Pendleton), and separate comments regarding the proposed designation on Marine Corps Air Station Miramar (MCAS Miramar), Naval Radio Receiving Facility (NRRF), Naval Outlying Landing Field (NOLF), and Navy housing at Chollas Heights and Murphy Canyon under Naval Base Coronado. We also received comments from individuals, some stating that DOD lands should be designated as critical habitat, and others stating that DOD lands should not be encumbered by critical habitat.

Comment 4: The Navy requested that critical habitat not be designated at MCB Camp Pendleton, MCAS Miramar, NRRF, and NOLF, based on approved INRMPs for these installations and adverse affects to military training and readiness. Another commenter also requested that military lands at MCB Camp Pendleton not be designated as critical habitat.

Our Response: In the April 22, 2003, proposed rule to revise critical habitat for the San Diego fairy shrimp (68 FR 19888), we considered but did not propose critical habitat on MCAS Miramar, NRRF, and on mission essential training areas at MCB Camp Pendleton under section 4(b)(2) of the Act. The April 22, 2003, rule proposed to designate some non-training areas at MCP Camp Pendleton and at NOLF. In this revised final designation, we have determined that all the INRMPs in place at MCAS Miramar, NRRF, MCB Camp Pendleton, and NOLF provide a benefit to San Diego fairy shrimp, and therefore these lands are exempt from this revised final critical habitat under section 4(a)(3) of the Act (see Exemptions and Exclusions section below for a detailed discussion of these exemptions).

Comment 5: The Navy requested that critical habitat not be designated at the vernal pool areas at Murphy Canyon Navy Housing and Chollas Heights Navy Housing because they plan to complete an INRMP for these areas. The Navy continued to request that should critical habitat be designated at these areas that the Service commit to revisiting the designation upon the Navy's completion of an INRMP or other management plan for these areas.

Our Response: The vernal pool complexes at Murphy Canyon Navy Housing and Chollas Heights areas are not covered under an INRMP at this time; therefore they are not appropriate to consider for exemption under section 4(a)(3) of the Act. The vernal pool complexes at Murphy Canyon Navy Housing and Chollas Heights areas have been preserved for the benefit of the San Diego fairy shrimp and other vernal pool species. The vernal pool complexes at these two Housing Areas provide high quality habitat for the San Diego fairy shrimp and are some of the last remaining areas in urban San Diego that support this species. We applaud the past conservation work that the Navy has implemented at these two housing areas, and we look forward to working with the Navy to minimize any financial or regulatory burden associated with this critical habitat designation. It is our understanding that the Navy is working to complete an INRMP that will include these two areas and will secure funding

for the long-term management of these two areas for the benefit of the San Diego fairy shrimp. Features essential to the conservation of the San Diego fairy shrimp in these areas continue to require special management considerations and protections and are therefore included in this revised final designation. At such time as the Navy completes an INRMP for these areas, we can assess any benefits provided to the San Diego fairy shrimp and revise the designation through the rulemaking process consistent with available funding and program priorities.

Comment 6: Some commenters stated that our exclusion of INRMPs is not legally or scientifically justified because the commenter believes that the INRMPs, specifically those for MCB Camp Pendleton and MCAS Miramar, do not adequately protect vernal pools or San Diego fairy shrimp.

Our Response: Section 318 of National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended section 4(a)(3) of Act to address the relationship of INRMPs to critical habitat by adding a new section, 4(a)(3)(B). This amendment prohibits us from designating as critical habitat any lands or other geographical areas owned or controlled by DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act, if the Secretary of the Interior (Secretary) determines, in writing, that such plan provides a benefit to the species for which critical habitat is proposed for designation. Lands at MCB Camp Pendleton, MCAS Miramar, NRRF, and NOLF are exempt from critical habitat for the San Diego fairy shrimp under section 4(a)(3) of the Act as we have determined that these installations' INRMPs benefit the San Diego fairy shrimp and features essential to its conservation (see Exemptions and Exclusions section below for a detailed discussion on exclusions and exemptions). We believe that these exemptions are legally and scientifically justified because implementation of these INRMPs will benefit the San Diego fairy shrimp and its habitat at each installation.

Habitat Conservation Plans and Natural Community Conservation Plans

We received several comments related to the exclusion or inclusion of Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs). The comments that we received have been paraphrased and grouped to better clarify how we have handled HCPs and NCCPs in this revised final designation of critical habitat.

Comment 7: We received comments that discussed the benefits of excluding critical habitat in areas covered by HCPs and NCCPs and comments that discussed the benefits of designating critical habitat in areas covered by HCPs and NCCPs. Commenters that supported the exclusion of areas covered by HCPs and NCCPs stated that these plans provide superior conservation than the section 7 process because HCPs and NCCPs plan for conservation at the landscape level rather than using a project-by-project approach. Supporters of the exclusion of critical habitat in these areas stated that the exclusion of critical habitat will: Benefit partnerships and future planning; prevent additional regulation; avoid legal challenges that HCPs will result in ''adverse modification'' of critical habitat; and support Implementation Agreements. Supporters of the designation of critical habitat in areas covered by HCPs and NCCPs stated that the designation of critical habitat provides additional protection and conservation benefit to the San Diego fairy shrimp, which is needed to avoid impacts that the HCPs and NCCPs do not protect against. Other commenters stated that HCPs and NCCPs are often under-funded, and actual implementation is sometimes ineffective. One commenter stated that the exclusion of areas covered by HCPs from critical habitat is neither legally sound nor appropriate as demonstrated by the October 13, 2006, ruling by the U.S. District Court for the Southern District of California (*Southwest Center for Biological Diversity* v. *Bartel*, CV 98–2234), which clearly rules that the Multiple Species Conservation Program (MSCP) is ineffective, specifically for protecting the fairy shrimp. The commenter stated that the MSCP cannot act as a surrogate for critical habitat, and lands under the MSCP (and other HCPs) should not be excluded from critical habitat designation.

Our Response: We believe that regional HCPs and NCCPs typically provide for greater conservation benefits to species than project-by-project consultations conducted under section 7 of the Act. Because large HCPs approach conservation from a regional perspective, these plans have the advantage of addressing conservation issues from a coordinated, integrated perspective rather than a piecemeal project-by-project approach. Moreover, regional HCPs typically provide for the proactive monitoring and management of conserved lands, which is important to the survival and recovery of the San Diego fairy shrimp. Such conservation needs are typically not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. Section 4(b)(2) of the Act authorizes the Secretary to consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate an area as critical habitat will result in the extinction of the species. We believe that the exclusions that we made in this final revised rule are legally supported under section 4(b)(2) of the Act and scientifically justified because of the level of protection and long-term conservation for the San Diego fairy shrimp that are a result of the HCPs that we have excluded. Please see the Exemptions and Exclusions section in this revised final rule for a detailed analysis on why we reaffirmed our 2003 determination that the benefit of excluding many of these areas from critical habitat is greater than the benefit of including them in a critical habitat designation.

In response to the comment on the *Southwest Center for Biological Diversity* v. *Bartel*, (CV 98–2234) ruling, we have fully considered this significant information. In this challenge, brought by 14 environmental organizations, the court held that the protections afforded the San Diego fairy shrimp and six other vernal pool species under the City of San Diego's MSCP subarea plan are inadequate, and the Service's decision to issue an incidental take permit to the City based on the subarea plan was arbitrary and capricious. The court enjoined the incidental take permit with respect to ongoing and future land use activities that affect vernal pool habitat. The court concluded, in part, that the approach adopted in the City's MSCP subarea plan for evaluating project impacts on vernal pool species through the ACOE's site-specific permitting process under section 404 of the Clean Water Act had been effectively eliminated by the United States Supreme Court's *SWANCC* decision and that the remaining protections contained in the MSCP subarea plan do not adequately protect the San Diego fairy shrimp. As a result of the decision, we have designated as critical habitat lands covered by the City of San Diego's subarea plan that were considered, but not proposed, in the 2003 revised proposed rule (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section

and Unit Descriptions section below for more details).

Comment 8: Some commenters requested that we exclude pending HCPs and lands enrolled in the NCCP program be excluded under section 4(b)(2) of the Act or that we remove designated critical habitat concurrent with the final approval of an HCP or NCCP. Commenters recommended the establishment of a set of standards for HCPs and NCCPs that would provide for the automatic removal of these areas from critical habitat at the time these plans are completed. Some commenters stated that the designation of critical habitat in these areas may have a negative effect on entities pursuing an HCP and deter the completion of these pending HCPs. Specifically, we received requests to exclude the following pending HCPs: the Orange County Southern Subregion Habitat Conservation Program (Southern Subregion HCP); the City of Carlsbad Habitat Management Plan (Carlsbad HMP) under the Northwestern San Diego County Multiple Habitat Conservation Program (MHCP); and the County of San Diego's HCP covering the proposed critical habitat in Ramona.

Our Response: Although we believe that an NCCP/HCP completed in the future will conserve the San Diego fairy shrimp if it is a covered species under the plan, we are not able to automatically remove designated critical habitat. In order to revise a critical habitat designation to take into consideration a completed NCCP or HCP, we are required under sections 4(b)(5) and 4(b)(6) of the Act to follow the appropriate rulemaking process, consistent with available funding and program priorities. We have reanalyzed the areas that were covered by pending HCPs or NCCPs at the time we proposed critical habitat and we have made the following conclusions. The Southern Subregion HCP was completed on January 10, 2007. This plan provides for the conservation of the San Diego fairy shrimp in critical habitat subunits 1D and 1E. We have determined that the benefits of exclusion outweigh the benefits of inclusion for these subunits, and therefore we have excluded these subunits from critical habitat under section 4(b)(2) of the Act (see the Exemptions and Exclusion section for more details on this exclusion.)

The Carlsbad HMP under the MHCP was completed on November 15, 2004. This plan provides for the conditional coverage of the San Diego fairy shrimp; however, the coverage of this species is contingent on the specific commitment to manage vernal pool habitat within this plan. At this time the City of Carlsbad has not committed to manage vernal pool habitat or include the area we identified as critical habitat within this plan (subunit 2G); therefore the Carlsbad HMP under the MHCP does not cover the San Diego fairy shrimp at this time, and we have not excluded lands covered under this plan from critical habitat.

At this time the HCP for northern San Diego County is still in the process of being written. No draft of this plan is available for public review. Therefore, we have not excluded lands covered under this plan from critical habitat in and around Ramona (subunits 3E.1, 3E.2, 3E.3, and 3E.4).

Comment 9: We received comments requesting that we exclude the area covered by the San Diego Gas & Electric (SDG&E) NCCP/HCP.

Our Response: We have reviewed the appropriateness of excluding lands covered by the SDG&E NCCP/HCP and determined that SDG&E does not own any lands containing features we have determined essential for the conservation of the San Diego fairy shrimp. Although SDG&E is bound by this NCCP/HCP on all easements and access roads that we have determined contain features essential to the conservation of the San Diego fairy shrimp, the actual owners of the land covered by the SDG&E NCCP/HCP are not bound by this plan. Therefore we believe it would be inappropriate to consider lands not under the control of SDG&E for exclusion based on the coverage provided in this NCCP/HCP.

Comment 10: We received a comment requesting that we reaffirm our exclusion of the Orange County Central-Coastal NCCP/HCP (Central-Coastal NCCP/HCP) in this final revised critical habitat.

Our Response: In the April 22, 2003, proposed rule to designate revised critical habitat for the San Diego fairy shrimp, we discussed the Central-Coastal NCCP/HCP and stated that areas essential to the San Diego fairy shrimp covered by this plan should be excluded from critical habitat. In our review of the proposed critical habitat we found that, although critical habitat subunits 1A, 1B, and 1C are all near the boundary of this plan, there are no areas containing features essential to the San Diego fairy shrimp within the area covered by the Central-Coastal NCCP/HCP. Furthermore, we do not know of any vernal pools occupied by the San Diego fairy shrimp within the area covered by the Central-Coastal NCCP/HCP. Therefore, we have no reason to include a discussion of the Central-Coastal NCCP/HCP in this revised final designation of critical habitat.

Other Comments on Inclusions, Exclusions, and Removals

Comment 11: One commenter requested that we exclude the Shaw Lorenz project site on Del Mar Mesa from critical habitat based on the conservation actions that the developer of the site is undertaking as part of this development.

Our Response: The vernal pool habitat on the Shaw Lorenz project site was not known to be occupied at the time of the proposed rule and the Shaw Lorenz project site was not considered in the proposed rule to revise critical habitat (68 FR 19888, April 22, 2003). Therefore, we are not designating lands at the Shaw Lorenz project site as critical habitat for the San Diego fairy shrimp.

Comment 12: The Army Corps of Engineers (ACOE) raised the following issues in their comments: (1) Some lands owned by the Department of Homeland Security (DHS) within proposed critical habitat subunits 5D and 5F have already been disturbed and developed by the construction of the 14-Mile Border Infrastructure System (BIS) project along the United States/Mexico border and should be removed from critical habitat; (2) lands owned by the DHS located north of the BIS within proposed critical habitat subunit 5F are being conserved by the DHS and should not be designated as critical habitat under section 3(5)(A) or should be excluded under section 4(b)(2) of the Act; and (3) lands within the footprint of the BIS do not or will not contain any of the PCEs for the San Diego fairy shrimp because of their use as an active enforcement zone subject to ongoing vehicular use.

Our Response: We evaluated habitat on lands owned by the DHS within proposed subunits 5D and 5F, and removed or excluded all DHS-owned lands from this final designation. Some portions of the BIS project have already been completed and the habitat impacted no longer contains the PCEs essential to support the San Diego fairy shrimp; therefore, we removed these lands from the critical habitat designation. Please see the Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section for more information about the removal of these lands from critical habitat. The remaining 29 ac (12 ha) of DHS-owned land within subunit 5F includes a vernal pool restoration site (Arnie's Point) where the DHS is offsetting impacts to vernal pool habitat associated with the construction of the BIS. The DHS is implementing conservation measures for the San Diego

fairy shrimp at Arnie's Point even though they have a waiver exempting them from obligations under section 7 of the Act. The entire strip of DHS lands (29 ac (12 ha)) along the U.S./Mexico border that meet the definition of critical habitat are important to national security. We determined that the benefits of excluding this area from critical habitat outweigh the benefits of including this area in critical habitat. A detailed discussion of our rationale for excluding these lands is provided in the Exemptions and Exclusions section of this revised final rule.

Comment 13: One commenter disagreed with our proposed critical habitat unit for the land in East Otay Mesa. The commenter stated that some of the areas proposed as critical habitat have been developed. The commenter concluded that the mapping of the critical habitat is inaccurate. Another commenter provided comments on a specific area on Otay Mesa. This commenter stated that proposed critical habitat subunit 5D is completely within either the City of San Diego subarea plan under the MSCP or the County of San Diego subarea plan under the MSCP. The commenter added that a significant portion of the proposed critical habitat in subunit 5D, including nearly 100 percent of the Otay Crossings Commerce Park project, is within the MSCP boundaries. The commenter stated that the inclusion of the MSCP land in critical habitat is counter to the involvement of the Service in the HCP process. The commenter stated that the Otay Crossings Commerce Park project site has been surveyed repeatedly for vernal pools and San Diego fairy shrimp and only vernal pools that were present on the site in the recent past have been eliminated by the construction of the BIS project. The commenter indicated that the East Otay Mesa area supports relatively few known locations of the listed San Diego fairy shrimp, and that these locations are scattered and are not vernal pool complexes. The commenter stated that the mesa area generally slopes to the south, providing limited flat areas where fairy shrimp pools could become established. The commenter concluded that the designation of this area as critical habitat for the San Diego fairy shrimp would not afford additional benefits to the species and would not play a significant role in the species' recovery.

Our Response: The area identified in the April 22, 2003, proposed rule to revise critical habitat for San Diego fairy shrimp on East Otay Mesa was reevaluated at the suggestion of the commenters. Some of the land proposed as critical habitat was removed because it did not contain the PCEs, such as the lands owned by the DHS in subunit 5D. However, we found that the majority of the area was appropriately mapped and is included in the revised final designation. The areas we are designating as critical habitat contain the features essential for the conservation of the San Diego fairy shrimp. Critical habitat subunit 5D on eastern Otay Mesa contains vernal pools that support known locations of the San Diego fairy shrimp and the watershed area necessary to maintain the vernal pools. The area designated as critical habitat gently slopes to the south and contains several vernal pools dispersed across an area of approximately 391 ac (158 ha). The area on East Otay Mesa included in the designation is relatively undamaged by development and off-road vehicle activity. This area is entirely within the County of San Diego's Major and Minor Amendment Areas of the MSCP, which are not covered as part of the County's approved MSCP subarea plan. Therefore, it is not appropriate to exclude these lands because of their location within the boundaries of the MSCP (see Exemptions and Exclusions section below for a detailed discussion).

Criteria and Methodology

Comment 14: Some commenters stated that the Service has deferred determination of whether specific areas contain PCEs, leaving landowners without effective notice as to whether their property contains critical habitat.

Our Response: We have determined that all of the designated units contain all of the PCEs (see Unit Descriptions section below). In our proposed rule, we provided a description of the PCEs and maps of the areas that we proposed for critical habitat in the **Federal Register**. Additional maps showing all areas containing features arranged in the quantity and spatial configuration essential for the conservation of the San Diego fairy shrimp were made available to the public for review and comment on our Web site. Also, the contact information for the Carlsbad Fish and Wildlife Office was provided to the public. These resources were readily available to any landowner with a question regarding the critical habitat proposal, including the PCEs. We believe these measures effectively notified landowners concerning the proposed revised designation of critical habitat.

Furthermore, in this revised final rule, we have re-evaluated all units and removed any areas that do not contain the PCEs (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section below). Where possible, the boundaries of final critical habitat have been refined to remove lands containing features such as roads, buildings, and other infrastructure that do not contain the PCEs; however, it was not possible to exclude all such areas from the designation. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this revised final rule have been excluded by text and are not designated as critical habitat. Please refer to the Criteria Used to Identify Critical Habitat section below for more information about the mapping methodology. Landowners needing assistance in determining whether their property lies within designated critical habitat can contact the Carlsbad Fish and Wildlife Office for assistance (see **ADDRESSES**).

Comment 15: One commenter indicated that the mapping methodology to identify areas for critical habitat is too general, and does not adequately account for site-specific analysis of the size and attributes of the vernal pools. Another commenter indicated that we had no scientific basis for using a 328 feet (ft) (100 meters (m)) grid for mapping of critical habitat.

Our Response: In the April 22, 2003, proposed rule we used a 328 feet (ft) (100 meters (m)) grid to delineate critical habitat. In order to make our mapping more specific we are no longer using the 328 feet (ft) (100 meters (m)) grid, instead we are mapping the specific areas that contain the PCEs for this species. We used a number of data sources to map the vernal pool complexes identified as critical habitat in this revised final rule. The vernal pool and San Diego fairy shrimp data referenced for this revised final rule include: Beauchamp and Cass 1979 (pp. 1–15), Zedler and Ebert 1979 (pp. 1–150), Bauder 1986 (pp. 1–29, Appendices), City of San Diego 2003 (pp. 1–125, Appendices), survey reports for San Diego fairy shrimp from 10(A)(1)(a) permits, and California Natural Diversity Database (CNDDB) (2004, 2007) information. In addition to this location data for vernal pools and San Diego fairy shrimp, we used topographical maps, soil maps (Bowman 1973, pp. 7–17), and aerial imagery to capture the PCEs associated with each vernal pool complex designated as critical habitat. We also relied on information obtained from site visits to vernal pool complexes to verify the

presence of the PCEs in the areas that we identified as critical habitat.

Comment 16: One commenter stated that it is important to designate the entire area within each vernal pool complex, including the watershed of the vernal pool, in order to provide habitat for animals that are vectors for dispersal of San Diego fairy shrimp cysts. Another commenter provided similar information to specific vernal pool complexes in San Marcos, California.

Our Response: This revised final designation includes vernal pool basins and the associated watersheds necessary to support the San Diego fairy shrimp; however, we did not include larger areas of habitat needed for animal dispersal vectors. We did not have enough specific information on this topic to include other areas with any degree of certainty. We believe that our discussion of the PCEs adequately captures the physical and biological features essential for conservation of the San Diego fairy shrimp (see Primary Constituent Elements section below for details). The information regarding vernal pool complexes added to the information that we previously had on the vernal pools in San Marcos; however, it did not significantly change our analysis of this area.

Comment 17: One commenter stated that stochastic (random) events could drive the species to extinction since it no longer has the ability to meet the challenges of environmental or human-caused stress. The commenter stated that the exclusion of any area from critical habitat could result in the extinction of the San Diego fairy shrimp.

Our Response: We agree that stochastic events could negatively impact the San Diego fairy shrimp throughout its range. We reaffirmed our 2003 determination to exclude areas covered by HCPs that provide for the conservation of vernal pool habitat and the San Diego fairy shrimp because these plans incorporate management and monitoring for vernal pool ecosystems. As environmental conditions change, management of these areas will also change to address new threats to the species and its habitat. The areas we excluded also provide for management actions to address human induced stresses such as off-road vehicle use or the illegal dumping of trash in preserve areas. We determined the exclusion of these areas from critical habitat designation under section 4(b)(2) of the Act will not result in the extinction of the San Diego fairy shrimp (see Exemptions and Exclusions section below for a detailed discussion).

Comment 18: Several commenters requested that the Service expand the proposed critical habitat to include all essential vernal pools identified in the Recovery Plan for Vernal Pools of Southern California (recovery plan) (Service 1998a), including the vernal pools listed in appendices F and G.

Our Response: We believe that this final revised critical habitat reflects the intent of the recovery plan (Service 1998a). The 1998 recovery plan outlined four recovery criteria for the seven federally listed vernal pool species occurring in Southern California. In sum the recovery criteria state that: (1) Existing vernal pools and their associated watersheds that contain a federally-listed species should be secured for that specific supported species; (2) existing vernal pools and their associated watersheds need to be secured in a configuration that maintains habitat function and species viability (as determined by future research); (3) secured vernal pools be enhanced or restored such that population levels of existing species are stabilized or increased; and (4) population trends must be shown to be stable or increasing for a minimum of 10 years prior to reclassification (Service 1998a, pp. iv–vi; pp. 62–64T). The intent of the recovery criteria is to identify, protect existing vernal pools, and, as necessary, restore degraded vernal pool habitat within the range of the San Diego fairy shrimp. Appendices F and G of the recovery plan identified vernal pool complexes needed to stabilize or reclassify the San Diego fairy shrimp to threatened status based on information available to the Service in 1998. Since that time we have gained additional information about the relative significance and current status of vernal pool areas identified in appendices F and G, and we have identified several important areas that were discovered to be occupied by the San Diego fairy shrimp after the recovery plan was completed that are not analyzed in the recovery plan. The areas designated in this rule reflect our current assessment, based on the best available information, of habitat essential to the conservation of the species. Please see Table 1 and the Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section below for a full discussion.

Comment 19: One commenter stated that the San Diego fairy shrimp has already gone extinct in Los Angeles and Orange counties and that it is close to extinction in Riverside and Ventura counties. The commenter indicated that all remaining habitat throughout the species' range is essential to the species' survival and will require special management. The commenter stated that we should designate critical habitat in areas where new vernal pools have been found since the publication of the proposed rule in April 2003.

Our Response: This commenter is incorrect about the historical distribution of the San Diego fairy shrimp. The best available scientific information indicates that the San Diego fairy shrimp has always been restricted to Orange and San Diego counties in the United States and to northwestern Baja California in Mexico. There is a single record of a female fairy shrimp in Santa Barbara County; however, the site where this fairy shrimp was collected from has been revisited and there is no corroborating evidence indicating San Diego fairy shrimp occupy this area. We believe this original report was an error. The San Diego fairy shrimp has never been reported from Los Angeles, Riverside, or Ventura counties. The San Diego fairy shrimp is still present in Orange County. The commenter did not provide specific information on the vernal pool complexes that they believe are essential to the conservation of the San Diego fairy shrimp, so we cannot address the reasons that these areas were not included in critical habitat. In addition, we have not evaluated new occurrences discovered after the 2003 proposed rule to determine whether they are essential to the conservation of the species. In light of the fact that the commenter did not provide any specific data and that we have not evaluated new occurrences, it would not be appropriate to include these occurrences in the final rule. Section 4 of the Act allows for revision of any critical habitat designation as appropriate to evaluate and include new information through the full rulemaking process allowing for public comment on all proposed lands.

Policy and Procedures

Comment 20: The ACOE requested clarification of the definition of ''destruction or adverse modification'' of critical habitat.

Our Response: Concerning the ACOE's request for a clarification of ''destruction or adverse modification'' of critical habitat, we have revisited the regulatory definition of adverse modification in relation to the species' conservation. Recent decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our regulatory definition of ''adverse modification'' at 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, 245 F.3d 434, 442F* (5th Cir 2001)).

Consistent with 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 the intended conservation role for the species.

Comment 21: One commenter stated an environmental impact statement (EIS) as defined under the National Environmental Policy Act (NEPA) should be written to address the potential significant impacts from the designation of San Diego fairy shrimp critical habitat.

Our Response: It is our position that, outside the Tenth Circuit Court, 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 position was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Comment 22: Some commenters stated that it was unclear how critical habitat designation would affect private landowners.

Our Response: The designation of critical habitat does not affect State, local, private or other non-Federal landowners unless a project requires Federal funding, permits, or authorization. Critical habitat does not affect land ownership or establish a refuge, preserve, or other special conservation area. It does not allow government or public access to private lands, and will not result in the closure of an area to all access or use. Please refer to the Effects of Critical Habitat Designation section below for more information.

Comment 23: One commenter reiterated the Service's mandate to follow Secretarial Order 3206 and Executive Order 13175 regarding consultation and coordination with Tribal governments when deciding to propose critical habitat on Tribal lands.

Our Response: Executive Order 13175 and Secretarial Order 3206 direct the United States government, and specifically the Service, to establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications, to strengthen the government-to-government relationships with Tribes, and reduce the imposition of unfunded mandates upon Tribes. In the case of San Diego fairy shrimp, there are no known occurrences of this species on Tribal lands, nor is there any habitat essential for the conservation of the San Diego fairy shrimp on Tribal lands. Therefore, no critical habitat is designated for this species on Tribal lands.

Comment 24: One commenter requested that we extend the comment period on the proposed designation and DEA.

Our Response: Following the publication of the proposed critical habitat designation on April 22, 2003, we opened a 60-day public comment period that closed on June 23, 2003, and conducted outreach notifying affected elected officials, local jurisdictions, interest groups, and property owners. We conducted much of this outreach through legal notices in regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups, and publication of the proposed designation and associated material on our Web site. We prepared a DEA of the proposed critical habitat designation, which we made available to the public on April 8, 2004 (68 FR 18516). The public comment period was reopened through May 10, 2004. During this comment period, two public hearings were held on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. We provided notification of the DEA through telephone calls and letters and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the DEA and associated material on our Web site following the draft's release on April 8, 2004. A third period for public comment was opened from April 3, 2007, to May 3, 2007. In addition, several public comment periods were held on our earlier proposed and final critical habitat rules, which are similar in many respects to the current proposed and final rule. Because of our obligation to meet the deadline established in settlement of litigation involving critical habitat designation for the San Diego fairy shrimp, we were not able to extend or open an additional public comment period.

Economic Analysis

Comment 25: Some commenters stated, in general, that we should exclude areas from critical habitat due to the significant economic impacts associated with the designation of critical habitat.

Our Response: We have not excluded any lands based on disproportionate economic impacts to a property. We have responded to comments that provided us with specific information and maps requesting economic exclusions below.

Comment 26: One commenter stated that the placement of critical habitat over subunit 5D, especially the Otay Crossings Commerce Park project, will only divert limited staffing and financial resources towards addressing critical habitat issues instead of focusing on the successful implementation of the MSCP.

Our Response: As discussed above in the response to Comment 15 we reanalyzed subunit 5D. We removed all areas in this subunit that do not contain features essential to the conservation of the San Diego fairy shrimp. However, a large portion of subunit 5D has been designated because it contains features in quantity and spatial arrangement essential to the conservation of the San Diego fairy shrimp, i.e., PCEs (Please see Criteria Used to Identify Critical Habitat section). Our economic analysis of subunit 5D did not indicate that the economic impacts in this subunit were substantially different from other areas included in critical habitat, therefore we have not excluded this area due to disproportionate economic impacts.

Comment 27: One commenter stated that the Service's appreciation for, and earlier estimates of, the cost of the shrimp's listing have proven low. The commenter stated that delays in development associated with the breakdown of the MSCP/section 7 of the Act consultation process have been high. The commenter stated that the aftermath of the *Southwest Center for Biological Diversity* v. *Bartel* (CV 98–2234) decision has increased those costs. The commenter stated that a small property or project with a debt of just $10 million, for example, will see an additional cost in interest alone of approximately $50,000 per month of delay in the section 7 consultation process. Large projects with massive early expenditure on design, drawings, and the California Environmental Quality Act (CEQA) planning process, as well as sunk development costs will have incurred and will continue to incur extraordinary carrying costs too large to calculate except by the agency with access to all of the projects delayed and their sunk costs and carry costs. The commenter stated that the new rulemaking obliges the Service to list the projects, public and private, delayed by the ruling and the breakdown of the section 7 consultation process and use the costs to those projects as the minimum cost to date of the critical habitat designation while also calculating the additional cost of going

forward. The commenter stated that the economic analysis should also include a reasonable analysis of the impact of a critical habitat designation on that land not yet under development but newly burdened with this designation. Another commenter echoed these comments and stated that the result of a critical habitat designation would cause land owners to enter into a section 7 consultation with the Service. The commenter stated that this consultation process would lengthen the time and increase the cost to process projects. The commenter added that adding to the regulatory burden does not make sense since the MSCP was created to expedite the processing of projects within the County while providing for the long-term survival of fairy shrimp within the preserve lands.

Our Response: The draft economic analysis (DEA) addresses potential costs that a private land development may incur from the designation of critical habitat. It is not necessarily the case that delays for development projects will result from the designation of critical habitat. The need to complete section 7 consultations in and of itself does not automatically delay private development projects; these consultations can generally be coordinated with baseline land use regulatory processes and do not necessarily increase the time to obtain approvals. The DEA identified projects that were currently being processed (i.e., those that are reasonably foreseeable) or had been recently completed as the most likely projects to be delayed by the designation of critical habitat. The DEA analyzed the cost that these projects may incur and incorporated this information into the analysis. Please see the section Time-Delay Costs of the DEA (Economic and Planning Systems, Inc. 2004, pp. 53–55). Further, the economic costs associated with development delays resulting from the *Southwest Center for Biological Diversity* v. *Bartel* (CV 98–2234) decision are not the result of the existing critical habitat designation or of the revised critical habitat designation. Rather they are the result of the court's determination that there are deficiencies in the City of San Diego subarea plan under the MSCP and in the Service's decision to issue an incidental take permit based on the plan. In the aftermath of *SWANCC* and *Rapanos* it is not clear to what extent projects affected by the *Southwest Center for Biological Diversity* v. *Bartel* (CV 98–2234) decision are likely to have a Federal nexus that would trigger consultation under section 7 of the Act and an examination of the projects' impacts on critical habitat.

Comment 28: One commenter stated that the DEA was flawed because it used existing HCPs and INRMPs that are already in place as a baseline for the economic analysis. The commenter indicated that the use of baseline conditions underestimates the economic cost of the designation. The commenter also stated that the DEA fails to take into account the impact of the designation of critical habitat on the housing market or on transportation projects.

Our Response: The economic analysis used baseline conditions and regulations that are already in place for the economic analysis because the designation of critical habitat will not alter existing conditions. In areas that do not have existing HCPs or other regulations that provide for the regulation of San Diego fairy shrimp habitat, the economic analysis highlights the possible costs that may be due to the designation of critical habitat. We believe that the economic analysis did address both impacts on the housing market and transportation projects by analyzing the impacts of critical habitat on private land development and on road construction and maintenance.

Comment 29: Commenters stated that the DEA should use case studies rather than cost estimates or projections and that the economic analysis should be released to the public prior to the final designation of critical habitat. Other commenters stated that the economic analysis should be completed prior to proposing critical habitat.

Our Response: We agree that cost estimates derived from real examples are preferable. To the extent possible, our economic analysis is derived from actual cost information collected in the preparation of the economic analysis and during the comment periods. The DEA was made available for public review and comment prior to the final designation of critical habitat. Under 50 CFR 424.19, we are not required to consider the probable economic impacts of designating a particular area as critical habitat until after critical habitat is proposed. There were two comment periods for the public to provide input on the DEA, one opened on April 8, 2004, and closed May 10, 2004 (69 FR 18516), the other opened on April 3, 2007, and closed May 3, 2007. There were also public hearings on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California, to provide comments on the DEA. An additional comment period was opened from April 3, 2007, to May 3, 2007, on the DEA and proposed rule. The final designation takes into consideration the findings of the DEA, and comments and information submitted to us regarding the DEA.

Comments From State Agencies

Comment 30: California Department of Fish and Game (CDFG) supported the exclusion of Natural Communities Conservation Plans (NCCP)/HCPs that include the San Diego fairy shrimp as a covered species. Additionally, CDFG also requested that land designated as critical habitat be automatically removed from such designation upon approval of an NCCP.

Our Response: Although we agree with CDFG that an approved NCCP/HCP likely provides a conservation benefit to the species covered by that particular plan and should be considered for exclusion from critical habitat designation under section 4(b)(2) of the Act, we are not able to automatically remove designated critical habitat from areas once an NCCP/HCP is approved. In order to revise a critical habitat designation to take into consideration a completed NCCP or HCP, we are required under sections 4(b)(5) and 4(b)(6) of the Act to follow the appropriate rulemaking process. If an NCCP or HCP that includes the San Diego fairy shrimp as a covered species is approved subsequent to the designation of critical habitat for the species, we can reassess the critical habitat boundaries and revise such designation through the rulemaking process, consistent with available funding and program priorities.

Comment 31: CDFG requested that State-owned land on Del Mar Mesa be excluded from the revised final designation of critical habitat.

Our Response: The State-owned lands on Del Mar Mesa are intermingled with other conservation lands on Del Mar Mesa under Federal, local, and private ownership. We have determined that many of these lands meet the definition of critical habitat and contain the features essential to the conservation of the SDFS; we are designating these lands (including State-owned lands) as critical habitat in this final rule. Several landowners, including the State, are working together toward preservation and management of the vernal pools on Del Mar Mesa and we applaud this effort. The ''Del Mar Mesa Preserve'' lands are essential for the conservation of the San Diego fairy shrimp because they consist of one of the largest continuous blocks of largely undisturbed mesa topography, on non-military land, remaining in San Diego County. The area contains several hundred vernal pools occupied by San Diego fairy shrimp and other sensitive

vernal pool species. The lands that contain the features essential for the conservation of the San Diego fairy shrimp on Del Mar Mesa are part of the area that is within the City of San Diego subarea plan under the MSCP. Consistent with the City's subarea plan, a draft management plan for the Del Mar Mesa Preserve has been written (Recon 2002); however, the plan has not been finalized or implemented. As recognized in the plan, the Del Mar Mesa Preserve requires integrated management to control threats associated with off-road vehicle use and illegal dumping; however, the Del Mar Mesa Preserve lands are not adequately fenced or otherwise managed. Funding to implement the draft management plan has yet to be identified. Although we considered, but did not propose lands covered by the City of San Diego subarea plan under the MSCP under section 4(b)(2) in the proposed rule; we have determined that it is inappropriate to exclude lands within the City of San Diego subarea plan (including State-owned lands) under the MSCP (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section and Exemptions and Exclusions section below for a detailed discussion).

Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule

On October 3, 2000, we designated five units comprising a total of 4,025 ac (1,629 ha). We proposed to revise this designation to 6,098 ac (2,468 ha) on April 22, 2003 (68 FR 19888). The areas designated in this revised final rule constitute a revision of the areas we proposed as critical habitat for San Diego fairy shrimp on April 22, 2003 (68 FR 19888). In addition, all of the land designated in this revised final rule was considered for critical habitat in the 2003 proposed rule. In this section we present the differences between what was designated in 2000, what was proposed in 2003, and what is included in this final designation.

1. The 2000 final critical habitat designation (65 FR 63438, October 3, 2000) consisted of five units totaling 4,025 ac (1,629 ha). This revision to designated critical habitat also includes five units totaling 3,082 ac (1,248 ha). The five units in this revision generally correspond to the previously designated five critical habitat units, though some vernal pool complexes have been added to units where occupancy of the San Diego fairy shrimp has been identified outside of previously designated critical habitat. Additionally, we have refined our mapping techniques (as detailed below) and used data to limit the critical habitat designation to those areas that contain the features essential to the conservation of the species that may require special management considerations or protection.

2. In the 2000 critical habitat rule (65 FR 63438, October 3, 2000), the descriptions of unit boundaries were delineated on Universal Transverse Mercator (UTM) gridlines set on a 820 ft (250 m) grid. In the 2003 revised proposed designation, we based the critical habitat boundary descriptions on UTM gridlines set every 100 m (328 ft). These square grids were overlaid on areas determined to contain the PCEs required by the species. Portions of these grid squares did not contain PCEs, and were inadvertently included within the boundaries of the critical habitat designation due to mapping limitations. The use of UTM gridlines was the best available methodology to digitize critical habitat boundaries and provide UTM coordinates to the public of the boundaries at the time of the 2000 final designation and 2003 proposed designation. We are now able to delineate critical habitat unit boundaries by screen-digitizing habitat polygons using ArcMap, a computer Geographic Information System (GIS) program. We have used this methodology to produce boundaries associated more precisely with areas that we determined contain the PCEs for the species and are essential for the conservation of the San Diego fairy shrimp, and removed large areas of habitat that do not contain the features essential to the conservation of the species (see the ''Criteria Used to Identify Critical Habitat'' section for a detailed discussion).

3. As a result of comments received, we made editorial changes to the sections of the rule pertaining to the background, the PCEs, the criteria used to identify critical habitat, and the unit descriptions. We made these changes to eliminate redundancy, improve clarity, and provide a more in-depth explanation of the biological requirements of the San Diego fairy shrimp. We have revised the PCE section since publication of the 2000 critical habitat rule (65 FR 63438, October 3, 2000) to include more information about how we developed the PCEs. We added more specific information relating to: the ponding duration and depth required by the San Diego fairy shrimp (PCE 1); surrounding upland areas that vernal pools need to function naturally (PCE 2); and the soils that vernal pools are known to form on (PCE 3). We also provided additional information in our Criteria Used to Identify Critical Habitat Section to increase the transparency of the critical habitat designation. We provided information to better explain how we identified which vernal pool complexes contain the features essential to the conservation of the San Diego fairy shrimp, and how we delineated the areas that contain the PCEs for each critical habitat subunit.

4. The 2000 designation (65 FR 63438, October 3, 2000) and the 2003 proposed revision (68 FR 19888, April 22, 2003) broadly included upland habitat surrounding many vernal pools. Much of the surrounding upland habitat did not contain the PCEs. Furthermore, the 2000 designation (65 FR 63438, October 3, 2000) and the 2003 proposed revision (68 FR 19888, April 22, 2003) included habitat that does not contribute to any vernal pool watershed; for example, these rules included lands that are down-slope from vernal pool complexes. We used recent aerial imagery to determine where development has occurred, and removed any lands from this revision that do not contain the PCEs nor support the species. We also removed areas that do not contribute to any vernal pool watershed and have no affect on the ability of the San Diego fairy shrimp to persist or be recovered within a vernal pool watershed, and are therefore not essential to the conservation of this species. The majority of these lands were on the edges of an area considered for designation.

5. The 2000 critical habitat rule (65 FR 63438, October 3, 2000), the 2003 proposed revision (68 FR 19888, April 22, 2003), and this final designation are all largely based on the 1998 recovery plan. The San Diego fairy shrimp was first taxonomically described in 1993 (Fugate 1993, pp. 296–304). The species was subsequently listed as endangered in 1997, and included in a recovery plan for seven vernal pool species (two invertebrates and five plants) in southern California published the following year. The 1998 recovery plan outlined four recovery criteria for the seven federally listed vernal pool species. In sum the recovery criteria state that: (1) Existing vernal pools and their associated watersheds that contain a federally listed species should be secured for that specific supported species; (2) existing vernal pools and their associated watersheds need to be secured in a configuration that maintains habitat function and species viability (as determined by future research); (3) secured vernal pools be enhanced or restored such that population levels of existing species are

stabilized or increased; and (4) population trends must be shown to be stable or increasing for a minimum of 10 years prior to reclassification (Service 1998a, pp. iv–vi; pp. 62–64). In addition, the 1998 recovery plan included appendices that identified specific vernal pool complexes as ''necessary to stabilize the proposed and listed vernal pool'' (appendix F) and other vernal pool complexes as ''necessary to reclassify the proposed and listed vernal pool species'' (appendix G). The recovery plan did not explain how the vernal pool complexes listed in these appendices were identified for inclusion on the list nor why other occupied vernal pool complexes were not included in these appendices. Task 113, which relates to criteria 1, recognizes that certain pools within any vernal pool complex may not be necessary to maintain habitat function and species viability (Service 1998a, p. 66). As illustrated in Table 1, the 2000 critical habitat designation included many, but not all of the vernal pools identified in appendices F and G of the recovery plan. Likewise, the 2003 proposed revision included many, but not all, of the vernal pools identified in appendices F and G and also added several occupied vernal pools that were either not identified in the recovery plan, or were identified but not included in appendices F and G. In this final designation, we reanalyzed all vernal pool complexes identified in the recovery plan and reviewed all data identifying additional vernal pool complexes occupied by the San Diego fairy shrimp to determine which vernal pool complexes are essential to the conservation of this species, including the surrounding watershed necessary to support the complex.

As a consequence, this final revision to critical habitat does not include some lands that were identified in the recovery plan for which we have no data documenting historical or existing occupancy by the species or that, because of location, we do not believe would contribute meaningfully to the conservation of the species. Though the recovery plan focused predominantly on protecting existing habitat, the recovery plan did include other tasks to reestablish vernal pool habitat based on historical structure and composition to increase genetic diversity and population stability (Service 1998a, p. 69). The recovery plan noted that historical distributions of vernal pool species can be reconstructed and the landscape restored sufficiently to allow for the reestablishment and expansion of populations, where necessary (Service 1998a, p. 71). At this time, we have not identified any specific areas within the extant range of the San Diego fairy shrimp where this species should be reestablished; therefore we are not designating any areas for this purpose. If such areas are identified and restored in the future, we may at that time revise critical habitat to include them. We also removed areas that were identified in the 1998 recovery plan as occupied but not included in either Appendix F or G as necessary to stabilize or reclassify the San Diego fairy shrimp, unless we had new information that was not evaluated at the time of the 1998 recovery plan that indicated that these areas were essential to the conservation of the species. This final revision to critical habitat includes some lands that were not identified in the recovery plan or the 2000 critical habitat designation, but which we have since concluded are within the geographical area occupied by the species at the time of listing and contain the physical and biological features essential to the conservation of the species. The designation of lands within the extant range of the San Diego fairy shrimp will adequately conserve the species.

In addition, the following specific areas are removed from critical habitat:

a. Subunit 3B, San Marcos, northwest—The recovery plan lists this area in appendix G, grouping this particular complex with other occupied vernal pools in the San Marcos area. This unit was designated in 2000 and included in the 2003 proposal to revise the critical habitat designation. However, this area is degraded, surrounded by development, and does not contribute to the watershed of any occupied vernal pool complexes within the San Marcos area. Furthermore, we do not have any evidence to indicate that the San Diego fairy shrimp has ever occupied this vernal pool complex, currently or historically. Based on this information, we have determined that these lands are not essential to the conservation of the San Diego fairy shrimp and have removed these lands from the final designation.

b. Portions of subunit 3E, Ramona—The recovery plan specifically identifies the need to secure existing vernal pools and their watersheds within the Ramona complexes that contain San Diego fairy shrimp. Since the publication of the 2000 designation and the proposed revision to critical habitat in 2003, a survey was conducted to determine the distribution of vernal pools in the area around Ramona. The 2003 proposed rule included large expanses of habitat that did not contain any vernal pool complexes. The recent surveys in Ramona allowed us to more precisely map the distribution of vernal pool habitat. We used the recent survey data to identify and group all occupied vernal pools within subunit 3E. The Ramona area is gently sloped, and the distribution of soils did not correspond to the distribution of vernal pools, adding complexity to defining the watershed area that contributes to the identified vernal pool basins. Without more specific information on the extent of the watersheds in this gently sloping area, we delineated these units by including all lands connecting the identified vernal pools. Since we removed large areas of habitat within this subunit, we renamed the remaining areas as 3E.1, 3E.2, 3E.3, and 3E.4.

c. Fieldstone—The recovery plan, which specifically identified and evaluated this area in appendix E (Status of the Vernal Pool Species Within the Management Areas), did not include this area within either appendix F or G as necessary to stabilize or reclassify the San Diego fairy shrimp. In addition, this subunit was considered but not proposed in the 2003 proposed revision to critical habitat. Finally, we do not have any evidence to indicate that the San Diego fairy shrimp has ever occupied this vernal pool complex, currently or historically. Based on the lack of occupancy data or any recent data contrary to the recovery plan, which specifically did not identify this area as necessary to stabilize or reclassify the San Diego fairy shrimp, we do not consider this complex essential to the conservation of this species.

d. Maddox—The recovery plan, which specifically identified and evaluated this area in appendix E (Status of the Vernal Pool Species Within the Management Areas), did not include this area within either appendix F or G as necessary to stabilize or reclassify the San Diego fairy shrimp. The recovery plan did specifically identify this area in appendix G as necessary to reclassify two plant species (*Eryngium aristulatum* var. *parishii* and *Pogogyne abramsii*). Though this subunit was occupied at the time of listing and it was considered in the 2003 proposed revision to critical habitat, the area was not proposed. This site has been proposed for development and we are working with landowners to identify appropriate offsite mitigation for project impacts. We have no new information on this site that was not considered at the time the recovery plan was written for the San Diego fairy shrimp, and we still conclude that these lands are not essential to the conservation of the

species. Therefore, we are not including these lands in this final designation.

e. Vernal pool complex K1, K2, K6, and K7—The recovery plan groups these complexes together in appendix G as the Otay River complexes and considers these complexes as necessary to reclassify both the San Diego fairy shrimp and *Navarretia fossalis*. The 2000 final designation included the K1 complex and K7 complex within the area designated as critical habitat (subunits 5B and 5A respectively); however, the 2000 final designation did not include complexes K2 or K6 as critical habitat for the San Diego fairy shrimp. In the 2003 proposed revision to critical habitat we proposed the K1 complex as subunit 5A; however, at that time we determined that the K2, K6, and K7 complexes were not essential to the conservation of the species, and furthermore did not include these complexes in the 2003 proposed revision to critical habitat. At this time, we do not have any records to indicate that the San Diego fairy shrimp occupies the vernal pools in the K1 complex, currently or historically. Furthermore, we do not have any records for San Diego fairy shrimp in the Otay River Valley below Lower Otay Reservoir. Conversely, eastern Otay Mesa, directly south of the Otay River Valley, supports many vernal pools where occupancy by the San Diego fairy shrimp has been confirmed although these vernal pools are not identified in the recovery plan. Therefore, consistent with the intent of the recovery plan, we are designating those complexes on eastern Otay Mesa that were not identified in the recovery plan, but are known to support the San Diego fairy shrimp (e.g., complexes in subunit 5D). However, we do not consider the K1 complex or features contained therein to be essential to the conservation of the San Diego fairy shrimp and have removed the vernal pools in the K1 complex from this final designation.

6. In the 2000 critical habitat designation (65 FR 63438, October 3, 2000), we evaluated DOD lands covered by INRMPs to determine if an INRMP that addressed the San Diego fairy shrimp adequately provided management for the species and its habitat. We determined that the INRMP for MCAS Miramar provided adequate management for San Diego fairy shrimp and its habitat; therefore, we determined that vernal pools on MCAS Miramar did not meet the definition of critical habitat and did not include this area under section 3(5)(A) of the Act. In the 2000 critical habitat rule (65 FR 63438, October 3, 2000), we also excluded lands on MCB Camp Pendleton under section 4(b)(2) of the Act. We did not exclude the portion of MCB Camp Pendleton leased to the State of California at San Onofre State Beach from the 2000 critical habitat rule. In the 2003 proposed revision to critical habitat (68 FR 19888), we considered, but did not propose as critical habitat lands, on MCAS Miramar and the NRRF in Coronado under sections 3(5)(A) and 4(b)(2) of the Act, based on the benefits provided by their completed INRMPs. We also considered, but did not propose, mission-essential training areas on MCB Camp Pendleton under section 4(b)(2) of the Act for national security reasons. In this final revised critical habitat designation, all Department of Defense lands covered by an INRMP that we have determined will provide a benefit to the San Diego fairy shrimp are exempt from this critical habitat designation under section 4(a)(3)(B) of the Act; this includes lands at MCAS Miramar, NRRF, MCB Camp Pendleton, and at NOLF (see Exemptions and Exclusions section below for a detailed discussion of each exemption).

7. The 2003 proposed rule to revise critical habitat for the San Diego fairy shrimp identified some lands that we ''considered but, did not propose'' either because we did not believe these lands met the definition of critical habitat under section 3(5)(A) of the Act or because we specified the land for exclusion under section 4(b)(2) of the Act. Although these areas were not formally identified as proposed critical habitat, we specifically sought public review and comment on these lands and provided maps on the Carlsbad Fish and Wildlife Office's public Web site to facilitate the public's ability to comment substantively on these lands. Through such notice and request for public comment, we alerted the public that the lands could potentially be included in the final designation. Lands considered but not included or proposed for designation were also analyzed for potential economic impacts in the DEA published on April 8, 2004 (69 FR 18516).

8. In the 2003 proposed rule to revise critical habitat for the San Diego fairy shrimp, we ''considered but, did not propose'' lands covered by the City and County of San Diego's subarea plans under the MSCP (collectively referred to as lands in the San Diego MSCP in the 2003 proposed rule). In this revised final rule, we reaffirm our exclusion of lands covered by the County of San Diego's subarea plan under section 4(b)(2) of the Act (see Exemptions and Exclusions section below for a detailed discussion of these exclusions). However, in light of a ruling issued by the U.S. District Court for the Southern District of California on October 13, 2006, (*Southwest Center for Biological Diversity* v. *Bartel*, CV 98–2234) (referred to here as the *Bartel* decision), we have reevaluated the City of San Diego's subarea plan and have determined that exclusion of lands covered by the City's subarea plan is not appropriate at this time. In a challenge brought by 14 environmental organizations, the district court held that the protections afforded the San Diego fairy shrimp and six other vernal pool species under the City of San Diego's MSCP subarea plan are inadequate, and the Service's decision to issue an incidental take permit for these species to the City based on the subarea plan was arbitrary and capricious. The court enjoined the incidental take permit with respect to ongoing and future land use activities that affect vernal pool habitat. The court concluded, in part, that the approach adopted in the City's MSCP subarea plan for evaluating project impacts on vernal pool species through the ACOE's site-specific permitting process under section 404 of the Clean Water Act had been effectively eliminated by the United States Supreme Court's decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001 (*SWANCC*)) and that the remaining protections contained in the MSCP subarea plan do not adequately protect the San Diego fairy shrimp. As a result of the decision, we have designated as critical habitat the lands that we consider to be essential to the conservation of the species covered by the City of San Diego's subarea plan that were considered, but not proposed, in the 2003 revised proposed rule (see Unit Descriptions section below for more details). Although we did not formally propose these lands in the 2003 proposed rule to revise critical habitat, we notified the public that the lands had been considered for designation and invited the public to comment on our exclusion of the lands from proposed designation. We also provided maps of the lands on our Web site. In our **Federal Register** notice of April 3, 2007, that reopened the comment period on the proposed rule to revise critical habitat, we expressly asked for public comment on how the lands covered by the City of San Diego's subarea plan should be reevaluated with regard to critical habitat designation in light of the *Bartel* decision (72 FR 15857). Therefore, we believe that we provided the public with adequate notice of and an opportunity to

comment on the potential inclusion of these lands in the final designation.

9. In the 2003 proposed rule, we included land within the North Ranch Policy Planning Area, which is owned by The Irvine Company. At the time we published the proposed rule, we recognized that this area was not covered under the incidental take permit issued for the Central-Coastal NCCP/HCP, and that additional planning was necessary to determine conservation and development areas. We have reanalyzed this area, which is known presently as The Irvine Ranch, and have determined that The Irvine Ranch is permanently conserved, managed with adequate current and future funding for the entire property, and managed for the benefit of the San Diego fairy shrimp. As a result, we have excluded The Irvine Ranch under section 4(b)(2) of the Act (see the Exemptions and Exclusions section below for a discussion of these exclusions).

10. In 2003, we proposed inclusion of land in revised critical habitat of lands within the Orange County Southern Subregion HCP. At that time, the plan was still under development. This HCP, which has since been completed and approved by the Service, includes the San Diego fairy shrimp as a covered species. We have determined that the benefits of excluding essential San Diego fairy shrimp habitat lands covered by this plan outweigh the benefits of including these lands in a critical habitat designation. Therefore, we have excluded lands in Orange County covered by the Southern Subregion HCP (proposed subunits 1D and 1E) from this revised final designation under section 4(b)(2) of the Act (see Exemptions and Exclusions section below for a discussion of this exclusion).

11. We are also excluding Fairview Regional Park, City of Costa Mesa (proposed subunit 1B) under section 4(b)(2) of the Act as we have determined that the City of Costa Mesa has completed and is implementing a management plan. We have determined that the benefits of excluding Fairview Regional Park outweigh the benefits of including this area in the critical habitat designation. Please see the Exemptions and Exclusions section below for a discussion of this exclusion.

12. In 2003, we proposed to designate critical habitat on land near the United States/Mexico border. We are excluding a portion of these lands in subunit 5F from the revised final designation under section 4(b)(2) of the Act based on impacts to national security. We determined that the benefit of excluding lands at Arnie's Point outweighs the benefit of including these lands in the critical habitat designation (see the Exemptions and Exclusions section below for a discussion of this exclusion).

As a result of the above exemptions, removals, and exclusions, we are designating 3,082 ac (1,248 ha) as critical habitat in this revised final rule. The lands designated as critical habitat include areas in Orange and San Diego counties. To minimize confusion, we retained our subunit numbers from the 2003 proposed revision. Due to the inclusion of lands that were considered, but not proposed, in the 2003 rule, some of the areas that we are designating as critical habitat do not have subunit numbers. In Unit 4, the inclusion of lands on Del Mar Mesa makes proposed subunits 4A and 4B contiguous, and this area is referred to as subunit 4A/B in this revised final rule. Other areas included in Unit 4 are not contiguous with any proposed subunits and these areas are named consecutively starting with subunit 4E and continuing through subunit 4M. In Unit 5, most of the areas that were considered, but not proposed in the 2003 proposed revision are contiguous with proposed subunits and the names of the existing proposed subunits are used to refer to these areas. Three areas in Unit 5 are not contiguous with proposed subunits and these areas are referred to as subunits 5G, 5H, and 5I in this revised final rule. As previously discussed, we removed large areas of proposed critical habitat in subunit 3E; for greater clarity we renamed the remaining critical habitat in this area 3E.1; 3E.2; 3E.3; and 3E.4.

TABLE 1.—GUIDE TO CHANGES BETWEEN THE OCTOBER 23, 2000 CRITICAL HABITAT DESIGNATION, THE APRIL 22, 2003 PROPOSED DESIGNATION, AND THIS REVISED FINAL DESIGNATION

Unit	Area identification used in this rule (naming convention in recovery plan)*	Included in Appendix F or G 1998 recovery plan	San Diego fairy shrimp detected following the recovery plan	2000 Designation of critical habitat*	2003 Proposed revision to the critical habitat designation*	2007 Final revised critical habitat designation*
Unit 1 Orange County.	The Irvine Ranch		X		Subunit 1A	Excluded under 4(b)(2).
	Fairview Park	X		Unit 1	Subunit 1B	Excluded under 4(b)(2).
	Newport Banning Ranch		X		Subunit 1C	Subunit 1C.
	Chiquita Ridge		X		Subunit 1D	Excluded under 4(b)(2).
	Radio Tower Road		X		Subunit 1E	Excluded under 4(b)(2).
	San Clemente State Park	X				
Unit 2 North coastal San Diego County.	MCB Camp Pendleton (San Onofre State Lease Area).	X		Subunit 2A	Subunit 2A	Exempt under 4(a)(3).
	MCB Camp Pendleton (Cockleburr Mesa).	X		Excluded under 4(b)(2).	Subunits 2B, 2C	Exempt under 4(a)(3).
	MCB Camp Pendleton (O Neil)	X		Excluded under 4(b)(2).	Considered essential; not proposed.	Exempt under 4(a)(3).
	MCB Camp Pendleton (Las Pulgas, San Mateo, Stuart Mesa).	X		Excluded under 4(b)(2).	Considered essential; not proposed.	Exempt under 4(a)(3).

TABLE 1.—GUIDE TO CHANGES BETWEEN THE OCTOBER 23, 2000 CRITICAL HABITAT DESIGNATION, THE APRIL 22, 2003 PROPOSED DESIGNATION, AND THIS REVISED FINAL DESIGNATION—Continued

Unit	Area identification used in this rule (naming convention in recovery plan)*	Included in Appendix F or G 1998 recovery plan	San Diego fairy shrimp detected following the recovery plan	2000 Designation of critical habitat*	2003 Proposed revision to the critical habitat designation*	2007 Final revised critical habitat designation*
	MCB Camp Pendleton (Wire Mountain Housing).	X	.....	Excluded under 4(b)(2).	Subunits 2D, 2E, 2F.	Exempt under 4(a)(3).
	Palomar Airport	X	.....	Subunit 2C	Determined not to be essential.	
	Poinsettia Lane Commuter Station (JJ1, JJ3).	X	.....	Subunit 2B	Subunit 2G	Subunit 2G.
Unit 3 Inland San Diego County.	San Marcos (L15–16)	X	X	Subunit 3B	Subunit 3A	Subunit 3A.
	San Marcos (L14)	X	.....	Subunit 3A	Subunit 3B	Determined not to be essential.
	San Marcos (L1–6, 9–10)	X	X	Subunit 3C	Subunit 3C	Subunit 3C.
	San Marcos (L 11–13, 19)	X	X	Subunit 3D	Subunit 3D	Subunit 3D.
	San Marcos (L7)	X	.....	Determined not to be essential.		
	San Marcos (L8, 17–18, 20)	X				
	Ramona, grasslands	X	X	Subunit 3E	Subunit 3E	Subunit 3E.1.
	Ramona, airport	X	.....	Subunit 3E	Subunit 3E	Subunit 3E.2.
	Ramona, downtown	X	.....	Subunit 3E	Subunit 3E	Subunit 3E.3.
	Ramona, downtown	X	.....	Subunit 3F	Subunit 3E	Subunit 3E.3.
	Ramona, high school	X	.....	Subunit 3E	Subunit 3E	Subunit 3E.4.
Unit 4 Central coastal San Diego County.	Del Mar Mesa (H18–23)	X	X	Subunit 4A	Subunit 4A	Subunit 4A/B.
	Del Mar Mesa (H1–10, 13–15, Peñasquitos North/Del Mar Mesa).	X	X	Subunit 4A	Subunit 4B	Subunit 4A/B.
	Murphy Canyon Navy Housing (G1–2 Tierrasanta South, G3).	X	.....	Subunit 4C	Subunit 4C	Subunit 4C.
	Chollas Heights Navy Housing	X	.....	Subunit 4D	Subunit 4D	Subunit 4D.
	Carmel Mountain (H (undescribed))	X	.....	Considered essential; not proposed.	Considered essential; not proposed.	Subunits 4E, 4F.
	Mira Mesa North (B)	X	.....	Considered essential; not proposed.		
	Tierra Alta (B5–6)	X	.....	Subunit 4B	Considered essential; not proposed.	Subunit 4G.
	Lopez Ridge (B7–8)	X	.....	Subunit 4B	Considered essential; not proposed.	Subunit 4H.
	Winterwood (C10–16)	X	.....	Considered essential; not proposed.	Considered essential; not proposed.	Subunit 4I.
	Fieldstone (C17–18)	.....	.....	.....	Considered essential; not proposed.	Determined not to be essential.
	Mira Mesa Central (C26)	X				
	Maddox (Maddox Park)	.....	.....	.....	Considered essential; not proposed.	Determined not to be essential.
	Carroll Canyon (D5–8)	.....	X	Considered essential; not proposed.	Considered essential; not proposed.	Subunit 4J.
	MCAS Miramar (A4; F1–27; I7; U1–13; U North; Z1–3, Z6; Z7; Z10; AA1–13; EE1–2; FF1–2; HH1–4 and RR1–2).	X	.....	Not included under 3(5)(A).	Considered essential; not proposed.	Exempt under 4(a)(3).
	Miramar Industrial	X				
	Nobel Drive (X5)	X	X			

TABLE 1.—GUIDE TO CHANGES BETWEEN THE OCTOBER 23, 2000 CRITICAL HABITAT DESIGNATION, THE APRIL 22, 2003 PROPOSED DESIGNATION, AND THIS REVISED FINAL DESIGNATION—Continued

Unit	Area identification used in this rule (naming convention in recovery plan)*	Included in Appendix F or G 1998 recovery plan	San Diego fairy shrimp detected following the recovery plan	2000 Designation of critical habitat*	2003 Proposed revision to the critical habitat designation*	2007 Final revised critical habitat designation*
	New Century (BB2)	X		Considered essential; not proposed.		
	SANDER and Magnatron (U15, SANDER).	X		Excluded under 4(b)(2).	Considered essential; not proposed.	Subunit 4K.
	Cubic (U19, Cubic Pools)	X		Excluded under 4(b)(2).	Considered essential; not proposed.	Subunit 4L.
	Montgomery Field (N1–4, 6)	X	X	Considered essential; not proposed.	Considered essential; not proposed.	Subunit 4M.
Unit 5 South San Diego County.	Otay Mesa (J26)	X	X	Excluded under 4(b)(2).	Considered essential; not proposed.	Subunit 5A.
	Otay Mesa (J23–25)	X	X	Considered essential; not proposed.	Considered essential; not proposed.	Excluded under 4(b)(2).
	Otay Mesa (J29–30)	X		Considered essential; not proposed.	Considered essential; not proposed.	Subunit 5B.
	Otay Mesa (J22)		X	Subunit 5C	Subunit 5C	Subunit 5C.
	Otay Mesa (J27–28)	X	X	Considered essential; not proposed.		
	Otay Mesa		X		Considered essential; not proposed.	Subunit 5D.
	Naval Base Coronado, Naval Radar Receiving Facility.		X		Considered essential; not proposed.	Exempt under 4(a)(3).
	Naval Base Coronado, Navy Outlying Landing Field (Tijuana Estuary).	X		Subunit 5D	Subunit 5E	Exempt under 4(a)(3).
	Otay Mesa (J11–21)	X		Considered essential; not proposed.	Considered essential; not proposed.	Subunit 5F.
	Otay Mesa (J2, 5, 7)	X		Considered essential; not proposed.	Considered essential; not proposed.	Subunit 5G.
	Otay River Valley (K1)	X		Subunit 5B	Considered essential; not proposed.	Determined not to be essential.
	Otay River Valley (K2)	X		Determined not to be essential.		
	Otay River Valley (K6)	X				
	Lower Otay Reservoir (K3–5)		X		Considered essential; not proposed.	Subunit 5H.
	Otay Lakes Road (K7)	X		Subunit 5A	Determined not to be essential.	
	Marron Valley		X		Considered essential; not proposed.	Subunit 5I.

*The unit and subunit areas listed in this table have changed in size and configuration, largely due to the various methods that were used to delineate critical habitat. The table is provided to make general comparisons between analogous areas, but not meant to define which individual vernal pools were or were not included in each specific unit or subunit.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means 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. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) 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 the landowner. Where the landowner seeks or requests federal agency funding or authorization 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 features that are essential to the conservation of the species. 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 primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate areas outside of the geographical area occupied by the species at the time of listing only when we determine that the best available scientific data demonstrate that the designation of such areas is essential to the conservation needs 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 the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that 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 San Diego fairy shrimp, 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 scientific 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), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements (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, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements required for the San Diego fairy shrimp from the biological needs of the San Diego fairy shrimp as described in the proposed critical habitat rule published in the

Federal Register on April 22, 2003 (68 FR 19888), and below.

Space for Individual and Population Growth, and for Normal Behavior

San Diego fairy shrimp require vernal pool habitat to grow and reproduce. Their life cycle requires periods of inundation as well as dry periods (Ripley *et al.* 2004, pp. 221–223). The San Diego fairy shrimp is most often found in vernal pools or vernal pool complexes that have the appropriate temperature, water chemistry, depth, and duration. More specifically, San Diego fairy shrimp are found in vernal and ephemeral wetlands that range in ponding duration from 7 days to 2 months and that range in depth from less than 2 inches (in) (5 centimeters (cm)) to over 12 in (30 cm) (Simovich and Fugate 1992, p. 111; Hathaway and Simovich 1996, p. 670). For the appropriate conditions to occur, the following factors are necessary: (1) Associated hydrology that provides water to fill the pools; and (2) any soil type with a claypan or hardpan component that forms an impermeable layer and provides space for individual and population growth and normal behavior. Vernal pool hydrology (i.e., seasonal filling and drying of vernal pools) is an essential feature that governs the life cycle of the San Diego fairy shrimp; proper timing, duration, and depth of these hydrological processes is necessary for cyst hatching and successful reproduction of San Diego fairy shrimp.

Vernal pools generally occur in complexes. Vernal pool complexes are defined by two or more vernal pools in the context of a larger vernal pool watershed. Adjacent upland habitat also contributes to the overall functions important to the vernal pool ecosystem. Protection of the upland habitat between vernal pools within the vernal pool watershed is important for maintaining the hydroperiods of adequate length to support the entire reproductive cycle for San Diego fairy shrimp and to buffer the vernal pools from edge effects. During periods of high rainfall, adult fairy shrimp and cysts (dormant eggs) may be transported between vernal pools in a complex as individual pools become connected by over surface flows of water. To maintain high-quality vernal pool ecosystems, all components including the vernal pool basin, the vernal pool watershed, and the surrounding upland habitat must be available and functional (Hanes and Stromberg 1998, p. 38). Many of the remaining pools that support the San Diego fairy shrimp are no longer in a pristine or undisturbed state. Yet these pools, and the associated upland habitat, continue to function and provide space for individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Temperature, water chemistry, and length of time vernal pools are inundated with water are factors that play an important role in the distribution and temporal appearance of the San Diego fairy shrimp (Gonzalez *et al.* 1996, pp. 315–316; Hathway and Simovich 1996, p. 669). San Diego fairy shrimp hatch and reproduce in water at temperatures that range from 41 to 68 degrees Fahrenheit (F) (5 to 20 degrees Celsius (C)), and do not hatch at temperature greater than 77 degrees F (25 degrees C) (Hathway and Simovich 1996, pp. 674–675). This limitation keeps San Diego fairy shrimp from hatching during the summer months if the vernal pools were to fill with water. Also, San Diego fairy shrimp do not survive well in temperatures below 41 degrees F (5 degrees C) (Hathaway and Simovich 1996, pp. 674–675). San Diego fairy shrimp typically inhabit dilute, freshwater pools with low levels of total dissolved solids (low ion levels (Na^+ concentrations below 60 millimoles per liter (mmol/l)), low alkalinity levels (lower than 80 to 1,000 milligrams per liter (mg/l)), and that are characterized by a range of pH levels from neutral to alkaline (8.0 to 10.3) (Gonzalez *et al.* 1996, pp. 319–322). The San Diego fairy shrimp is not known to successfully mature and reproduce outside these limits in laboratory conditions; therefore, proper temperature, water chemistry, and length of time vernal pools are inundated may be necessary for survival and successful reproduction.

San Diego fairy shrimp have been shown to tightly regulate their internal body chemistry in pool environments that have low salinity and low alkalinity (Gonzalez *et al.* 1996, pp. 319–322). In a laboratory experiment, San Diego fairy shrimp were unable to maintain their body chemistry balance in conditions with sodium ion (Na+) concentrations greater than 60 mmol/l but less than half survived when concentrations exceeded 100 mmol/l (Gonzalez *et al.* 1996, pp. 319–322). This limited tolerance for saline conditions is one of the factors that restrict the San Diego fairy shrimp to its current range. San Diego fairy shrimp are filter feeders and their diet consists mostly of algae, bacteria, and other microorganisms (Parsick 2002, pp. 37–41, 65–70). In a natural vernal pool setting these food items are readily available.

Sites for Breeding, Reproduction and Rearing of Offspring

Adult San Diego fairy shrimp are usually observed from January to March. In years with early or late rainfall, the hatching period may be extended. When vernal pools fill with water the cysts hatch and juvenile fairy shrimp quickly develop into adults. San Diego fairy shrimp can reach sexually maturity and begin mating in 7 to 10 days from the time the vernal pool fills with water. When the females' eggs are fertilized they begin to develop; however, the development of the fertilized eggs stops at an early stage and the eggs become dormant. The dormant eggs are referred to as ''cysts'' or ''resting eggs'' and each egg is smaller than the tip of a pencil and contains a dormant fairy shrimp embryo encased in a hard outer shell. Cysts drop to the bottom of the vernal pool and then become part of the cyst bank in the soil of the vernal pool. In the absence of more rainfall the vernal pool dries and any remaining adult San Diego fairy shrimp die as the water evaporates. The cysts, however, are capable of withstanding temperature extremes and prolonged drying (i.e., drought conditions lasting several years). During subsequent filling events these cysts will emerge from dormancy and hatch. Researchers have found that only a small portion of the cysts in the cyst bank hatch each time the vernal pool fills. Simovich and Hathaway (1997, pp. 40–43) referred to this as ''bet-hedging'' and concluded that it allows the San Diego fairy shrimp to survive in an unpredictable environment. Many times when a vernal pool fills, the pool will evaporate before San Diego fairy shrimp are able to reproduce (Ripley *et al.* 2004, pp. 221–223). The ''bet-hedging'' insures that some cysts will hatch when the vernal pools hold water for a period long enough for the San Diego fairy shrimp to complete its entire life cycle. Thus, reproductive output of small aquatic crustaceans living in variable environments is spread over several seasons.

Primary Constituent Elements for the San Diego Fairy Shrimp

Within the geographical area occupied by the San Diego fairy shrimp, we must identify the PCEs that may require special management considerations or protection. All areas designated as critical habitat for San Diego fairy shrimp are occupied, within the species' geographic range, and contain sufficient PCEs to support at

least one life history function. In the case of this designation, all of the units contain all of the PCEs. The data provided in these PCEs have been generalized from existing scientific data. There may be cases where San Diego fairy shrimp persist in conditions outside the ranges expressed in these PCEs. It is also important to note that the variable amounts and timing of precipitation in southern California do not result in favorable conditions for San Diego fairy shrimp in every year.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the San Diego fairy shrimp's PCEs are:

(1) Vernal pools with shallow to moderate depths (2 in (5 cm) to 12 in (30 cm)) that hold water for sufficient lengths of time (7 to 60 days) necessary for incubation, maturation, and reproduction of the San Diego fairy shrimp, in all but the driest years;

(2) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE 1, providing for dispersal and promoting hydroperiods of adequate length in the pools (i.e., the vernal pool watershed); and

(3) Flat to gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat (including Carlsbad, Chesterton, Diablo, Huerhuero, Linne, Olivenhain, Placentia, Redding, and Stockpen soils).

We have designed this revised final designation for the conservation of PCEs necessary to support the life history functions and the areas containing those PCEs. The matrix of vernal pools/ephemeral wetlands, upland habitats, and underlying soil substrates in combination create ecologically functional units. These features and the lands that they represent are essential to the conservation of the San Diego fairy shrimp. All lands designated as critical habitat contain all of the features essential to the conservation of the San Diego fairy shrimp (i.e., PCEs). As stated in the Summary of Changes section of this rule, we believe that a designation limited to the extant range is adequate to conserve the San Diego fairy shrimp.

We designate units based on sufficient PCEs being present to support at least one of the species' life history functions. In the case of this designation, all of the units contain all of the PCEs.

Special Management Considerations or Protection

When designating critical habitat under the first prong of the statutory definition of critical habitat, as here, we assess whether areas within the geographical area occupied by the species contain features that are essential to the conservation of the species and that may require special management considerations or protection. In this section, we describe special management considerations and protection required to conserve the PCEs for the San Diego fairy shrimp.

The most pressing threat to critical habitat for the San Diego fairy shrimp is the loss of habitat. Vernal pools supporting the San Diego fairy shrimp are found on level or gently sloping land within 40 mi (64 km) of the coast. Virtually all of this land is sought after for commercial and residential development. Soils supporting vernal pools have been almost completely lost to development (Bauder and McMillan 1998, p. 56). Development of an area can directly impact all the PCEs for this species if the vernal pool basins are lost during the development process. The vernal pool basin (PCE 1) can also be indirectly impacted by development if the vernal pool watershed (PCE 2) is impacted during the development process. Development can also indirectly impact PCE 1 and PCE 2 if the vernal pool soils or topography is altered (PCE 3). Specifically, the following subunits include land that is not protected from development through ownership by a conservation organization or by a conservation easement or other similar legal mechanisms: 1C; 3A; 3C; 3E.1; 3E.2; 3E.3; 3E.4; 4A/B; 4H; 4J–4M; 5A–5D; 5F; and 5G. These lands require special management considerations or protections from negative impacts associated with development.

Once a vernal pool complex has been protected from loss from habitat conversion or development, it is still necessary to ensure that the habitat is not degraded as a result of altered hydrology, contamination, nonnative species invasions, or other incompatible land uses (e.g., off-road vehicle use, mountain bike use, illegal dumping). Special management considerations are necessary to ensure that vernal pool habitat protected for the San Diego fairy shrimp retains the physical and biological features essential to the conservation of the San Diego fairy shrimp. As discussed below, all of the subunits designated as critical habitat require some form of special management consideration or protection of their constituent PCEs.

Special management may be necessary to prevent and reduce incursion of nonnative invasive plant species that alter PCE 1. Nonnative plant species can impact the duration of ponding in a vernal pool basin. Nonnative plant species can also impact the vernal pool watershed (PCE 2) by reducing the inundation period through an over-abundance of vegetation within the watershed (Marty 2005, p. 1630). Special management actions can be taken to reduce the negative effects of such invasions. Removal of weed species by hand, increased planting of vernal pool species, mowing, restoration of native species in the upland areas, and prescribed burns may be potential tools to manage this threat. Nonnative species threaten the following subunits: 1C; 2G; 3A; 3C; 3D; 3E.1; 3E.2; 3E.3; 3E.4; 4I–4M; 5A–5D; 5F; 5G; and 5I.

Special management considerations or protections may be necessary to protect and restore vernal pool hydrology (PCE 1 and PCE 2). Alteration of natural hydrology directly threatens San Diego fairy shrimp, and the invasion of nonnative species may be facilitated by alterations in the natural vernal pool hydrology. Runoff from adjacent developments should be monitored to ensure that a pool's hydrology has not been altered, either through changes in ponding duration or changes to water temperature or chemistry. Discing, grading and digging in ways that impact the topography and soils near vernal pool complexes (PCE 3) can also indirectly impact the hydrology (PCE 1 and PCE 2). Altered hydrology threatens the following subunits: 1C; 2G; 3A; 3C; 3D; 3E.1; 3E.2; 3E.3; 3E.4; 4A/B; 4I–4M; 5A–5D; 5F; 5G and 5I.

Special management considerations or protection may be necessary to reduce degradation of vernal pools. Management actions such as fencing, trail building, and sign posting can help to reduce human activities that threaten San Diego fairy shrimp habitat. Vehicular traffic can impact to adult and juvenile San Diego fairy shrimp, and may crush cysts during the wet season (Hathaway *et al.* 1996, p. 451). Motorized and non-motorized off-road vehicle use, illegal trash dumping, and trampling can: (1) Affect the ponding duration in the vernal pool by increasing or decreasing the amount of water in the basin (PCE 1) or move soils and alter the topography, and (2) divert water or compact the soil such that the water does not saturate the soils (PCE 2). Degradation associated with human

activities threatens the following subunits: 1C; 2G; 3A; 3C; 3D; 3E.1; 3E.2; 3E.3; 3E.4; 4A/B; 4C–4F; 4I–4M; 5A–5I.

The control of invasive nonnative species, the maintenance and enhancement of natural vernal pool hydrology, and the control of incompatible and often illegal activities, such as off-road vehicle use and trash dumping, will help to ensure the preservation of vernal pool complexes. Ongoing monitoring of the threats to preserved vernal pool complexes and the San Diego fairy shrimp in each vernal pool complex is necessary for the long-term conservation of the San Diego fairy shrimp.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining the specific areas within the geographical area occupied by the species at listing that contain the features essential to the conservation of species which may require special management considerations or protection, as well as when determining if any specific areas outside the geographical area occupied by the species at listing are essential to the conservation of the species. We only designate areas outside the geographical area occupied at the time of listing by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).

We based this final revision to the critical habitat designation on the 1998 recovery plan, which calls for the preservation and enhancement of existing vernal pools that are within the extant range of the San Diego fairy shrimp (Service 1998a). We used all scientific and commercial data available to identify existing vernal pool complexes that contain San Diego fairy shrimp. Occupancy status was determined using occurrence data from the CNDDB (2001, 2004, 2007), the City of San Diego's Vernal Pool Inventory (2003), the Ramona Vernal Pool Conservation Study (TAIC and EDAW 2005), Appendix E of the Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp. E1–E16), and 10(A)(1)(a) reports submitted to the Service for San Diego fairy shrimp. Since the publication of the recovery plan we have become aware of several more vernal pool complexes that are occupied by the San Diego fairy shrimp. In addition to vernal pool complexes identified in appendices F and G, we have included the following areas in this designation that were not identified as essential to the San Diego fairy shrimp in the recovery plan or the 2000 designation of critical habitat: Subunits 1A; 1B; 1C; 1D; 5D; 5H; and 5I (see Table 1).

We consider all of the vernal pool complexes designated as critical habitat to have been occupied at the time of listing and to be currently occupied by the San Diego fairy shrimp. Genetic studies indicate that there is low rate of dispersal for this species, meaning that it is infrequent for San Diego fairy shrimp to move from one area to another. The San Diego fairy shrimp was first described in 1993, and there are only a limited number of people who have been trained to survey for this species (Fugate 1993, pp. 296–304). As a result, ''new'' populations of this species have been identified since listing in 1997, not because the San Diego fairy shrimp recently appeared there, but rather San Diego fairy shrimp were discovered at new locations the first time focused surveys were conducted at those locations. For these reasons we believe that all areas designated as critical habitat were occupied by San Diego fairy shrimp at the time of listing. As stated above, we believe that a designation encompassing habitat within the extant range of the San Diego fairy shrimp is adequate to conserve this species. After we delineated all of the vernal pool complexes occupied by San Diego fairy shrimp, we examined the complexes to delineate the watersheds associated with the complexes and determined the extent of the PCEs in each complex and watershed. Areas determined to contain the PCEs were based on the boundaries of vernal pool complexes delineated in Beauchamp and Cass 1979 (pp. 12–13) and Bauder 1986 (Appendix 4). However, these boundaries were drawn to group and classify vernal pool complexes and did not always capture the entire watershed area needed to support the vernal pool complex. To better capture the watershed areas in the critical habitat we included areas of similar topography and soil type (Service GIS database; soils described by Bowman 1973, pp. 7–17).

Finally, we removed vernal pool complexes that lack any evidence to indicate historical or current occupancy by San Diego fairy shrimp or that are unlikely to contribute to the conservation of the species due to location or other limitations. We removed subunit 3B in San Marco; the Fieldstone vernal pools; and the K1, K2 and K6 vernal pool complexes (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule for additional details on these areas).

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands containing buildings, paved areas, and other structures that lack PCEs for San Diego fairy shrimp. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule are excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the primary constituent elements in the adjacent critical habitat.

Revisions to the Critical Habitat Designation

We are designating 3,082 ac (1,248 ha) of land as critical habitat for San Diego fairy shrimp in 5 units with a total of 29 subunits. Table 2 outlines the areas included (definitional areas) and the areas excluded and exempt from this revised final critical habitat. Subunits designated as critical habitat are discussed in detail below in the Unit Description section; exempt or excluded subunits are further discussed in the Exemptions and Exclusions section below. The five units in this final revision to critical habitat are defined by the Management Areas described in the recovery plan (Service 1998a, pp. 35–44). The critical habitat areas described below constitute our best assessment of the areas that are within the geographical area occupied by the San Diego fairy shrimp at the time of listing and that contain the primary constituent elements essential to the conservation of the San Diego fairy shrimp that may require special management considerations or protection.

TABLE 2.—SIZE OF AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE SAN DIEGO FAIRY SHRIMP (DEFINITIONAL AREA), THE AREA EXCLUDED OR EXEMPT FROM THE FINAL CRITICAL HABITAT DESIGNATION (EXCLUDED AND EXEMPT AREA), AND THE TOTAL AREA DESIGNATED FOR EACH SUBUNIT OF CRITICAL HABITAT (TOTAL DESIGNATED). NUMBERS HAVE BEEN ROUNDED TO THE NEAREST WHOLE DIGIT AND MAY OVERESTIMATE AREA DUE TO ROUNDING

Unit/subunit	Geographic area	Definitional area	Excluded and exempt area	Total designated
Unit 1	Orange County.			
1A	North Ranch Policy Plan Area	4 ac (2 ha)	4 ac (2 ha)	0 ac (0 ha).
1B	Costa Mesa Fairview Park	43 ac (17 ha)	43 ac (17 ha)	0 ac (0 ha).
1C	Newport-Banning Ranch	15 ac (6 ha)	0 ac (0 ha)	15 ac (6 ha).
1D	Chiquita Ridge	56 ac (23 ha)	56 ac (23 ha)	0 ac (0 ha).
1E	Radio Tower Road	84 ac (34 ha)	84 ac (34 ha)	0 ac (0 ha).
Subtotal for Unit 1.		202 ac (82 ha)	187 ac (76 ha)	15 ac (6 ha).
Unit 2	North Coastal Mesa, San Diego County.			
2A	MCB Camp Pendleton, San Onofre State Lease Area.	17 ac (9 ha)	17 ac (9 ha)	0 ac (0 ha).
2B	MCB Camp Pendleton, Cockleburr Mesa.	43 ac (17 ha)	43 ac (17 ha)	0 ac (0 ha).
2C	MCB Camp Pendleton, Cockleburr Mesa.	132 ac (53 ha)	132 ac (53 ha)	0 ac (0 ha).
2D	MCB Camp Pendleton, Wire Mountain Housing.	155 ac (63 ha)	155 ac (63 ha)	0 ac (0 ha).
2E	MCB Camp Pendleton, Wire Mountain Housing.	18 ac (7 ha)	18 ac (7 ha)	0 ac (0 ha).
2F	MCB Camp Pendleton, Wire Mountain Housing.	203 ac (82 ha)	203 ac (82 ha)	0 ac (0 ha).
2G	Poinsettia Lane Commuter Station	6 ac (3 ha)	0 ac (0 ha)	6 ac (3 ha).
	MCB Camp Pendleton, training areas.	7182 ac (2906 ha)	7182 ac (2906 ha)	0 ac (0 ha).
Subtotal for Unit 2.		7756 ac (3140 ha)	7750 ac (3137 ha)	6 ac (3 ha).
Unit 3	Inland Valley, San Diego County.			
3A	San Marcos, northeast unit	17 ac (7 ha)	0 ac (0 ha)	17 ac (7 ha).
3C	San Marcos, southwest unit	63 ac (25 ha)	0 ac (0 ha)	63 ac (25 ha).
3D	San Marcos, southeast unit	5 ac (2 ha)	0 ac (0 ha)	5 ac (2 ha).
3E.1	Ramona, grasslands	382 ac (154 ha)	0 ac (0 ha)	382 ac (154 ha).
3E.2	Ramona, airport	191 ac (77 ha)	0 ac (0 ha)	191 ac (77 ha).
3E.3	Ramona, downtown	27 ac (11 ha)	0 ac (0 ha)	27 ac (11 ha).
3E.4	Ramona, high school	40 ac (16 ha)	0 ac (0 ha)	40 ac (16 ha).
Subtotal for Unit 3.		725 ac (292 ha)*	0 ac (0 ha)	725 ac (292 ha).*
Unit 4	Central Coastal Mesa, San Diego County.			
4A/B	Del Mar Mesa	252 ac (102 ha)	0 ac (0 ha)	252 ac (102 ha).
4C	Murphy Canyon Navy Housing	41 ac (17 ha)	0 ac (0 ha)	41 ac (17 ha).
4D	Chollas Heights Navy Housing	16 ac (7 ha)	0 ac (0 ha)	16 ac (7 ha).
4E	Carmel Mountain, west	32 ac (13 ha)	0 ac (0 ha)	32 ac (13 ha).
4F	Carmel Mountain, east	4 ac (2 ha)	0 ac (0 ha)	4 ac (2 ha).
4G	Tierra Alta	5 ac (2 ha)	0 ac (0 ha)	5 ac (2 ha).
4H	Lopez Ridge	11 ac (4 ha)	0 ac (0 ha)	11 ac (4 ha).
4I	Winterwood	17 ac (7 ha)	0 ac (0 ha)	17 ac (7 ha).
4J	Carroll Canyon	14 ac (6 ha)	0 ac (0 ha)	14 ac (6 ha).
4K	Sander and Magnatron	56 ac (23 ha)	0 ac (0 ha)	56 ac (23 ha).
4L	Cubic	7 ac (3 ha)	0 ac (0 ha)	7 ac (3 ha).
4M	Montgomery Field	96 ac (39 ha)	0 ac (0 ha)	96 ac (39 ha).
	MCAS Miramar	1703 ac (689 ha)	1703 ac (689 ha)	0 ac (0 ha).
Subtotal for Unit 4.		2254 ac (914 ha)	1703 ac (689 ha)	551 ac (225 ha).
Unit 5	Southern Coastal Mesa, San Diego County.			
5A	Otay Mesa, northeast unit	234 ac (95 ha)	196 ac (79 ha)	38 ac (16 ha).
5B	Otay Mesa, north unit	327 ac (132 ha)	23 ac (9 ha)	304 ac (123 ha).
5C	Otay Mesa, east unit	75 ac (30 ha)	0 ac (0 ha)	75 ac (30 ha).
5D	Otay Mesa, southeast unit	391 ac (158 ha)	0 ac (0 ha)	391 ac (158 ha).

TABLE 2.—SIZE OF AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF THE SAN DIEGO FAIRY SHRIMP (DEFINITIONAL AREA), THE AREA EXCLUDED OR EXEMPT FROM THE FINAL CRITICAL HABITAT DESIGNATION (EXCLUDED AND EXEMPT AREA), AND THE TOTAL AREA DESIGNATED FOR EACH SUBUNIT OF CRITICAL HABITAT (TOTAL DESIGNATED). NUMBERS HAVE BEEN ROUNDED TO THE NEAREST WHOLE DIGIT AND MAY OVERESTIMATE AREA DUE TO ROUNDING—Continued

Unit/subunit	Geographic area	Definitional area	Excluded and exempt area	Total designated
5E	Naval Outlying Landing Field (NOLF).	8 ac (3 ha)	8 ac (3 ha)	0 ac (0 ha).
5F	Otay Mesa, southwest unit	650 ac (263 ha)	29 ac (12 ha)	621 ac (251 ha).
5G	Otay Mesa, northwest unit	132 ac (53 ha)	0 ac (0 ha)	132 ac (53 ha).
5H	Lower Otay Reservoir	205 ac (83 ha)	5 ac (2 ha)	200 ac (81 ha).
5I	Marron Valley	24 ac (10 ha)	0 ac (0 ha)	24 ac (10 ha).
	Naval Radar Receiving Facility (NRRF).	161 ac (65 ha)	161 ac (61 ha)	0 ac (0 ha).
Subtotal for Unit 5.		2,207 ac (892 ha)*	422 ac (170 ha)*	1,785 ac (722 ha).*
Total		13,144 ac (5,320 ha)*	10,062 ac (4,072 ha)*	3,082 ac (1,248 ha).*

*Figures in table may not sum due to rounding.

The approximate area encompassed within each critical habitat subunit by landownership is shown in Table 3.

TABLE 3.—CRITICAL HABITAT UNITS AND SUBUNITS FOR THE SAN DIEGO FAIRY SHRIMP. NUMBERS HAVE BEEN ROUNDED TO THE NEAREST WHOLE DIGIT AND MAY OVERESTIMATE AREA DUE TO ROUNDING

Unit/subunit	Geographic area	Owner	Total designated
Unit 1	Orange County.		
1C	Newport-Banning Ranch	Private	15 ac (6 ha).
Unit 2	North Coastal Mesa, San Diego County.		
2G	Poinsettia Lane Commuter Station	Private	2 ac (1 ha).
		North County Transit District (NCTD)	4 ac (2 ha).
Unit 3	Inland Valley, San Diego County.		
3A	San Marcos, northeast unit	Private	16 ac (6 ha).
		Other Special Districts	1 ac (<1 ha).
3C	San Marcos, southwest unit	City of San Marcos	11 ac (4 ha).
		Water District	4 ac (2 ha).
		Private	48 ac (19 ha).
3D	San Marcos, southeast unit	Private	5 ac (2 ha).
3E.1	Ramona, grasslands	Water District	1 ac (<1 ha).
		Private	381 ac (153 ha).
3E.2	Ramona, airport	County of San Diego	67 ac (27 ha).
		Private	124 ac (50 ha).
3E.3	Ramona, downtown	Private	26 ac (10 ha).
		County of San Diego	1 ac (<1 ha).
3E.4	Ramona, high school	Ramona Unified School District	35 ac (14 ha).
		Private	5 ac (2 ha).
Unit 4	Central Coastal Mesa, San Diego County.		
4A/B	Del Mar Mesa	U.S. Fish and Wildlife Service	41 ac (16 ha).
		State of California	56 ac (23 ha).
		County of San Diego	5 ac (2 ha).
		City of San Diego	51 ac (21 ha).
		Private	99 ac (40 ha).
4C	Murphy Canyon Navy Housing	Department of Defense	40 ac (16 ha).
		City of San Diego	1 ac (<1 ha).
4D	Chollas Heights Navy Housing	Department of Defense	16 ac (7 ha).
4E	Carmel Mountain, west	City of San Diego	31 ac (12 ha).
		Private	1 ac (<1 ha).
4F	Carmel Mountain, east	City of San Diego	4 ac (2 ha).
4G	Tierra Alta	City of San Diego	2 ac (1 ha).
		Private	3 ac (1 ha).
4H	Lopez Ridge	City of San Diego	7 ac (3 ha).
		Private	4 ac (2 ha).
4I	Winterwood	City of San Diego	17 ac (7 ha).

TABLE 3.—CRITICAL HABITAT UNITS AND SUBUNITS FOR THE SAN DIEGO FAIRY SHRIMP. NUMBERS HAVE BEEN ROUNDED TO THE NEAREST WHOLE DIGIT AND MAY OVERESTIMATE AREA DUE TO ROUNDING—Continued

Unit/subunit	Geographic area	Owner	Total designated
4J	Carroll Canyon	City of San Diego	13 ac (5 ha).
		Private	1 ac (<1 ha).
4K	SANDER and Magnatron	City of San Diego	55 ac (22 ha).
		Private	1 ac (1 ha).
4L	Cubic	Private	7 ac (3 ha).
4M	Montgomery Field	City of San Diego	96 ac (39 ha).
Unit 5	Southern Coastal Mesa, San Diego County.		
5A	Otay Mesa, northeast unit	State of California	16 ac (7 ha).
		County of San Diego	8 ac (3 ha).
		Water District	1 ac (<1 ha).
		Private	13 ac (5 ha).
5B	Otay Mesa, north unit	Private	304 ac (123 ha).
5C	Otay Mesa, east unit	Private	75 ac (30 ha).
5D	Otay Mesa, southeast unit	Private	391 ac (158 ha).
5F	Otay Mesa, southwest unit	U.S. Government	11 ac (4 ha).
		City of San Diego	73 ac (30 ha).
		Private	537 ac (217 ha).
5G	Otay Mesa, northwest unit	City of San Diego	19 ac (7 ha).
		Private	113 ac (46 ha).
5H	Lower Otay Reservoir	City of San Diego	200 ac (81 ha).
5I	Marron Valley	City of San Diego	24 ac (10 ha)
Total			3,082 ac (1,248 ha)*.

*Figures in table may not sum due to rounding.

Unit Descriptions

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the San Diego fairy shrimp below.

Unit 1: Orange County (15 ac (6 ha))

Unit 1 is located in Orange County, California. The area was occupied at the time of listing and contains the PCEs essential to the conservation of the San Diego fairy shrimp that may require special management considerations or protection. The majority of the vernal pools in Orange County were eliminated prior to 1950 and only a small number of vernal pool complexes remain (Riefner and Pryor 1996, p. 300). This unit represents the northern extent of the species' distribution in southern California and represents the historical distribution of coastal terrace vernal pools in this area. The vernal pools in Orange County are the only pools that form on Alo clay, Calleguas clay loam, Cieneba sandy loam, and Soper gravelly loam that support the San Diego fairy shrimp. This unit contains vernal pools that support San Diego fairy shrimp populations in the ''Group A'' genetic clade (Bohonak 2007, p. 1). For these reasons this unit is essential for recovery of the San Diego fairy shrimp. For more information about Unit 1 please see the proposed rule (68 FR 19888; April 22, 2003).

Subunit 1A: The Irvine Ranch (Formerly North Ranch Policy Plan Area)

We are excluding Subunit 1A from critical habitat because this area is part of The Irvine Ranch. We have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Subunit 1B: Fairview Park

We are excluding Subunit 1B from critical habitat because this area is part of the Fairview Park Master Plan. We have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Subunit 1C: Newport-Banning Ranch

We are designating subunit 1C as critical habitat for the San Diego fairy shrimp. Subunit 1C consists of 15 ac (6 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. It is located south of the Santa Ana River, 2 mi (3 km) inland from the coast. Subunit 1C consists of privately owned land.

The vernal pool complex at Newport-Banning Ranch is one of only five known vernal pool complexes containing the San Diego fairy shrimp in Orange County. This vernal pool complex and the vernal pool complex at Fairview Park (subunit 1B) represent the only remaining examples of coastal vernal pools in Orange County. Subunit 1C is closed to recreational use; however, this area has been degraded by past activities and may face future impacts from the development of this site and/or its watershed. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development activities and nonnative species that may negatively impact the San Diego fairy shrimp, its PCEs, and its habitat.

Subunit 1D: Chiquita Ridge

We are excluding Subunit 1D from critical habitat because this area is part of the Southern Subregion NCCP/HCP. We have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Subunit 1E: Radio Tower Road

We are excluding Subunit 1E from critical habitat because this area is part of the Southern Subregion NCCP/HCP. We have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of

including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Unit 2: San Diego, North Coastal Mesa (6 ac (3 ha))

Unit 2 is located in San Diego County, California. The area was occupied at the time of listing and contains the features we have identified as essential to the conservation of the San Diego fairy shrimp that may require special management considerations or protection. The vernal pool complexes in this unit occur on Carlsbad gravelly loam sand, Diablo clay, and Salinas clay. As a result of coastal development, most vernal pools supporting the San Diego fairy shrimp on coastal terraces in San Diego County have been lost. Unit 2 represents the largest collection of vernal pools on coastal terraces that remain in San Diego County. Given the rarity of the San Diego fairy shrimp and the limited amount of remaining vernal pool habitat, this unit is essential to the conservation of this species because of the need to conserve vernal pools throughout the range of the species. This unit contains vernal pools that support San Diego fairy shrimp populations in the ''Group B'' genetic clade (Bohonak 2007, p. 1). This unit is also essential due to its role in maintaining the genetic diversity and population stability of the San Diego fairy shrimp. For more information about Unit 2 please see the proposed rule (68 FR 19888; April 22, 2003).

We have determined that MCB Camp Pendleton's INRMP provides a benefit to the San Diego fairy shrimp and therefore MCB Camp Pendleton, including the proposed subunits 2A–2F, is exempt from the designation of critical habitat pursuant to section 4(a)(3) of the Act (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule and Exemptions and Exclusions sections for more information on this exemption).

Subunit 2G: Poinsettia Lane Commuter Station

We are designating subunit 2G as critical habitat for the San Diego fairy shrimp. Subunit 2G consists of 6 ac (3 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. It is located in Carlsbad, California, north of Poinsettia Lane, 0.25 mi (0.4 km) inland from the coast. Subunit 2G consists of 4 ac (2 ha) of public land owned by the North County Transit District (NCTD) and 2 ac (1 ha) of private land.

Lands in this subunit owned by NCTD are in a conservation easement managed by CDFG. However, at this time additional management measures, such as monitoring of water quality and the restoration of native vegetation around the vernal pools, may be needed to conserve the PCEs for San Diego fairy shrimp. The PCEs in this critical habitat subunit may also require special management considerations or protection to address threats from altered hydrology and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Unit 3: San Diego, Inland Valley (725 ac (292 ha))

Unit 3 contains vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona. The area was occupied at the time of listing and contains the features essential to the conservation of the San Diego fairy shrimp that may require special management considerations or protection for the San Diego fairy shrimp. The vernal pool complexes in unit 3 are associated with alluvial or volcanic type soils and include the only vernal pool complexes known to occur on Placentia soils (Service GIS database; soils described by Bowman 1973, pp. 68–69). The vernal pool complexes in San Marcos are associated with a unique plant association of multiple species of *Brodiaea* (Armstrong 2007, pp. 11–16). The recovery plan specifically identifies these vernal pools as essential for the recovery of the San Diego fairy shrimp. This unit includes vernal pools within the easternmost edge of the geographical distribution of the species and at the highest elevation where this species occurs. This unit contains vernal pools that support San Diego fairy shrimp populations in the ''Group B'' genetic clade (Bohonak 2004, pp. 3–9). Conservation of vernal pools in this unit will help maintain the diversity of vernal pool habitats and their unique geological substrates, and will retain the genetic diversity of these geographically distinct populations. For more information about Unit 3 please see the proposed rule (68 FR 19888; April 22, 2003).

Subunit 3A: San Marcos: Northeast

We are designating subunit 3A as critical habitat for the San Diego fairy shrimp. Subunit 3A consists of 17 ac (7 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3A is located north of State Route 78, just south of Palomar Community College, 8 mi (13 km) inland from the coast. Subunit 3A consists of 16 ac (6 ha) of privately owned land and of 1 ac (<1 ha) of land owned by a Special District.

This site has been proposed for development, and it is likely that the vernal pools within this subunit will be directly or indirectly impacted by the development. The PCEs within this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3C: San Marcos: Southwest

We are designating subunit 3C as critical habitat for the San Diego fairy shrimp. Subunit 3C consists of 63 ac (25 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3C is located south of State Route 78, to the north of San Marcos Boulevard between South Pacific Street and South Las Posas Road, 8 mi (13 km) inland from the coast. Subunit 3C consists of 11 ac (4 ha) of land owned by the City of San Marcos, 4 ac (2 ha) of land owned by the Water District, and 48 ac (19 ha) of privately owned land.

This site is currently not fenced and the vernal pool habitat in this subunit is subject to continuing impacts from off-road vehicles and illegal dumping. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3D: San Marcos: Southeast

We are designating subunit 3D as critical habitat for the San Diego fairy shrimp. Subunit 3D consists of 5 ac (2 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3D is located south of State Route 78, east of Linda Vista Drive and west of Bent Avenue, 9 mi (14 km) inland from the coast. Subunit 3C is privately owned. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from altered hydrology and nonnative species

that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3E.1: Ramona Grasslands

We are designating subunit 3E.1 as critical habitat for the San Diego fairy shrimp. Subunit 3E.1 consists of 382 ac (154 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3E.1 is located in the western portion of the Santa Maria Valley, north of the Santa Maria Creek and southwest of the Ramona Airport, 20 mi (32 km) inland from the coast. Subunit 3E.1 consists of 1 ac (<1 ha) land owned by the Water District and 381 ac (153 ha) of privately owned land.

Various conservation organizations are in the process of acquiring land within this subunit; however, not all of the land is conserved at this point and there is no long-term management plan for the conservation of the San Diego fairy shrimp and its vernal pool habitat. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3E.2: Ramona Airport

We are designating subunit 3E.2 as critical habitat for the San Diego fairy shrimp. Subunit 3E.2 consists of 191 ac (77 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3E.2 is located in the central portion of the Santa Maria Valley, north of the Santa Maria Creek and south of the Ramona Airport, 21 mi (34 km) inland from the coast. Subunit 3E.2 consists of 67 ac (27 ha) public land owned by the County of San Diego and 124 ac (50 ha) of privately owned land.

Various conservation organizations are in the process of acquiring land within this subunit; however, not all of the land is conserved at this point and there is no long-term management plan for the conservation of the San Diego fairy shrimp. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3E.3: Ramona, Main Street

We are designating subunit 3E.3 as critical habitat for the San Diego fairy shrimp. Subunit 3E.3 consists of 27 ac (11 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3E.3 is located along Main Street in Ramona, 23 mi (37 km) inland from the coast. Subunit 3E.3 consists of 1 ac (<1 ha) of land owned by the County of San Diego and 26 ac (10 ha) of private land.

This site is privately owned and subject to potential development. In addition, the site is currently not fenced and its vernal pool habitat is subject to continuing impacts from off-road vehicles. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 3E.4: Ramona High School

We are designating subunit 3E.4 as critical habitat for the San Diego fairy shrimp. Subunit 3E.4 consists of 40 ac (16 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 3E.4 is located east of State Route 67, 24 mi (39 km) inland from the coast. Subunit 3E.4 consists of 35 ac (14 ha) of land owned by the Ramona Unified School District and 5 ac (2 ha) of privately owned land. The PCEs in this critical habitat subunit may require special management considerations or protection to address current development threats, and impacts from off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Unit 4: San Diego, Central Coastal Mesas (551 ac (225 ha))

Unit 4 is located in San Diego County, California. The area was occupied at the time of listing and contains the features essential to the conservation of the San Diego fairy shrimp. These features may require special management considerations or protection due to threats from development, illegal trash dumping, OHV activity, and nonnative plant species. The occurrences of San Diego fairy shrimp in Unit 4 are associated with coastal terraces and mesas found south of the San Dieguito River to the Sweetwater River. While many of the vernal pool complexes in this unit have been destroyed or fragmented, the complexes being designated represent some of the best remaining vernal pools in San Diego County. Many of the vernal pools in this unit receive conservation protection by virtue of their land ownership; however, they may require additional management to maintain populations of San Diego fairy shrimp. This unit contains vernal pools that support San Diego fairy shrimp populations in both the ''Group A'' and ''Group B'' genetic clade (Bohonak 2004, pp. 3–9). This unit includes vernal pools that are within the center of this species' geographical distribution and retains the genetic diversity of these geographically distinct populations. For more information about Unit 4 please see the proposed rule (68 FR 19888; April 22, 2003).

We have determined that MCAS Miramar's INRMP provides a benefit to the San Diego fairy shrimp and, therefore, MCAS Miramar is exempt from the designation pursuant to section 4(a)(3) of the Act (see Exemptions and Exclusions section below for a detailed discussion of this exemption).

Subunit 4A/B: Del Mar Mesa

We are designating subunit 4A/B as critical habitat for the San Diego fairy shrimp. Subunit 4A/B consists of 252 ac (102 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4A/B is located south of State Route 56 and north of Los Peñasquitos Canyon, 6 mi (10 km) inland from the coast. Subunit 4A/B consists 51 ac (21 ha) land owned by the City of San Diego, 5 ac (2 ha) land owned by the County of San Diego, 56 ac (23 ha) land owned by the State of California, 41 ac (16 ha) land owned by the Service, and 99 ac (40 ha) is privately owned land.

The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4C: Murphy Canyon Navy Housing

We are designating subunit 4C as critical habitat for the San Diego fairy shrimp. Subunit 4C consists of 41 ac (17 ha) of habitat occupied by the species at the time of listing and the species

continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4C is located northeast of the junction of Interstate 8 and Interstate 15, 10 mi (16 km) inland from the coast. Subunit 4C consists of 40 ac (16 ha) of DOD land and 1 ac (<1 ha) of public land owned by the City of San Diego.

As a result of two section 7 consultations (Service 2002; Service 2003), the vernal pool habitat in this subunit and in subunit 4D were restored to offset project impacts. The Navy has completed a 5-year monitoring and management period as described in the section 7 consultations and is now seeking funds for a long-term management plan for this area (Jacobsen 2007, p. 1). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this subunit may require special management considerations or protection to address on-going threats from recreational activities, illegal dumping, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4D: Chollas Heights Navy Housing

We are designating subunit 4D as critical habitat for the San Diego fairy shrimp. Subunit 4D consists of 16 ac (7 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4D is located north of State Route 94 and north Chollas Reservoir, 8 mi (13 km) inland from the coast. Subunit 4D consists entirely of DOD land.

As a result of two section 7 consultations (Service 2002; Service 2003), the vernal pool habitat in this subunit and in subunit 4C were restored to offset project impacts. The Navy has completed a 5-year monitoring and management period as described in the section 7 consultations and is now seeking funds for a long-term management plan for this area (Jacobsen 2007, p. 1). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this subunit may require special management considerations or protection to address on-going threats from nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4E: Carmel Mountain, West

We are designating subunit 4E as critical habitat for the San Diego fairy shrimp. Subunit 4E consists of 32 ac (13 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4E is located south of State Route 56 and north of Los Peñasquitos Canyon, 3 mi (5 km) inland from the coast. Subunit 4E consists of 31 ac (13 ha) of public land owned by the City of San Diego and 1 ac (<1 ha) of privately owned land.

The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4F: Carmel Mountain, East

We are designating subunit 4F as critical habitat for the San Diego fairy shrimp. Subunit 4F consists of 4 ac (2 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. It is located south of State Route 56 and north of Los Peñasquitos Canyon, 3 mi (5 km) inland from the coast. Subunit 4F consists entirely of public land owned by the City of San Diego.

The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4G: Tierra Alta

We are designating subunit 4G as critical habitat for the San Diego fairy shrimp. Subunit 4G consists of 5 ac (2 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4G is located north of Calle Cristobal and south of Los Peñasquitos Canyon, 6 mi (10 km) inland from the coast. Subunit 4G consists of 2 ac (1 ha) of public land owned by the City of San Diego and 3 ac (1 ha) of privately owned land.

The private land in subunit 4G is conserved and maintained by the Tierra Alta Home Owner's Association. This subunit is considered to be in the same complex and series as the Lopez Ridge vernal pools to the south (subunit 4H). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this subunit may require special management considerations or protection to address on-going threats from recreational activities and illegal dumping that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4H: Lopez Ridge

We are designating subunit 4H as critical habitat for the San Diego fairy shrimp. Subunit 4H consists of 11 ac (4 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4H is located north of Calle Cristobal and south of Los Peñasquitos Canyon, 6 mi (10 km) inland from the coast. Subunit 4H consists of 7 ac (3 ha) of public land owned by the City of San Diego and 4 ac (2 ha) of privately owned land.

The private portion of this subunit is zoned for single family residential and it is vulnerable to impacts associated with development. The publicly owned portion of this critical habitat unit is preserved as a mitigation site as a condition of a Service Biological Opinion (1–1–83–F–29R (Service 1983)). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this critical habitat subunit may require special management considerations or protection to address threats from development, off-road vehicles, altered hydrology, and nonnative species that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4I: Winterwood

We are designating subunit 4I as critical habitat for the San Diego fairy shrimp. Subunit 4I consists of 17 ac (7 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4I is located to the south of Challenger Middle School in Mira Mesa, 6 mi (10 km) inland from the coast. Subunit 4I consists entirely of public land owned by the City of San Diego.

This area is currently owned and managed by the City of San Diego Parks and Recreation Department. The subunit is partially conserved as mitigation as a

result of U.S. Environmental Protection Agency compliance order CWA 404–09a–94–005 (see RECON 1996 for additional information). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this subunit may require special management considerations or protection to address threats from recreational activities, nonnative weed invasion, illegal dumping, and off-road vehicle use that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4J: Carroll Canyon

We are designating subunit 4J as critical habitat for the San Diego fairy shrimp. Subunit 4J consists of 14 ac (6 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4J is located at the southern terminus of Parkdale Avenue in Mira Mesa, 6 mi (10 km) inland from the coast. Subunit 4J consists of 14 ac (6 ha) of public land owned by the City of San Diego and 1 ac (<1 ha) of privately owned land.

A portion of this subunit was conserved as mitigation pursuant to the requirements of the Service Biological Opinions 1–1–82–F–108 (Service 1982a) and 1–1–82–F–108R (Service 1982b). An additional area within this subunit was purchased by the City of San Diego with money from the City of San Diego's Vernal Pool Preservation Fund. The site has been maintained per the requirements of Service Biological Opinions 1–1–82–F–108 and 1–1–82–F–108R, and the City of San Diego's Vernal Pool Management Plan (City of San Diego 1996). However, at this time additional management measures may be needed for the conservation of San Diego fairy shrimp. The PCEs in this subunit may require special management considerations or protection to address threats from on-going recreational activities and illegal dumping that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4K: San Diego Energy Recovery (SANDER) and Magnatron

We are designating subunit 4K as critical habitat for the San Diego fairy shrimp. Subunit 4K consists of 56 ac (23 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4K is located to the west of the intersection of Magnatron Boulevard and State Route 163 and south of State Route 52, 7 mi (11 km) inland from the coast. Subunit 4K consists of 55 ac (22 ha) of public land owned by the City of San Diego and 1 ac (<1 ha) of privately owned land.

Subunit 4K has an ''Industrial Parks'' zoning designation and is not currently conserved or being managed for the San Diego fairy shrimp or its habitat. The PCEs in subunit may require special management considerations or protection to address on-going threats from development, recreational activities, nonnative weed invasion, illegal dumping, and off-road vehicle use that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4L: Cubic

We are designating subunit 4L as critical habitat for the San Diego fairy shrimp. Subunit 4L consists of 7 ac (3 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4L is located between State Route 52 and State Route 163 at the northeastern terminus of Kearny Mesa Road in Kearny Mesa, 8 mi (13 km) inland from the coast. Subunit 4L consists of privately owned land.

Subunit 4L has an ''Industrial Parks'' zoning designation and is not conserved or being managed to protect the San Diego fairy shrimp or its habitat. The PCEs within this subunit may require special management considerations or protection to address on-going threats from development, recreational activities, nonnative weed invasion, illegal trash dumping, and off-road vehicle use that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 4M: Montgomery Field

We are designating subunit 4M as critical habitat for the San Diego fairy shrimp. Subunit 4M consists of 96 ac (39 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 4M is located north of Aero Drive in Kearny Mesa, 7 mi (11 km) inland from the coast. Subunit 4M is owned and managed by the City of San Diego, Airports Division.

The vernal pool complexes within subunit 4M are managed according to the Service Biological Opinion 1–6–94–F–32 (Service 1995, pp. 1–33), the Montgomery Field Final Conceptual Mitigation Plan (P&D Technologies 1994), and the Vernal Pool Management Plan (City of San Diego 1996). The PCEs in this subunit may require special management considerations or protection to address threats from development, on-going operational management for the airport, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Unit 5: San Diego, Southern Coastal Mesa (1,785 ac (722 ha))

Unit 5 is located in San Diego County, California. The area was occupied at the time of listing and contains the features essential to the conservation of the San Diego fairy shrimp that may require special management considerations or protection. This southernmost unit of critical habitat is essential to the conservation of the San Diego fairy shrimp because it helps to maintain the ecological distribution and genetic diversity of the species. Due to the rapid urbanization on both sides of the border between the U.S. and Mexico, nearly all vernal pool habitat in this region has been lost. This unit contains vernal pools that support San Diego fairy shrimp populations in the ''Group A'' genetic clade (Bohonak 2004, pp. 3–9). The conservation of the remaining vernal pools in this unit is essential to maintain continuity in the range between the U.S. and Mexico as well as the genetic diversity of the species. For more information about Unit 5 please see the proposed rule (68 FR 19888; April 22, 2003).

We have determined that the INRMP for Naval Base Coronado, which includes the Navy Outlying Landing Field and Naval Radar Receiving Facility, provides a benefit to the San Diego fairy shrimp and therefore Department of Defense lands that are part of Naval Base Coronado's INRMP are exempt from critical habitat pursuant to section 4(a)(3) of the Act (see Exemptions and Exclusions section below for a detailed discussion of this exemption).

Subunit 5A: Otay Mesa, Northeast

We are designating subunit 5A as critical habitat for the San Diego fairy shrimp. Subunit 5A consists of 38 ac (16 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5A is located south of Otay River at the base of Otay Mountain, 12 mi (19 km) inland from the coast. Subunit 5A consists of 8 ac (3 ha) land owned by the County of San Diego, 16 ac (7 ha) land owned by the State of California, 1 ac (<1 ha) land owned by

the Water District, and 13 ac (5 ha) privately owned land.

We have excluded land covered by the County of San Diego subarea plan under the MSCP in this subunit because we have determined that the benefits of exclusion outweigh the benefits of inclusion (see Exemptions and Exclusions section below for a detailed discussion of this exclusion). However, lands within Major/Minor Amendment Areas in this subunit are not covered by the County of San Diego subarea plan under the MSCP. These areas contain sensitive resources that were not addressed during the development of the County of San Diego subarea plan under the MSCP and are to be addressed in a future amendment to the MSCP. We are designating all lands in subunit 5A that are not covered by the County of San Diego subarea plan under the MSCP, including these future amendment areas. The PCEs in this subunit may require special management considerations or protection to address threats from development, off-road vehicle use, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 5B: Otay Mesa, North

We are designating 304 ac (123 ha) of subunit 5B as critical habitat for the San Diego fairy shrimp. Subunit 5B consists of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5B is located central Otay Mesa, north of Otay Mesa Road, east of Brown Field, 9 mi (15 km) inland from the coast. Subunit 5B consists of privately owned land. The PCEs in this subunit may require special management considerations or protection to address threats from development, off-road vehicle use, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

We have excluded land covered by the County of San Diego subarea plan under the MSCP in this subunit because we have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Subunit 5C: Otay Mesa, East

We are designating subunit 5C as critical habitat for the San Diego fairy shrimp. Subunit 5C consists of 75 ac (30 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5C is located on eastern Otay Mesa, northeast of Otay Mesa Road, 12 mi (19 km) inland from the coast. Subunit 5C consists of privately owned land.

This vernal pool complex has had relatively little human disturbance compared to most vernal pool complexes on Otay Mesa. However, the PCEs in this subunit may require special management considerations or protection to address threats from development, off-road vehicle use, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 5D: Otay Mesa, Southeast

We are designating subunit 5D as critical habitat for the San Diego fairy shrimp. Subunit 5D consists of 391 ac (158 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5D is located north of the United States/Mexico border, at the base of Otay Mountain, 13 mi (21 km) inland from the coast. Subunit 5D consists entirely of privately owned land.

The vernal pool complexes in this unit have not yet been directly impacted by development or fragmentation. The populations of San Diego fairy shrimp in this subunit are the closest United States population to any of the populations of San Diego fairy shrimp in Mexico. As vernal pool complexes become more fragmented by development in both the United States and Mexico, the preservation of vernal pool complexes near to one another will be increasingly important to these ecosystems to provide continuity in the range between the United States and Mexico. The PCEs in this subunit may require special management considerations or protection to address on-going threats from development, off-road vehicle use, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 5F: Otay Mesa, Southwest

We are designating subunit 5F as critical habitat for the San Diego fairy shrimp. Subunit 5F consists of 621 ac (251 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5F is located south of Otay Mesa Road and north of the United States/Mexico border on the western portion of Otay Mesa, 7 mi (11 km) inland from the coast. Subunit 5F consists of 11ac (4 ha) of land owned by the U.S. Government, 73 ac (30 ha) of land owned by the City of San Diego, and 537 ac (217 ha) of privately owned land.

Some of the land within this subunit has been purchased for conservation; however, these areas may require measures to ensure that the San Diego fairy shrimp is conserved on these lands. Additionally, there are lands in this subunit that are privately owned and may be partially developed. Conservation measures may be required in these areas to ensure that the structure and function of the vernal pool habitat for San Diego fairy shrimp is not altered and that the PCEs are protected. The PCEs in this subunit may require special management considerations or protection to address threats from development, off-road vehicle use, and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

We are excluding DHS-owned land at Arnie's Point (29 ac (12 ha)) from this subunit because we have determined that the benefits of exclusion outweigh the benefits of inclusion (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Subunit 5G: Otay Mesa, Northwest

We are designating subunit 5G as critical habitat for the San Diego fairy shrimp. Subunit 5G consists of 132 ac (53 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5G is located north of Otay Mesa Road on the mesa tops around Dennery Canyon, 7 mi (11 km) inland from the coast. Subunit 5G consists of public and private land. Subunit 5G consists of 19 ac (7 ha) of land owned by the City of San Diego and 113 ac (46 ha) of privately owned land.

Subunit 5G includes a number of vernal pool complexes. Most of the vernal pool complexes in this unit have been purchased for conservation; however, some of the unprotected areas may be impacted by development. In addition to the threats posed by development to PCEs in some portions of the subunit, the PCEs throughout the subunit may require special management considerations or protection to address threats from off-road vehicle use, and nonnative weed

invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 5H: Lower Otay Reservoir

We are designating subunit 5H as critical habitat for the San Diego fairy shrimp. Subunit 5H consists of 200 ac (81 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. The portion of subunit 5H being designated as critical habitat is located on the south side of Lower Otay Reservoir, 15 mi (24 km) inland from the coast. Subunit 5H is entirely public land owned by the City of San Diego.

We have excluded all of the land covered by the County of San Diego subarea plan under the MSCP in this subunit because we have determined that the benefits of excluding this subunit from the final designation outweigh the benefits of including it (see Exemptions and Exclusions section below for a detailed discussion of this exclusion).

Remaining vernal pool complexes in this subunit are isolated from urbanized areas of San Diego and this subunit may be one of the few places where indirect effects from development have not placed stress on the population of San Diego fairy shrimp. However, the PCEs in this subunit may require special management considerations or protection to address threats from off-road vehicles and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

Subunit 5I: Marron Valley

We are designating subunit 5I as critical habitat for the San Diego fairy shrimp. Subunit 5I consists of 24 ac (10 ha) of habitat occupied by the species at the time of listing and the species continues to occur within this subunit. This subunit contains all of the features essential to the conservation of the species. Subunit 5I is located approximately 25 mi (40 km) east of the coast along the United States/Mexico border. Subunit 5I is entirely public land owned by the City of San Diego.

This area is isolated from urbanized areas of San Diego and may be one of the few places where indirect effects from development have not placed stress on the population of San Diego fairy shrimp. Subunit 5I is within the Marron Valley Conservation Bank, which is included in the MSCP Cornerstone Bank Agreement. The PCEs in this subunit may require special management considerations or protection to address threats from off-road vehicles use and nonnative weed invasion that may negatively impact the San Diego fairy shrimp and its habitat.

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 5th and 9th 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.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action. The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, if we list those species or designate critical habitat.

Under conference procedures, we may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may conduct conferences either informally or formally. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the species proposed for listing or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to species proposed for listing or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. Conference opinions on proposed species or critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or 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)).

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 the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, 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, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we 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.

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 San Diego fairy shrimp or its designated critical habitat require consultation under section 7 of 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 (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also subject to the section 7(a)(2) 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(a)(2) 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 elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for San Diego fairy shrimp. Generally, the conservation role of San Diego fairy shrimp critical habitat units is to support viable core area 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, 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 affect critical habitat and therefore should result in consultation for San Diego fairy shrimp include, but are not limited to:

(1) Actions that would permanently reduce or increase: the depth of a vernal pool; the ponding duration and inundation of the vernal pool; or other vernal pool features beyond the tolerances of the San Diego fairy shrimp (PCE 1). Actions that could permanently alter the features in the vernal pool basin that the San Diego fairy shrimp requires include, but are not limited to: discharge of dredged or fill material into vernal pools; erosion of sediments from fill material; the introduction of water, other liquids, or chemicals (including herbicides and pesticides) into the vernal pool basin; the disturbance of soil profile by grading, digging or other earthmoving work in and around the vernal pool basin; and/or other activities such as off-road vehicle use, heavy foot traffic, grazing, vegetation removal, or road construction within the watershed for the vernal pools.

(2) Actions that impact the watershed and the local hydrology of a vernal pool complex (PCE 2). These actions could increase or decrease the amount of water that comes into a vernal pool complex (PCE 2). These actions could also change the timing or amount of water that flows into a vernal pool complex and alter the timing, duration, and amount of water in the vernal pool basins (PCE 1). Actions that could alter the hydrology of a vernal pool complex include, but are not limited to: the creation of impervious surfaces around a vernal pool complex; channeling water runoff into a vernal pool complex; the use of artificial irrigation near a vernal pool complex; cut and fill work in or adjacent to the vernal pool watersheds that disrupts the surface and subsurface water flow; creating structures that limit the amount of natural water runoff into a vernal pool complex; and/or grading, digging or other earthmoving work in and around the vernal pool watershed.

(3) Actions that would permanently alter the function of the underlying claypan or hardpan soil layer (PCE 3) to hold and retain water in the vernal pool basin (PCE 1). Damage to the claypan or hardpan layer could impact the hydrology of a vernal pool complex and disrupt the ability of the vernal pools in the complex to fill with water or to hold water (PCE 1). Actions that disturb the claypan or hardpan layer can also impact the flow of water at the surface and subsurface level so that the vernal pool watershed is impacted and the amount of water following into or out of a vernal pool complex is altered (PCE 3). Actions that could permanently alter the function of the underlying claypan or hardpan soil layer (PCE 3) include, but are not limited to: grading or earthmoving work that disrupts or rips into the claypan or hardpan soil layer; cut and fill work that disrupts the surface or subsurface water flow by disrupting the claypan or hardpan soil layer; digging, trenching, mining, and/or drilling into the claypan or hardpan soil layer; and/or construction activities that create cut slopes, which disrupt the claypan or hardpan soil layer.

We consider all of the units designated as critical habitat, as well as those that have been excluded or exempt, to contain features essential to the conservation of the San Diego fairy shrimp. All units are within the geographical area occupied by the species at the time of listing and are likely to be used by the San Diego fairy shrimp. Federal agencies already consult with us on activities in areas currently occupied by the San Diego fairy shrimp, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the San Diego fairy shrimp.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 4(a)(3)

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete 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:

• An assessment of the ecological needs on the installation, including the

need to provide for the conservation of listed species;

- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for San Diego fairy shrimp to determine if they are exempt under section 4(a)(3) of the Act.

Approved INRMPs

In the April 22, 2003, proposed rule (68 FR 19888), we considered but did not propose as critical habitat lands on MCAS Miramar and U.S. Navy's NRRF under Naval Base Coronado under sections 3(5)(A) and 4(b)(2) of the Act, based on the benefits provided by their completed INRMPs. We also considered, but did not propose, mission-essential training areas on MCB Camp Pendleton under section 4(b)(2) of the Act for national security reasons. However, non-training areas on MCB Camp Pendleton were included in the 2003 proposed critical habitat designation.

Following the publication of the proposed rule, the Act was amended to include section 4(a)(3)(B)(i). As stated above, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' The INRMPs for MCAS Miramar, MCB Camp Pendleton, NRRF, and NOLF include measures that benefit the San Diego fairy shrimp (a brief discussion of the benefits of each INRMP follows below). Therefore, under Section 4(a)(3)(B)(i) of the Act, we are exempting lands on MCAS Miramar, MCB Camp Pendleton, NRRF, or NOLF from critical habitat for the San Diego fairy shrimp, and we are not relying on section 3(5)(A) of the Act as an additional basis for our decision not to designate these military lands.

Marine Corps Air Station Miramar (MCAS Miramar)

We have determined that conservation efforts identified in the INRMP for MCAS Miramar provide a benefit to the San Diego fairy shrimp occurring on MCAS Miramar. This includes 1,703 ac (689 ha) of habitat throughout the western portion of MCAS Miramar. Therefore, this installation is exempt from critical habitat for San Diego fairy shrimp under section 4(a)(3) of the Act for the reasons described below.

MCAS Miramar completed a final INRMP in May 2000. MCAS Miramar revised and updated its INRMP in 2006 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for the San Diego fairy shrimp and vernal pool habitat on the base (MCAS Miramar 2006, Section 7, pp. 17–23).

We have determined that MCAS Miramar's INRMP benefits the San Diego fairy shrimp through ongoing efforts to avoid and minimize impacts to the species and vernal pool habitat. The INRMP classifies nearly all of the vernal pool basins and watersheds on MCAS Miramar as a Level I Management Area. Under the INRMP, Level I Management Areas receive the highest conservation priority of the various levels of Management Areas on MCAS Miramar. The conservation of vernal pool basins and watersheds in Level I Management Areas is achieved through: (1) Education of base personnel; (2) implementation of proactive measures that help avoid accidental impacts (e.g., signs and fencing); (3) development of procedures to respond to and restore accidental impacts on vernal pools; and (4) maintenance of an inventory of vernal pool basins and the associated watersheds on MCAS Miramar. Further, the MCAS Miramar's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the San Diego fairy shrimp and its habitat. Activities occurring on MCAS Miramar are currently being conducted in a manner that minimizes impacts to San Diego fairy shrimp and prevents degradation or destruction of vernal pool habitat.

This military installation has an approved INRMP that we have determined provides a benefit to the San Diego fairy shrimp, and the Marine Corps has committed to work closely with the Service and CDFG to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, this installation is exempt from this critical habitat designation.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)

We have determined that conservation efforts identified in the INRMP for MCB Camp Pendleton provide a benefit to the San Diego fairy shrimp occurring on MCB Camp Pendleton. This includes 7,750 ac (3,137 ha) of habitat located in the following areas: Cockleburr Mesa; La Pulgas; San Mateo; the State Park Lease Area (San Onofre State Park); Stuart Mesa; Wire Mountain; and O'Neill (names of areas follow those used in the recovery plan (Service 1998a, Appendix E)). Therefore, this installation is exempt from critical habitat for San Diego fairy shrimp pursuant to section 4(a)(3) of the Act for the reasons described below.

MCB Camp Pendleton completed their INRMP in November 2001. MCB Camp Pendleton revised and updated its INRMP in 2007 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for the San Diego fairy shrimp and vernal pool habitat on the base (MCB Camp Pendleton 2007, Section 4, pp. 51–76). Also, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and supportive of the objectives of the revised 2007 INRMP (MCB Camp Pendleton 2007, pp. 2–31).

MCB Camp Pendleton's INRMP benefits the San Diego fairy shrimp through ongoing efforts to survey and monitor the species and to provide this information to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. MCB Camp Pendleton's INRMP also benefits the San Diego fairy shrimp by implementing the following base directives to avoid and minimize adverse effects to the species: (1) Bivouac, command post, and field support activities should be no closer than 984 ft (300 m) to occupied San Diego fairy shrimp habitat year round; (2) vehicle and equipment operations are limited to existing road and trail networks year round; and (3) any soil excavation, filling, or grading require environmental clearance. Further, MCB Camp Pendleton's environmental security staff review projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the San Diego fairy shrimp and its habitat. Activities occurring on MCB Camp Pendleton are currently being conducted in a manner that minimizes impacts to San Diego fairy shrimp habitat. In addition, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base including San Diego fairy shrimp and vernal pool habitat. We are also consulting with the Marine Corps under section 7 of the Act to programmatically address potential impacts to the San Diego fairy shrimp (and several other species) as a result of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we anticipate additional measures that benefit San Diego fairy shrimp will be incorporated into the INRMP for MCB Camp Pendleton.

MCB Camp Pendleton has an approved INRMP that we have determined provides a benefit to the San Diego fairy shrimp and the Marine Corps has committed to work closely with the Service, CDFG, and California Department of Parks and Recreation to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, MCB Camp Pendleton, including those lands leased to the California State Parks (i.e., San Onofre State Beach) is exempt from this critical habitat.

Naval Base Coronado (Including Naval Radar Receiving Facility and Naval Outlying Landing Field)

We have determined that conservation efforts identified in the INRMP for Naval Base Coronado (Naval Base Coronado 2002, Section 4, pp. 4–47) provide a benefit to the San Diego fairy shrimp. This includes 169 ac (68 ha) of habitat covered by Naval Base Coronado's INRMP at the following installations: the Naval Radar Receiving Facility (NRRF) and the Naval Outlying Landing Field (NOLF). Therefore, this installation is exempt from critical habitat for San Diego fairy shrimp under section 4(a)(3) of the Act for the reasons described below.

Naval Base Coronado completed an INRMP in May 2002, which includes NRRF south of Coronado and NOLF in Imperial Beach. Naval Base Coronado completed the INRMP to address conservation and management recommendations within the scope of the installation's military mission. Naval Base Coronado's INRMP provides conservation measures for the San Diego fairy shrimp and vernal pool habitat on NRRF and NOLF.

One of the goals of Naval Base Coronado's INRMP is to conserve the San Diego fairy shrimp through the management of vernal pool habitat, including the following provisions: (1) Monitor the status of San Diego fairy shrimp populations; (2) post signs around vernal pools; (3) advise personnel to keep vehicles on the main roads while traveling through the property; and (4) seek opportunities to restore disturbed vernal pool habitats while considering potential impacts to the San Diego fairy shrimp. Further, the Naval Base Coronado's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including San Diego fairy shrimp and their habitat. Activities occurring on NRRF and NOLF are currently being conducted in a manner that minimizes impacts to San Diego fairy shrimp habitat.

Naval Base Coronado, which includes NRRF and NOLF, has an approved INRMP that we have determined provides a benefit to the San Diego fairy shrimp and the Navy has committed to work closely with the Service and CDFG to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, this installation is exempt from this critical habitat designation.

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. In making that determination, the Congressional Record is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

In addition, we conducted a DEA of the impacts of the proposed revision to designated critical habitat and related factors (referred to here as the DEA). The DEA was made available for public review and comment from April 8, 2004, to May 10, 2004 (69 FR 18516). Substantive comments and information received on the DEA are summarized above in the Public Comment section and have been incorporated into the final analysis, as appropriate. Based on public comment on the DEA, the proposed revision to critical habitat, and the information in this revised final designation of critical habitat and the final economic analysis, we have excluded areas from critical habitat under the provisions of section 4(b)(2) of the Act. 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 features or PCEs essential for 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 to the conservation of the species. The designation process includes peer review and public comment on the identified features and 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 actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects 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.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. 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 to the conservation of the species is not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward 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 primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and 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 specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are 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 voluntary 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 coastal California gnatcatcher. 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 cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners 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 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; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. 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; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this 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). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

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 voluntary conservation commitments can often be high.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans

The benefits of excluding lands with HCPs or other approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs and other conservation plans take years to develop, and upon completion, are consistent with recovery objectives for listed species that are covered within the plan area. Many 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 in many areas. 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 additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands within approved HCPs and management plans 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. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCP and Natural Communities Conservation Plan (NCCP)-HCP applications require consultation, which would 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.

Areas Excluded Under Section 4(b)(2) of the Act

In the April 22, 2003, proposed rule, we considered, but did not propose as critical habitat under section 4(b)(2) of the Act, lands covered by the City of San Diego subarea plan under the MSCP and the County of San Diego subarea plan under the MSCP (collectively referred to as lands in the San Diego MSCP in the 2003 proposed rule). In this revised final rule, we reaffirm our exclusion of lands covered by the County of San Diego subarea plan under the MSCP under section 4(b)(2) of the Act. We have also excluded lands from this revised final designation under section 4(b)(2) that are covered by the Southern Subregion HCP, a recently completed HCP in Orange County. However, we have not excluded lands covered by the City of San Diego subarea plan under the MSCP (see Summary of Changes From Previously Designated Critical Habitat and 2003 Proposed Rule section above for a detailed discussion). The conservation value of the excluded County of San Diego and southern Orange County lands for San Diego fairy shrimp has been addressed by the respective habitat conservation plans covering these lands. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow under the section heading, Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act.

Additionally, we excluded, under section 4(b)(2) of the Act, essential habitat in the following areas: (1) The Irvine Ranch in Orange County; (2) Fairview Park in the City of Costa Mesa; and (3) Department of Homeland Security lands at Arnie's Point in San Diego. The conservation value of these lands for San Diego fairy shrimp has been addressed by existing protective actions and exclusion of these lands under the provisions of section 4(b)(2) is appropriate. We are excluding areas (1) through (3) because we believe that either their value for conservation will be preserved for the foreseeable future by existing protective actions, or they are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

In reviewing approved HCPs for potential exclusion under section 4(b)(2) we consider, in addition to the general partnership relationships identified above, whether the plan provides for protection and appropriate management, if necessary, of essential habitat within the plan area and incorporates conservation strategies and measures consistent with currently accepted principles of conservation biology.

Orange County Southern Subregion Habitat Conservation Plan (Southern Subregion HCP)

The Southern Subregion HCP was developed in support of applications for incidental take permits for several covered species, including the San Diego fairy shrimp, by Orange County, Rancho Mission Viejo, and the Santa Margarita Water District in connection with proposed residential development and related actions in southern Orange County. The Service issued permits based on the plan on January 10, 2007. At this time an NCCP permit has not been granted for this plan.

The Southern Subregion HCP action area encompasses 86,076 ac (34,834 ha) (Service 2007, p. 24) and provides for the conservation of covered species, including the San Diego fairy shrimp, through the establishment of an approximately 30,426 ac (12,313 ha) habitat reserve and 4,456 ac (1,803 ha) of supplemental open space areas (Service 2007, p. 19). Subunits 1D and 1E fall within the boundaries of the habitat reserve of this HCP.

Implementation of the covered development activities under the Southern Subregion HCP will not permanently impact any areas that we have determined contain the features essential to the conservation of the San Diego fairy shrimp (Service 2007, p. 142). Critical habitat subunits 1D and 1E, which encompass the vernal pool basins and associated vernal pool watersheds on Chiquita Ridge and Radio Tower Road, will be conserved and managed within the habitat reserve (Service 2007, p. 142). The adaptive management program for the San Diego fairy shrimp incorporated into this HCP, includes regular monitoring and necessary management, and will address potential sources of habitat degradation to ensure that all existing pools within subunits 1D and 1E are managed in a way that will maintain the ecological distribution and genetic variability of this species on a broad geographic scale (Service 2007, p. 142). The underlying hydrogeomorphic processes that support these vernal pools will be preserved through the protection of the vernal pool watersheds (PCE 2) from any development activities (Service 2007, p. 10).

The Southern Subregion HCP benefits the PCEs essential to the conservation of the San Diego fairy shrimp through the implementation of the following conservation measures: conservation of vernal pools within the habitat reserve (PCE 1); minimizing impacts to vernal pools from development; maintaining water quality/quantity (PCE 2 and PCE 3); controlling non-native invasive species (PCE 1 and PCE 2); managing livestock grazing (PCE 1 and PCE 2); and minimizing human access and disturbance (PCE 1, PCE 2, and PCE 3). Specifically, any development must be located at least 1000 ft (305 m) away from the vernal pools and built at a lower elevation than the vernal pools to avoid hydrological alterations (PCE 1 and PCE 2) (Service 2007, p. 143). Water quality monitoring will be conducted throughout the life of the permit at occupied vernal pools near development (PCE 2) (Service 2007, p. 143). Management tools will be developed specifically for controlling nonnative plant species in the watersheds of the Chiquita Ridge and Radio Tower Road vernal pools, so that nonnative plants do not alter the ponding depth or duration of the vernal pools by directly growing in the vernal pool basin or by indirectly diverting water from the vernal pool by growing in the vernal pool watershed (PCE 1 and PCE 2) (Service 2007, p. 143). Furthermore, livestock grazing in vernal pool areas will be monitored and can be managed by implementing seasonal exclusion of cattle through the placement of temporary fencing around vernal pools, which will ensure that cattle do not impact the vernal pool basin by compacting the soil or greatly

alter the water quality in the vernal pool while it is filled with water (PCE 1) (Service 2007, p. 143). Exclusionary fencing has already been placed around Chiquita Ridge vernal pools, and public access to the habitat reserve will be limited protecting the ponding duration (PCE 1), the hydrology (PCE 2), and the underlying claypan or hardpan soil layer (PCE 3) (Service 2007, p. 144). Properly timed prescribed burns can effectively control nonnative species, thereby, protecting the ability of the vernal pools to hold water for the appropriate duration (PCE 1). Prescribed burns will include any necessary impact avoidance minimization measures to ensure that the populations of San Diego fairy shrimp are conserved (Service 2007, p. 144).

In the 1997 final rule listing this species as endangered (62 FR 4925, February 3, 1997), we identified habitat destruction and fragmentation from urban development and agricultural conversion, alterations of vernal pool hydrology, off-road vehicle activity, and livestock grazing as primary threats to the species. As described above, the Southern Subregion HCP provides protection and appropriate management for the San Diego fairy shrimp, its habitat, and its PCEs through implementation of conservation strategies that are consistent with generally accepted principles of conservation biology. The Southern Subregion HCP preserves habitat that supports identified core populations of this species and therefore provides for recovery.

Benefits of Exclusion Outweigh Benefits of Inclusion

As discussed in the Benefits of Designating Critical Habitat section, we believe that the regulatory benefit of critical habitat is low when essential habitat is protected under an HCP or management plan such as the Southern Subregion HCP. The Southern Subregion HCP addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal project-by-project approach and will achieve more San Diego fairy shrimp conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. This regional HCP provides for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the San Diego fairy shrimp or its habitat. Conservation and management of San Diego fairy shrimp habitat is essential to 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 Southern Subregion HCP provides as much or more benefit 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 and largely redundant to the educational benefits achieved through significant public, State, and local government input during the development and ongoing implementation of this HCP. We have developed close partnerships with Orange County, Rancho Mission Viejo, and the Santa Margarita Water District through the development of the Southern Subregion HCP, a plan that incorporates appropriate protections and management for vernal pool habitat areas, and their constituent PCEs, essential for the conservation of this species. Those protections are consistent with statutory 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 an essentially redundant layer of regulatory review for projects covered by the HCP and helping to preserve our ongoing partnerships with the permittees and to encourage 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 San Diego fairy shrimp.

We have reviewed and evaluated the exclusion of approximately 140 ac (57 ha) of lands within the Southern Subregion HCP area from the designation of final critical habitat. We have determined that the regulatory benefit of designating lands in subunits 1D and 1E is low because essential San Diego fairy shrimp habitat within the plan area is assured of conservation and management under the HCP. The educational and recovery benefits of critical habitat designation are also minor and have largely been achieved through development and public review of the HCP. The minor benefits of critical habitat designation are outweighed by the significant partnership benefits summarized above that will result from exclusion of the lands from the final rule. As discussed above, the Southern Subregion HCP will provide for significant preservation and management of habitat for the San Diego fairy shrimp and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 140 ac (57 ha) from the final designation of critical habitat for the San Diego fairy shrimp will result in the extinction of the species because the Southern Subregion HCP provides for the protection and management in perpetuity of essential habitat, including its PCEs, for the San Diego fairy shrimp within subunits 1D and 1E. In addition, because the 140 ac (57 ha) we have excluded from critical habitat are occupied by San Diego fairy shrimp, future consultations under section 7 of the Act that involve these lands will occur even in the absence of their designation as critical habitat. Application of jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct.

The San Diego County Multiple Species Conservation Program (MSCP)

In southwestern San Diego County, the MSCP planning area encompasses more than 582,000 ac (236,000 ha) in the southwestern portion of the county and includes the County of San Diego, City of San Diego, 10 other city jurisdictions, and several independent special districts. Under the broad umbrella of the MSCP, each participating jurisdiction prepares a subarea plan that complements the goals of the MSCP. We consult under section 7 of the Act on each subarea plan and associated permit to ensure the issuance of the associated incidental take permits under section 10 of the Act are not likely to jeopardize or adversely modify or destroy the designated critical habitat of any covered species. We also review the subarea plans under section 10 of the Act to ensure they meet the criteria for issuance of an incidental take permit and are consistent with the terms and goals of the MSCP.

The MSCP provides for the assembly and establishment of approximately 171,000 ac (69,200 ha) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species, including the San Diego fairy shrimp, over the permit term. The MSCP provides for avoidance of impacts to vernal pool habitat for the San Diego fairy shrimp within and outside of existing and targeted reserve areas. In addition, the incidental take permits issued under this plan do not allow for the take of San Diego fairy shrimp in

natural vernal pool habitat. The individual subarea plans also commit each jurisdiction to monitor and adaptively manage vernal pool species and their associated habitat.

City of San Diego and County of San Diego Subarea plans Under the MSCP

The objectives of the City and the County's subarea plans applicable to the San Diego fairy shrimp and its essential vernal pool habitat are to: (1) Implement a no-net-loss-of-wetlands standard to satisfy State and Federal wetland goals and policies; (2) include measures to maximize habitat diversity within conserved habitat areas, including conservation of unique habitats and habitat features; (3) conserve spatially representative examples of habitat types ranked as having high and very high biological value by the MSCP; (4) create significant blocks of habitat to reduce edge effects and maximize the ratio of surface area to the perimeter of conserved habitats; (5) provide incentives for development in the least sensitive habitat areas; (6) provide for the conservation of key regional populations of the covered species, and representation of sensitive habitats and their geographic subassociations in biologically functioning units; and (7) conserve large interconnected blocks of habitat that contribute to the preservation of wide-ranging species. These measures are intended to conserve the San Diego fairy shrimp and its habitat by protecting vernal pool basins (PCE 1) and the associated vernal pool watershed necessary for the vernal pool ecosystem to function (PCE 2) and connections between vernal pool habitat and other open-space preserve areas.

To protect vernal pool habitat, the City and County of San Diego subarea plans erequire that: (1) Development be configured in a manner that minimizes impacts to sensitive biological resources (Service 1997, p. 10; Service 1998b, p. 7), in order to reduce any impact to San Diego fairy shrimp habitat through protection of the vernal pool basin (PCE 1) and associated vernal pool soils (PCE 3); (2) unavoidable impacts to vernal pools associated with reasonable use or essential public facilities be minimized and mitigated to achieve no-net-loss of function and value; and (3) a sufficient amount of watershed be avoided as necessary for the continuing viability of vernal pools (PCE 2) (Service 1997, pp. 43–44; Service 1998b, p. 67).

In the 1997 final rule listing this species as endangered (62 FR 4925, February 3, 1997), we identified habitat destruction and fragmentation from urban development and agricultural conversion, alterations of vernal pool hydrology, off-road vehicle activity, and livestock grazing as primary threats to the species. As described above, these subarea plans under the MSCP are designed to preserve and manage essential San Diego fairy shrimp habitat and its PCEs within each subarea.

The incidental take permits issued to the City and County of San Diego under the MSCP limit take of San Diego fairy shrimp to areas outside of jurisdictional waters of the United States, as that term was understood under the Clean Water Act at the time these permits were issued and prior the 2001 U.S. Supreme Court's *SWANCC* decision. The subarea plans and permits anticipated that individual consultations under section 7 of the Act with the ACOE would occur for all individual projects impacting vernal pool habitat of the San Diego fairy shrimp pursuant to section 404 of the Clean Water Act. In addition, we assumed these actions would be required to comply with the Environmental Protection Agency Clean Water Act, 404(b)(1) guidelines and the Federal policy of ''no net loss of wetland function and values.'' In light of the intervening *SWANCC* decision, these individual reviews may not occur. Further, the U.S. District Court for the Southern District of California on October 13, 2006, (*Southwest Center for Biological Diversity* v. *Bartel*, CV 98–2234) (referred to here as the *Bartel* decision) concluded, in part, that the approach adopted in the City of San Diego's MSCP subarea plan to evaluate individual project impacts on vernal pool species, including the San Diego fairy shrimp, had been effectively eliminated by the *SWANCC* decision and that the remaining protections contained in the City's subarea plan do not adequately protect the San Diego fairy shrimp and the other vernal pool species. The court enjoined the City of San Diego's incidental take permit with respect to ongoing and future land use activities that affect vernal pool habitat. The district court ruling does not apply to other HCPs, including other MSCP subarea plans, and does not address the adequacy of these other plans to protect the San Diego fairy shrimp.

In light of the *SWANCC* and *Bartel* decisions, we have reanalyzed lands covered by the City and County subarea plans to determine whether lands essential to the conservation of the San Diego fairy shrimp are assured of conservation and management consistent with the original objectives and goals of the MSCP and subarea plans.

Approximately 1,805 ac (730 ha) of habitat essential to the conservation of the San Diego fairy shrimp are within the boundaries of the City of San Diego's subarea plan. Of these 1,805 ac (730 ha), approximately 420 ac (170 ha) have been dedicated to the City of San Diego's preserve and 1,385 ac (561 ha) have yet to be fully conserved (HabiTrak database 2007). In light of the *SWANCC* and *Bartel* decisions, the conservation of essential habitat in the City of San Diego is uncertain. Conversely, approximately 224 ac (90 ha) of habitat essential to the conservation of the San Diego fairy shrimp are within the boundaries of the County of San Diego's subarea plan. Of these 224 ac (90 ha), approximately 157 ac (63 ha) have been dedicated to the County of San Diego's preserve and 67 ac (27 ha) have yet to be fully conserved (HabiTrak database 2007); however, as we describe below, these lands are reasonably assured of conservation. Because we are not assured of the conservation of most of the habitat essential to the conservation of the San Diego fairy shrimp within the City of San Diego's subarea plan, we have determined that essential habitat covered by this subarea plan should be designated as critical habitat.

While the potential regulatory, educational and recovery benefits of designating essential habitat within the City's subarea plan are low for the reasons stated in Benefits of Designating Critical Habitat and Conservation Partnerships on Non-Federal Lands sections above, and in particular, because of the uncertainty regarding a future Federal nexus for section 7 consultation involving such lands, the partnership benefits of excluding essential habitat within the subarea plan area are also low. As discussed above under Benefits of Excluding Lands within HCPs and Other Approved Management Plans, a primary reason for excluding lands covered by HCPs from designation is to preserve our partnerships with local jurisdictions and private landowners in order to achieve a higher level of protection and management for listed species than would otherwise occur through regulation under Section 7 of the Act. However, given the concerns raised by the *Bartel* decision about the adequacy of the City's plan to protect vernal pool habitat and uncertainty about future of the plan with regard to the San Diego fairy shrimp, it is not clear that the conservation measures provided under the City's current plan will benefit the San Diego fairy shrimp more than the designation of essential habitat within the City. Because we do not believe that the benefits of excluding essential habitat covered by the City's subarea plan outweigh the benefits of including

such lands as critical habitat, we have included the lands in the final designation. We remain committed to working with the City of San Diego and other stakeholders to strengthen the protections for the San Diego fairy shrimp and its essential habitat provided in the City's subarea plan.

In contrast to lands covered by the City of San Diego's subarea plan, all of the lands slated for conservation of the San Diego fairy shrimp under the County of San Diego's subarea plan have already been permanently conserved and managed or are assured of conservation and management through other specific conservation plans. Of the 224 ac (90 ha) of habitat essential to the conservation of the San Diego fairy shrimp occurring within the boundary of the County of San Diego's subarea plan, 157 ac (63 ha) of land have already been dedicated to the County of San Diego preserve. An additional 62 ac (25 ha) of land will be conserved under the Otay Ranch Phase 2 Resource Management Plan (Otay Ranch 2002) (Otay Ranch Plan)T). The remaining 5 ac (2 ha) of essential vernal pool habitat is targeted for conservation as part of the County's future proposed amendment to the County's MSCP subarea plan to add the Quino checkerspot butterfly (*Euphydryas editha quino*) as a covered species. In sum, all essential vernal pool habitat identified for conservation under the County's subarea plan has been conserved and managed or is reasonably assured of conservation and management.

The Otay Ranch Plan is an approved General Development Plan that was developed to conserve sensitive biological resources on Otay Ranch while allowing compatible residential and commercial development. This plan includes land in the City of San Diego, the City of Chula Vista, and the County of San Diego. The areas covered under this plan in the County of San Diego, which will be conserved, have been added to the County of San Diego's subarea plan preserve, thus conservation of these areas is assured. The lands within in the Otay Ranch Plan are essential to the long-term conservation of several species in southern San Diego County, and include 80 ac (32 ha) of essential habitat for the San Diego fairy shrimp in the County of San Diego. While 62 ac (25 ha) of these 80 ac (32 ha) of essential habitat have not been dedicated to the MSCP preserve and are not yet managed under the Otay Ranch Plan, ongoing measures are in place to protect all San Diego fairy shrimp habitat and conserve the PCEs on those lands. All 80 ac (32 ha) of essential habitat is entirely within the area zoned by the County of San Diego as open space, which places restrictions on any development in this area. Furthermore, the essential habitat is fenced and has locked gates at access points, excluding any unauthorized off-road vehicle activity from the area. Other areas within the Otay Ranch have been conserved as expected and we believe a reasonable certainty exists that these 62 ac (25 ha) will be conserved as planned.

The Plan (Otay Ranch 2002, pp. 52–53, 112–130, 141–145) describes the following monitoring and management activities, which will benefit San Diego fairy shrimp within the Otay Ranch Preserve: (1) Focused surveys and population estimates specifically for San Diego fairy shrimp (pp. 141, 145); (2) management of vernal pool habitat as discussed in the ''Vernal Pool Preservation and Management Plan'' (pp. 112–130); (3) inhibition of additional degradation (through fencing, elimination of cattle grazing, and access control) (p. 121); (4) establishment of protocols for research and education (p. 121); (5) development of specific monitoring strategies for determining changes in flora and fauna of the pools (p. 121); (6) general enhancement activities (p. 121); and (7) removal and control of exotic species including the control of nonnative plants (p. 53).

The conservation or reasonably assured future conservation of the habitat that contains the features essential to the conservation of the San Diego fairy shrimp within the boundaries of the County of San Diego's subarea plan ensures that the San Diego fairy shrimp will be adequately protected and conserved under the County's subarea plan. Implementation of the County's subarea plan will adequately manage (as previously described) habitat and features essential to the conservation of the San Diego fairy shrimp. Therefore, we are reaffirming our exclusion of 224 ac (90 ha) of land covered by the County of San Diego subarea plan under the MSCP under section 4(b)(2) of the Act.

Benefits of Exclusion Outweigh the Benefits of Inclusion

As discussed under Benefits of Designating Critical Habitat above, we believe that the regulatory benefit of critical habitat is low when essential habitat is protected under an HCP or similar management plan such as the County of San Diego's MSCP Subarea Plan and the Otay Ranch Plan. The County's subarea plan and the Otay Ranch Plan address conservation issues from a coordinated, integrated perspective rather than a piece meal project-by-project approach and will achieve more San Diego fairy shrimp conservation than we would achieve through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. The subarea plan and Otay Ranch Plan provide for the proactive monitoring and management of conserved lands (as previously described), which will remove or reduce known threats to the San Diego fairy shrimp and its habitat. Conservation and management of San Diego fairy shrimp habitat is essential to survival and recovery of this species. Such conservation needs are often not addressed through the application of the statutory prohibition on adverse modification or destruction of critical habitat. The County's MSCP subarea plan and the Otay Ranch Plan provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision. Further, the educational benefits that may be derived from a critical habitat designation are low and largely redundant to the educational benefits achieved through significant public, State, and local government input during the development of the County's subarea plan. The Otay Ranch Plan was also reviewed by the public and sections of the plan have been adopted by the San Diego County Board of Supervisors.

We have developed close partnerships with the County, CDFG and private landowners and other stakeholders through the development of the County's subarea plan and the Otay Ranch Plan, plans that incorporate appropriate protections and management for vernal pool habitat areas, and their constituent PCEs, essential for the conservation of the San Diego fairy shrimp. Those protections are consistent with statutory 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 an essentially redundant layer of regulatory review for projects covered by the County's subarea plan and helping to preserve our ongoing partnerships with the County and other stakeholders and to encourage 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 San Diego fairy shrimp.

We have reviewed and evaluated the exclusion of approximately 224 ac (90 ha) of lands within the County of San Diego's MSCP subarea plan area from the designation of final critical habitat. We have determined that the regulatory benefit of designating those lands in subunits 5A, 5B and 5H that are covered by the County's subarea plan is low because the essential San Diego fairy shrimp habitat within the plan area is already protected and managed or assured of protection and management under the subarea plan and Otay Ranch Plan. The educational and recovery benefits of critical habitat designation are also minor and have largely been achieved through development and public review of the subarea plan. We conclude that the minor benefits of critical habitat designation are outweighed by the significant partnership benefits summarized above that will result from exclusion of the lands from the final rule.

We, therefore, reaffirm the exclusion of essential habitat covered by the County of San Diego subarea plan under the MSCP under 4(b)(2) of the Act. As discussed above, the County's subarea plan under the MSCP will provide for significant preservation and management of habitat features essential to the conservation of the San Diego fairy shrimp and will help reach the recovery goals for this species.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 224 ac (90 ha) from the final designation of critical habitat for the San Diego fairy shrimp will result in the extinction of the species because the County of San Diego subarea plan under the MSCP provides for the protection and management in perpetuity of essential habitat, including its PCEs, for the San Diego fairy shrimp within subunits 5A, 5B, and 5H, as discussed above. In addition, because the 224 ac (90 ha) we have excluded from critical habitat are occupied by San Diego fairy shrimp, future consultations under section 7 of the Act that involve these lands will occur even in the absence of their designation as critical habitat. Application of jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct.

Management Plans—Exclusions Under Section 4(b)(2) of the Act

The Irvine Ranch in Orange County

In the 2003 proposed rule to revise critical habitat, approximately 25 ac (10 ha) with The Irvine Ranch (previously identified as the North Ranch Planning Policy Area) were proposed for designation. In preparing this revised final designation, we reanalyzed our proposal to designate these lands as critical habitat and determined that the area has a very limited watershed and that only 4 ac (2 ha) of this area contained the PCEs essential to the conservation of the San Diego fairy shrimp. After further review of the conservation actions that are being implemented and additional measures being planned, we excluded these 4 ac (2 ha) from the revised final designation because the benefits of exclusion outweigh the benefits of including the lands in critical habitat.

The Irvine Ranch supports one vernal pool containing San Diego fairy shrimp. In contrast to all other vernal pools where San Diego fairy shrimp are found, this particular pool occurs in a rock basin. This rock pool, discovered in 2001, does not appear to have undergone any negative impacts.

In 1992, the Irvine Company initiated a partnership with the Nature Conservancy to develop and implement a stewardship plan for 35,000 ac (14,164 ha) of what is presently called The Irvine Ranch to address compatible public access, habitat management and restoration (TNC 2007). An additional 11,000 ac (4,452 ha) was donated by the Irvine Company in 2001. In 2005, all 50,000 ac (20,234 ha) of The Irvine Ranch were placed under the responsibility of the Irvine Ranch Conservancy, a non-profit organization that was created specifically by the Irvine Company to protect the lands within The Irvine Ranch (Irvine Ranch 2007a), with a financial commitment of $50 million to help protect, restore and enhance the resources of these lands (Irvine Ranch 2007b). As noted above, the 4 ac (2 ha) of essential San Diego fairy shrimp habitat is included among the lands managed by the Irvine Ranch Conservancy.

The mission of the Irvine Ranch Conservancy is to help protect, restore and enhance the natural resources of The Irvine Ranch in perpetuity and to encourage the creation of new and diverse opportunities for public enjoyment and education (IRC 2007a). The Conservancy's stewardship responsibilities include (1) strategies for habitat protection, restoration and public access in a manner that ensures the long-term well-being of the native habitat and wildlife; (2) hands-on field work to maintain trails, restore habitat, and remove invasive weeds; (3) ongoing biological monitoring to assess the health of native plants and wildlife; and (4) recruitment, training, and use of volunteers to serve as naturalist-guides for public hikes, mountain-bike rides and horse rides, and to assist with other activities (IRC 2007b). The Irvine Ranch Conservancy is currently working on a conservation plan for the Irvine Ranch wildlands which will formalize their conservation vision, strategy, and approach for all the wildlands they directly manage, including the 4 ac (2 ha) of essential San Diego fairy shrimp habitat (Olson 2007).

Benefits of Exclusion Outweigh Benefits of Inclusion

In 2003, when we proposed designating this vernal pool as critical habitat we had incomplete information about the extent to which the area would be managed for the conservation of the species. Since that time we have obtained additional information regarding the Irvine Ranch Conservancy's management strategy for the Irvine Ranch including actions to conserve the San Diego fairy shrimp at the rock pool (Harmsworth and Associates 2007, p. 8; Olson 2007, p. 1). The lands are protected by a conservation easement and secured from public access, and their permanent management plan is fully funded by way of the endowment for the conservation of the Irvine Ranch discussed above. Specific conservation actions that benefit the San Diego fairy shrimp at this location include the exclusion of cattle from this area and the limitations placed on human access to this area. The sole focus of onsite management is to avoid any activity that would negatively impact the pool. Thus, the regulatory benefits of designating this area as critical habitat are minimal. The educational and recovery benefits of designation are also small and are largely addressed through the Irvine Ranch Conservancy's ongoing environmental education programs to promote public understanding and appreciation of the natural resources on the Irvine Ranch, summarized above.

By excluding these lands from critical habitat designation, we are eliminating an essentially redundant layer of regulatory review for conservation projects that may be undertaken to restore habitat surrounding the vernal pool (e.g., removal of non-native, invasive plants) and furthering our partnership with the Irvine Ranch Conservancy in preserving the whole of The Irvine Ranch for future generations. We have reviewed and evaluated the exclusion of 4 ac (2 ha) of lands within the Irvine Ranch from the designation of final critical habitat. We have determined that the regulatory benefit of

designating those lands in subunit 1A is low because the essential San Diego fairy shrimp habitat within the subunit is already permanently protected and assured of management by the Irvine Ranch Conservancy. The educational and recovery benefits of critical habitat designation are also minor and have largely been achieved through the Irvine Ranch Conservancy's on-going environmental education programs for the Irvine Ranch. We conclude that the minor benefits of critical habitat designation are outweighed by the significant partnership benefits identified in this section and under Benefits of Excluding Lands within HCPs and Other Approved Management Plans that will result from exclusion of the lands from the final rule.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of the 4 ac (2 ha) of land within The Irvine Ranch from the revised final designation of critical habitat will result in the extinction of the San Diego fairy shrimp because management of The Irvine Ranch by the Irvine Ranch Conservancy provides protection of all the PCEs for the species within proposed subunit 1A. In addition, because the 4 ac (2 ha) we have excluded from critical habitat are occupied by San Diego fairy shrimp, future consultations under section 7 of the Act that involve these lands will occur even in the absence of their designation as critical habitat. Application of jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct.

Fairview Park Master Plan in the City of Costa Mesa

Approximately 62 ac (25 ha) of Fairview Park were designated as critical habitat in October 2000 (65 FR 63438). In the 2003 proposed rule to revise critical habitat, we estimated that approximately 74 ac (30 ha) of the 208-ac (83-ha) Fairview Park contained features essential to the conservation of the species. After reanalyzing our 2003 proposal for this subunit, we determined that, in fact, only 43 ac (17 ha) of land within Fairview Park support the features essential to the conservation of the San Diego fairy shrimp.

Based on our review of conservation actions being undertaken by the City of Costa Mesa to benefit the San Diego fairy shrimp and its essential habitat we excluded these lands from the revised final designation because the benefits of exclusion outweigh the benefits of including them in critical habitat.

The 208-acre (83-ha) Fairview Park is adjacent to the Talbot Nature Preserve, part of the conserved open space in the Orange County Central-Coastal NCCP/HCP. As described below the Master Plan for Fairview Park provides for habitat restoration and management consistent with and complementary to the Orange County Central-Coastal NCCP/HCP. Fairview Park supports seven vernal pool basins covering approximately 3 ac (1 ha), with the largest pool covering about 2 ac (1 ha). Of the seven identified pools in Fairview Park, three are known to be occupied by the San Diego fairy shrimp (City of Costa Mesa 2001, p. C–43). The vernal pools have been impacted to some extent by pedestrian traffic, bicycles, and mowing. Additionally, the largest vernal pool was previously impacted by the deposition of fill material, including asphalt and concrete (City of Costa Mesa 2001, pp. 7–14).

The Master Plan for restoration of Fairview Park and its long-term management was developed in 1998 and revised in 2001. The Master Plan guides all natural habitat restoration actions as well as passive and active public uses. Actions in the Master Plan that benefit the San Diego fairy shrimp include, but are not limited to: (1) Development of a formalized trail system to avoid sensitive areas to the extent feasible; (2) installation of educational signage and observation platforms in the vernal pool restoration area; (3) installation of fencing to protect the vernal pools; and (4) cessation of mowing within the vernal pools or, if necessary, mowing only late in the season after annual forbs and grasses have set seed (City of Costa Mesa 2001, p. C–46).

Implementation of the Master Plan, including the vernal pool restoration, has been funded since 1994 using a variety of sources, including $88,000 from the Segerstrom Company (City of Costa Mesa 2003) and annual budget allocations from the City totaling approximately $250,000. In 2007, a grant for $250,000 was awarded by the California Department of Parks and Recreation with a match of $250,000 from the City of Costa Mesa to implement a trail plan for Fairview Park. Actions to restore the vernal pools are planned and implemented by a qualified biologist holding a valid section 10(a)(1)(A) permit from the Service.

Benefits of Exclusion Outweigh Benefits of Inclusion

We have reviewed and evaluated the proposed designation of essential habitat in Fairview Park and have determined that the benefits of excluding critical habitat on 43 ac (17 ha) of land in Fairview Park outweigh the benefits of designating these lands as critical habitat.

Critical habitat was designated on these lands in October 2000 because of the importance of these vernal pools in the conservation of the San Diego fairy shrimp. At the time of the 2000 final critical habitat rule, implementation of the Master Plan for Fairview Park was in its early stages. Since that time, the City of Costa Mesa and management of Fairview Park have consistently demonstrated their commitment to fund and implement the Master Plan for the benefit of the San Diego fairy shrimp and other native species that inhabit the area, thus ensuring the PCEs identified as essential to the conservation of the San Diego fairy shrimp will be maintained over the long-term. Thus, the regulatory benefits of designating this area as critical habitat are minimal. The educational and recovery benefits of designation are also small and are largely addressed through the Fairview Park Master Plan's inclusion of measures to promote public education and awareness of the park's sensitive vernal pool habitat.

By excluding these lands from critical habitat designation, we are eliminating an essentially redundant layer of regulatory review for conservation projects that may be undertaken to restore habitat surrounding the vernal pool habitat (e.g., removal of non-native, invasive plants) and furthering our partnership with the City of Costa Mesa and Fairview Park management to preserve and protect essential vernal pool habitat in the park. Excluding Fairview Park from the revised final designation sends a clear signal to the City of Costa Mesa that the Service actively recognizes and supports the City's sustained commitment to restore and protect the vernal pools at the park. The Service expects to continue working in partnership with the City of Costa Mesa to implement the Master Plan and, potentially, to include these lands as part of the reserve system under the Central-Coastal NCCP/HCP.

We have reviewed and evaluated the exclusion of 43 ac (17 ha) of lands within Fairview Park from the designation of final critical habitat. We have determined that the regulatory benefit of designating those lands in subunit 1B1B is low because the essential San Diego fairy shrimp habitat within this subunit is protected and assured of appropriate management under the Fairview Park Master Plan. The educational and recovery benefits of critical habitat designation are also minor and are largely met through the

public education measures included in the Master Plan and the City's on-going efforts to educate the public about the sensitive natural resources in Fairview Park. We conclude that the minor benefits of critical habitat designation are outweighed by the significant partnership benefits identified in this section and under Benefits of Excluding Lands within HCPs and Other Approved Management Plans that will result from exclusion of the lands from this this final rule.

Exclusion Will Not Result in the Extinction of the Species

We do not believe that the exclusion of 43 ac (17 ha) of land at Fairview Park from the revised final critical habitat designation will result in the extinction of the San Diego fairy shrimp because the Master Plan provides for active restoration of what have been degraded vernal pools, thereby, enhancing the PCEs for the species. In addition, because the 43 ac (17 ha) we have excluded from critical habitat are occupied by San Diego fairy shrimp, future consultations under section 7 of the Act that involve these lands will occur even in the absence of their designation as critical habitat. Application of jeopardy standard of section 7 of the Act provides assurances that the species will not go extinct.

Department of Homeland Security (DHS) Lands (Arnie's Point, San Diego County)

In preparing this revised final designation, we revisited the status of lands owned by the Department of Homeland Security (DHS) (formerly known as Immigration and Naturalization Service (INS)) in subunits 5D and 5F. Within the 2003 proposed subunits 5D and 5F, we removed 174 ac (71 ha) of habitat from this final designation because these lands no longer support the PCEs for the San Diego fairy shrimp. A portion of the land removed is owned by the DHS and is located along the U.S./Mexico border. As a result all DHS–owned land in subunit 5D was removed because it does not contain the PCEs; however, 29 ac (12 ha) remained in subunit 5F. We excluded the remaining DHS lands (29 ac (12 ha)) in subunit 5F under section 4(b)(2) of the Act as a result of national security considerations, as described below.

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208 (8 U.S.C. 1103 note 2000), was enacted as part of the Omnibus Consolidated Appropriations Act of 1997, and addressed construction of the 14-Mile Border Fence. Among the provisions of section 102 is the authority granted to the Attorney General of the United States (AG) to waive the provisions of the Act and of NEPA ''to ensure the expeditious construction of barriers and roads * * *'' (PL 104–208, 1996; Sec. 102 (c)). Although DHS was within its authority to request the AG grant a waiver from complying with the Act, it did consult with the Service on impacts associated with the proposed fence project, including the preparation of documents to fulfill its NEPA obligations. In our biological opinion for the project we described vernal pool habitat within subunit 5F as ''poor'' (Service, 2002, p. 14). A small amount of habitat for the San Diego fairy shrimp was lost as part of the border fence construction; however, the impacts were offset with the restoration of the vernal pools on Arnie's Point (Service 2002; Service 2003). Conservation measures undertaken by the ACOE and INS included the installation of a chain link fence along the inside edge of an existing perimeter road to prevent vehicles from driving into the restoration area; preparation of a restoration plan for the vernal pools; and the restoration and management of the vernal pools on Arnie's Point. The INS committed to preserve in perpetuity INS-owned (now DHS-owned) land outside the project footprint within Arnie's Point, Spring Canyon, and Wruck Canyon through a transfer of deed and title to a cooperating entity to the MSCP (Service 2002; p. 7).

In 2002, the Homeland Security Act (AHSA) transferred the authority to take such actions as necessary to construct the 14-Mile Border Fence to the Secretary of the DHS. In 2005, the Secretary of the DHS, under the authority granted under the HSA and section 102 of the IIRIRA as amended by the REAL ID Act of 2005 (P.L. 109–13), made a determination to waive all ''federal, state, or other laws, regulations or legal requirements of, deriving from, or related to the subject of, * * * The National Environmental Policy Act, the Endangered Species Act * * *.'' (70 FR 55623). In light of this determination (effective on September 22, 2005), there is no longer a requirement for DHS to consult with the Service on actions that may impact federally listed species, including the San Diego fairy shrimp or their designated critical habitat, if those actions are related to the construction or maintenance or operations of the 14-Mile Border Fence.

Benefits of Exclusion Outweigh Benefits of Inclusion

We believe that the regulatory benefit of critical habitat is non-existent in this case. Although designating critical habitat in subunit 5F would reflect our determination that these lands are essential to the conservation of the San Diego fairy shrimp, there is no regulatory requirement for the DHS or any other Federal agency directly involved with the construction and maintenance of the 14-Mile Border Fence project to consult with us regarding impacts to the species or its designated critical habitat.

Furthermore, any educational or recovery benefits from designation of lands at Arnie's point would be minor. Both the DHS and the ACOE are already aware of the presence of the San Diego fairy shrimp and its essential habitat in these areas as they have previously consulted with us on impacts to the species arising from construction of the project.

In contrast to the lack of regulatory, educational and recovery benefits of designation, exclusion of these lands from critical habitat will further the national security purposes of the IIRIRA and the 14-Mile Border Fence Project. Through enactment of the IIRIRA and HSA, Congress expressed their intent that construction of the 14-Mile Border Fence Project should not be delayed or impeded by the statutory requirements of the Endangered Species Act by granting the Secretary of the Department of Homeland Security the authority to waive those requirements. We conclude that national security benefits of excluding 29 ac (12 ha) of land in subunit 5F from critical habitat outweigh any potential regulatory, educational or recovery benefits that would accrue from designation.

Exclusion Will Not Result in Extinction of the Species

The impacts associated with the 14-Mile Border Fence project on the San Diego fairy shrimp were analyzed and we found that the conservation and restoration of the vernal pools at Arnie's Point offset these impacts. The vernal pools at Arnie's Point will now be managed for the long-term conservation of the San Diego fairy shrimp. Therefore, we do not believe that the exclusion of 29 ac (12 ha) of land in subunit 5F will result in the extinction of the San Diego fairy shrimp.

Economics

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information

available and to consider the economic impact on national security and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (DEA) was made available for public review on April 8, 2004 (69 FR 18516). We accepted comments on the draft analysis until May 10, 2004. On April 3, 2007, we published a notice in the **Federal Register** (72 FR 15857) announcing the reopening of the public comment period for the 2003 proposed rule to revise critical habitat (68 FR 19888; April 22, 2003) for the San Diego fairy shrimp and on the DEA. We accepted comments and information until May 3, 2007.

The primary purpose of the DEA is to estimate the potential economic impacts associated with the designation of critical habitat for the San Diego fairy shrimp. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This draft analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The DEA examined activities taking place both within and adjacent to the areas ''considered, but not proposed'' and the areas formally proposed for critical habitat designation (68 FR 19888, April 22, 2003). It estimates impacts based on activities that are ''reasonably foreseeable'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20-year time frame, from when the proposed rule became available to the public (68 FR 19888, April 22, 2003). The 20-year time frame was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

Due to the amount of time that elapsed between the publication of the DEA and the publication of this final rule, we developed an addendum to the DEA to investigate how the potential economic effects may have changed since the DEA was made available to the public (69 FR 18516, April 8, 2004). The addendum does not recreate the analysis provided in the DEA or recalculate all the results; rather it is designed to assess the primary implications of the changes that have taken place since the publication of the DEA. The addendum recognizes that the DEA was based on 2002 dollars and also calculates costs in 2002 dollars to enable direct comparison with the draft analysis. The DEA estimated $53,042,532 in economic costs associated with the conservation of the San Diego fairy shrimp over the next 20 years or approximately $5.2 million annually. Most of the impact results from private land development avoiding areas containing vernal pool soils and topography. At the time the DEA was conducted, we looked at the total cost of listing and critical habitat without attributing which costs were related specifically to the designation of critical habitat (incremental impacts). The addendum estimates that 44 percent or $23,140,688 of the cost is attributable to the critical habitat designation because Federal action agencies already routinely initiate consultations with the Service for projects that potentially affect San Diego fairy shrimp and its vernal pool habitat; however, the critical habitat designation may provide new information about the extent or range of linked watershed areas, resulting in consultations or project modifications that may not have occurred in the absence of critical habitat designation. The final addendum further estimates that future evaluations of destruction or adverse modification of critical habitat under section 7 of the Act in accordance with the statutory standard recognized by the *Gifford Pinchot* decision could have either negligible impacts or could increase the economic impacts reported in the draft analysis if additional conservation above that provided under the existing regulatory baseline is required to ensure that the affected critical habitat unit would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. However, the addendum states that the implications of this relatively recent court decision are difficult to quantify at this time. The addendum estimates that the total cost attributable to the critical habitat designation ($23,140,688) could be $5,228,000 higher based on updated market data, but could be $324,484 lower based on the decision not to relocate the San Diego International Airport, a cost that was factored in to the DEA. The addendum assumes that the baseline regulatory context within the City of San Diego would not change in the aftermath of the recent *Bartel* district court decision enjoining the City's incidental take permit for the San Diego fairy shrimp. Any prediction about possible economic effects of the court's decision on the baseline regulatory context for the San Diego fairy shrimp within the City would be speculative because the future of the City's subarea plan and conservation efforts with regard to the San Diego fairy shrimp are currently unknown. On a cost per unit basis, the largest portion of forecast costs is expected to occur in Unit 3, the San Diego, Inland Valley. The DEA estimated $37,462,742 in economic costs for this unit and the addendum estimates that $16,365,476 of the cost is attributable to the critical habitat designation. Unit 3, the San Diego, Inland Valley has a higher portion of forecast costs because this area is not covered by an HCP and therefore has no baseline regulatory context for the San Diego fairy shrimp, meaning that there are no local or state laws that would restrict the development of these lands for the San Diego fairy shrimp if this species was not federally listed. These costs are attributable to lost commercial and industrial development potential. We do not find the economic costs to be disproportionate because similar costs

are potentially occurring in other areas included in critical habitat, but have not been calculated due to existing HCPs or regulations that are in place which conserve the San Diego fairy shrimp and its habitat. Therefore we have not considered these areas for exclusion based on the economic analysis.

A copy of the DEA, associated addendum, and with supporting documents are included in our supporting record and may be obtained by contacting U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or for downloading from the Internet at *http://www.fws.gov/carlsbad*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues. Based on the DEA looking at all conservation related effects, $53,042,532 in economic costs are estimated over the next 20 years or approximately $5.2 million annually. Based on the addendum to the DEA, $23,140,688 is estimated to be attributable to the critical habitat designation. The addendum states that the total cost attributable to the critical habitat designation could be $5,228,000 higher based on updated market data or could be $324,484 lower based on the decision not to relocate the San Diego International Airport, a cost that was factored in to the DEA. From an evaluation of our DEA and addendum we have determined that the critical habitat designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

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.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect San Diego fairy shrimp. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Small businesses in the land development and real estate industry and small governments are likely to be affected by the rule. According to the DEA, three small businesses in the land development and real estate industry are likely to be affected annually, representing less than 1 percent of the total number of small businesses in the industry for the study area. These affected small businesses are likely to experience an impact of 17 percent on their annual revenues as a result of the vernal pool critical habitat designation.

The DEA encompassed both those areas ''considered, but not proposed'' and the areas formally proposed for critical habitat designation. We anticipate the economic impacts to be less than those discussed in the DEA because the area we are designating is smaller than the area analyzed in the DEA. For the small governments in the study area, about 8 percent of the total number of small governments in the study area may be affected by this action. Affected small governments are likely to experience impacts that range from 1 to 5 percent of the median revenue of small governments in the study area. However, for a small government to experience more than 1 percent impact to its annual revenues, the project must be funded and completed in a year. Transportation infrastructure projects will typically span 3 to 10 years, suggesting that most of the small governments in this analysis will experience closer to a 1 percent impact to their annual revenues.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately three small businesses, on average, that may be required to consult with us each year regarding their project's impact on San Diego fairy shrimp and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species or adversely modify its critical habitat, we may identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Road construction and maintenance and right-of-way designation by Federal Highway Administration (FHWA);

(4) Regulation of airport improvement activities by the Federal Aviation Administration;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Land development or other activities funded or permitted by the EPA, U.S. Department of Energy, or any other Federal agency.

Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Army Corps of Engineers permits, permits we may issue under section 10(a)(1)(B) of the Act, and FHWA funding for road improvements.

Further, it is likely that a developer or other project proponent could modify a project or take measures to protect San Diego fairy shrimp. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this final designation of critical habitat for the San Diego fairy shrimp would result in a significant economic impact on a substantial number of small entities. Only three small real estate and development businesses, or less than 1 percent of the total businesses in the industry, are likely to be affected annually by the final designation. Only 1 small government, or 8 percent of the small governments within designated critical habitat, is likely to be affected by the final designation and economic impacts are estimated to be only approximately 1 percent of annual revenues. Therefore, we certify that the designation of critical habitat for the San Diego fairy shrimp will not result in a significant impact on a substantial number of small business entities. Please see the ''Economic Analysis'' section above, the DEA, and the final addendum for a more detailed discussion of potential economic impacts. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That 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. While this final rule to designate critical habitat for San Diego fairy shrimp is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it to significantly affect energy supplies, distribution, or use. The DEA concluded that no project modifications are anticipated to occur in any energy producing industries from the implementation of this rule. Furthermore, no additional energy use is likely to be required as a result of designation of critical habitat for the San Diego fairy shrimp. Based on information from Federal agencies involved in the construction of new energy production facilities or the maintenance of energy facilities, there is no expected impact on energy producing industries over the next 20 years (Economic and Planning Systems, Inc. 2004, p. 76). Because of the minimal impact of this designation we conclude that this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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 that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) Based on our DEA and final addendum, for the small governments in the study area, less than one unique small government is likely to be affected annually or about eight percent of the total number of small governments in the study area. Affected small governments are likely to experience impacts that fall in the range of one percent to five percent of the median revenue of small governments in the study area. However, for a small government to experience more than one percent impact to its annual revenues, the project must be funded and completed in a year. Transportation infrastructure projects will typically span anywhere from 3 to 10 years, suggesting that most of the small governments in the analysis will experience closer to a one percent impact to their annual revenues from San Diego fairy shrimp critical habitat designation. Therefore, we do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Takings

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 critical habitat for San Diego fairy shrimp in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for San Diego fairy shrimp does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, critical habitat designation with appropriate State resource agencies in California. We received comments from California Department of Fish and Game (CDFG); those comments and our responses are included in the Summary of Comments and Recommendations section of this final rule. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This revised final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to

assist the public in understanding the habitat needs of the San Diego fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (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 (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This 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)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are unoccupied areas that are essential for the conservation of the San Diego fairy shrimp. Therefore, critical habitat for the San Diego fairy shrimp has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary author of this package is the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(h), revise the entry for ''San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) Crustaceans

* * * * *

San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)

(1) Critical habitat units are depicted for Orange and San Diego counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the San Diego fairy shrimp are:

(i) Vernal pools with shallow to moderate depths (2 in (5 cm) to 12 in (30 cm)) that hold water for sufficient lengths of time (7 to 60 days) necessary for incubation, maturation, and reproduction of the San Diego fairy shrimp, in all but the driest years;

(ii) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in paragraph (2)(i) of this entry, providing for dispersal and promoting hydroperiods of adequate length in the pools (i.e., the vernal pool watershed); and

(iii) Flat to gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat (including Carlsbad, Chesterton, Diablo, Huerhuero, Linne, Olivenhain, Placentia, Redding, and Stockpen soils).

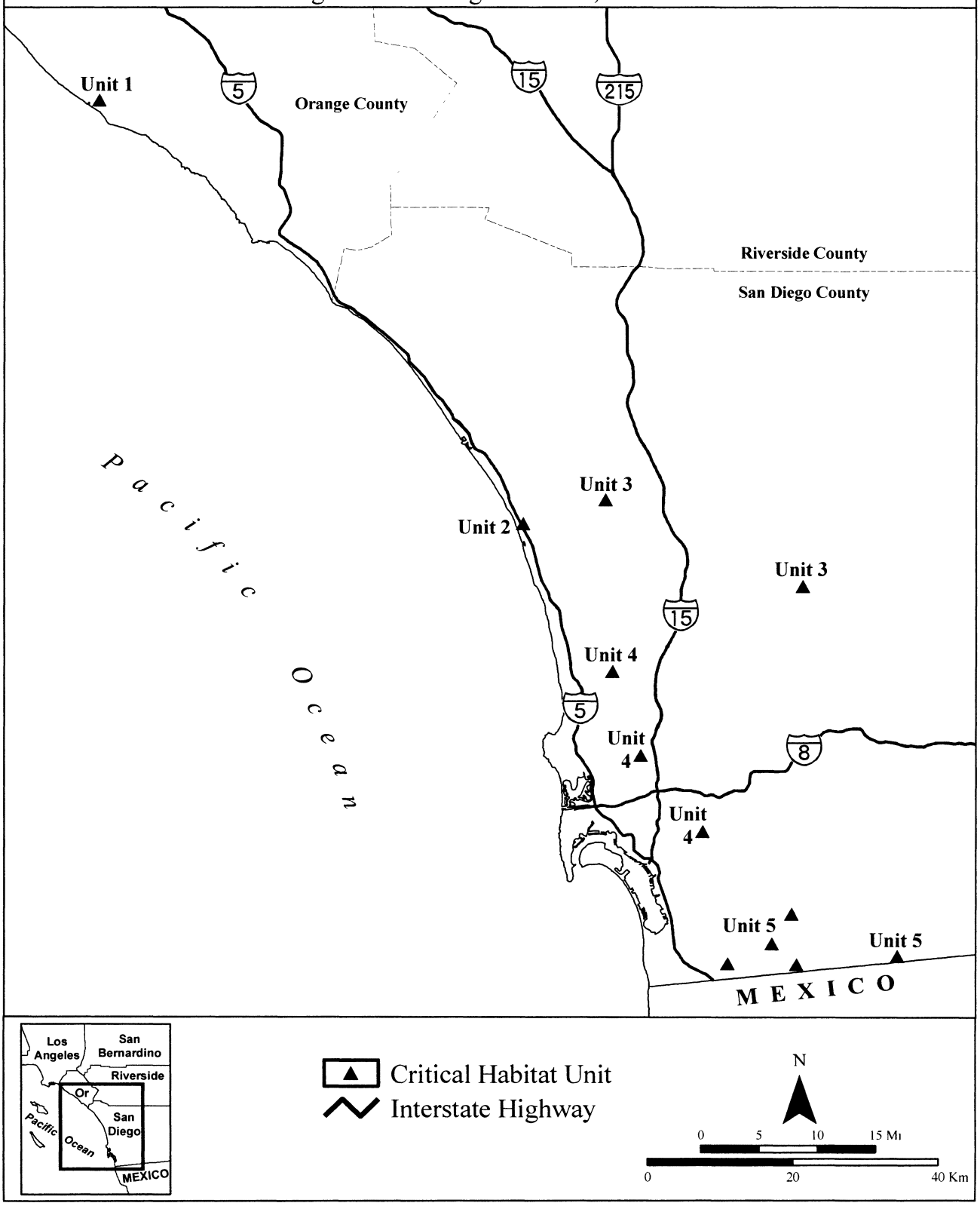
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created using a base of U.S. Geological Survey 7.5′ quadrangle maps, and the critical habitat units were then mapped using UTM coordinates.

(5) Note: Index map (Map 1) follows:

BILLING CODE 4310–55–P

Map 1. Index Map
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Orange and San Diego Counties, California

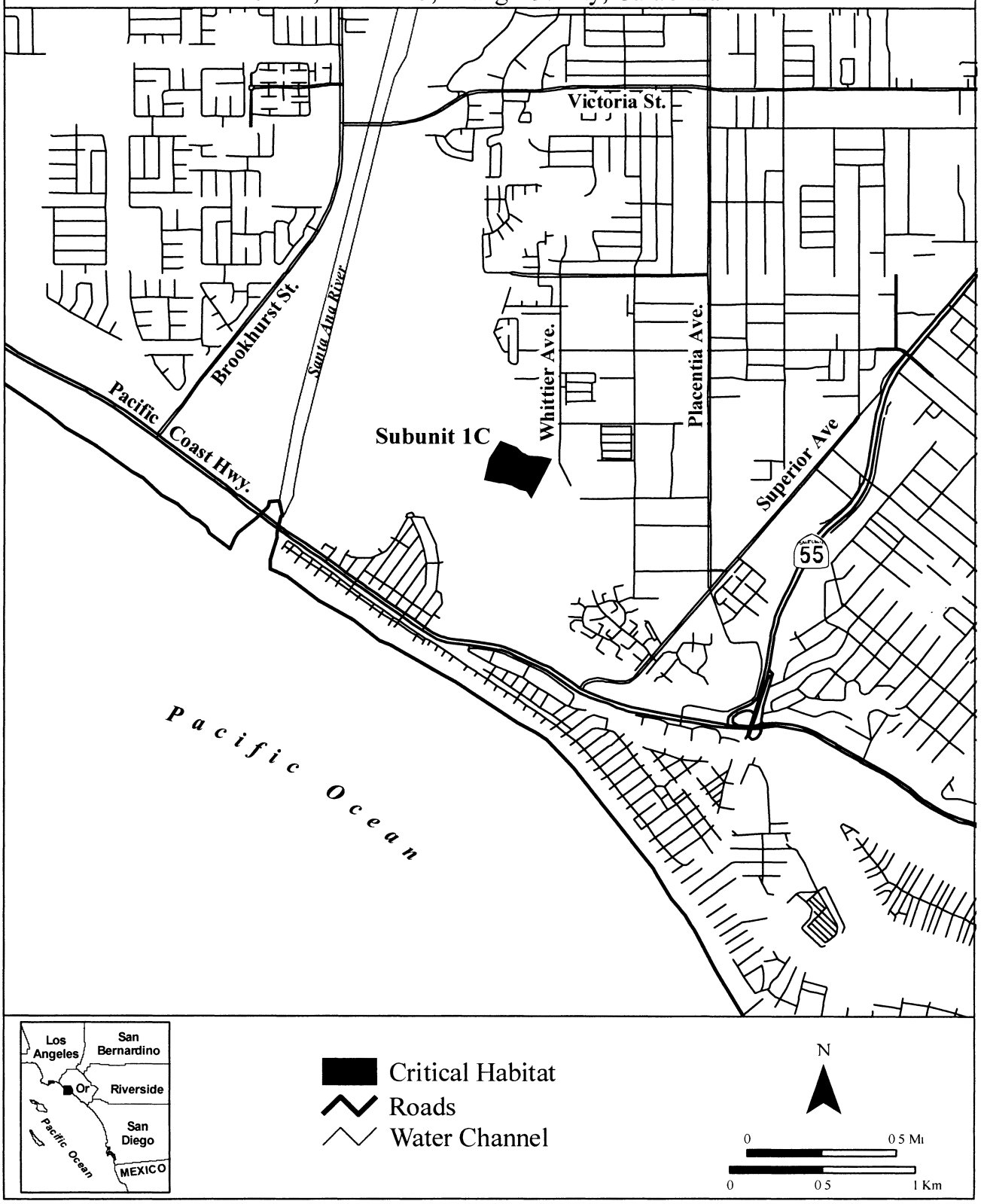


(6) Unit 1: Orange County, California. From USGS 1:24, 000 quadrangle map Newport Beach.

(i) Subunit 1C. Land bounded by the following UTM NAD27 coordinates (E,N): 412805, 3721810; 412694, 3721593; 412668, 3721631; 412633, 3721638; 412589, 3721661; 412539, 3721674; 412521, 3721676; 412436, 3721693; 412465, 3721807; 412524, 3721907; 412616, 3721871; 412643, 3721844; 412677, 3721827; 412744, 3721820; 412805, 3721810.

(ii) Note: Map of Unit 1, Subunit 1C (Map 2) follows:

Map 2.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 1, Subunit C, Orange County, California

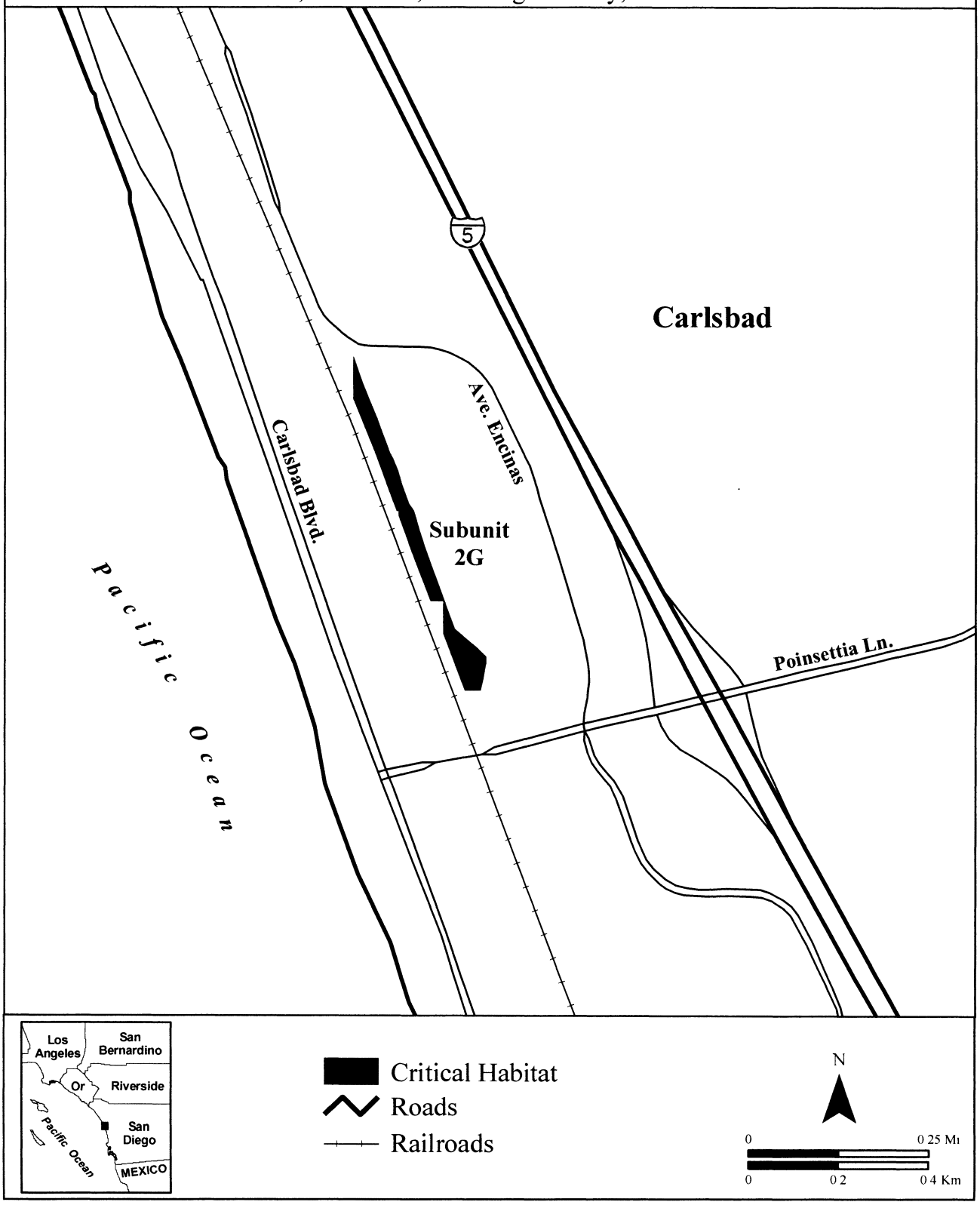


(7) Unit 2: San Diego County, California. From USGS 1:24, 000 quadrangle map Encinitas.

(i) Subunit 2G. Land bounded by the following UTM NAD27 coordinates (E,N): 470300, 3663348; 470301, 3663346; 470323, 3663284; 470356, 3663198; 470366, 3663172; 470382, 3663133; 470388, 3663119; 470399, 3663092; 470399, 3663092; 470408, 3663065; 470418, 3663034; 470424, 3663019; 470434, 3663002; 470442, 3662980; 470447, 3662960; 470459, 3662925; 470476, 3662876; 470527, 3662739; 470531, 3662733; 470573, 3662699; 470596, 3662675; 470596, 3662661; 470590, 3662625; 470584, 3662600; 470568, 3662600; 470548, 3662600; 470500, 3662727; 470500, 3662779; 470500, 3662800; 470492, 3662800; 470472, 3662800; 470430, 3662912; 470400, 3662991; 470400, 3663000; 470397, 3663000; 470343, 3663144; 470300, 3663252; 470300, 3663328; 470300, 3663330.

(ii) Note: Map of Unit 2, Subunit 2G (Map 3) follows:

Map 3.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 2, Subunit G, San Diego County, California



BILLING CODE 4310–55–C

(8) Unit 3: San Diego County, California. From USGS 1:24, 000 quadrangle maps San Marcos, San Pasqual, and Ramona.

(i) Subunit 3A. Land bounded by the following UTM NAD27 coordinates (E,N): 482519, 3667481; 482522, 3667490; 482746, 3667403; 482743, 3667398; 482702, 3667300; 482600, 3667300; 482600, 3667232; 482556, 3667127; 482419, 3667185; 482436, 3667237; 482433, 3667249; 482361, 3667282; 482404, 3667370; 482467, 3667341; 482489, 3667400; 482500, 3667400; 482500, 3667430.

(ii) Subunit 3C. Land bounded by the following UTM NAD27 coordinates (E,N): 482054, 3666630; 481931, 3666341; 481800, 3666394; 481800, 3666400; 481786, 3666400; 481600, 3666476; 481600, 3666500; 481542, 3666500; 481586, 3666600; 481600, 3666600; 481600, 3666631; 481672, 3666793. Land bounded by the following UTM NAD27 coordinates (E,N): 481457, 3666290; 481750, 3666164; 481792, 3666269; 481822, 3666258; 481888, 3666230; 481888, 3666188; 481900, 3666135; 481900, 3666128; 481900, 3666100; 481908, 3666100; 481910, 3666093; 481926, 3666044; 481938, 3666006; 481954, 3665952; 481953, 3665951; 481872, 3665932; 481893, 3665863; 481726, 3665813; 481717, 3665831; 481700, 3665878; 481700, 3665900; 481692, 3665900; 481662, 3665987; 481637, 3666057; 481623, 3666077; 481600, 3666087; 481600, 3666100; 481572, 3666100; 481571, 3666100; 481406, 3666174; 481444, 3666261; 481455, 3666286.

(iii) Subunit 3D. Land bounded by the following UTM NAD27 coordinates (E,N): 482905, 3666600; 482943, 3666600; 482951, 3666576; 482878, 3666400; 482844, 3666400; 482800, 3666539; 482800, 3666566.

(iv) Subunit 3E.1. Land bounded by the following UTM NAD27 coordinates (E,N): 505832, 3655634; 505833, 3655626; 505920, 3655402; 506333, 3654967; 506504, 3655015; 506619, 3655015; 506795, 3655157; 507417, 3654906; 507417, 3654593; 507713, 3654398; 507614, 3654262; 506880, 3654385; 506410, 3654601; 505906, 3654692; 505398, 3655020; 505000, 3655164; 505000, 3655250; 505000, 3655500; 505000, 3655532; 505068, 3655630; 505199, 3655620; 505259, 3655600; 505403, 3655674; 505514, 3655610; 505534, 3655573; 505660, 3655633; 505665, 3655636; 505665, 3655636; 505692, 3655667; 505811, 3655671; 505832, 3655634; 505832, 3655634.

(v) Subunit 3E.2. Land bounded by the following UTM NAD27 coordinates (E,N): 509149, 3655266; 509295, 3655337; 509429, 3655206; 509321, 3655061; 509275, 3655000; 509250, 3655000; 509250, 3654973; 509174, 3654924; 509203, 3654625; 508642, 3654684; 508347, 3654484; 508311, 3654514; 508344, 3654563; 508583, 3654776; 508577, 3654914; 508488, 3654973; 508013, 3654934; 508029, 3655012; 507918, 3655209; 507485, 3655284; 507301, 3655340; 507261, 3655424; 507203, 3655544; 508301, 3655340; 508379, 3655228; 508429, 3655157; 508444, 3655152; 508646, 3655084; 508760, 3655311; 509003, 3655196; 509131, 3655258.

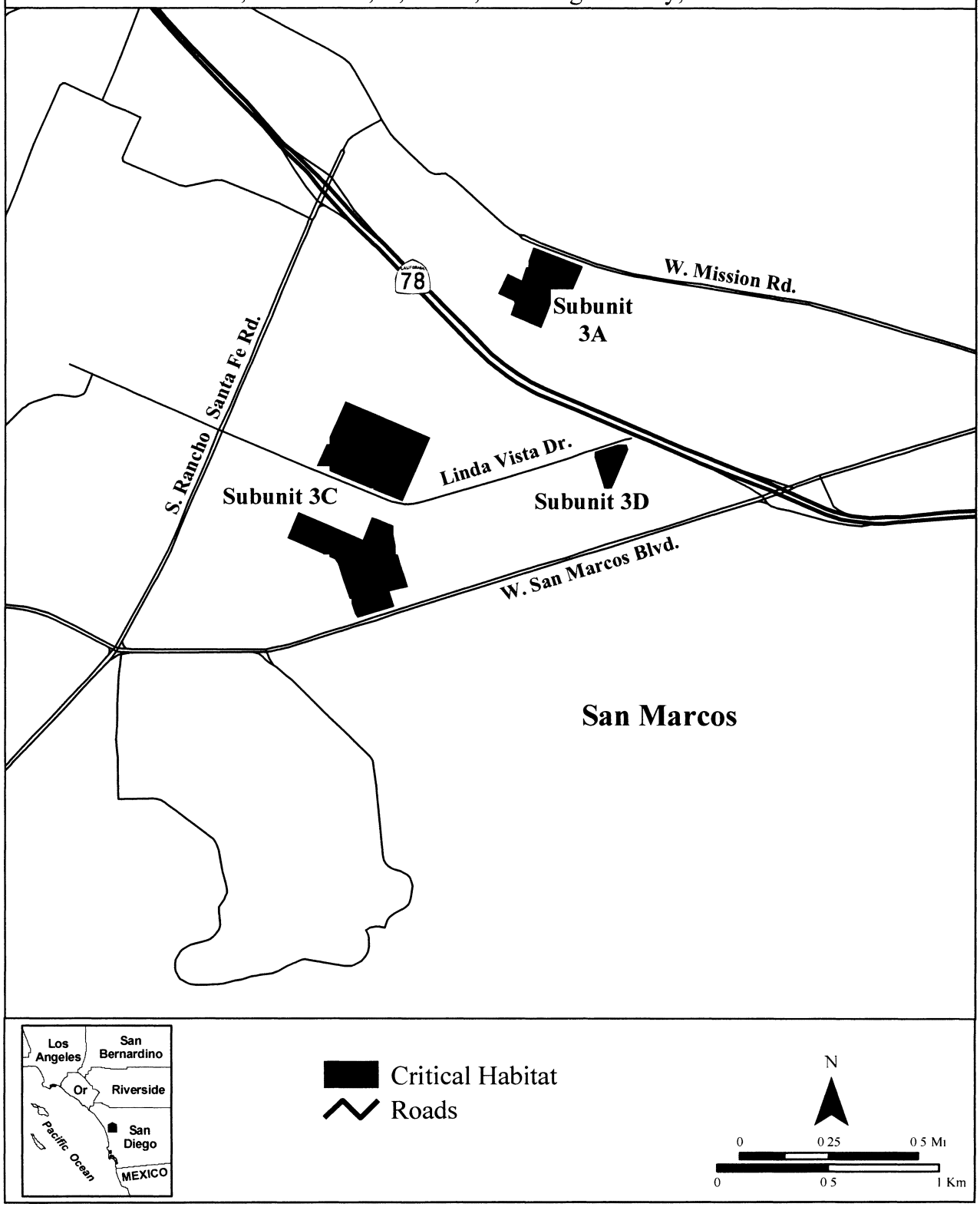
(vi) Subunit 3E.3. Land bounded by the following UTM NAD27 coordinates (E,N): 510101, 3654200; 510140, 3654178; 510198, 3654185; 510244, 3654214; 510292, 3654240; 510317, 3654246; 510342, 3654205; 510330, 3654166; 510323, 3654121; 510325, 3654076; 510321, 3654007; 510314, 3654000; 510300, 3654000; 510300, 3653984; 510250, 3653938; 510250, 3653938; 510210, 3653900; 510200, 3653900; 510152, 3653953; 510148, 3653968; 510158, 3654004; 510110, 3654061; 510023, 3654160; 510062, 3654196; 510098, 3654200; 510100, 3654200; 510100, 3654200. Land bounded by the following UTM NAD27 coordinates (E,N): 511334, 3655370; 511340, 3655365; 511345, 3655353; 511397, 3655274; 511404, 3655265; 511416, 3655273; 511460, 3655300; 511473, 3655300; 511500, 3655262; 511500, 3655250; 511500, 3655218; 511500, 3655214; 511331, 3655102; 511310, 3655088; 511300, 3655099; 511300, 3655100; 511299, 3655100; 511292, 3655107; 511250, 3655150; 511208, 3655192; 511200, 3655200; 511200, 3655265; 511250, 3655310; 511299, 3655354; 511333, 3655371.

(vii) Subunit 3E.4. Land bounded by the following UTM NAD27 coordinates (E,N): 512552, 3654788; 512561, 3654778; 512553, 3654759; 512542, 3654734; 512535, 3654677; 512533, 3654565; 512532, 3654547; 512531, 3654515; 512530, 3654422; 512485, 3654420; 512487, 3654359; 512313, 3654385; 512139, 3654363; 511954, 3654363; 511937, 3654353; 511935, 3654350; 511874, 3654257; 511806, 3654242; 511802, 3654342; 511873, 3654405; 511946, 3654429; 511947, 3654432; 511948, 3654430; 512095, 3654525; 512106, 3654533; 512441, 3654750; 512442, 3654750; 512443, 3654750; 512500, 3654787; 512500, 3654785; 512517, 3654799; 512532, 3654810; 512533, 3654809.

(viii) Note: Map of Unit 3, Subunits 3A, 3C, and 3D (Map 4) follows:

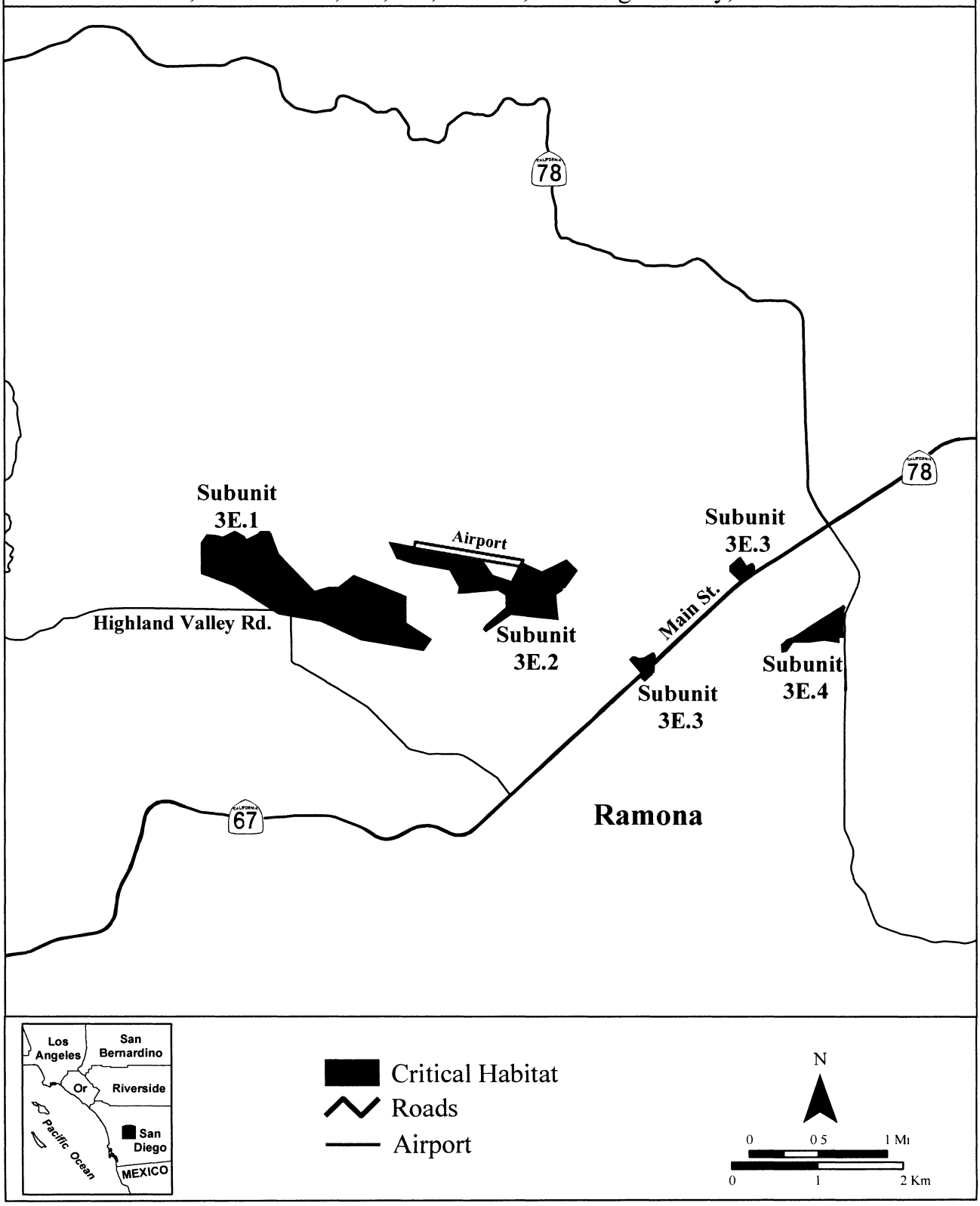
BILLING CODE 4310–55–P

Map 4.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 3, Subunits A, C, and D, San Diego County, California



(ix) Note: Map of Unit 3, Subunits 3E.1, 3E.2, 3E.3, and 3E.4 (Map 5) follows:

Map 5.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 3, Subunits E.1, E.2, E.3, and E.4, San Diego County, California



BILLING CODE 4310–55–C

(9) *Unit 4:* San Diego County, California. From USGS 1:24, 000 quadrangle maps Del Mar, La Jolla, and La Mesa.

(i) Subunit 4A/B. Land bounded by the following UTM NAD27 coordinates (E,N): 485317, 3645035; 485298, 3645039; 485274, 3645039; 485259, 3645035; 485245, 3645032; 485244, 3645032; 485241, 3645032; 485226, 3645028; 485213, 3645026; 485209, 3645025; 485187, 3645020; 485173, 3645017; 485153, 3645012; 485139, 3645009; 485128, 3645009; 485114, 3645012; 485101, 3645018; 485090, 3645027; 485078, 3645035; 485065, 3645043; 485052, 3645052; 485033, 3645066; 485019, 3645074; 485009, 3645081; 485001, 3645086; 484987, 3645095; 484971, 3645103; 484957, 3645107; 484940, 3645108; 484923, 3645108; 484912, 3645106; 484901, 3645102; 484897, 3645098; 484890, 3645093; 484886, 3645088; 484884, 3645085; 484883, 3645077; 484886, 3645067; 484890, 3645055; 484899, 3645041; 484906, 3645034; 484915, 3645027; 484921, 3645018; 484929, 3645005; 484935, 3644996; 484943, 3644981; 484947, 3644970; 484947, 3644958; 484945, 3644947; 484939, 3644936; 484933, 3644928; 484925, 3644922; 484916, 3644917; 484904, 3644916; 484891, 3644921; 484873, 3644929; 484860, 3644939; 484860, 3644939; 484850, 3644950; 484841, 3644961; 484829, 3644979; 484822, 3644989; 484817, 3644997; 484812, 3645003; 484806, 3645012; 484796, 3645023; 484795, 3645024; 484785, 3645030; 484771, 3645032; 484758, 3645034; 484741, 3645032; 484729, 3645030; 484715, 3645026; 484709, 3645024; 484704, 3645022; 484697, 3645018; 484691, 3645012; 484688, 3645008; 484685, 3645004; 484675, 3644990; 484670, 3644981; 484665, 3644967; 484662, 3644959; 484659, 3644953; 484656, 3644947; 484651, 3644936; 484650, 3644934; 484639, 3644920; 484633, 3644912; 484629, 3644906; 484622, 3644899; 484615, 3644896; 484605, 3644894; 484600, 3644893; 484589, 3644893; 484575, 3644897; 484561, 3644903; 484550, 3644908; 484539, 3644916; 484531, 3644929; 484523, 3644951; 484520, 3644957; 484518, 3644963; 484517, 3644969; 484515, 3644975; 484512, 3644991; 484507, 3645006; 484498, 3645018; 484491, 3645021; 484490, 3645022; 484487, 3645023; 484472, 3645024; 484459, 3645023; 484458, 3645023; 484458, 3645023; 484450, 3645023; 484426, 3645025; 484397, 3645030; 484378, 3645037; 484367, 3645047; 484358, 3645060; 484352, 3645072; 484349, 3645083; 484350, 3645096; 484357, 3645102; 484368, 3645107; 484379, 3645111; 484393, 3645112; 484410, 3645110; 484414, 3645108; 484414, 3645108; 484429, 3645101; 484441, 3645097; 484451, 3645092; 484460, 3645085; 484472, 3645078; 484486, 3645069; 484498, 3645062; 484498, 3645062; 484512, 3645058; 484515, 3645057; 484520, 3645057; 484529, 3645056; 484544, 3645055; 484564, 3645053; 484586, 3645053; 484600, 3645054; 484618, 3645060; 484632, 3645062; 484634, 3645062; 484634, 3645062; 484636, 3645063; 484646, 3645065; 484649, 3645066; 484650, 3645066; 484665, 3645068; 484691, 3645073; 484704, 3645078; 484714, 3645087; 484718, 3645095; 484720, 3645102; 484721, 3645109; 484721, 3645119; 484721, 3645123; 484720, 3645131; 484715, 3645143; 484708, 3645157; 484701, 3645163; 484691, 3645171; 484683, 3645177; 484669, 3645185; 484662, 3645189; 484651, 3645194; 484650, 3645195; 484649, 3645196; 484647, 3645199; 484637, 3645201; 484622, 3645206; 484621, 3645208; 484620, 3645208; 484620, 3645209; 484607, 3645222; 484602, 3645230; 484598, 3645243; 484595, 3645261; 484592, 3645283; 484589, 3645300; 484589, 3645300; 484588, 3645313; 484587, 3645331; 484582, 3645350; 484578, 3645361; 484573, 3645370; 484564, 3645376; 484555, 3645381; 484543, 3645385; 484531, 3645386; 484523, 3645385; 484510, 3645382; 484502, 3645378; 484487, 3645371; 484478, 3645370; 484465, 3645367; 484449, 3645365; 484440, 3645365; 484429, 3645366; 484419, 3645373; 484412, 3645379; 484409, 3645388; 484406, 3645399; 484406, 3645403; 484406, 3645404; 484406, 3645404; 484406, 3645407; 484408, 3645413; 484413, 3645418; 484416, 3645426; 484423, 3645430; 484427, 3645432; 484432, 3645436; 484440, 3645439; 484451, 3645448; 484458, 3645454; 484465, 3645459; 484471, 3645465; 484476, 3645472; 484479, 3645476; 484483, 3645490; 484483, 3645497; 484481, 3645508; 484476, 3645519; 484470, 3645526; 484459, 3645530; 484447, 3645535; 484422, 3645543; 484412, 3645546; 484406, 3645547; 484389, 3645553; 484377, 3645559; 484367, 3645572; 484363, 3645578; 484362, 3645585; 484363, 3645594; 484368, 3645599; 484368, 3645599; 484369, 3645600; 484372, 3645605; 484377, 3645611; 484380, 3645626; 484382, 3645635; 484386, 3645643; 484386, 3645644; 484387, 3645655; 484387, 3645663; 484387, 3645664; 484385, 3645677; 484382, 3645688; 484371, 3645700; 484363, 3645706; 484348, 3645713; 484335, 3645718; 484318, 3645720; 484307, 3645718; 484297, 3645717; 484289, 3645713; 484283, 3645711; 484274, 3645709; 484265, 3645712; 484255, 3645715; 484245, 3645723; 484244, 3645723; 484237, 3645728; 484219, 3645734; 484209, 3645732; 484197, 3645729; 484186, 3645724; 484177, 3645720; 484167, 3645715; 484155, 3645708; 484143, 3645699; 484130, 3645694; 484115, 3645691; 484104, 3645693; 484093, 3645702; 484085, 3645711; 484077, 3645718; 484074, 3645730; 484076, 3645740; 484083, 3645747; 484098, 3645753; 484110, 3645754; 484123, 3645755; 484135, 3645754; 484149, 3645752; 484160, 3645755; 484167, 3645758; 484173, 3645761; 484178, 3645765; 484182, 3645769; 484185, 3645774; 484191, 3645785; 484199, 3645795; 484205, 3645802; 484212, 3645811; 484220, 3645818; 484229, 3645823; 484238, 3645822; 484241, 3645821; 484244, 3645820; 484250, 3645816; 484256, 3645810; 484258, 3645804; 484262, 3645801; 484264, 3645799; 484267, 3645796; 484270, 3645794; 484277, 3645788; 484292, 3645778; 484307, 3645773; 484325, 3645771; 484343, 3645773; 484353, 3645775; 484362, 3645778; 484376, 3645781; 484384, 3645782; 484396, 3645780; 484407, 3645778; 484417, 3645773; 484425, 3645770; 484442, 3645764; 484445, 3645762; 484454, 3645753; 484460, 3645744; 484467, 3645739; 484475, 3645734; 484485, 3645731; 484491, 3645730; 484499, 3645727; 484504, 3645722; 484512, 3645718; 484518, 3645714; 484524, 3645705; 484526, 3645693; 484527, 3645686; 484524, 3645666; 484521, 3645660; 484515, 3645649; 484507, 3645632; 484505, 3645617; 484506, 3645610; 484510, 3645602; 484511, 3645600; 484512, 3645600; 484512, 3645600; 484512, 3645600; 484515, 3645597; 484521, 3645593; 484528, 3645590; 484538, 3645589; 484548, 3645583; 484556, 3645574; 484566, 3645563; 484571, 3645552; 484577, 3645534; 484581, 3645520; 484587, 3645507; 484590, 3645496; 484594, 3645482; 484600, 3645459; 484604, 3645442; 484610, 3645431; 484615, 3645423; 484621, 3645410; 484629, 3645399; 484631, 3645397; 484631, 3645397; 484632, 3645396; 484637, 3645392; 484643, 3645387; 484647, 3645382; 484647, 3645382; 484650, 3645378; 484661, 3645369; 484674, 3645356; 484687, 3645347; 484700, 3645335; 484704, 3645332; 484723, 3645320; 484737, 3645313; 484751, 3645305; 484769, 3645292; 484789, 3645285; 484806, 3645275; 484810, 3645274; 484817, 3645270; 484827,

3645268; 484835, 3645267; 484840, 3645268; 484847, 3645269; 484853, 3645274; 484857, 3645279; 484860, 3645287; 484865, 3645298; 484871, 3645306; 484879, 3645314; 484885, 3645324; 484891, 3645331; 484899, 3645342; 484907, 3645352; 484916, 3645357; 484924, 3645358; 484935, 3645357; 484945, 3645354; 484950, 3645345; 484957, 3645338; 484965, 3645330; 484970, 3645324; 484976, 3645317; 484985, 3645304; 484993, 3645296; 484996, 3645293; 485007, 3645285; 485015, 3645282; 485021, 3645281; 485031, 3645280; 485035, 3645280; 485044, 3645280; 485056, 3645279; 485065, 3645279; 485076, 3645278; 485093, 3645273; 485113, 3645266; 485126, 3645261; 485136, 3645258; 485144, 3645253; 485150, 3645252; 485162, 3645242; 485175, 3645233; 485189, 3645219; 485202, 3645210; 485214, 3645199; 485217, 3645198; 485219, 3645197; 485226, 3645189; 485236, 3645180; 485246, 3645172; 485259, 3645165; 485274, 3645158; 485286, 3645150; 485293, 3645147; 485304, 3645144; 485320, 3645144; 485334, 3645145; 485351, 3645151; 485360, 3645156; 485367, 3645162; 485369, 3645166; 485371, 3645171; 485372, 3645175; 485374, 3645180; 485375, 3645189; 485374, 3645194; 485374, 3645205; 485376, 3645221; 485379, 3645238; 485383, 3645255; 485388, 3645281; 485391, 3645291; 485398, 3645304; 485405, 3645312; 485406, 3645312; 485390, 3645351; 485385, 3645385; 485377, 3645442; 485356, 3645586; 485340, 3645756; 485335, 3645772; 485318, 3645827; 485318, 3645827; 485310, 3645851; 485309, 3645984; 485375, 3646007; 485375, 3646007; 485388, 3646011; 485407, 3646016; 485485, 3646037; 485696, 3646058; 485786, 3646083; 485789, 3646083; 485876, 3646098; 485954, 3646155; 486023, 3646185; 486099, 3646175; 486160, 3646136; 486200, 3646117; 486222, 3646106; 486223, 3646100; 486232, 3646056; 486215, 3645983; 486196, 3645951; 486213, 3645920; 486218, 3645920; 486183, 3645872; 486189, 3645811; 486190, 3645412; 485919, 3645438; 485918, 3645438; 485917, 3645371; 486016, 3645368; 486080, 3645305; 486040, 3645234; 486027, 3645244; 485982, 3645240; 485825, 3645240; 485751, 3645241; 485738, 3645193; 485708, 3645150; 485701, 3645138; 485693, 3645136; 485681, 3645130; 485679, 3645130; 485671, 3645127; 485656, 3645121; 485644, 3645114; 485631, 3645108; 485623, 3645103; 485618, 3645100; 485615, 3645098; 485599, 3645096; 485591, 3645094; 485586, 3645093; 485581, 3645092; 485571, 3645092; 485561, 3645095; 485550, 3645099; 485533, 3645100; 485533, 3645100; 485518, 3645103; 485504, 3645104; 485489, 3645102; 485479, 3645100; 485470, 3645097; 485464, 3645092; 485461, 3645088; 485451, 3645078; 485446, 3645072; 485445, 3645070; 485445, 3645069; 485441, 3645060; 485440, 3645059; 485440, 3645058; 485440, 3645052; 485385, 3645047; 485372, 3645046; 485369, 3645046; 485369, 3645044; 485369, 3645023; 485365, 3645017; 485365, 3645016; 485364, 3645016; 485364, 3645016; 485341, 3645027; 485326, 3645032; 485322, 3645033.

(ii) Subunit 4C. Land bounded by the following UTM NAD27 coordinates (E,N): 490395, 3629279; 490395, 3629231; 490396, 3629048; 490358, 3628917; 490295, 3628700; 490293, 3628636; 490280, 3628634; 490111, 3628613; 490000, 3628601; 489913, 3628573; 489739, 3628518; 489724, 3628567; 489718, 3628588; 489705, 3628631; 489842, 3628715; 489893, 3628747; 489985, 3628789; 490101, 3628795; 490203, 3628901; 490202, 3628998; 490304, 3629099; 490306, 3629152; 490301, 3629236; 490299, 3629280; 490342, 3629279; 490364, 3629279.

(iii) Subunit 4D. Land bounded by the following UTM NAD27 coordinates (E,N): 494410, 3622458; 494410, 3622458; 494415, 3622443; 494429, 3622410; 494425, 3622393; 494409, 3622376; 494394, 3622372; 494374, 3622371; 494341, 3622377; 494327, 3622361; 494325, 3622291; 494300, 3622294; 494300, 3622300; 494250, 3622300; 494226, 3622303; 494227, 3622331; 494234, 3622339; 494242, 3622347; 494240, 3622360; 494228, 3622373; 494210, 3622384; 494200, 3622392; 494200, 3622400; 494192, 3622400; 494186, 3622411; 494180, 3622431; 494100, 3622428; 494102, 3622400; 494100, 3622400; 494100, 3622392; 494093, 3622379; 494071, 3622370; 494044, 3622367; 494024, 3622370; 494006, 3622381; 494000, 3622388; 494000, 3622400; 493991, 3622400; 493979, 3622418; 493969, 3622437; 493839, 3622432; 493839, 3622463; 493839, 3622466; 493839, 3622467; 493839, 3622468; 493867, 3622468; 494023, 3622470; 494092, 3622471; 494099, 3622471; 494417, 3622476; 494417, 3622475; 494417, 3622475. Land bounded by the following UTM NAD27 coordinates (E,N): 494403, 3622266; 494430, 3622258; 494439, 3622241; 494444, 3622219; 494433, 3622200; 494400, 3622200; 494400, 3622136; 494399, 3622134; 494389, 3622114; 494300, 3622115; 494300, 3622151; 494308, 3622175; 494300, 3622214; 494300, 3622265.

(iv) Subunit 4E. Land bounded by the following UTM NAD27 coordinates (E,N): 479564, 3643663; 479567, 3643643; 479569, 3643624; 479569, 3643612; 479569, 3643604; 479565, 3643579; 479562, 3643558; 479558, 3643541; 479555, 3643523; 479552, 3643502; 479550, 3643476; 479551, 3643456; 479560, 3643436; 479574, 3643422; 479580, 3643414; 479580, 3643414; 479590, 3643399; 479596, 3643380; 479600, 3643346; 479600, 3643346; 479600, 3643346; 479596, 3643219; 479596, 3643164; 479605, 3643123; 479608, 3643108; 479611, 3643082; 479612, 3643060; 479610, 3643042; 479611, 3643020; 479606, 3643005; 479602, 3642994; 479597, 3642980; 479594, 3642970; 479593, 3642966; 479590, 3642954; 479589, 3642951; 479582, 3642943; 479575, 3642938; 479567, 3642936; 479565, 3642937; 479564, 3642936; 479541, 3642932; 479537, 3642904; 479500, 3642905; 479500, 3643000; 479400, 3643000; 479400, 3643055; 479400, 3643061; 479400, 3643100; 479386, 3643100; 479377, 3643100; 479308, 3643100; 479308, 3643103; 479252, 3643201; 479259, 3643248; 479330, 3643265; 479376, 3643287; 479381, 3643289; 479403, 3643300; 479415, 3643362; 479424, 3643410; 479428, 3643412; 479432, 3643426; 479443, 3643437; 479443, 3643437; 479490, 3643487; 479502, 3643499; 479503, 3643651; 479504, 3643652; 479511, 3643660; 479524, 3643673; 479548, 3643698; 479553, 3643685; 479556, 3643684; 479559, 3643677; 479561, 3643673.

(v) Subunit 4F. Land bounded by the following UTM NAD27 coordinates (E,N): 479996, 3643593; 479997, 3643543; 479997, 3643513; 479913, 3643503; 479900, 3643503; 479900, 3643577; 479900, 3643683; 479998, 3643682.

(vi) Subunit 4G. Land bounded by the following UTM NAD27 coordinates (E,N): 484021, 3642526; 484021, 3642515; 484019, 3642503; 484019, 3642503; 484015, 3642495; 484008, 3642489; 484005, 3642487; 483999, 3642483; 483988, 3642477; 483978, 3642473; 483969, 3642470; 483965, 3642469; 483952, 3642466; 483943, 3642465; 483931, 3642465; 483921, 3642466; 483909, 3642470; 483898, 3642470; 483891, 3642472; 483881, 3642475; 483862, 3642479; 483847, 3642484; 483832, 3642490; 483823, 3642494; 483823, 3642494; 483814, 3642497; 483795, 3642503; 483778, 3642505; 483756, 3642504; 483742, 3642499; 483727, 3642491; 483712, 3642484; 483696, 3642476; 483682,

3642473; 483669, 3642475; 483662, 3642480; 483659, 3642490; 483659, 3642502; 483664, 3642514; 483682, 3642533; 483690, 3642536; 483703, 3642538; 483721, 3642540; 483740, 3642541; 483760, 3642541; 483777, 3642538; 483788, 3642540; 483790, 3642540; 483805, 3642537; 483826, 3642531; 483846, 3642527; 483865, 3642528; 483880, 3642532; 483882, 3642532; 483898, 3642540; 483912, 3642548; 483927, 3642557; 483943, 3642565; 483955, 3642571; 483968, 3642573; 483978, 3642570; 483988, 3642566; 484001, 3642560; 484008, 3642553; 484016, 3642542; 484020, 3642535.

(vii) Subunit 4H. Land bounded by the following UTM NAD27 coordinates (E,N): 483842, 3642261; 483853, 3642265; 483867, 3642269; 483879, 3642272; 483892, 3642272; 483905, 3642274; 483912, 3642274; 483917, 3642275; 483933, 3642275; 483948, 3642277; 483964, 3642279; 483976, 3642280; 483993, 3642281; 484005, 3642281; 484013, 3642279; 484023, 3642276; 484028, 3642270; 484030, 3642263; 484030, 3642255; 484029, 3642248; 484025, 3642241; 484020, 3642233; 484014, 3642224; 484002, 3642214; 483985, 3642202; 483972, 3642193; 483953, 3642177; 483939, 3642167; 483933, 3642159; 483933, 3642146; 483939, 3642132; 483948, 3642118; 483954, 3642108; 483955, 3642106; 483955, 3642105; 483934, 3642094; 483873, 3642068; 483839, 3642059; 483835, 3642058; 483834, 3642058; 483819, 3642055; 483809, 3642053; 483796, 3642052; 483747, 3642050; 483677, 3642050; 483628, 3642051; 483601, 3642056; 483596, 3642059; 483549, 3642079; 483543, 3642082; 483549, 3642088; 483558, 3642093; 483570, 3642095; 483580, 3642095; 483589, 3642094; 483597, 3642092; 483606, 3642090; 483607, 3642090; 483607, 3642090; 483635, 3642088; 483682, 3642088; 483719, 3642094; 483754, 3642105; 483783, 3642129; 483796, 3642147; 483797, 3642148; 483803, 3642165; 483806, 3642181; 483810, 3642198; 483814, 3642219; 483818, 3642238; 483823, 3642249; 483824, 3642251; 483832, 3642258; 483841, 3642261.

(viii) Subunit 4I. Land bounded by the following UTM NAD27 coordinates (E,N): 485100, 3641415; 485231, 3641411; 485237, 3641411; 485445, 3641409; 485450, 3641409; 485450, 3641400; 485444, 3641310; 485444, 3641310; 485438, 3641220; 485369, 3641214; 485290, 3641219; 485258, 3641235; 485211, 3641234; 485143, 3641234; 485111, 3641262; 485101, 3641270; 485069, 3641328; 485056, 3641340; 485041, 3641355; 485022, 3641356; 485015, 3641375; 485004, 3641397; 485000, 3641419; 485019, 3641424; 485035, 3641417; 485036, 3641417; 485039, 3641417.

(ix) Subunit 4J. Land bounded by the following UTM NAD27 coordinates (E,N): 485600, 3639788; 485601, 3639788; 485612, 3639787; 485615, 3639782; 485615, 3639781; 485609, 3639777; 485604, 3639774; 485600, 3639771; 485595, 3639769; 485578, 3639758; 485558, 3639749; 485534, 3639741; 485503, 3639730; 485490, 3639724; 485478, 3639714; 485466, 3639709; 485445, 3639701; 485441, 3639700; 485417, 3639692; 485400, 3639687; 485385, 3639682; 485363, 3639673; 485322, 3639658; 485308, 3639654; 485285, 3639648; 485267, 3639644; 485247, 3639637; 485195, 3639619; 485173, 3639614; 485170, 3639614; 485153, 3639615; 485139, 3639618; 485125, 3639622; 485114, 3639632; 485106, 3639643; 485100, 3639655; 485097, 3639660; 485095, 3639672; 485099, 3639680; 485100, 3639681; 485102, 3639685; 485107, 3639693; 485112, 3639703; 485114, 3639705; 485123, 3639716; 485131, 3639722; 485136, 3639730; 485134, 3639744; 485125, 3639756; 485115, 3639770; 485104, 3639781; 485104, 3639787; 485105, 3639787; 485104, 3639797; 485600, 3639797.

(x) Subunit 4K. Land bounded by the following UTM NAD27 coordinates (E,N): 486900, 3633200; 486911, 3633200; 486913, 3633170; 486914, 3633158; 486917, 3633125; 486934, 3632893; 486937, 3632893; 486941, 3632892; 486943, 3632892; 486942, 3632891; 486940, 3632890; 486995, 3632852; 486996, 3632831; 486996, 3632805; 486971, 3632804; 486964, 3632804; 486964, 3632819; 486948, 3632822; 486941, 3632873; 486939, 3632873; 486916, 3632876; 486915, 3632877; 486915, 3632877; 486909, 3632877; 486903, 3632877; 486900, 3632877; 486895, 3632877; 486859, 3632877; 486791, 3632884; 486731, 3632895; 486720, 3632900; 486693, 3632912; 486682, 3632917; 486674, 3632921; 486668, 3632923; 486627, 3632941; 486618, 3632944; 486596, 3632950; 486580, 3632937; 486579, 3632937; 486400, 3632968; 486192, 3633005; 486136, 3633015; 486136, 3633015; 486135, 3633139; 486200, 3633155; 486220, 3633160; 486220, 3633161; 486331, 3633188; 486332, 3633188; 486332, 3633189; 486381, 3633201; 486402, 3633206; 486482, 3633225; 486603, 3633253; 486689, 3633272; 486690, 3633272; 486700, 3633274; 486771, 3633284; 486775, 3633284; 486786, 3633284; 486900, 3633299.

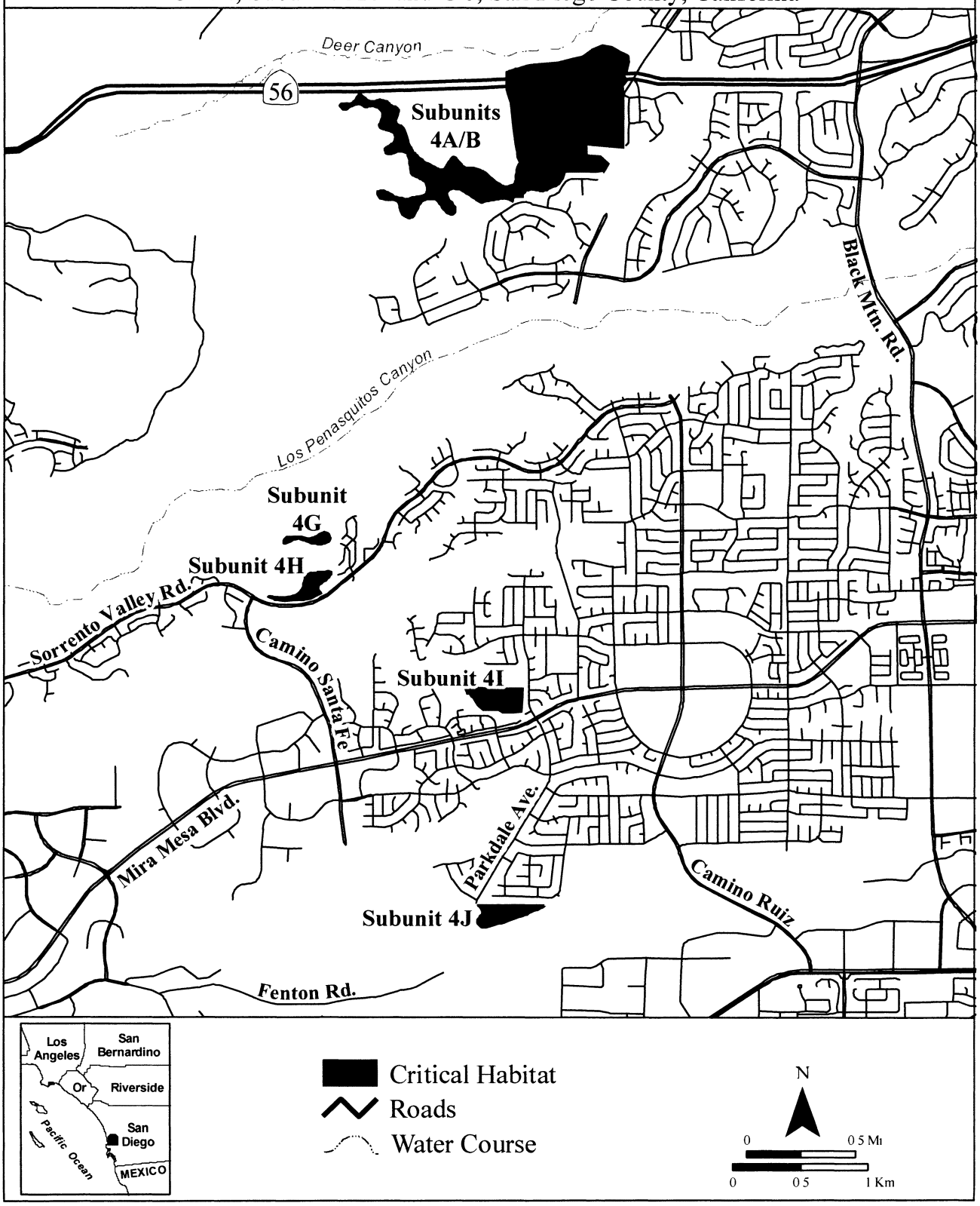
(xi) Subunit 4L. Land bounded by the following UTM NAD27 coordinates (E,N): 487340, 3633277; 487340, 3633277; 487361, 3633261; 487346, 3633241; 487346, 3633241; 487346, 3633241; 487298, 3633197; 487280, 3633208; 487280, 3633208; 487280, 3633209; 487268, 3633218; 487200, 3633269; 487196, 3633272; 487160, 3633234; 487100, 3633264; 487073, 3633277; 487065, 3633300; 487062, 3633309; 487053, 3633340; 487147, 3633365; 487147, 3633366; 487152, 3633366; 487204, 3633380.

(xii) Subunit 4M. Land bounded by the following UTM NAD27 coordinates (E,N): 487669, 3631049; 487669, 3631036; 487667, 3630972; 487660, 3630780; 487672, 3630772; 487816, 3630687; 487818, 3630675; 487828, 3630556; 487829, 3630556; 488292, 3630338; 488292, 3630320; 488294, 3630143; 488295, 3630029; 488260, 3630028; 488195, 3630027; 488076, 3630043; 487879, 3630039; 487830, 3630081; 487805, 3630102; 487714, 3630177; 487798, 3630210; 487829, 3630273; 487830, 3630336; 487830, 3630388; 487516, 3630559; 487501, 3630568; 487340, 3630655; 487335, 3630674; 487313, 3630766; 487384, 3630777; 487428, 3630783; 487503, 3630920; 487508, 3631141; 487677, 3631228; 487672, 3631125; 487670, 3631078.

(xiii) Note: Map of Unit 4, Subunits 4A/B, 4G, 4H, 4I, and 4J (Map 6) follows:

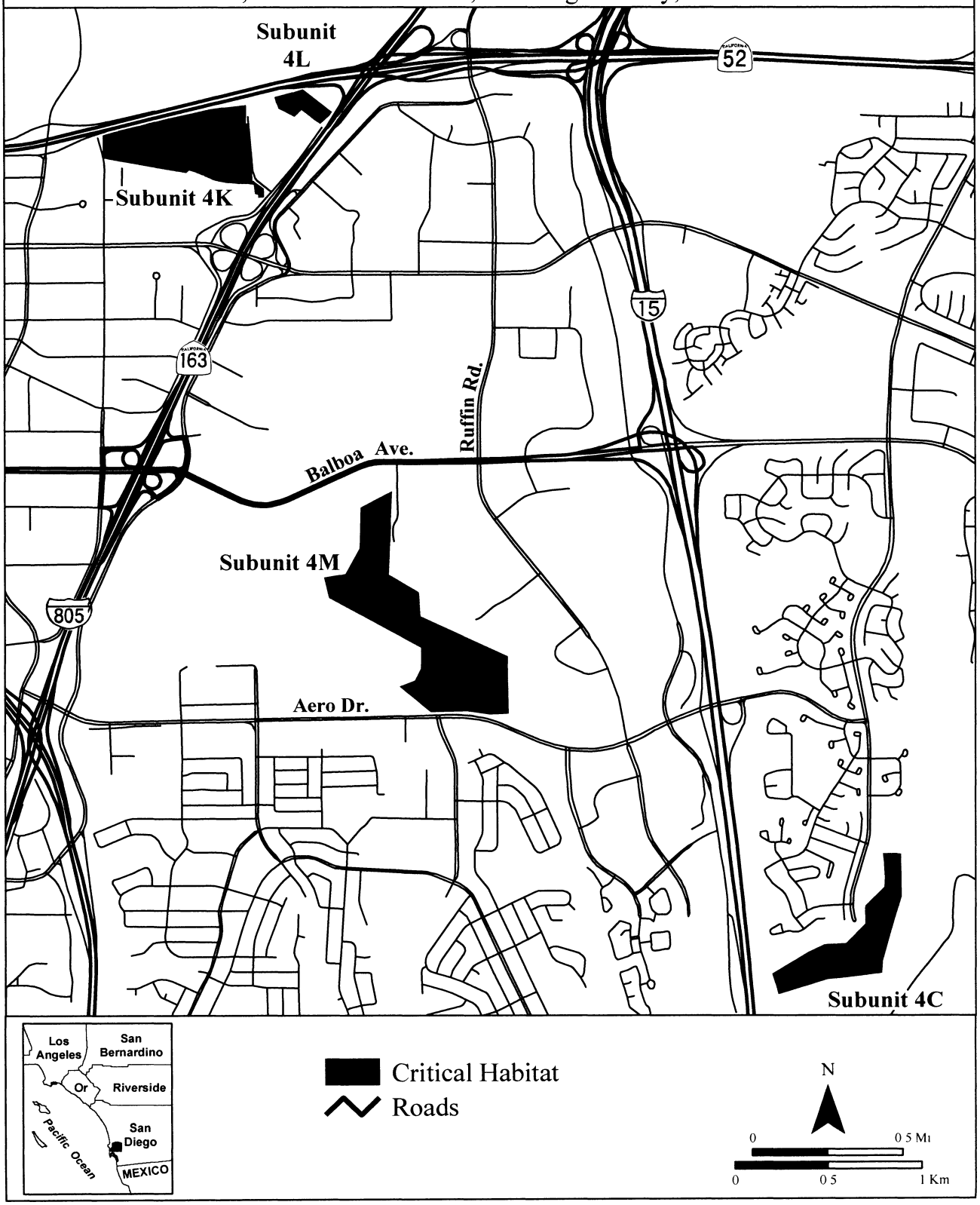
BILLING CODE 4310–55–P

Map 6.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 4, Subunits A/B and G-J, San Diego County, California



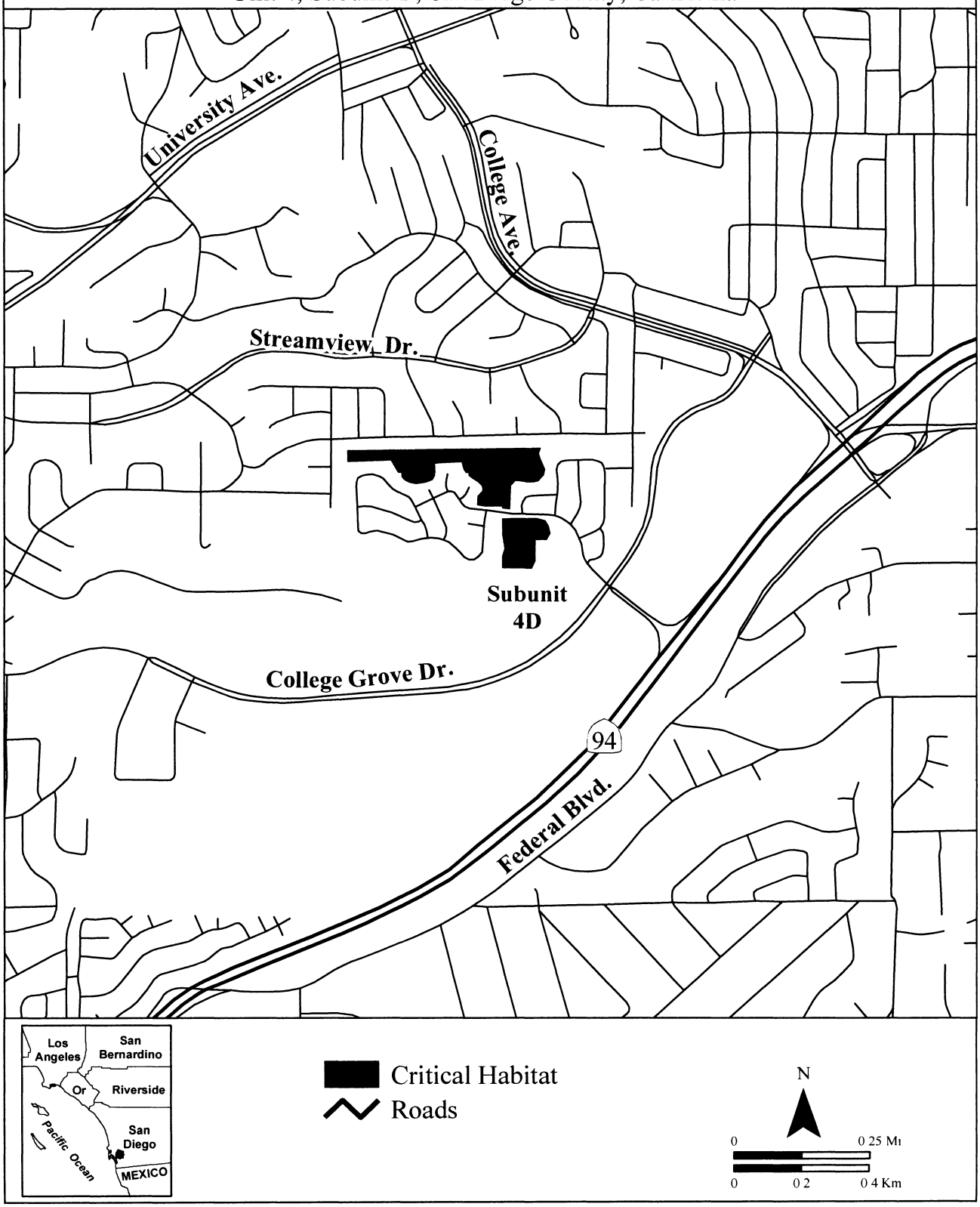
(xiv) Note: Map of Unit 4, Subunits 4C, 4K, 4L and 4M (Map 7) follows:

Map 7.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 4, Subunits C and K-M, San Diego County, California



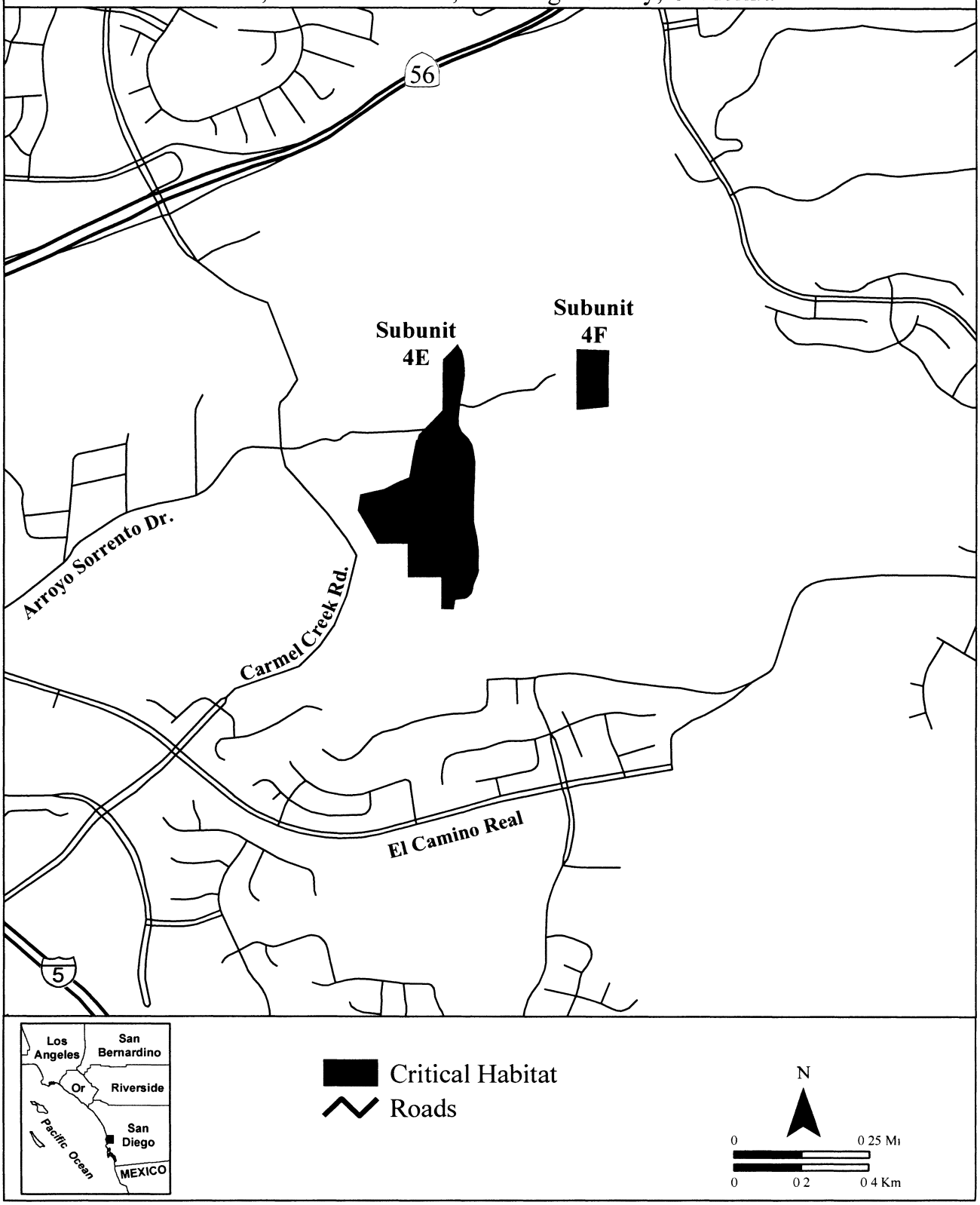
(xv) Note: Map of Unit 4, Subunit 4D (Map 8) follows:

Map 8.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 4, Subunit D, San Diego County, California



(xvi) Note: Map of Unit 4, Subunits 4E and 4F (Map 9) follows:

Map 9.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 4, Subunits E and F, San Diego County, California



BILLING CODE 4310–55–C

(10) Unit 5: San Diego County, California. From USGS 1:24, 000 quadrangle maps Imperial Beach, Jamul Mountains, Otay Mesa, and Otay Mountain.

(i) Subunit 5A. Land bounded by the following UTM NAD27 coordinates (E,N): 506870, 3606405; 506878, 3606405; 506888, 3606405; 506887, 3606404; 506881, 3606394; 506880, 3606392; 506879, 3606390; 506882, 3606388; 506874, 3606348; 506856, 3606282; 506837, 3606194; 506847, 3606090; 506880, 3606025; 506858, 3606009; 506843, 3605998; 506802, 3605981; 506795, 3605978; 506749, 3605974; 506739, 3605981; 506713, 3605998; 506692, 3606035; 506675, 3606077; 506660, 3606147; 506656, 3606157; 506647, 3606180; 506644, 3606186; 506636, 3606200; 506625, 3606220; 506593, 3606288; 506586, 3606303; 506555, 3606368; 506541, 3606400; 506539, 3606405; 506528, 3606429; 506522, 3606487; 506609, 3606517; 506609, 3606518; 506613, 3606522; 506620, 3606526; 506631, 3606530; 506657, 3606530; 506685, 3606523; 506688, 3606523; 506691, 3606524; 506702, 3606526; 506707, 3606529; 506719, 3606537; 506724, 3606543; 506728, 3606550; 506732, 3606567; 506733, 3606573; 506734, 3606582; 506753, 3606589; 506741, 3606620; 506742, 3606626; 506744, 3606633; 506745, 3606642; 506748, 3606650; 506754, 3606656; 506760, 3606661; 506766, 3606664; 506773, 3606667; 506780, 3606666; 506788, 3606665; 506793, 3606660; 506801, 3606654; 506806, 3606648; 506813, 3606638; 506819, 3606631; 506827, 3606625; 506837, 3606621; 506844, 3606619; 506846, 3606618; 506853, 3606616; 506857, 3606614; 506858, 3606461; 506858, 3606449; 506858, 3606449; 506858, 3606436; 506858, 3606427; 506858, 3606405; 506858, 3606405. Excluding land bounded by the following UTM NAD27 coordinates (E,N): 506704, 3606405; 506655, 3606405; 506655, 3606405; 506655, 3606400; 506656, 3606300; 506656, 3606200; 506656, 3606186; 506656, 3606186; 506706, 3606186; 506831, 3606187; 506831, 3606252; 506847, 3606275; 506858, 3606290; 506858, 3606290; 506858, 3606372; 506858, 3606392; 506858, 3606405. Land bounded by the following UTM NAD27 coordinates (E,N): 505791, 3606031; 505841, 3605966; 505884, 3605895; 505914, 3605830; 505935, 3605785; 505950, 3605753; 505951, 3605750; 505964, 3605715; 505973, 3605708; 505983, 3605665; 505863, 3605614; 505847, 3605635; 505834, 3605651; 505825, 3605658; 505797, 3605677; 505774, 3605686; 505774, 3605767; 505774, 3605767; 505774, 3605807; 505774, 3606046; 505774, 3606046.

(ii) Subunit 5B. Land bounded by the following UTM NAD27 coordinates (E,N): 504332, 3605189; 504347, 3605165; 504372, 3605163; 504405, 3605173; 504429, 3605160; 504432, 3605139; 504454, 3605119; 504474, 3605134; 504505, 3605127; 504533, 3605097; 504559, 3605077; 504597, 3605074; 504629, 3605076; 504630, 3604936; 504630, 3604918; 504629, 3604782; 504627, 3604782; 504627, 3604746; 504626, 3604744; 504627, 3604742; 504626, 3604631; 504603, 3604604; 504587, 3604590; 504573, 3604589; 503692, 3604599; 503641, 3604600; 503620, 3604621; 503508, 3604831; 503453, 3604971; 503470, 3604979; 503500, 3604973; 503517, 3604970; 503525, 3604977; 503534, 3604982; 503556, 3604994; 503626, 3604992; 503626, 3605008; 503626, 3605032; 503628, 3605033; 503628, 3605033; 503705, 3605099; 503742, 3605171; 503743, 3605172; 503754, 3605194. Land bounded by the following UTM NAD27 coordinates (E,N): 503241, 3604951; 503260, 3604945; 503260, 3604964; 503275, 3604981; 503314, 3604988; 503319, 3604989; 503389, 3604822; 503508, 3604612; 503537, 3604561; 503567, 3604506; 503620, 3604411; 503620, 3604400; 503619, 3604330; 503617, 3604074; 503617, 3603990; 503609, 3603990; 503569, 3603990; 503464, 3603991; 502923, 3603996; 502813, 3603997; 502813, 3603997; 502800, 3604601; 502800, 3604620; 502799, 3604653; 502800, 3604654; 502820, 3604686; 502830, 3604730; 502835, 3604781; 502836, 3604804; 502994, 3604803; 502991, 3604794; 503003, 3604742; 503041, 3604705; 503064, 3604692; 503074, 3604694; 503104, 3604726; 503111, 3604741; 503137, 3604801; 503208, 3604801; 503208, 3604953.

(iii) Subunit 5C. Land bounded by the following UTM NAD27 coordinates (E,N): 505948, 3603807; 505970, 3603764; 505991, 3603750; 506009, 3603736; 505983, 3603699; 505954, 3603652; 505908, 3603585; 505841, 3603550; 505808, 3603538; 505522, 3603537; 505458, 3603536; 505450, 3603546; 505435, 3603553; 505408, 3603570; 505401, 3603574; 505369, 3603601; 505358, 3603624; 505365, 3603650; 505375, 3603667; 505374, 3603667; 505390, 3603794; 505391, 3603794; 505416, 3603798; 505467, 3603821; 505484, 3603845; 505500, 3603876; 505487, 3603903; 505566, 3604008; 505566, 3604011; 505568, 3604010; 505578, 3604030; 505600, 3604057; 505623, 3604065; 505623, 3604065; 505622, 3604070; 505617, 3604088; 505625, 3604130; 505632, 3604141; 505633, 3604141; 505633, 3604141; 505641, 3604152; 505675, 3604184; 505720, 3604211; 505732, 3604218; 505732, 3604218; 505732, 3604218; 505785, 3604243; 505820, 3604252; 505844, 3604235; 505902, 3604197; 505948, 3604161; 505958, 3604137; 505958, 3604117; 505946, 3604091; 505926, 3604057; 505920, 3604041; 505929, 3604037; 505942, 3604028; 505949, 3604021; 505955, 3604011; 505961, 3603997; 505959, 3603982; 505951, 3603973; 505948, 3603966; 505942, 3603961; 505929, 3603951; 505914, 3603946; 505912, 3603945; 505912, 3603928; 505926, 3603866; 505936, 3603840.

(iv) Subunit 5D. Land bounded by the following UTM NAD27 coordinates (E,N): 509019, 3602417; 509019, 3602284; 509015, 3602132; 509048, 3602002; 509135, 3601973; 509203, 3602071; 509235, 3602133; 509236, 3602136; 509268, 3602255; 509270, 3602335; 509272, 3602407; 509308, 3602461; 509348, 3602490; 509438, 3602540; 509604, 3602573; 509727, 3602641; 509821, 3602670; 509926, 3602613; 510009, 3602537; 510009, 3602450; 509976, 3602327; 509915, 3602212; 509832, 3602096; 509727, 3601865; 509712, 3601746; 509692, 3601743; 509659, 3601737; 509628, 3601732; 509604, 3601726; 509576, 3601713; 509533, 3601697; 509504, 3601687; 509419, 3601669; 509357, 3601654; 509354, 3601654; 509315, 3601643; 509277, 3601623; 509010, 3601592; 508505, 3601541; 508494, 3601540; 508266, 3601517; 508266, 3601517; 508266, 3601517; 508265, 3601517; 507688, 3601459; 507688, 3601459; 507534, 3601443; 507508, 3601733; 507507, 3601736; 507509, 3601735; 507571, 3601753; 507517, 3601850; 507484, 3601937; 507560, 3601995; 507589, 3602056; 507582, 3602147; 507614, 3602241; 507654, 3602208; 507690, 3602147; 507719, 3602172; 507730, 3602248; 507737, 3602331; 507748, 3602410; 507787, 3602450; 507813, 3602403; 507860, 3602320; 507921, 3602190; 507983, 3602049; 508003, 3602033; 508113, 3601944; 508141, 3601999; 508161, 3602070; 508181, 3602147; 508217, 3602168; 508243, 3602118; 508279, 3602013; 508394, 3601901; 508524, 3601901; 508554, 3601918; 508651, 3601973; 508712, 3602061; 508719, 3602071; 508719, 3602165; 508719, 3602255; 508745, 3602302; 508795, 3602414; 508819, 3602464; 508839, 3602504; 508867, 3602504; 508887, 3602499; 508907, 3602494; 508936, 3602486; 509019, 3602425.

(v) Subunit 5F. Land bounded by the following UTM NAD27 coordinates (E,N): 500168, 3603213; 500175, 3603212; 500176, 3603212; 500176, 3603205; 500175, 3603200; 500174, 3603154; 500170, 3603022; 500168, 3602973; 500167, 3602921; 500166, 3602890; 500165, 3602890; 500150, 3602901; 500145, 3602889; 500144, 3602888; 500084, 3602881; 500029, 3602874; 500047, 3602855; 500052, 3602849; 500042, 3602844; 500028, 3602840; 500014, 3602839; 500000, 3602840; 499992, 3602842; 499987, 3602844; 499974, 3602850; 499969, 3602853; 499961, 3602857; 499950, 3602865; 499940, 3602875; 499933, 3602885; 499942, 3602885; 499947, 3602885; 499952, 3602885; 499956, 3602890; 499956, 3602971; 499956, 3602974; 499956, 3602992; 499956, 3603141; 499964, 3603142; 500014, 3603147; 500048, 3603151; 500046, 3603200; 500046, 3603215; 500046, 3603220; 500164, 3603213. Land bounded by the following UTM NAD27 coordinates (E,N): 499760, 3602958; 499763, 3602950; 499763, 3602887; 499792, 3602887; 499808, 3602860; 499825, 3602835; 499861, 3602824; 499904, 3602816; 499951, 3602808; 499986, 3602804; 500000, 3602800; 500003, 3602796; 500004, 3602796; 500018, 3602793; 500030, 3602787; 500042, 3602779; 500052, 3602769; 500060, 3602758; 500066, 3602745; 500069, 3602731; 500069, 3602728; 500070, 3602718; 500070, 3602716; 500076, 3602703; 500080, 3602689; 500081, 3602676; 500080, 3602662; 500076, 3602648; 500070, 3602636; 500062, 3602624; 500052, 3602614; 500041, 3602606; 500028, 3602600; 500026, 3602600; 500025, 3602597; 500019, 3602585; 500011, 3602573; 500001, 3602564; 500000, 3602563; 499990, 3602556; 499977, 3602550; 499965, 3602546; 499963, 3602527; 499972, 3602500; 499975, 3602477; 499969, 3602456; 499952, 3602435; 499929, 3602421; 499913, 3602434; 499909, 3602430; 499897, 3602422; 499895, 3602421; 499891, 3602411; 499891, 3602373; 499888, 3602336; 499887, 3602329; 499876, 3602304; 499862, 3602296; 499828, 3602282; 499813, 3602276; 499788, 3602265; 499750, 3602262; 499728, 3602264; 499717, 3602275; 499710, 3602283; 499706, 3602313; 499684, 3602337; 499685, 3602340; 499698, 3602361; 499703, 3602395; 499702, 3602396; 499696, 3602408; 499695, 3602410; 499692, 3602422; 499692, 3602436; 499692, 3602444; 499691, 3602448; 499675, 3602476; 499694, 3602512; 499724, 3602552; 499748, 3602585; 499763, 3602614; 499765, 3602639; 499763, 3602641; 499745, 3602636; 499706, 3602616; 499662, 3602599; 499641, 3602608; 499629, 3602639; 499623, 3602686; 499599, 3602723; 499595, 3602715; 499598, 3602705; 499600, 3602690; 499598, 3602677; 499594, 3602663; 499592, 3602659; 499591, 3602656; 499588, 3602651; 499580, 3602639; 499577, 3602636; 499577, 3602589; 499586, 3602524; 499588, 3602463; 499563, 3602456; 499538, 3602479; 499502, 3602507; 499483, 3602555; 499471, 3602590; 499437, 3602611; 499431, 3602650; 499429, 3602688; 499407, 3602712; 499395, 3602747; 499389, 3602793; 499385, 3602832; 499373, 3602870; 499351, 3602865; 499347, 3602855; 499328, 3602823; 499318, 3602784; 499302, 3602767; 499276, 3602768; 499254, 3602783; 499225, 3602803; 499224, 3602803; 499224, 3602802; 499232, 3602791; 499238, 3602778; 499242, 3602764; 499247, 3602766; 499260, 3602767; 499267, 3602766; 499274, 3602766; 499278, 3602765; 499281, 3602764; 499288, 3602763; 499292, 3602761; 499294, 3602761; 499306, 3602759; 499318, 3602753; 499330, 3602745; 499340, 3602735; 499348, 3602724; 499353, 3602711; 499357, 3602698; 499358, 3602684; 499358, 3602681; 499358, 3602680; 499360, 3602666; 499358, 3602652; 499355, 3602638; 499350, 3602629; 499361, 3602628; 499374, 3602624; 499387, 3602618; 499398, 3602610; 499407, 3602602; 499409, 3602601; 499416, 3602589; 499422, 3602576; 499425, 3602567; 499426, 3602563; 499427, 3602549; 499426, 3602535; 499422, 3602522; 499416, 3602509; 499411, 3602501; 499417, 3602494; 499425, 3602483; 499428, 3602477; 499431, 3602474; 499441, 3602465; 499449, 3602453; 499455, 3602440; 499458, 3602431; 499459, 3602427; 499460, 3602413; 499459, 3602399; 499455, 3602386; 499449, 3602373; 499441, 3602362; 499431, 3602352; 499424, 3602347; 499425, 3602346; 499460, 3602319; 499485, 3602289; 499501, 3602264; 499532, 3602246; 499549, 3602226; 499553, 3602205; 499550, 3602183; 499555, 3602176; 499555, 3602176; 499559, 3602169; 499561, 3602164; 499565, 3602150; 499566, 3602136; 499565, 3602122; 499561, 3602109; 499558, 3602104; 499555, 3602097; 499547, 3602085; 499537, 3602075; 499526, 3602067; 499513, 3602061; 499500, 3602057; 499486, 3602056; 499472, 3602057; 499459, 3602061; 499446, 3602067; 499434, 3602075; 499429, 3602080; 499422, 3602079; 499408, 3602081; 499395, 3602084; 499382, 3602090; 499371, 3602098; 499361, 3602108; 499353, 3602119; 499347, 3602132; 499346, 3602136; 499343, 3602145; 499342, 3602159; 499343, 3602170; 499343, 3602173; 499347, 3602187; 499353, 3602199; 499360, 3602210; 499359, 3602212; 499351, 3602245; 499356, 3602271; 499347, 3602291; 499323, 3602295; 499298, 3602298; 499278, 3602309; 499269, 3602305; 499256, 3602301; 499242, 3602300; 499228, 3602301; 499215, 3602305; 499202, 3602311; 499190, 3602319; 499181, 3602329; 499176, 3602335; 499184, 3602299; 499187, 3602288; 499176, 3602307; 499174, 3602310; 499156, 3602340; 499154, 3602344; 499137, 3602396; 499134, 3602404; 499133, 3602407; 499113, 3602496; 499110, 3602510; 499107, 3602523; 499106, 3602527; 499105, 3602531; 499082, 3602625; 499077, 3602646; 499075, 3602652; 499075, 3602668; 499072, 3602728; 499072, 3602735; 499071, 3602748; 499075, 3602763; 499088, 3602809; 499090, 3602814; 499096, 3602835; 499115, 3602853; 499119, 3602857; 499137, 3602874; 499163, 3602885; 499198, 3602900; 499200, 3602901; 499215, 3602907; 499243, 3602919; 499245, 3602920; 499251, 3602920; 499308, 3602924; 499316, 3602925; 499327, 3602922; 499373, 3602911; 499437, 3602860; 499440, 3602857; 499457, 3602838; 499463, 3602838; 499558, 3602840; 499558, 3602990; 499661, 3602989; 499737, 3602987. Land bounded by the following UTM NAD27 coordinates (E,N): 498628, 3602069; 498638, 3602063; 498692, 3602024; 498727, 3601981; 498745, 3601957; 498752, 3601948; 498759, 3601937; 498766, 3601929; 498767, 3601929; 498780, 3601925; 498793, 3601919; 498804, 3601911; 498814, 3601901; 498822, 3601890; 498828, 3601877; 498832, 3601864; 498832, 3601863; 498832, 3601855; 498868, 3601832; 498873, 3601829; 498923, 3601788; 498966, 3601760; 498973, 3601760; 499043, 3601753; 499149, 3601715; 499155, 3601713; 499221, 3601690; 499266, 3601661; 499266, 3601661; 499307, 3601634; 499343, 3601618; 499343, 3601618; 499325, 3601653; 499324, 3601659; 499324, 3601659; 499320, 3601682; 499346, 3601698; 499389, 3601697; 499424, 3601689; 499449, 3601704; 499483, 3601715; 499517, 3601715; 499532, 3601732; 499547, 3601770; 499559, 3601784; 499585, 3601800; 499608, 3601782; 499633, 3601747; 499659, 3601712; 499714, 3601684; 499763, 3601668; 499792, 3601630; 499824, 3601610; 499838, 3601603; 499848, 3601619; 499896, 3601624; 499940, 3601606; 499958, 3601597; 499984, 3601634; 500021,

3601684; 500044, 3601716; 500045, 3601719; 500045, 3601719; 500089, 3601730; 500190, 3601721; 500242, 3601714; 500245, 3601710; 500249, 3601711; 500249, 3601709; 500267, 3601635; 500267, 3601634; 500274, 3601604; 500294, 3601588; 500303, 3601557; 500308, 3601530; 500323, 3601507; 500342, 3601488; 500340, 3601466; 500334, 3601439; 500341, 3601411; 500350, 3601380; 500375, 3601350; 500380, 3601319; 500372, 3601300; 500372, 3601299; 500369, 3601300; 500352, 3601304; 500322, 3601311; 500298, 3601309; 500279, 3601300; 500274, 3601298; 500267, 3601300; 500248, 3601308; 500211, 3601326; 500184, 3601327; 500163, 3601321; 500163, 3601320; 500154, 3601304; 500152, 3601300; 500149, 3601296; 500133, 3601264; 500120, 3601254; 500108, 3601231; 500107, 3601230; 500107, 3601229; 500104, 3601204; 500064, 3601189; 500030, 3601181; 500003, 3601183; 499982, 3601184; 499924, 3601177; 499905, 3601168; 499878, 3601149; 499852, 3601133; 499822, 3601134; 499757, 3601145; 499711, 3601147; 499651, 3601146; 499590, 3601148; 499557, 3601151; 499556, 3601151; 499540, 3601152; 499512, 3601153; 499500, 3601152; 499471, 3601148; 499429, 3601140; 499380, 3601146; 499345, 3601135; 499317, 3601110; 499269, 3601093; 499249, 3601100; 499239, 3601146; 499227, 3601146; 499194, 3601145; 499158, 3601143; 499137, 3601133; 499129, 3601107; 499124, 3601078; 499098, 3601074; 499074, 3601079; 499061, 3601055; 499065, 3601024; 499064, 3600987; 499049, 3600935; 499018, 3600891; 498982, 3600880; 498970, 3600869; 498914, 3600841; 498851, 3600818; 498757, 3600792; 498667, 3600774; 498571, 3600766; 498528, 3600778; 498484, 3600804; 498435, 3600849; 498407, 3600889; 498376, 3600936; 498349, 3600957; 498309, 3600976; 498270, 3600995; 498249, 3600977; 498217, 3600951; 498210, 3600920; 498202, 3600891; 498203, 3600889; 498204, 3600704; 498208, 3600700; 498208, 3600700; 498208, 3600699; 498221, 3600669; 498234, 3600637; 498233, 3600631; 497938, 3600602; 497938, 3600539; 497930, 3600538; 497768, 3600522; 497762, 3600531; 497744, 3600568; 497727, 3600599; 497726, 3600600; 497711, 3600627; 497687, 3600650; 497647, 3600666; 497616, 3600687; 497606, 3600714; 497602, 3600738; 497622, 3600756; 497656, 3600760; 497697, 3600761; 497738, 3600776; 497761, 3600802; 497790, 3600834; 497827, 3600868; 497842, 3600880; 497864, 3600920; 497917, 3601050; 497926, 3601090; 497924, 3601089; 497922, 3601094; 497923, 3601094; 497923, 3601099; 497923, 3601136; 497924, 3601169; 497924, 3601201; 497924, 3601264; 497924, 3601265; 497925, 3601391; 497925, 3601442; 497926, 3601682; 497926, 3601686; 497940, 3601685; 497983, 3601684; 498048, 3601683; 498275, 3601679; 498282, 3601678; 498285, 3601725; 498295, 3601889; 498304, 3602048; 498306, 3602073; 498614, 3602069; 498615, 3602069.

(vi) Subunit 5G. Land bounded by the following UTM NAD27 coordinates (E,N): 499163, 3604679; 499168, 3604677; 499169, 3604676; 499169, 3604671; 499174, 3604638; 499175, 3604631; 499177, 3604618; 499175, 3604601; 499173, 3604575; 499176, 3604567; 499190, 3604533; 499200, 3604524; 499227, 3604500; 499242, 3604487; 499250, 3604456; 499251, 3604452; 499286, 3604445; 499299, 3604469; 499543, 3604452; 499556, 3604416; 499565, 3604389; 499629, 3604368; 499699, 3604386; 499700, 3604385; 499744, 3604322; 499744, 3604300; 499745, 3604266; 499747, 3604175; 499748, 3604122; 499748, 3604122; 499749, 3604100; 499750, 3604061; 499739, 3604057; 499700, 3604042; 499648, 3604021; 499618, 3604022; 499549, 3604024; 499533, 3604008; 499525, 3604000; 499500, 3603974; 499440, 3603913; 499439, 3603900; 499431, 3603830; 499429, 3603817; 499404, 3603839; 499398, 3603849; 499369, 3603891; 499356, 3603915; 499337, 3603927; 499328, 3603924; 499305, 3603918; 499263, 3603904; 499237, 3603929; 499238, 3603972; 499247, 3604004; 499245, 3604008; 499242, 3604014; 499239, 3604020; 499237, 3604027; 499236, 3604034; 499235, 3604041; 499235, 3604048; 499236, 3604055; 499237, 3604058; 499228, 3604075; 499190, 3604094; 499200, 3604109; 499218, 3604140; 499258, 3604151; 499259, 3604151; 499270, 3604156; 499292, 3604156; 499325, 3604156; 499377, 3604142; 499427, 3604118; 499460, 3604091; 499487, 3604114; 499517, 3604142; 499557, 3604141; 499570, 3604141; 499593, 3604115; 499622, 3604098; 499646, 3604112; 499648, 3604135; 499644, 3604167; 499640, 3604175; 499620, 3604210; 499579, 3604252; 499575, 3604255; 499557, 3604274; 499551, 3604279; 499533, 3604297; 499474, 3604333; 499452, 3604342; 499412, 3604360; 499376, 3604370; 499328, 3604385; 499258, 3604401; 499240, 3604407; 499213, 3604414; 499162, 3604442; 499150, 3604454; 499138, 3604466; 499124, 3604500; 499124, 3604501; 499123, 3604508; 499118, 3604536; 499111, 3604581; 499110, 3604584; 499109, 3604607; 499108, 3604623; 499108, 3604623; 499107, 3604623; 499106, 3604640; 499103, 3604677; 499103, 3604682; 499120, 3604694; 499120, 3604695; 499121, 3604695. Land bounded by the following UTM NAD27 coordinates (E,N): 498823, 3603831; 498873, 3603865; 498928, 3603903; 498930, 3603895; 498938, 3603850; 498912, 3603794; 498870, 3603746; 498833, 3603700; 498795, 3603670; 498762, 3603651; 498719, 3603629; 498670, 3603600; 498663, 3603579; 498678, 3603566; 498669, 3603545; 498651, 3603535; 498622, 3603534; 498625, 3603525; 498634, 3603530; 498648, 3603533; 498661, 3603535; 498675, 3603533; 498689, 3603530; 498701, 3603524; 498713, 3603516; 498723, 3603506; 498731, 3603495; 498737, 3603482; 498740, 3603468; 498741, 3603463; 498747, 3603476; 498755, 3603484; 498773, 3603507; 498810, 3603545; 498859, 3603574; 498901, 3603605; 498943, 3603631; 498976, 3603632; 499011, 3603645; 499027, 3603658; 499026, 3603657; 499024, 3603656; 499010, 3603652; 498996, 3603651; 498983, 3603652; 498969, 3603656; 498960, 3603660; 498956, 3603662; 498945, 3603670; 498935, 3603680; 498927, 3603691; 498921, 3603704; 498918, 3603717; 498916, 3603731; 498916, 3603732; 498918, 3603745; 498921, 3603759; 498927, 3603771; 498935, 3603783; 498945, 3603792; 498956, 3603800; 498969, 3603806; 498983, 3603810; 498988, 3603810; 498996, 3603811; 499010, 3603810; 499024, 3603806; 499036, 3603800; 499048, 3603792; 499058, 3603783; 499066, 3603771; 499072, 3603759; 499075, 3603745; 499076, 3603731; 499075, 3603717; 499072, 3603704; 499066, 3603691; 499058, 3603680; 499056, 3603679; 499082, 3603687; 499082, 3603687; 499088, 3603650; 499088, 3603612; 499094, 3603574; 499107, 3603535; 499120, 3603511; 499139, 3603492; 499127, 3603448; 499102, 3603430; 499075, 3603416; 499056, 3603387; 499061, 3603365; 499101, 3603365; 499143, 3603379; 499174, 3603384; 499205, 3603385; 499211, 3603370; 499223, 3603341; 499229, 3603313; 499237, 3603306; 499241, 3603296; 499242, 3603293; 499246, 3603283; 499249, 3603265; 499248, 3603257; 499248, 3603254; 499247, 3603250; 499247, 3603249; 499244, 3603249; 499218, 3603250; 499214, 3603250; 499024, 3603257; 499021, 3603257; 499021, 3603258; 499023, 3603301; 499025, 3603366; 499026, 3603409; 499067, 3603488; 499062, 3603580;

499036, 3603611; 499033, 3603608; 499030, 3603605; 498978, 3603558; 498955, 3603537; 498939, 3603507; 498935, 3603498; 498891, 3603486; 498787, 3603476; 498783, 3603476; 498784, 3603469; 498796, 3603264; 498780, 3603265; 498746, 3603266; 498638, 3603269; 498631, 3603269; 498450, 3603275; 498389, 3603277; 498348, 3603279; 498341, 3603279; 498341, 3603310; 498341, 3603354; 498340, 3603460; 498340, 3603493; 498339, 3603675; 498466, 3603673; 498564, 3603672; 498745, 3603667; 498786, 3603788; 498788, 3603795; 498793, 3603800; 498800, 3603808; 498818, 3603827. Land bounded by the following UTM NAD27 coordinates (E,N): 499520, 3603710; 499537, 3603690; 499502, 3603686; 499500, 3603686; 499465, 3603682; 499465, 3603676; 499467, 3603527; 499468, 3603437; 499470, 3603335; 499470, 3603331; 499475, 3603330; 499515, 3603321; 499527, 3603292; 499528, 3603290; 499542, 3603257; 499546, 3603249; 499537, 3603249; 499468, 3603247; 499445, 3603247; 499443, 3603247; 499367, 3603246; 499358, 3603246; 499295, 3603248; 499267, 3603249; 499267, 3603249; 499267, 3603250; 499268, 3603254; 499276, 3603292; 499277, 3603296; 499285, 3603334; 499289, 3603354; 499297, 3603389; 499309, 3603417; 499330, 3603436; 499349, 3603447; 499351, 3603462; 499353, 3603474; 499347, 3603487; 499328, 3603492; 499281, 3603507; 499260, 3603569; 499265, 3603615; 499261, 3603624; 499258, 3603652; 499257, 3603663; 499255, 3603681; 499265, 3603698; 499283, 3603709; 499294, 3603710; 499300, 3603714; 499312, 3603709; 499313, 3603709; 499328, 3603706; 499332, 3603704; 499348, 3603695; 499382, 3603690; 499383, 3603690; 499430, 3603695; 499486, 3603704; 499497, 3603706.

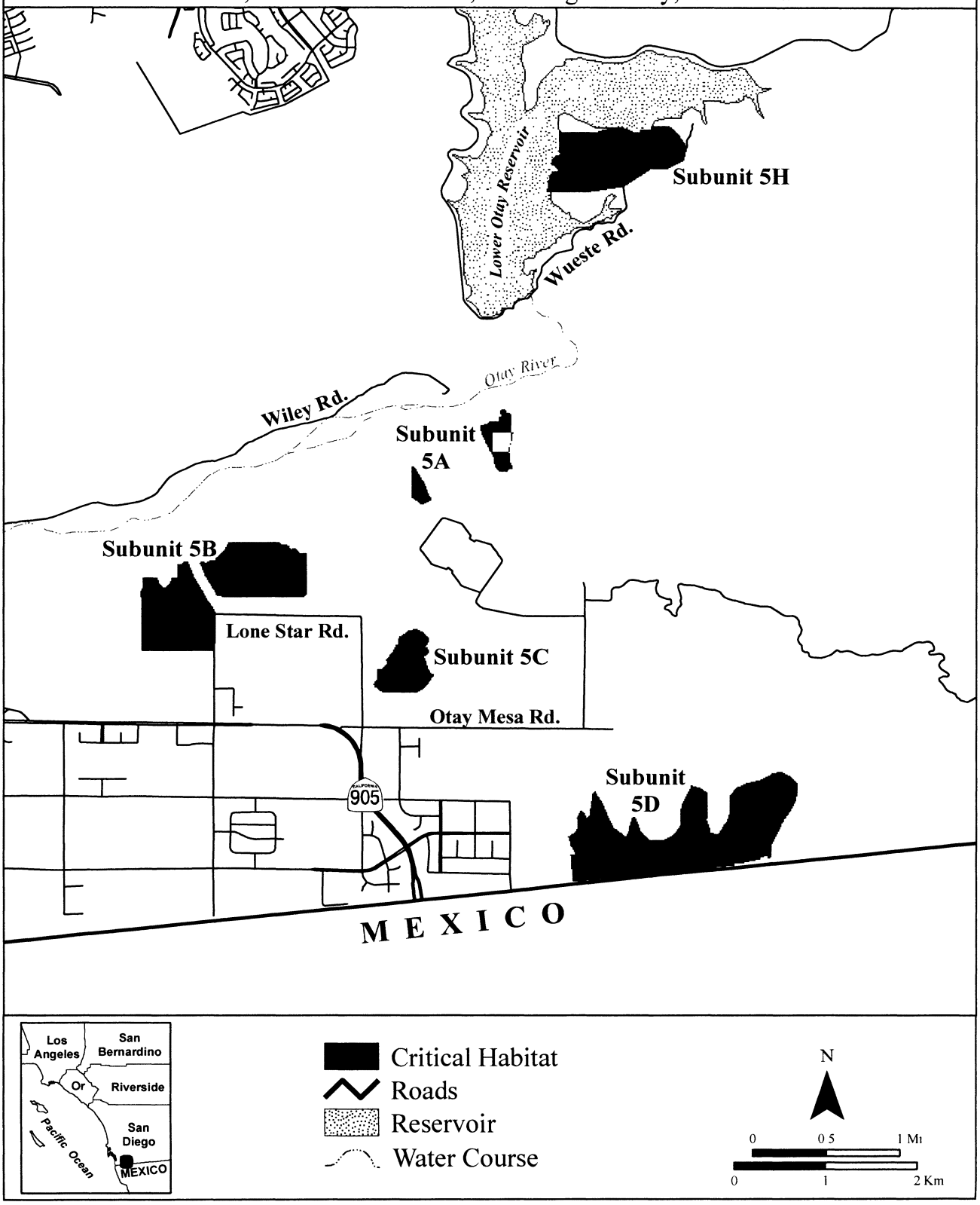
(vii) Subunit 5H. Land bounded by the following UTM NAD27 coordinates (E,N): 507788, 3609712; 507858, 3609742; 507950, 3609771; 508044, 3609778; 508178, 3609744; 508218, 3609710; 508262, 3609710; 508280, 3609740; 508330, 3609757; 508397, 3609740; 508403, 3609790; 508604, 3609787; 508699, 3609699; 508787, 3609559; 508746, 3609407; 508557, 3609308; 508392, 3609308; 508090, 3609118; 507643, 3609056; 507269, 3609054; 507257, 3609091; 507269, 3609148; 507269, 3609191; 507290, 3609251; 507329, 3609280; 507389, 3609280; 507367, 3609319; 507310, 3609369; 507310, 3609419; 507338, 3609448; 507401, 3609470; 507382, 3609518; 507394, 3609547; 507391, 3609636; 507388, 3609713.

(viii) Subunit 5I. Land bounded by the following UTM NAD27 coordinates (E,N): 522790, 3603588; 522715, 3603505; 522712, 3603500; 522700, 3603500; 522700, 3603479; 522699, 3603478; 522663, 3603371; 522692, 3603132; 522639, 3603116; 522566, 3603131; 522529, 3603165; 522517, 3603225; 522514, 3603355; 522496, 3603446; 522488, 3603478; 522497, 3603494; 522563, 3603563; 522641, 3603627; 522720, 3603689; 522759, 3603708; 522791, 3603699; 522800, 3603685; 522800, 3603617.

(ix) Note: Map of Unit 5, Subunits 5A, 5B, 5C, 5D, and 5H (Map 10) follows:

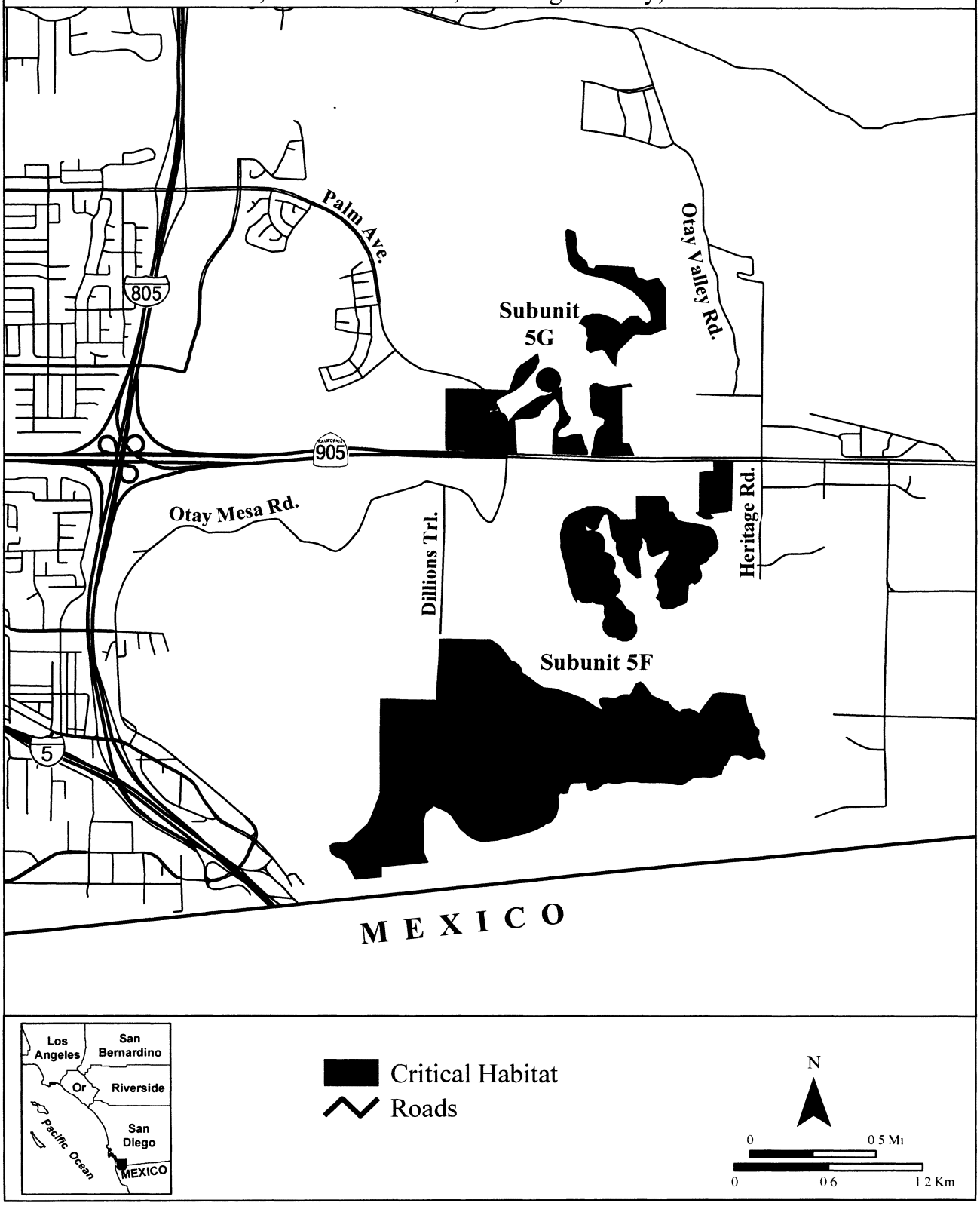
BILLING CODE 4310–55–P

Map 10.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 5, Subunits A-D and H, San Diego County, California



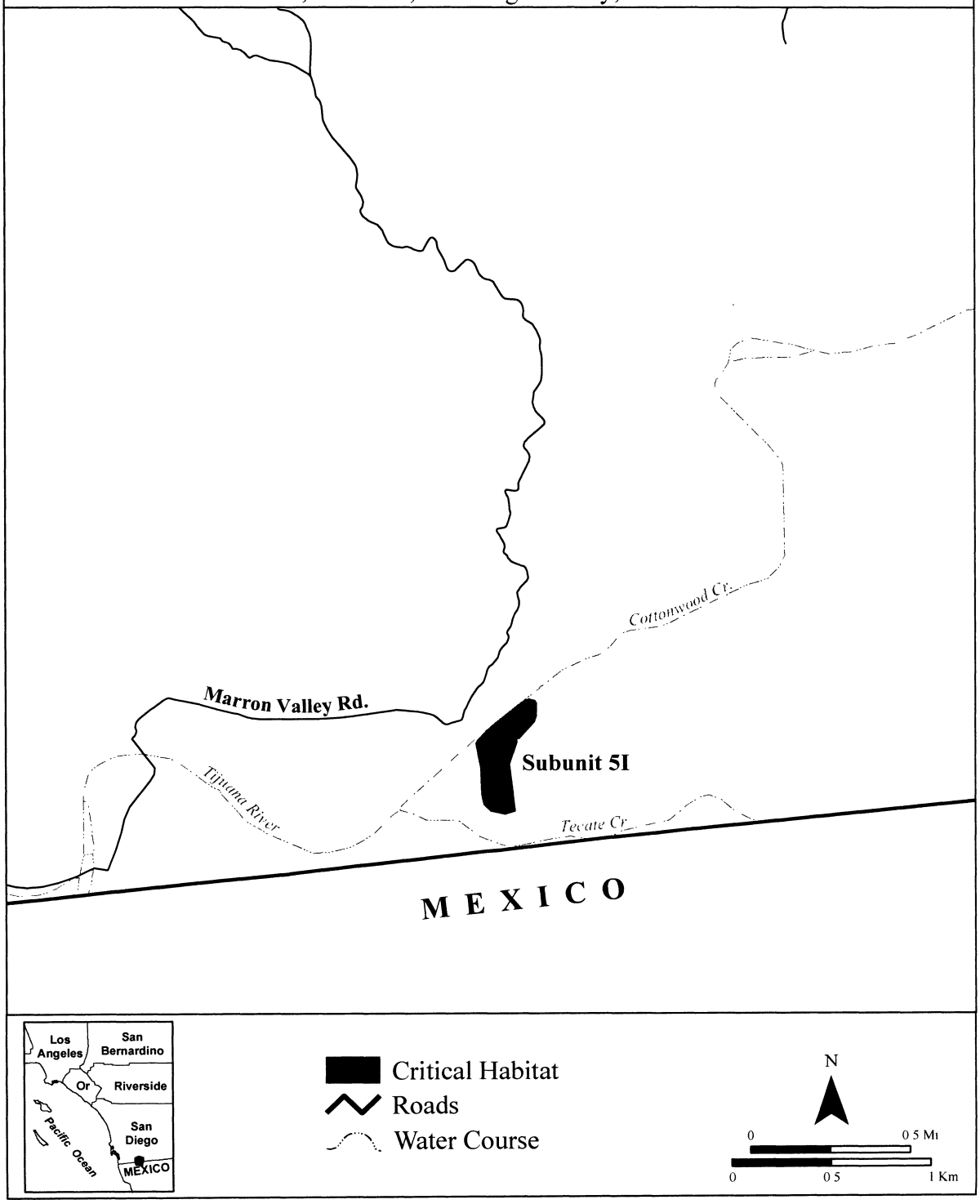
(x) Note: Map of Unit 5, Subunits 5F and 5G (Map 11) follows:

Map 11.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 5, Subunits F and G, San Diego County, California



(xi) Note: Map of Unit 5, Subunit 5I (Map 12) follows:

Map 12.
Critical Habitat for San Diego fairy shrimp (Branchinecta sandiegonensis)
Unit 5, Subunit I, San Diego County, California



* * * * *

Dated: November 30, 2007.

Mitch Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–5972 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
December 12, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle (Cicindela nevadica lincolniana); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT79

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle (Cicindela nevadica lincolniana)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft economic analysis and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Salt Creek tiger beetle (*Cicindela nevadica lincolniana*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,795 acres (ac) (727 hectares (ha)) fall within the boundaries of our proposed critical habitat designation. The proposed critical habitat is located in Lancaster and Saunders Counties, Nebraska. We also announce the availability of the draft economic analysis for our proposed designation of critical habitat for the Salt Creek tiger beetle. The draft economic analysis estimates that, over the 20-year period 2008 to 2027, post-designation costs for Salt Creek tiger beetle conservation-related activities would range between $21.4 and $25.5 million in undiscounted 2007 dollars. In discounted terms, we estimate potential post-designation economic costs to be $19.9 to $22.9 million (using a 3 percent discount rate) and $18.5 to $20.6 million (using a 7 percent discount rate). In annualized terms, potential impacts are expected to range from $1.3 to $1.5 million (annualized at three percent) and $1.7 to $1.9 million (annualized at seven percent). In addition, we announce the availability of a draft environmental assessment prepared in accordance with the National Environmental Policy Act (NEPA) of 1969.

DATES: We will accept comments from all interested parties until February 11, 2008. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 28, 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: RIN 1018–AT79; 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: Mike LeValley, Field Supervisor, Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801 (telephone 308–382–6468; facsimile 308–384–8835). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will 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 designate 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 any threats to the subspecies caused by designation;

(2) Specific information on:

- The amount and distribution of Salt Creek tiger beetle habitat;
- What areas occupied at the time of listing and that contain features essential for the conservation of the subspecies we should include in the designation and why; and
- What areas not occupied at the time of listing are essential to the conservation of the subspecies and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Information on whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that have been inadvertently overlooked.

(5) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes that would be imposed as a result of the designation of critical habitat.

(6) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(7) Information on areas that could potentially be disproportionately impacted by the designation of critical habitat.

(8) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(9) Economic data on the incremental effects that would result from designating any particular area as critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposal by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801; telephone 308–382–6468.

Background

Our intent is to discuss only topics directly relevant to the designation of critical habitat for the Salt Creek tiger beetle in this proposed rule. For more information on the Salt Creek tiger

beetle, refer to the final rule listing the subspecies as endangered in the **Federal Register** on October 6, 2005 (70 FR 58335).

The Salt Creek tiger beetle is an active, ground-dwelling, predatory insect of the family Cicindelidae. It is endemic to saline wetlands and streams in the Eastern Nebraska Saline Wetland Complex of Lancaster and Saunders Counties, Nebraska. Saline wetlands occur in swales and depressions, are characterized by saline soils and halophytes (plants adapted to saline conditions), and are often associated with a saline stream within the Salt Creek basin (LaGrange 1997, p. 19). Saline wetlands usually have a central area that is devoid of vegetation and, when dry, exhibit salt-encrusted mudflats (barren salt flats) (LaGrange 1997, p. 19).

Saline wetlands at one time represented approximately 65,065 ac (26,342 ha) within the floodplain of Salt Creek and its tributaries (Gilbert and Stutheit 1994, p. 5). Channel-straightening projects in the early 1900s (Rus, *et al.* 2003, p. 2), and later residential, commercial, industrial, infrastructure, and agricultural developments resulted in degradation, loss, and fragmentation of saline wetland and stream habitats. These modifications have had a negative impact on the Salt Creek tiger beetle because it is adapted to these saline wetland and stream ecosystems (Ratcliffe and Spomer 2002, p. 5).

As recently as 1994, six populations of Salt Creek tiger beetles were distributed along Oak, Little Salt, and Rock Creeks (Spomer, *et al.* 2004, p. 1). Since 1994, half of these populations have been extirpated and the remaining three extant populations are all located along a single waterway, Little Salt Creek (Spomer, *et al.* 2004, p. 2). The two largest populations along Little Salt Creek exist within 1 mile (mi) (1.6 kilometers (km)) of each other in an area on the north side of Lincoln, Nebraska, where extensive urban growth and development has already occurred and continues to do so. The proximity of these remaining populations to one another along the same stream greatly increases the threat of subspecies extinction because a single human or natural event could cause the loss of these remaining populations. In 2004, the number of adult Salt Creek tiger beetles declined by 25 percent from 2003 (Spomer, *et al.* 2004, pp. 1–2). In 2005, only 153 adult Salt Creek tiger beetles were found, a 73 percent decline from 2004, and the lowest count in the past 14 years of surveys (Spomer 2005). Salt Creek tiger beetle population counts totaled 466 individuals in 2006 and 263 in 2007 (Cochnar 2007).

Previous Federal Actions

The final rule to list the Salt Creek tiger beetle as endangered was published on October 6, 2005 (70 FR 58335). Critical habitat was not designated at the time of listing because we were in the process of identifying the physical and biological features essential to the conservation of the Salt Creek tiger beetle. We are proposing this critical habitat designation in accordance with section 4(b)(2) of the Act.

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) which 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 government or public access to private lands. Section 7 of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must first have features that are essential to the conservation of the species. 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 primary constituent elements, as defined at 50 CFR 424.12(b), laid out in an appropriate quantity and spatial arrangement to provide for conservation).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if its essential features may require special management considerations or protection.

We can designate unoccupied areas as critical habitat. However, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by 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 represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the listing package 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 of the habitat areas that we may eventually determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery.

Any areas later found to support populations that 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), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the Salt Creek tiger beetle, and areas unoccupied at the time of listing that are essential to the conservation of the Salt Creek tiger beetle, or both. We propose to designate as critical habitat three areas occupied at the time of listing and one area that was last known to be occupied in 1998. Although Salt Creek tiger beetles may be able to colonize the unoccupied area over time through natural dispersal, we plan to reintroduce the beetle in the unoccupied area to establish an additional viable population in the relatively near future. This population will help reduce the extinction risk associated with having all populations located on a single stream segment and vulnerable to extinction through a single chance event.

In determining which areas to propose as critical habitat, we reviewed available information pertaining to the presence and habitat requirements of the Salt Creek tiger beetle, such as research published in peer-reviewed articles, contracted surveys, agency reports and databases, Geographic Information System (GIS) analyses, and aerial photography. Information that has been reviewed includes, but is not limited to: Allgeier (2005); Carter (1989); Gersib and Steinauer (1991); Gilbert and Stutheit (1994); Hoback, *et al.* (1998); Hoback, *et al.* (2000); Rus, *et al.* (2003); Spomer and Higley (1993); Allgeier, *et al.* (2003); Allgeier, *et al.* (2004); and Spomer, *et al.* (2004).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat within areas occupied by the species at the time of listing, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements 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, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements (PCEs) required for the Salt Creek tiger beetle from its biological needs.

Moist, Barren Salt Flats

Salt Creek tiger beetles require moist, barren salt flats for thermoregulation, reproduction, and foraging. Tiger beetle species are generally habitat-specific because of oviposition (the act of laying eggs) and larval sensitivities to soil moisture, salinity (measured by electroconductivity), composition, and temperature (Pearson 1988, pp. 136–137; Pearson and Cassola 1992, p. 380). In field measurements, Salt Creek tiger beetles were found using areas with a mean soil electroconductivity of 2,504.1 mS/m (conductivity per meter), with a lower confidence limit of 2,016.0 mS/m and an upper confidence limit of 2,992.2 mS/m (Allgeier 2005, p. 72). Field measurements also demonstrate that Salt Creek tiger beetles prefer mean soil moistures of 47.6 percent, with a lower confidence limit of 43.5 percent and an upper confidence limit of 51.7 percent (Allgeier 2005, p. 72). The ability to occupy areas with specific soil salinities and moisture levels enables Salt Creek tiger beetles to partition habitat for themselves while existing among conspecific or congeneric tiger beetles.

These reported soil salinity and moisture preferences are available on saline wetland and stream habitats in the Salt Creek basin. The following discussion provides specific details about saline soils, evaporative processes, and recharge zones required to create and maintain moist, barren salt flats within saline wetlands and streams.

(a) Saline soils—Salmo and Saltillo soils and Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions provide salt in sufficient content to result in the creation of salt barrens (U.S. Department of Agriculture 1980, p. 93). The Salt Creek tiger beetle is found in association with Salmo soils (Allgeier 2005, p. 18), and probably is also found in association with Saltillo soils when barren salt flats are present. Although Salmo and Saltillo soils are known to contain sufficient salt to result in the creation of salt barrens, Salmo soils tend to be better drained than Saltillo soils (*http://ortho.ftw.nrcs.usda.gov/cgi-bin/osd/osdname.cgi*). However, for the purpose of this proposed rule, we will consider these classes of soils interchangeable, and response by the Salt Creek tiger beetle to Salmo or Saltillo soils identical. Stream channels in the Salt Creek basin often were not mapped as a soil unit. However, these streams can take on saline characteristics as they pass through areas with the saline soils described above, or through areas that may have historically contained saline soils (e.g., urban areas where the saline soils were covered over by fill materials and thus not mapped).

(b) Evaporation—Salmo and Saltillo soils and Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions must have soil electroconductivity within the range used by the Salt Creek tiger beetle. In addition, the process of evaporation also must occur to create exposed salt on the soil surface, resulting in the formation of barren salt flats. Specifically, evaporation of groundwater (through differential hydraulic pressures) and surface water from the soils listed above results in the creation of a thin salt crust on the soil surface (Schainost 2005).

(c) Recharge Zone—Contiguous freshwater and saline wetlands function as a recharge zone for barren salt flats and stream banks by regulating surface water flows that are often charged with sediment and freshwater. Without recharge zones, barren salt flats and stream banks required by Salt Creek tiger beetles do not persist (LaGrange 2005; Stutheit 2005). A reduction in salinity concentration can result in the germination of aggressive invasive species such as cattail (*Typha angustifolia*) and reed canarygrass (*Phalaris arundinacea*), which are tolerant of a somewhat reduced salt content. These plant species shade

previously open, sunny areas (i.e., barren salt flats and stream banks) required by Salt Creek tiger beetles for thermoregulating, foraging, and ovipositing (Fritz 2001). Hoback, *et al.* (2000, pp. 184–186) discovered that changes in salinity and hydrology may alter the abundance of prey and cause the loss of suitable larval habitat for saline wetland/stream-dependent tiger beetles, including the Salt Creek tiger beetle. Increased vegetative encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (e.g., *C. abdominals* and *C. debilis*) (Knisley and Hill 1992, pp. 135–142), and is one of the main threats to the endangered Ohlone tiger beetle (*C. ohlone*) (66 FR 0340).

Water Availability and Hydrologic Regime

Salt Creek tiger beetles require water to prevent larval desiccation, to maintain moist conditions at larval burrows, for breeding and foraging activities, and for drinking (Spomer and Higley 1993, p. 396). Adult Salt Creek tiger beetles are confined to moist, muddy areas within a few meters of wetlands and stream edges, and larval burrows are only found in association with hydrated salt flats located along saline stream edges and saline wetlands (Spomer 2005). A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer is essential to maintain these areas, and to provide groundwater or surface water sources for the Salt Creek tiger beetle. Further, natural elevation changes in groundwater levels are important to hydrate saline wetlands located on the floodplain.

Larvae of the Salt Creek tiger beetle have adapted to elevated flows, inundation, and anaerobic conditions resulting from precipitation events that can occur during the summer (e.g., localized thunderstorms). This adaptation is thought to provide access to limited prey resources in areas where other predacious insects cannot compete; in addition, it may help the Salt Creek tiger beetle avoid parasites and other insect predators (e.g., robberflies) (Hoback 2005) after flows recede. Salt Creek tiger beetle larvae likely plug their burrows and switch from aerobic to anaerobic respiration to avoid short-duration inundation by floods (Spomer 2005). Although no studies have confirmed these hypotheses, Hoback, *et al.* (1998, p. 31) found that larvae of *Cicindela togata*, a tiger beetle found in close association with the Salt Creek tiger beetle, were able to survive without oxygen for an average of 6 days at 25 °C (57 °F). An adaptation to survive without oxygen during floods may allow the Salt Creek tiger beetle to persist along stream systems subject to regular flooding cycles. Brust, *et al.* (2005, pp. 11–16) concluded that *C. hirticollis* is able to survive along river systems subject to regular flooding cycles because its larvae could survive several days of hypoxia, although extended inundation results in decline of the species.

Prey Availability

Salt Creek tiger beetles require an abundant and diverse prey base consisting of flying and non-flying invertebrates. Larochelle (1974, pp. 21–43) provided a list of insect families from many orders that tiger beetles have been observed to eat. Most common are prey belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, and Lepidoptera. Ants (Formicidae) are the most commonly observed prey of adult Salt Creek tiger beetles in the field (Allgeier 2005, p. 5). Although adults can prey on a greater diversity of available prey than larvae, both adults and larvae are predators of similar-sized insects. Adults can capture flying insects; larval prey consists only of insects and arthropods living on the soil surface that wander within striking distance of their burrows (Allgeier 2005, p. 5; Spomer 2005). Typical prey of larval tiger beetles includes dragonflies (Shelford 1908, pp. 157–184; McNamara 1922, pp. 241–246; Smith 1971, p. 80), millipedes (Labonte and Johnson 1988, pp. 53–54), and earthworms and amphibians (Larochelle and Lariviere 2001, pp. 41–122).

Space and Dispersal Requirements

Salt Creek tiger beetles require non-vegetated stream banks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, to allow movement for thermoregulation, hunting, and dispersal. Salt Creek tiger beetles move between habitats consisting of saline wetlands and streams (Allgeier, *et al.* 2003, pp. 6–7), but open salt flats must be separated by a reasonable dispersal distance for the subspecies (Gowan and Knisley 2005, p. 9). Two Salt Creek tiger beetles were documented moving distances of 1,509 and 1,198 feet (ft) (460 and 365 meters (m)), respectively, between a saline stream and saline wetland, through a small assemblage of saline banks, presumably to meet the life requirements described above (Allgeier, *et al.* 2003, pp. 6–7). Salt Creek tiger beetles also have been observed moving among salt flats and seeps along saline stream edges, using barren mid-channel and scoured bank habitats (Spomer 2005; Harms 2003). Mid-channel habitats and scoured bank lines are created through natural hydrological processes in streams with sufficient flow to cause sediment scour, transport, and redeposition. Salt Creek tiger beetles can disperse from one mid-channel bar to the next, which enables them to move up and down stream courses in response to habitat changes. These ''short-range'' movement corridors are necessary to repopulate areas previously extirpated due to habitat loss or extreme weather events (Murphy, *et al.* 1990, pp. 41–51; Fahrig and Merriam 1994, pp. 50–59; Ruggerio, *et al.* 1994, pp. 364–372; Noss 2002, pp. 10–19).

The Salt Creek tiger beetle probably has some long-range dispersal capability, an adaptation that has been documented in other tiger beetle species (see following paragraph) and is thought to enable colonization of transient or well-separated habitat that may be important for long-term species survival (U.S. Fish and Wildlife Service 1994, p. 15). Although we have no data on long-range dispersal distances, the approximately 14-mile (mi) (22-kilometer (km)) separation between previously-occupied habitats on Oak and Rock Creeks suggests that the Salt Creek tiger beetle may be capable of some level of aerial dispersal. However, other possibilities may be equally plausible, such as that the subspecies existed in a large area that included several streams within Lancaster and Saunders Counties. No studies have been conducted to determine the long-range dispersal distance of Salt Creek tiger beetles.

Other tiger beetle species are capable of long-range dispersal. For example, mark-recapture studies completed for the Northeastern beach tiger beetle (*Cicindela dorsalis*) resulted in the recovery of marked tiger beetles 5 to 12 mi (8 to 19 km) from sites where they were marked (U.S. Fish and Wildlife Service 1994, p. 15). Unmarked Puritan tiger beetles (*C. puritana*) are known to have dispersed distances of 25 to 30 mi (40 to 48 km) from known populations (U.S. Fish and Wildlife Service 1993, p. 12). A population viability analysis for the Puritan tiger beetle in the Chesapeake Bay region completed by Gowan and Knisley (2005, pp. 8–22) also supports the notion that tiger beetles are capable of aerial dispersal. In that analysis, the authors modeled beetle dispersal among subpopulations utilizing data from the Northeastern beach tiger beetle (*C. dorsalis*). That analysis concluded that populations less

than 4 mi (6 km) apart tended to exchange individuals, which decreases the risk of extinction by allowing extant subpopulations to repopulate nearby previously-extirpated areas (Gowan and Knisley 2005, p. 11).

We consider both short-range and long-range dispersal distances to be important to the continued existence of the Salt Creek tiger beetle. However, because specific data are not available to precisely define either short-range or long-range dispersal distances for the Salt Creek tiger beetle, we find that the best available science is Gowan and Knisley's (2005, pp. 8–22) study results, which indicate that populations less than 4 mi (6 km) can exchange individuals. Therefore, we conclude that areas providing appropriate habitat, located on more than a single stream, and separated by a maximum of 4 mi (6 km), should be maintained for the species in order to decrease the risk of extinction by allowing extant subpopulations to exchange individuals and to repopulate nearby previously-extirpated areas.

Primary Constituent Elements for the Salt Creek Tiger Beetle

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs) within the geographical area known to be occupied, which may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the Salt Creek tiger beetle, we have determined that the Salt Creek tiger beetle's PCEs are:

(1) Moist, barren salt flats with:

(a) Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;

(b) Soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;

(c) Soil moisture ranging from 43.5 percent to 51.7 percent; and

(d) Differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces;

(2) A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain;

(3) Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another; and

(4) Presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

We have designed this proposed designation for the conservation of PCEs necessary to support the life history functions that were the basis for our proposal and the areas containing those PCEs. Because not all life history functions require all the PCEs, not all proposed critical habitat units will contain all the PCEs.

We propose units for designation based on sufficient PCEs being present to support at least one of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain the features that are essential to the conservation of the subspecies and may require special management considerations or protection. Special management is required in these areas to reduce threats. Threats common to all four critical habitat units being proposed for the Salt Creek tiger beetle include: (a) Stream channelization and bank armoring; (b) wetland draining and filling (including excessive sedimentation); (c) excessive freshwater input; and (d) overgrazing.

Stream channelization and bank armoring projects in the area of all four proposed critical habitat units have resulted in headcutting (a sharp break in the profile of a stream which forms an in-channel scarp called a headcut) and entrenchment (lowering of the stream bed into a restricted channel) of Little Salt and Rock Creeks. These impacts have the effect of lowering the water table in the local area, resulting in the drainage of adjacent saline and freshwater wetlands. The ultimate effect has been the gradual lowering of the water table and subsequent loss of evaporation processes essential for the development of moist, barren salt flats. Stream entrenchment, a direct consequence of stream channelization and bank armoring projects, has resulted in bank sloughing along saline streams. Bank sloughing, in turn, smothers saline seeps and salt flats used by Salt Creek tiger beetles. Bank armoring projects in all four proposed units have resulted in smothered barren salt flats and seeps along saline streams. Stream channelization and bank armoring continue to be significant threats to Salt Creek tiger beetles in all four proposed critical habitat units.

Wetland draining and filling projects, including ditch excavation and drainage tile installation, substantially affect Salt Creek tiger beetle habitat—rendering formerly-occupied habitat unusable. In addition, these projects often lead to the conversion of wetlands to other land uses (e.g., hay production or pasture), thereby limiting restoration potential. Saline and freshwater wetlands have been filled as a result of sediment deposits from local runoff events. These deposits contain excessive nutrients, encouraging colonization by aggressive, invasive vegetation that is tolerant of saline conditions (i.e., cattail or reed canarygrass). Excessive surface water runoff has resulted in the dilution of saline wetlands, loss of barren salt flats, and modifications to site hydrological characteristics. Excessive sediment or freshwater runoff can encourage vegetation encroachment on barren salt flats, reducing the long-term viability of the area for Salt Creek tiger beetle use. These impacts have occurred on all four proposed critical habitat units.

Livestock with access to saline streams trample larvae and larval habitat on salt-encrusted soil surfaces associated with barren salt flats and seeps. Livestock continue to pose a significant threat to Salt Creek tiger beetles, primarily because too many animals are often grazed in a given area, and they are not prevented from lingering in stream habitat. Additionally, overgrazing can encourage soil erosion and smothering of larval habitat in saline wetland and saline stream edges. Adverse impacts from excessive livestock grazing have occurred at the Upper Little Salt Creek North and Little Salt Creek-Arbor Lake Units.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat in four areas—three areas occupied by the subspecies at the time of listing in 2005 (and currently occupied) which contain features essential to the conservation of the taxon, and one area not occupied at the time of listing (but known to be occupied as recently as 1998) that is considered to be essential to the conservation of the subspecies.

The Salt Creek tiger beetle has one of the most restricted ranges of any insect in the United States (Spomer and Higley 1993; Spomer, *et al.* 2004a), and the habitat currently occupied by the subspecies is highly limited and isolated. Surveys conducted over a 15-year period establish that the Salt Creek

tiger beetle is extremely rare, numbering only in the low hundreds and confined to three small populations along a single drainage in eastern Nebraska, Little Salt Creek (see the final listing rule for more information on population status of the salt Creek tiger beetle (70 FR 58335, October 6, 2005)). Because of low populations numbers and the limited number of populations, both of which place the subspecies at a high risk of extinction and highly susceptible to stochastic events, we are proposing to designate critical habitat associated with all three extant populations. However, the three currently occupied areas are within 1 mi (1.6 km) of each other on Little Salt Creek. The risk of extinction of the species due to a single human or natural event is greatly increased by this close proximity. Therefore, we have determined that an additional area in a different watershed than the three currently occupied units is essential to the conservation of the subspecies, and we propose to designate a unit of critical habitat in that area. Specifically, we have identified a currently unoccupied area on Rock Creek (associated with the Jack Sinn Wildlife Management Area of the Nebraska Game and Parks Commission (NGPC)) that was known to be occupied as recently as 1998 and contains all the PCEs. The Jack Sinn-Rock Creek proposed unit is a location where the subspecies can be reintroduced and where it would not be susceptible to human or natural events that occur on Little Salt Creek. We are proposing to include this one unoccupied unit per section 3(5)(A)(ii) of the Act, which states that critical habitat means ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.''

In determining boundaries of critical habitat units, we applied the following deductive rule set to identify four specific complexes of saline wetlands and streams that provide the PCEs required by the Salt Creek tiger beetle:

1. As a first step, we utilized the boundaries of the Resource Categorization Study (RCS), depicted as a GIS data layer by Gilbert and Stutheit (1994, pp. 1–24), to identify saline wetland complexes within the Salt Creek tiger beetle's historic range. The boundaries of the RCS encompass the Eastern Nebraska Saline Wetland Complex, which is the beetle's historic range.
2. Within the RCS boundaries, we then identified existing saline wetlands containing the PCEs required by the Salt Creek tiger beetle.
3. We also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography.
4. We then identified areas currently or recently occupied by the Salt Creek tiger beetle within saline wetland and stream complexes.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the Salt Creek tiger beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the Salt Creek tiger beetle. The critical habitat areas we describe below constitute our current and best assessment of areas that meet the definition of critical habitat for the Salt Creek tiger beetle. The four areas proposed for designation as critical habitat are: (1) Upper Little Salt Creek North, (2) Little Salt Creek—Arbor Lake, (3) Little Salt Creek—Roper, and (4) Jack Sinn—Rock Creek. Table 1 provides approximate areas (ac/ha), land ownership, and occupancy status of these units determined to meet the definition of critical habitat for the Salt Creek tiger beetle.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE SALT CREEK TIGER BEETLE

[Area estimates in acres/hectares reflect all land within the critical habitat unit boundary]

Critical habitat unit	State ownership (ac/ha)	Private ownership (ac/ha)	Total (ac/ha)	Current population status
1. Upper Little Salt Creek North	32/12.9	275/111.2	307/124.1	Occupied at time of listing and currently occupied.
2. Little Salt Creek—Arbor Lake	0/0	171/69.2	171/69.2	Occupied at time of listing and currently occupied.
3. Little Salt Creek—Roper	9/3.6	280/114.1	289/117.7	Occupied at time of listing and currently occupied.
4. Jack Sinn—Rock Creek	498/201.5	530/214.5	1,028/416	Unoccupied at time of listing and currently unoccupied.
Total	539/218.0	1,256/509.0	1,795/727	

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Salt Creek tiger beetle, below.

Unit 1—Upper Little Salt Creek North, Lancaster County, Nebraska

Unit 1 consists of 307 ac (124.1 ha) of occupied Salt Creek tiger beetle habitat located approximately 5.5 mi (8.8 km) north of the Interstate 80 and North 27th Street interchange in Lincoln, Nebraska. It is 4.5 mi (7.2 km)—upstream from Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 3.06 mi (4.9 km) of Little Salt Creek, and consists of a saline stream and wetland complex extending along the floodplain of Little Salt Creek. The unit has all the PCEs required by the Salt Creek tiger beetle, and provides habitat for the third largest existing population of the subspecies. This unit was occupied at the time of listing. It contains features that are essential to the conservation of the species. The area is located away from commercial and residential developments associated

with the City of Lincoln, Nebraska. Recently, a large parcel of land was acquired in this area by the Nebraska Game and Parks Commission (NGPC). Other large parcels of land within this unit consist of saline wetland and stream complex habitats, located along Little Salt Creek, and owned by The Nature Conservancy. Special management is required to address impacts from livestock overgrazing, stream entrenchment resulting from downstream channelization of Little Salt Creek, and ditching used to drain adjacent saline wetlands. Bank sloughing in response to stream entrenchment has likely covered over saline habitats located along the banks of Little Salt Creek.

Unit 2—Little Salt Creek—Arbor Lake, Lancaster County, Nebraska

Unit 2 consists of 171 ac (69.2 ha) of occupied Salt Creek tiger beetle habitat located approximately 1 mi (2 km) north of the Interstate 80 and North 27th Street interchange on the northern city limits of Lincoln, Nebraska. The unit includes 1.53 mi (2.5 km) of Little Salt Creek, and has a large, relatively intact saline wetland and stream complex located within the Little Salt Creek floodplain. This unit provides habitat for the largest population of Salt Creek tiger beetles and contains all of the PCEs. It was occupied at the time of listing. The abundance of Salt Creek tiger beetles in this Unit is supported by the large saline wetland and stream complex within the Little Salt Creek floodplain. As such, this unit contains features that are essential to the conservation of the species. Special management is required to reduce surface runoff and sedimentation from adjacent development activities, to reduce bank sloughing, and to address severe channel entrenchment of Little Salt Creek in adjacent saline wetlands. Excess freshwater and sediment has smothered saline habitats to the detriment of the Salt Creek tiger beetle. Other threats to the Little Salt Creek-Arbor Lake Unit include livestock trampling and row crop agriculture. Little Salt Creek is severely entrenched in this area resulting in the loss of several saline wetlands located along the floodplain.

Unit 3—Little Salt Creek—Roper, Lancaster County, Nebraska

Unit 3 consists of 289 ac (117.7 ha) of occupied Salt Creek tiger beetle habitat located immediately south of the Interstate 80 and North 27th Street Interchange, north of the confluence of Little Salt and Salt Creeks, and approximately 1 mi (2 km) downstream of Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 2.8 mi (4.5 km) of Little Salt Creek, and consists of a saline stream and wetland complex along the floodplain of Little Salt Creek. Unit 3 contains all of the PCEs, and supports the second largest population of Salt Creek tiger beetles. As such, this unit contains features that are essential to the conservation of the species. It was occupied at the time of listing. Special management is required to reduce surface water runoff and sediment transport from adjacent development activities, and to reduce channelization, stream entrenchment, and bank sloughing.

Unit 4—Jack Sinn-Rock Creek, Lancaster and Saunders Counties, Nebraska

Unit 4 consists of 1,028 ac (416 ha) of unoccupied Salt Creek tiger beetle habitat located approximately 3 mi (5 km) southeast of the City of Ceresco, Nebraska, and east of Highway 77. It is 8.5 mi (13.7 km) upstream from the confluence of Rock and Salt Creeks. Unit 4 includes 10.62 mi (17.1 km) of Rock Creek, and consists of a saline stream and wetland complex along the floodplain of Rock Creek. Unit 4 contains all of the PCEs. Rock Creek has been channelized and is entrenched. Bank sloughing in response to the entrenchment of Rock Creek has smothered saline seeps to the detriment of the Salt Creek tiger beetle. Channel entrenchment of Rock Creek has resulted in the loss of adjacent floodplain saline wetlands.

Because proposed Units 1, 2, and 3 (currently occupied) are all on the same stream, and within close proximity of each other (Units 2 and 3 are separated by less than 1 mi), the threat of species extinction is greatly increased as a result of a natural or manmade event such as a chemical spill, drought, flood, or other event. Such an event could cause the loss of remaining populations and render the habitat unsuitable. Local extinctions caused by habitat deterioration and stochastic weather events are frequent for insects, such as the Salt Creek tiger beetle, whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity (Murphy, *et al.* 1990, pp. 41–51; Ruggerio, *et al.* 1994, pp. 364–372). When developing conservation strategies for such species, the scientific community has stressed that greater emphasis should be placed on the maintenance of multiple populations as opposed to just protecting single reservoir populations (Murphy, *et al.* 1990, pp. 41–51; Howe, *et al.* 1991, pp. 251–253). For example, the recovery plan for the Puritan tiger beetle (*Cicindela puritana*), a species with a life cycle similar to the Salt Creek tiger beetle, states that multiple metapopulations (consisting of several subpopulations) need to be protected to sustain the species (U.S. Fish and Wildlife Service 1993, p. 21).

In the case of the Salt Creek tiger beetle, we have determined that establishment of multiple populations on different stream systems would lower overall extinction risk by lowering the risk from catastrophic events on a single stream, and by enabling repopulation following localized extinctions, which is comparable to conservation strategies utilized for other listed invertebrate species (Murphy, *et al.* 1990, pp. 41–51). Our conclusion that populations should be distributed among separate stream systems addresses risks of adverse habitat impacts and weather events on a few populations located in close proximity to each other. Therefore, we have determined that an additional population located on a separate stream is essential to the conservation of the Salt Creek tiger beetle. We further conclude that the currently-unoccupied Jack Sinn-Rock Creek Unit is essential for the conservation of the Salt Creek tiger beetle, because it is the site where a reintroduced population would have the best opportunity to survive and grow. The unit is large and contains the PCEs. Furthermore, unlike other areas with extirpated Salt Creek tiger beetle populations, such as those in the Oak Creek drainage where residential and commercial development have made reintroduction of the Salt Creek tiger beetle unfeasible, this unit is located in an area of primarily agricultural activity and, therefore, faces fewer threats.

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 5th and 9th 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 current national policy and the statutory provisions of the Act, we determine destruction or adverse modification is determined 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.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, if we list those species or designate critical habitat. We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or 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)).

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 the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, 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, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we 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.

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, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Salt Creek tiger beetle or its designated critical habitat 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 (33 U.S.C. 1251, *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also 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

For the reasons described in the Director's December 9, 2004, memorandum, 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 elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Salt Creek tiger beetle. Generally, the conservation role of Salt Creek tiger beetle critical habitat units is to support all populations and allow re-establishment of a population to lower overall extinction risk.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Salt Creek tiger beetle include, but are not limited to:

(1) Actions that would result in stream channelization and bank armoring. Such activities could include, but would not be limited to, stream channelization and bank armoring

projects located in Little Salt and Rock Creeks and their associated tributaries. These activities could result in the loss of moist, barren salt flats through physical smothering, bank sloughing, or hydrological modification along Little Salt and Rock Creeks. Such activities could result in lowering of the water table and the gradual drainage of floodplain saline wetlands. Further, these types of activities could result in modification to the prey base for adult and larval forms of the Salt Creek tiger beetle and elimination of movement corridors necessary to complete life requirements and repopulation of previously extirpated areas.

(2) Actions that would result in input of excessive freshwater runoff and sediment into saline streams and wetlands. Such activities could include, but would not be limited to, adjacent commercial, industrial, and residential developments and associated infrastructure, and construction or upgrade of utilities, including storm sewers. Such activities could result in the transport of sediment and freshwater into saline habitats that are required by the Salt Creek tiger beetle. Excessive freshwater and sediment could smother moist, barren salt flats and encourage vegetation growth. Excessive freshwater runoff and sediment could result in the loss of larval habitat through physical scouring or flooding, smothering with sediment, and conversion to a vegetated state.

(3) Actions that would result in wetland drainage and filling. Such activities could include agricultural, commercial, industrial, and residential land uses and infrastructure to support them. The effects of wetland loss would include the loss of: (1) Moist, barren salt flats; (2) the prey base for larval and adults forms of the Salt Creek tiger beetle; (3) the recharge capacity of adjacent wetlands that function to meter surface flows and capture sediment and freshwater runoff; and (4) the ability of the Salt Creek tiger beetle to move among saline streams and wetlands to meet life history requirements.

(4) Actions that would result in trampling and overgrazing by livestock. Such activities could occur as a result of agricultural land uses. Livestock trample moist, barren salt flats, resulting in the destruction of larvae and larval burrows.

Application of Section 4(b)(2) of the Act

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Salt Creek tiger beetle are not owned or managed by the Department of Defense, and the proposed designation does not include any Tribal lands or trust resources. There are currently no Habitat Conservation Plans for the Salt Creek Tiger Beetle. In response to the ongoing development pressure, Nebraska Game and Parks Commission (NGPC), as the lead agency of a broad partnership of resource organizations, is in the process of developing the ''Salt Creek Tiger Beetle and Eastern Saline Wetlands HCP'' in Lancaster and Saunders Counties. This HCP would be an ''umbrella'' plan, intended to provide documentation of research on the habitat needs of the Salt Creek tiger beetle. In the future, specific landowners would be able to develop HCPs that tier to this umbrella HCP. The City of Lincoln and Lancaster County should continue to protect the saline wetlands and an associated 500-ft (152.4-m) buffer until the critical habitat designation is finalized and the HCP is completed in order to protect the Salt Creek tiger beetle and the eastern saline wetlands of Nebraska. The HCP would act as the guiding document that will be used by a wide range of Federal, state, and local agencies; conservation organizations; private landowners; and developers. Habitat conservation would be accomplished through a number of different strategies, including land acquisition, conservation easements, state and Federal habitat management incentives, and the development of city and county zoning regulations. The HCP would identify and prioritize areas for conservation activities. However, this HCP is in initial development stages, and currently has no guarantee of completion. If completed, the NGPC would be issued a permit, under section 10(a)(1)(B) of the Act, in conjunction with the HCP.

We anticipate no impact to national security, Tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Based on the best available information, including the draft economic analysis, we believe that all of these units contain features essential to the species (PCEs), or are otherwise essential for the conservation of the species. We have found no areas for which the benefits of exclusion outweigh the benefits of inclusion; therefore we have not proposed to exclude any areas from this proposed designation of critical habitat for the Salt Creek tiger beetle based on economic or other relevant impacts. As such, we have considered but not excluded any lands from this proposed designation. However, during the development of a final designation, we will be considering economic impacts and additional conservation plans, if available, such that areas may be excluded from the final critical habitat designation under section 4(b)(2).

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. In compliance with section 4(b)(2) of the Act, we have prepared a draft economic analysis of this proposed designation of critical habitat for the Salt Creek tiger beetle.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Salt Creek tiger beetle, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Salt Creek tiger beetle in essential habitat areas. The draft economic analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use).

The draft economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group

or economic sector. Finally, the draft economic analysis looks retrospectively at costs that have been incurred since the date the Salt Creek tiger beetle was listed in 2005, and considers those costs that may occur in the 20 years following a designation of critical habitat.

Pre-designation (2005–2007) costs associated with species conservation activities are estimated at $2.6 million in 2007 dollars (ENTRIX 2007, p. ES–3). Potential post-designation (2007–2026) costs are estimated to range between $21.4 and $25.5 million in undiscounted 2007 dollars (ENTRIX 2007, p. ES–3). In discounted terms, potential post-designation economic costs are estimated to be $19.9 to $22.9 million (using a 3 percent discount rate) and $18.5 to $20.6 million (using a 7 percent discount rate) (ENTRIX 2007, p. ES–3). In annualized terms, potential post-designation costs are expected to range from $1.3 to $1.5 million (annualized at 3 percent) and $1.7 to $1.9 million (annualized at 7 percent) (ENTRIX 2007, p. ES–3).

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal to designate critical habitat. We will be conducting an incremental analysis for the final rule, and so we solicit any information on costs that are the result of the difference between application of the jeopardy and adverse modification standards, or other incremental costs. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

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 designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

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 address shown in the **ADDRESSES** 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.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, based on the draft economic analysis, we have determined that the proposed designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. The draft economic analysis estimates that, in annualized terms, potential post-designation costs can be expected to range from $1.3 to $1.5 million (annualized at 3 percent) and $1.7 to $1.9 million (annualized at 7 percent) (ENTRIX 2007, p. ES–3). To determine the economic consequences of designating the specific area as critical habitat, we have prepared a draft economic analysis of this proposed action, which is available for public comment (see below for Internet address). This economic analysis has been used to determine compliance with E.O. 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and E.O. 13211.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget (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 hereby notify the public of the availability, for review and comment, of the draft economic analysis for the proposed designation of critical habitat. The draft economic analysis is also available on the Internet at: *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm,* and at the Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801 (see **FOR FURTHER INFORMATION CONTACT**).

Regulatory Flexibility Act

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 effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5

million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Salt Creek tiger beetle could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when proposed critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

The draft economic analysis for the Salt Creek tiger beetle evaluated the potential for economic impacts related to several categories, including (1) land development; (2) development of the Salt Creek tiger beetle HCP; (3) public and non-governmental organization conservation and restoration; (4) agriculture; and (5) transportation and public works projects (ENTRIX 2007). Based on our analysis, only small agricultural entities are expected to be affected by conservation efforts for the Salt Creek tiger beetle. Land development, including conversion of cropland to pasture, is expected to be primarily carried out by private landowners. These landowners are likely to include small farmers. Therefore, the screening analysis focused on economic impacts resulting from loss of agriculture land values and modifications to farming activities. The small farmers expected to be affected are forecast to experience an impact equivalent to less than 0.08 percent of estimated annual sales (less than 0.1 of 1 percent) and, therefore, Salt Creek tiger beetle conservation activities are not expected to impact the annual profitability of small ranching and farming operations (ENTRIX 2007, pp. 63–69).

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Therefore, we certify that this proposed regulation will not result in a significant economic impact on a substantial number of small business entities. Please refer to our draft economic analysis of this designation for a more detailed discussion of potential economic impacts.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were Medicaid; 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 that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat designation are owned by the State of Nebraska, nongovernment organizations, City of Lincoln, Lower Platte South Natural Resources District, and private individuals and organizations. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings

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 critical habitat for the Salt Creek tiger beetle in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for

the Salt Creek tiger beetle does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Nebraska. The designation of critical habitat in areas currently occupied by the Salt Creek tiger beetle imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the areas proposed for designation to assist the public in understanding the habitat needs of the Salt Creek tiger beetle.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321–4247) 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 in the courts of the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, because the Regional Office overseeing the preparation of this rule lies within the Tenth Circuit, we have undertaken a NEPA analysis for critical habitat designation and hereby notify the public of the availability, for review and comment, of the draft environmental assessment for this proposal pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996). The draft environmental assessment is available on the Internet at *http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm*, and at the Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801 (see **FOR FURTHER INFORMATION CONTACT**).

The Draft Environmental Assessment presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the NEPA of 1969 (42 U.S.C. 4321, *et seq.*) as implemented by the Council on Environmental Quality regulations (40 CFR 1500, *et seq.*) and according to the Department of the Interior's NEPA procedures.

We will use the final economic analysis and public comments to determine whether critical habitat will be designated as proposed, if the Proposed Action in the environmental assessment requires refinement, or if further analyses are needed through preparation of an environmental impact statement. If the Proposed Action is selected as described, or with minimal changes, and no further environmental analyses are needed, then a Finding of No Significant Impact would be the appropriate conclusion of this NEPA process.

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, and no Tribal lands that are essential for the conservation, of the Salt Creek tiger beetle. Therefore, we have not proposed designation of critical habitat for the Salt Creek tiger beetle on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 (Actions Concerning Regulations That 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. OMB provides guidance for implementing this E.O., outlining nine outcomes that may constitute a significant adverse affect on energy supply, distribution, and use. Based on our draft economic analysis, only one of the nine criteria is relevant—increase in the cost of energy distribution in excess of one percent. Costs will be incurred as a result of routing a powerline to avoid saline wetlands in the Little Salt Creek—Arbor lake habitat. However, based on the electric utility's standard accounting practices, the annual additional incremental cost of this additional expenditure is 0.12 percent, which is less than the one percent threshold suggested by OMB. Therefore, we conclude that this proposed designation of critical habitat will not have a significant adverse effect on 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.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) 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.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are staff of the Nebraska Ecological Services Field Office, Grand Island, Nebraska.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''Salt Creek tiger beetle'' under ''INSECTS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Beetle, Salt Creek tiger.	*Cicindela nevadica lincolniana.*	U.S.A. (NE)	Entire	E	754	17.95(i)	NA
*	*	*	*	*	*		*

3. In § 17.95(i), add an entry for ''Salt Creek Tiger Beetle (*Cicindela nevadica lincolniana*)'' in the same alphabetical order in which this species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) Insects.

* * * * *

Salt Creek Tiger Beetle *(Cicindela nevadica lincolniana*)

(1) Critical habitat units are generally depicted for Lancaster and Saunders Counties, Nebraska, on the maps below.

(2) The primary constituent elements of critical habitat for the Salt Creek tiger beetle are the following habitat components:

(i) Moist, barren salt flats with:

(A) Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;

(B) soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;

(C) soil moisture ranging from 43.5 percent to 51.7 percent; and

(D) differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces;

(ii) A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain;

(iii) Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another; and

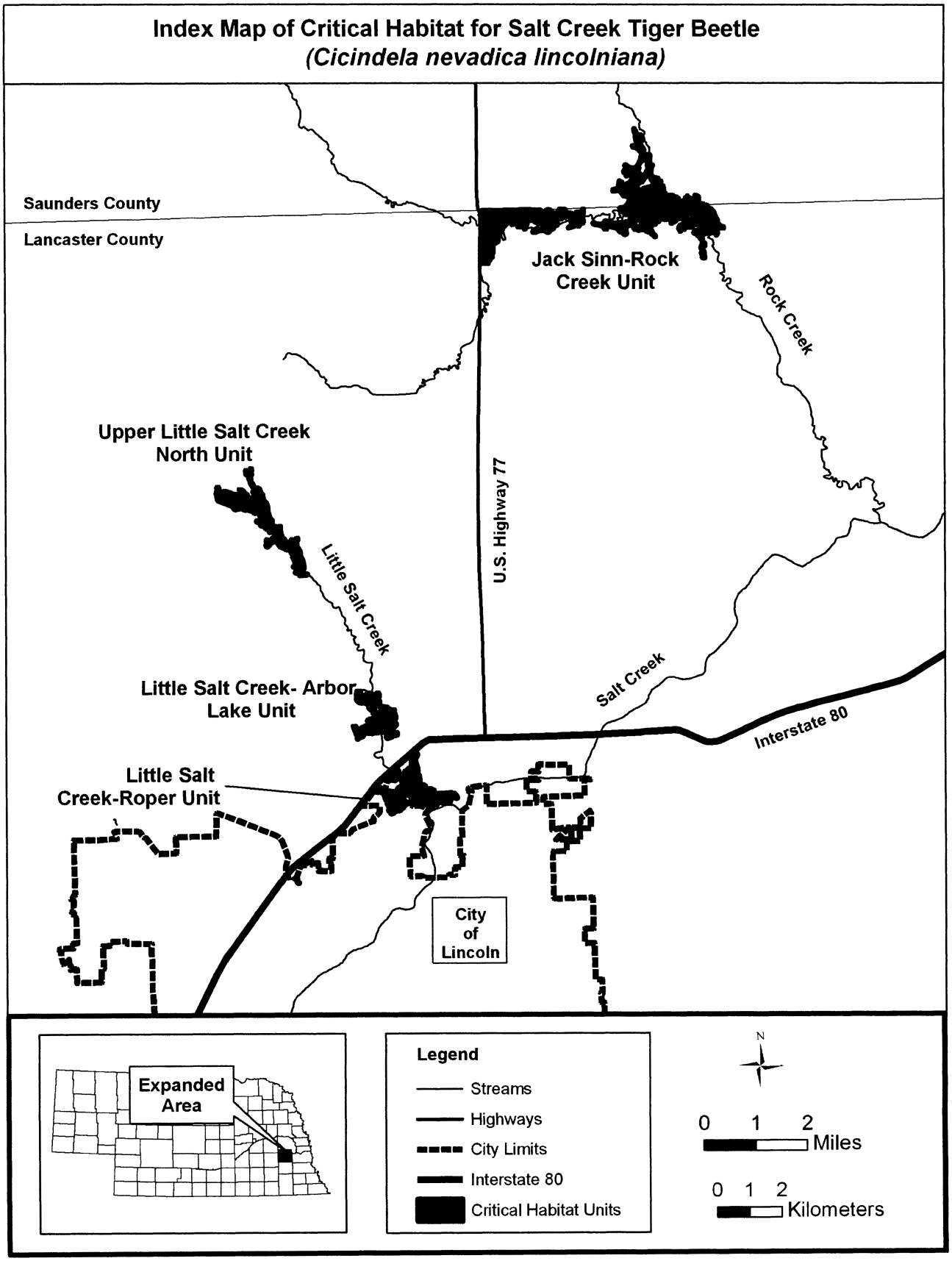
(iv) Presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* Critical habitat units were developed using GIS software. Critical habitat boundaries were defined as follows. We utilized the Resource Categorization Study (RCS; Gilbert and Stutheit 1994) to define boundaries of the Salt Creek tiger beetle's historic range. Within the RCS boundaries, we then identified existing saline wetlands containing the PCEs required by the Salt Creek tiger beetle; we also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography. Coordinate points defining critical habitat unit boundaries were created through an automated GIS process using Universal Transverse Mercator as the reference coordinate system.

(5) Note: Map 1 (index map) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Unit 1: Upper Little Salt Creek North, Lancaster County, Nebraska.

(i) Tract 1a: 692489, 4536054; 692486, 4536053; 692479, 4536054; 692476,

4536059; 692474, 4536062; 692471, 4536063; 692466, 4536064; 692464, 4536067; 692463, 4536072; 692464, 4536076; 692465, 4536079; 692468, 4536080; 692471, 4536081; 692475, 4536082; 692485, 4536083; 692494, 4536069; 692495, 4536064; 692495, 4536062; 692493, 4536057; 692489, 4536054;

(ii) Tract 1b: 691819, 4536470; 691815, 4536469; 691809, 4536470; 691800, 4536472; 691794, 4536477; 691794, 4536479; 691793, 4536485; 691793, 4536490; 691794, 4536496; 691795, 4536497; 691784, 4536503; 691784, 4536506; 691784, 4536512; 691786, 4536517; 691790, 4536521; 691798, 4536524; 691805, 4536526; 691811, 4536528; 691816, 4536530; 691821, 4536530; 691826, 4536530; 691829, 4536529; 691833, 4536527; 691834, 4536525; 691834, 4536521; 691833, 4536514; 691832, 4536511; 691829, 4536508; 691839, 4536503; 691840, 4536499; 691840, 4536494; 691839, 4536489; 691838, 4536486; 691834, 4536480; 691830, 4536475; 691824, 4536472; 691819, 4536470;

(iii) Tract 1c: 691841, 4536623; 691846, 4536619; 691849, 4536613; 691851, 4536608; 691853, 4536599; 691854, 4536589; 691852, 4536575; 691847, 4536567; 691841, 4536560; 691833, 4536553; 691822, 4536546; 691811, 4536544; 691801, 4536546; 691794, 4536547; 691786, 4536550; 691779, 4536552; 691773, 4536553; 691770, 4536555; 691766, 4536558; 691765, 4536558; 691762, 4536560; 691759, 4536563; 691757, 4536565; 691755, 4536569; 691752, 4536573; 691750, 4536577; 691750, 4536581; 691751, 4536585; 691753, 4536587; 691759, 4536589; 691765, 4536589; 691769, 4536589; 691772, 4536588; 691774, 4536587; 691776, 4536587; 691779, 4536587; 691783, 4536587; 691784, 4536586; 691788, 4536584; 691793, 4536581; 691797, 4536578; 691802, 4536575; 691807, 4536573; 691812, 4536571; 691815, 4536569; 691819, 4536567; 691824, 4536567; 691830, 4536568; 691832, 4536571; 691835, 4536575; 691836, 4536580; 691836, 4536586; 691831, 4536596; 691829, 4536600; 691825, 4536604; 691820, 4536607; 691817, 4536609; 691812, 4536611; 691808, 4536613; 691804, 4536615; 691798, 4536618; 691792, 4536620; 691791, 4536620; 691785, 4536621; 691782, 4536621; 691775, 4536621; 691771, 4536620; 691768, 4536621; 691765, 4536623; 691764, 4536627; 691764, 4536631; 691765, 4536634; 691766, 4536637; 691768, 4536639; 691770, 4536641; 691773, 4536643; 691778, 4536644; 691781, 4536644; 691785, 4536644; 691788, 4536644; 691798, 4536646; 691808, 4536639; 691813, 4536637; 691818, 4536635; 691823, 4536632; 691831, 4536629; 691836, 4536626; 691841, 4536623;

(iv) Tract 1d: 692150, 4536537; 692149, 4536533; 692147, 4536527; 692145, 4536518; 692143, 4536508; 692145, 4536500; 692149, 4536493; 692156, 4536488; 692159, 4536485; 692164, 4536480; 692167, 4536475; 692169, 4536467; 692168, 4536457; 692165, 4536448; 692162, 4536440; 692159, 4536433; 692157, 4536427; 692158, 4536418; 692161, 4536408; 692167, 4536398; 692173, 4536390; 692183, 4536385; 692191, 4536382; 692195, 4536377; 692197, 4536371; 692197, 4536364; 692194, 4536357; 692189, 4536351; 692182, 4536345; 692179, 4536342; 692170, 4536335; 692166, 4536332; 692158, 4536326; 692162, 4536314; 692162, 4536311; 692163, 4536309; 692174, 4536308; 692180, 4536304; 692185, 4536299; 692189, 4536290; 692193, 4536280; 692197, 4536273; 692204, 4536268; 692214, 4536264; 692225, 4536263; 692230, 4536264; 692237, 4536268; 692245, 4536271; 692254, 4536270; 692265, 4536266; 692272, 4536260; 692278, 4536254; 692284, 4536246; 692290, 4536239; 692294, 4536233; 692297, 4536226; 692300, 4536216; 692301, 4536209; 692303, 4536202; 692307, 4536191; 692316, 4536176; 692319, 4536172; 692321, 4536168; 692326, 4536163; 692333, 4536158; 692342, 4536155; 692350, 4536153; 692361, 4536152; 692369, 4536150; 692378, 4536147; 692387, 4536143; 692394, 4536139; 692400, 4536135; 692407, 4536132; 692415, 4536131; 692421, 4536130; 692425, 4536130; 692435, 4536134; 692442, 4536142; 692445, 4536151; 692446, 4536160; 692448, 4536169; 692451, 4536181; 692456, 4536192; 692462, 4536202; 692470, 4536214; 692476, 4536225; 692482, 4536233; 692487, 4536240; 692493, 4536246; 692497, 4536249; 692504, 4536251; 692514, 4536252; 692524, 4536251; 692534, 4536249; 692544, 4536248; 692554, 4536245; 692563, 4536243; 692570, 4536241; 692575, 4536239; 692580, 4536237; 692584, 4536235; 692587, 4536233; 692587, 4536232; 692609, 4536242; 692618, 4536262; 692623, 4536267; 692627, 4536272; 692631, 4536276; 692638, 4536278; 692649, 4536280; 692668, 4536284; 692675, 4536285; 692682, 4536284; 692686, 4536284; 692688, 4536282; 692692, 4536280; 692698, 4536274; 692693, 4536246; 692691, 4536238; 692685, 4536228; 692682, 4536220; 692679, 4536214; 692675, 4536210; 692671, 4536204; 692667, 4536199; 692663, 4536194; 692658, 4536192; 692656, 4536192; 692637, 4536160; 692639, 4536159; 692645, 4536156; 692649, 4536153; 692654, 4536143; 692658, 4536135; 692662, 4536125; 692665, 4536115; 692669, 4536100; 692671, 4536088; 692673, 4536072; 692674, 4536057; 692674, 4536048; 692671, 4536039; 692669, 4536033; 692668, 4536026; 692670, 4536014; 692676, 4536005; 692684, 4535997; 692692, 4535990; 692699, 4535984; 692707, 4535977; 692712, 4535971; 692718, 4535958; 692721, 4535945; 692723, 4535933; 692725, 4535924; 692729, 4535913; 692735, 4535907; 692742, 4535903; 692749, 4535899; 692754, 4535893; 692759, 4535882; 692760, 4535871; 692759, 4535860; 692763, 4535846; 692767, 4535839; 692771, 4535833; 692773, 4535825; 692774, 4535809; 692774, 4535793; 692772, 4535781; 692771, 4535770; 692770, 4535759; 692770, 4535750; 692770, 4535737; 692772, 4535728; 692775, 4535719; 692790, 4535682; 692799, 4535665; 692805, 4535654; 692812, 4535639; 692818, 4535625; 692823, 4535615; 692830, 4535605; 692836, 4535596; 692843, 4535584; 692846, 4535575; 692849, 4535563; 692854, 4535548; 692856, 4535532; 692859, 4535516; 692861, 4535505; 692864, 4535488; 692868, 4535473; 692872, 4535461; 692876, 4535448; 692877, 4535436; 692879, 4535425; 692881, 4535413; 692883, 4535399; 692885, 4535384; 692885, 4535371; 692884, 4535360; 692884, 4535354; 692884, 4535344; 692879, 4535340; 692869, 4535358; 692864, 4535365; 692854, 4535373; 692845, 4535377; 692834, 4535379; 692823, 4535381; 692810, 4535381; 692797, 4535378; 692787, 4535377; 692773, 4535378; 692759, 4535380; 692744, 4535382; 692734, 4535384; 692724, 4535388; 692716, 4535392; 692708, 4535399; 692703, 4535407; 692701, 4535413; 692700, 4535419; 692700, 4535424; 692699, 4535429; 692684, 4535431; 692680, 4535432; 692676, 4535434; 692671, 4535437; 692667, 4535439; 692662, 4535440; 692657, 4535441; 692652, 4535442; 692645, 4535442; 692643, 4535440; 692642, 4535434; 692644, 4535421; 692651, 4535411; 692656, 4535405; 692660, 4535399; 692663, 4535392; 692664, 4535387; 692663, 4535383; 692656, 4535377; 692648, 4535375; 692645, 4535369; 692647, 4535358; 692651, 4535345; 692659, 4535334; 692668, 4535325; 692672, 4535322; 692678, 4535317; 692680, 4535309; 692680, 4535303; 692681, 4535294; 692682, 4535286; 692686, 4535279; 692689, 4535274; 692697, 4535270; 692705, 4535269; 692716, 4535273;

692724, 4535279; 692730, 4535286;
692736, 4535296; 692740, 4535302;
692744, 4535308; 692751, 4535313;
692761, 4535317; 692766, 4535317;
692774, 4535315; 692782, 4535310;
692788, 4535305; 692794, 4535296;
692797, 4535289; 692801, 4535285;
692810, 4535282; 692817, 4535281;
692821, 4535279; 692825, 4535275;
692828, 4535267; 692829, 4535258;
692827, 4535249; 692824, 4535243;
692820, 4535236; 692820, 4535229;
692823, 4535215; 692825, 4535207;
692829, 4535196; 692831, 4535191;
692833, 4535182; 692832, 4535178;
692833, 4535173; 692835, 4535166;
692827, 4535159; 692826, 4535156;
692826, 4535153; 692826, 4535147;
692827, 4535143; 692827, 4535137;
692845, 4535142; 692850, 4535145;
692854, 4535148; 692858, 4535152;
692862, 4535155; 692870, 4535161;
692878, 4535164; 692883, 4535166;
692891, 4535167; 692897, 4535169;
692904, 4535169; 692910, 4535170;
692915, 4535169; 692919, 4535166;
692926, 4535163; 692930, 4535162;
692934, 4535162; 692938, 4535163;
692940, 4535166; 692948, 4535175;
692958, 4535168; 692965, 4535164;
692971, 4535160; 692977, 4535158;
692981, 4535156; 692984, 4535156;
692987, 4535156; 692989, 4535154;
692981, 4535147; 692975, 4535144;
692968, 4535140; 692963, 4535136;
692959, 4535133; 692956, 4535131;
692953, 4535128; 692952, 4535127;
692950, 4535125; 692948, 4535123;
692947, 4535121; 692945, 4535118;
692828, 4535116; 692744, 4535111;
692741, 4535111; 692741, 4535110;
692738, 4535113; 692735, 4535116;
692735, 4535120; 692734, 4535123;
692734, 4535126; 692730, 4535140;
692729, 4535144; 692725, 4535148;
692720, 4535156; 692714, 4535164;
692705, 4535170; 692695, 4535174;
692683, 4535175; 692670, 4535177;
692658, 4535181; 692648, 4535183;
692641, 4535186; 692632, 4535189;
692625, 4535192; 692618, 4535193;
692613, 4535194; 692607, 4535197;
692602, 4535201; 692599, 4535207;
692599, 4535213; 692598, 4535217;
692598, 4535218; 692604, 4535224;
692612, 4535226; 692618, 4535227;
692628, 4535228; 692637, 4535232;
692644, 4535236; 692650, 4535241;
692654, 4535248; 692655, 4535255;
692652, 4535265; 692650, 4535277;
692643, 4535290; 692637, 4535301;
692632, 4535311; 692625, 4535324;
692616, 4535334; 692609, 4535342;
692599, 4535351; 692592, 4535361;
692574, 4535375; 692569, 4535378;
692561, 4535382; 692556, 4535384;
692549, 4535387; 692545, 4535388;
692539, 4535391; 692537, 4535394;
692536, 4535398; 692537, 4535401;
692542, 4535404; 692550, 4535405;
692559, 4535405; 692567, 4535408;
692576, 4535414; 692583, 4535422;
692588, 4535434; 692592, 4535446;
692592, 4535453; 692592, 4535465;
692594, 4535478; 692597, 4535496;
692597, 4535509; 692595, 4535527;
692592, 4535540; 692587, 4535552;
692582, 4535560; 692578, 4535566;
692571, 4535578; 692568, 4535585;
692564, 4535595; 692562, 4535602;
692561, 4535607; 692562, 4535614;
692565, 4535619; 692569, 4535623;
692572, 4535626; 692577, 4535630;
692578, 4535631; 692568, 4535638;
692560, 4535643; 692554, 4535647;
692549, 4535651; 692545, 4535654;
692540, 4535657; 692538, 4535658;
692534, 4535665; 692520, 4535671;
692518, 4535674; 692515, 4535680;
692515, 4535688; 692514, 4535695;
692515, 4535701; 692515, 4535705;
692516, 4535716; 692537, 4535713;
692541, 4535712; 692548, 4535711;
692551, 4535710; 692554, 4535710;
692558, 4535710; 692570, 4535711;
692580, 4535724; 692583, 4535726;
692585, 4535729; 692585, 4535733;
692582, 4535741; 692567, 4535747;
692547, 4535749; 692540, 4535749;
692532, 4535749; 692528, 4535750;
692519, 4535750; 692514, 4535763;
692513, 4535766; 692512, 4535771;
692503, 4535789; 692500, 4535795;
692493, 4535804; 692489, 4535810;
692483, 4535817; 692479, 4535824;
692475, 4535831; 692469, 4535840;
692467, 4535847; 692464, 4535855;
692463, 4535861; 692459, 4535873;
692470, 4535884; 692472, 4535886;
692475, 4535888; 692480, 4535888;
692484, 4535886; 692487, 4535882;
692489, 4535879; 692493, 4535872;
692496, 4535866; 692499, 4535863;
692500, 4535861; 692505, 4535861;
692509, 4535866; 692511, 4535875;
692511, 4535881; 692511, 4535887;
692511, 4535900; 692521, 4535893;
692528, 4535892; 692537, 4535892;
692544, 4535893; 692555, 4535895;
692563, 4535898; 692572, 4535902;
692580, 4535905; 692586, 4535908;
692592, 4535911; 692598, 4535915;
692601, 4535918; 692603, 4535923;
692602, 4535927; 692597, 4535934;
692587, 4535936; 692577, 4535938;
692572, 4535940; 692565, 4535948;
692559, 4535953; 692557, 4535961;
692557, 4535972; 692560, 4535985;
692562, 4535991; 692564, 4535998;
692565, 4536002; 692565, 4536004;
692565, 4536006; 692579, 4536010;
692582, 4536011; 692586, 4536014;
692588, 4536018; 692589, 4536024;
692588, 4536029; 692585, 4536037;
692579, 4536046; 692572, 4536056;
692567, 4536064; 692561, 4536071;
692556, 4536076; 692551, 4536080;
692547, 4536083; 692542, 4536087;
692539, 4536092; 692538, 4536096;
692538, 4536104; 692538, 4536107;
692543, 4536112; 692537, 4536127;
692537, 4536131; 692539, 4536137;
692544, 4536142; 692551, 4536149;
692556, 4536153; 692562, 4536156;
692567, 4536159; 692571, 4536162;
692573, 4536163; 692575, 4536163;
692576, 4536168; 692576, 4536185;
692561, 4536183; 692553, 4536182;
692544, 4536183; 692539, 4536184;
692532, 4536184; 692525, 4536180;
692521, 4536174; 692518, 4536164;
692516, 4536155; 692513, 4536146;
692505, 4536135; 692495, 4536126;
692483, 4536114; 692474, 4536106;
692465, 4536100; 692458, 4536096;
692448, 4536091; 692440, 4536089;
692430, 4536087; 692420, 4536088;
692412, 4536089; 692408, 4536090;
692403, 4536091; 692401, 4536088;
692399, 4536081; 692399, 4536073;
692394, 4536065; 692388, 4536060;
692387, 4536057; 692383, 4536053;
692368, 4536058; 692362, 4536059;
692355, 4536060; 692344, 4536058;
692331, 4536054; 692323, 4536050;
692316, 4536047; 692309, 4536043;
692301, 4536041; 692292, 4536043;
692280, 4536047; 692263, 4536058;
692254, 4536064; 692248, 4536069;
692246, 4536071; 692244, 4536075;
692243, 4536085; 692244, 4536094;
692246, 4536103; 692247, 4536112;
692248, 4536125; 692246, 4536137;
692243, 4536151; 692239, 4536165;
692234, 4536171; 692227, 4536174;
692216, 4536174; 692207, 4536172;
692197, 4536169; 692188, 4536167;
692182, 4536166; 692177, 4536167;
692173, 4536168; 692170, 4536170;
692165, 4536173; 692162, 4536168;
692159, 4536165; 692148, 4536154;
692143, 4536141; 692141, 4536135;
692140, 4536126; 692138, 4536116;
692137, 4536108; 692136, 4536104;
692142, 4536065; 692149, 4536061;
692154, 4536061; 692162, 4536062;
692173, 4536063; 692182, 4536067;
692187, 4536073; 692191, 4536077;
692198, 4536078; 692206, 4536076;
692209, 4536073; 692211, 4536067;
692212, 4536059; 692212, 4536050;
692212, 4536038; 692213, 4536026;
692215, 4536019; 692220, 4536013;
692232, 4536009; 692244, 4536008;
692253, 4536010; 692263, 4536013;
692273, 4536013; 692281, 4536012;
692288, 4536007; 692291, 4536001;
692295, 4535995; 692299, 4535988;
692306, 4535980; 692315, 4535973;
692327, 4535967; 692339, 4535963;
692349, 4535963; 692352, 4535965;
692360, 4535965; 692366, 4535964;
692369, 4535961; 692370, 4535955;
692369, 4535950; 692366, 4535944;

692364, 4535941; 692359, 4535936; 692354, 4535930; 692349, 4535928; 692338, 4535925; 692330, 4535925; 692323, 4535927; 692316, 4535931; 692311, 4535935; 692307, 4535940; 692304, 4535946; 692300, 4535953; 692295, 4535959; 692288, 4535963; 692281, 4535965; 692274, 4535966; 692264, 4535966; 692252, 4535967; 692243, 4535967; 692236, 4535969; 692230, 4535973; 692218, 4535981; 692210, 4535981; 692206, 4535984; 692202, 4535986; 692198, 4535989; 692192, 4535995; 692186, 4535999; 692181, 4536003; 692172, 4536006; 692165, 4536009; 692157, 4536011; 692147, 4536014; 692137, 4536020; 692133, 4536025; 692129, 4536031; 692129, 4536032; 692087, 4536080; 692086, 4536081; 692082, 4536085; 692078, 4536093; 692074, 4536101; 692071, 4536106; 692069, 4536112; 692059, 4536124; 692050, 4536143; 692046, 4536150; 692040, 4536157; 692037, 4536160; 692034, 4536164; 692029, 4536167; 692025, 4536169; 692023, 4536169; 692020, 4536169; 692004, 4536172; 691997, 4536173; 691997, 4536173; 691900, 4536175; 691899, 4536174; 691897, 4536174; 691895, 4536172; 691892, 4536169; 691886, 4536163; 691880, 4536156; 691873, 4536150; 691864, 4536141; 691854, 4536135; 691845, 4536130; 691836, 4536124; 691827, 4536117; 691821, 4536107; 691819, 4536098; 691815, 4536087; 691811, 4536078; 691807, 4536072; 691801, 4536068; 691789, 4536063; 691785, 4536064; 691779, 4536064; 691769, 4536065; 691766, 4536048; 691765, 4536041; 691760, 4536033; 691755, 4536029; 691748, 4536026; 691739, 4536024; 691729, 4536024; 691717, 4536025; 691711, 4536027; 691710, 4536027; 691704, 4536032; 691698, 4536039; 691695, 4536045; 691694, 4536054; 691693, 4536065; 691693, 4536076; 691693, 4536084; 691694, 4536090; 691698, 4536095; 691700, 4536099; 691707, 4536102; 691717, 4536104; 691717, 4536105; 691718, 4536108; 691718, 4536114; 691719, 4536119; 691718, 4536127; 691718, 4536135; 691718, 4536141; 691717, 4536153; 691714, 4536162; 691713, 4536171; 691711, 4536180; 691709, 4536191; 691706, 4536201; 691702, 4536212; 691701, 4536224; 691702, 4536235; 691704, 4536243; 691709, 4536247; 691716, 4536251; 691722, 4536251; 691730, 4536250; 691737, 4536246; 691744, 4536244; 691752, 4536237; 691755, 4536233; 691758, 4536229; 691760, 4536225; 691763, 4536223; 691768, 4536220; 691780, 4536220; 691791, 4536219; 691800, 4536220; 691807, 4536220; 691815, 4536221; 691816, 4536222; 691823, 4536224; 691832, 4536230; 691837, 4536237; 691838, 4536238; 691841, 4536238; 691858, 4536248; 691879, 4536269; 691888, 4536284; 691890, 4536284; 691949, 4536311; 691950, 4536312; 691957, 4536315; 691963, 4536318; 691967, 4536320; 691971, 4536325; 691974, 4536329; 691975, 4536334; 691977, 4536342; 691981, 4536351; 691984, 4536354; 691989, 4536357; 691995, 4536358; 691998, 4536357; 692004, 4536354; 692006, 4536349; 692007, 4536344; 692007, 4536336; 692007, 4536328; 692008, 4536318; 692009, 4536312; 692013, 4536302; 692020, 4536295; 692028, 4536291; 692039, 4536288; 692048, 4536289; 692058, 4536290; 692067, 4536291; 692075, 4536293; 692080, 4536297; 692083, 4536301; 692084, 4536304; 692084, 4536311; 692082, 4536319; 692074, 4536327; 692069, 4536332; 692064, 4536336; 692056, 4536343; 692054, 4536346; 692053, 4536352; 692055, 4536360; 692062, 4536365; 692071, 4536366; 692079, 4536366; 692090, 4536364; 692097, 4536364; 692104, 4536364; 692107, 4536365; 692109, 4536367; 692115, 4536382; 692115, 4536400; 692113, 4536410; 692111, 4536419; 692106, 4536429; 692103, 4536437; 692099, 4536446; 692095, 4536453; 692092, 4536458; 692089, 4536460; 692084, 4536462; 692078, 4536462; 692073, 4536459; 692068, 4536456; 692070, 4536421; 692071, 4536418; 692074, 4536409; 692055, 4536406; 692047, 4536405; 692037, 4536403; 692026, 4536402; 692014, 4536400; 692003, 4536400; 691993, 4536400; 691982, 4536400; 691974, 4536402; 691968, 4536403; 691961, 4536405; 691956, 4536407; 691950, 4536410; 691959, 4536421; 691963, 4536425; 691969, 4536429; 691977, 4536436; 691985, 4536440; 691992, 4536441; 692004, 4536480; 692001, 4536490; 691998, 4536501; 691999, 4536508; 692000, 4536517; 692000, 4536524; 691998, 4536531; 691992, 4536541; 691984, 4536549; 691978, 4536556; 691972, 4536561; 691968, 4536567; 691958, 4536574; 691950, 4536580; 691941, 4536585; 691936, 4536588; 691931, 4536591; 691928, 4536592; 691926, 4536592; 691925, 4536654; 692006, 4536656; 692010, 4536647; 692015, 4536642; 692020, 4536639; 692024, 4536633; 692027, 4536623; 692029, 4536614; 692035, 4536598; 692040, 4536587; 692047, 4536579; 692055, 4536570; 692061, 4536561; 692071, 4536551; 692077, 4536544; 692082, 4536539; 692086, 4536536; 692093, 4536538; 692097, 4536542; 692099, 4536548; 692102, 4536554; 692104, 4536559; 692105, 4536564; 692107, 4536567; 692108, 4536569; 692109, 4536569; 692107, 4536589; 692106, 4536596; 692106, 4536606; 692105, 4536613; 692107, 4536624; 692108, 4536634; 692110, 4536641; 692112, 4536646; 692114, 4536650; 692118, 4536653; 692122, 4536655; 692129, 4536657; 692136, 4536657; 692141, 4536655; 692146, 4536652; 692150, 4536647; 692150, 4536638; 692150, 4536627; 692150, 4536619; 692149, 4536611; 692147, 4536599; 692144, 4536591; 692143, 4536583; 692142, 4536578; 692138, 4536568; 692146, 4536559; 692146, 4536555; 692150, 4536543; 692150, 4536537;

(v) Tract 1e: 691901, 4536654; 691902, 4536604; 691884, 4536605; 691878, 4536607; 691873, 4536610; 691869, 4536615; 691865, 4536624; 691863, 4536629; 691862, 4536634; 691861, 4536639; 691860, 4536643; 691859, 4536648; 691858, 4536651; 691857, 4536654; 691857, 4536656; 691858, 4536658; 691859, 4536659; 691862, 4536658; 691865, 4536656; 691867, 4536655; 691870, 4536655; 691901, 4536654;

(vi) Tract 1f: 691216, 4538366; 691216, 4538366; 691216, 4538366; 691216, 4538366; 691217, 4538375; 691222, 4538376; 691225, 4538377; 691229, 4538381; 691230, 4538384; 691232, 4538389; 691231, 4538394; 691231, 4538399; 691230, 4538404; 691229, 4538408; 691226, 4538412; 691224, 4538415; 691221, 4538418; 691216, 4538420; 691214, 4538420; 691212, 4538419; 691209, 4538418; 691201, 4538419; 691204, 4538432; 691205, 4538438; 691206, 4538444; 691207, 4538449; 691210, 4538460; 691213, 4538465; 691220, 4538467; 691224, 4538466; 691227, 4538461; 691229, 4538455; 691234, 4538451; 691241, 4538452; 691248, 4538455; 691255, 4538458; 691262, 4538458; 691264, 4538451; 691265, 4538442; 691262, 4538431; 691257, 4538418; 691256, 4538405; 691257, 4538394; 691258, 4538384; 691256, 4538379; 691251, 4538371; 691244, 4538366; 691236, 4538364; 691229, 4538364; 691219, 4538366; 691217, 4538364; 691231, 4538347; 691235, 4538342; 691241, 4538334; 691244, 4538328; 691246, 4538323; 691248, 4538317; 691250, 4538311; 691252, 4538306; 691253, 4538302; 691255, 4538297; 691255, 4538294; 691264, 4538279; 691262, 4538279; 691188, 4538214; 691189, 4538210; 691194, 4538199; 691201, 4538189; 691208, 4538181; 691215, 4538174; 691221, 4538167; 691226, 4538162; 691231, 4538154; 691237, 4538147; 691240, 4538143; 691242, 4538138; 691244, 4538135; 691243, 4538122; 691242, 4538107;

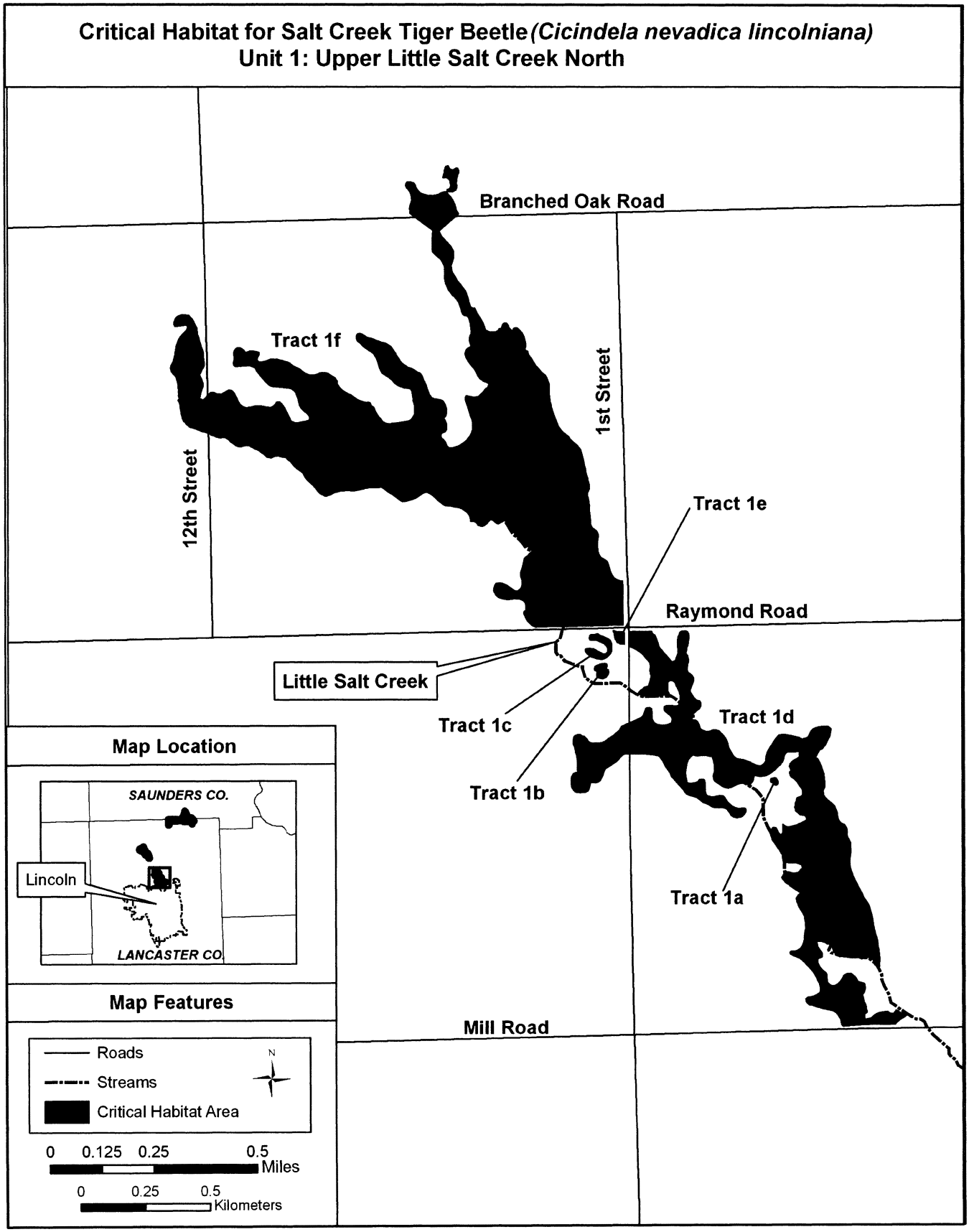
691240, 4538097; 691236, 4538087;
691234, 4538081; 691234, 4538075;
691236, 4538061; 691240, 4538050;
691245, 4538042; 691253, 4538029;
691259, 4538018; 691268, 4538007;
691276, 4537998; 691281, 4537992;
691288, 4537983; 691291, 4537975;
691295, 4537967; 691297, 4537958;
691300, 4537948; 691302, 4537937;
691305, 4537928; 691306, 4537923;
691308, 4537920; 691310, 4537917;
691314, 4537915; 691318, 4537914;
691320, 4537914; 691322, 4537915;
691324, 4537915; 691332, 4537900;
691337, 4537891; 691341, 4537883;
691344, 4537879; 691349, 4537871;
691353, 4537864; 691356, 4537859;
691357, 4537856; 691359, 4537850;
691361, 4537845; 691363, 4537840;
691364, 4537837; 691365, 4537830;
691378, 4537824; 691384, 4537822;
691395, 4537823; 691405, 4537824;
691412, 4537826; 691415, 4537828;
691416, 4537832; 691417, 4537834;
691419, 4537835; 691422, 4537836;
691423, 4537836; 691425, 4537835;
691430, 4537849; 691432, 4537852;
691435, 4537854; 691439, 4537857;
691444, 4537857; 691449, 4537854;
691454, 4537848; 691456, 4537842;
691460, 4537835; 691468, 4537827;
691475, 4537836; 691478, 4537839;
691483, 4537839; 691490, 4537837;
691494, 4537833; 691499, 4537828;
691505, 4537821; 691511, 4537812;
691515, 4537804; 691519, 4537789;
691521, 4537780; 691522, 4537772;
691521, 4537765; 691519, 4537759;
691519, 4537755; 691520, 4537752;
691522, 4537750; 691526, 4537748;
691528, 4537746; 691530, 4537743;
691532, 4537739; 691532, 4537732;
691543, 4537717; 691550, 4537706;
691561, 4537690; 691571, 4537679;
691577, 4537672; 691585, 4537663;
691591, 4537658; 691597, 4537653;
691602, 4537646; 691607, 4537633;
691610, 4537621; 691612, 4537609;
691611, 4537599; 691612, 4537588;
691613, 4537576; 691614, 4537563;
691616, 4537551; 691618, 4537540;
691621, 4537530; 691625, 4537514;
691630, 4537497; 691635, 4537484;
691641, 4537472; 691645, 4537460;
691651, 4537449; 691659, 4537438;
691666, 4537430; 691682, 4537419;
691687, 4537415; 691692, 4537405;
691698, 4537398; 691710, 4537388;
691714, 4537384; 691723, 4537377;
691729, 4537370; 691734, 4537362;
691743, 4537327; 691745, 4537316;
691747, 4537304; 691749, 4537298;
691751, 4537284; 691753, 4537275;
691755, 4537267; 691759, 4537254;
691762, 4537244; 691764, 4537236;
691765, 4537230; 691767, 4537224;
691767, 4537218; 691767, 4537215;
691768, 4537209; 691759, 4537194;
691758, 4537188; 691761, 4537175;
691764, 4537164; 691766, 4537151;
691767, 4537136; 691767, 4537121;
691769, 4537110; 691771, 4537094;
691772, 4537082; 691772, 4537071;
691774, 4537065; 691779, 4537058;
691785, 4537053; 691794, 4537047;
691798, 4537040; 691801, 4537029;
691800, 4537019; 691798, 4537009;
691796, 4536995; 691798, 4536979;
691800, 4536965; 691804, 4536953;
691810, 4536944; 691819, 4536938;
691827, 4536934; 691835, 4536927;
691840, 4536915; 691844, 4536902;
691847, 4536890; 691852, 4536878;
691860, 4536865; 691869, 4536859;
691875, 4536855; 691883, 4536852;
691890, 4536851; 691895, 4536851;
691897, 4536679; 691715, 4536673;
691715, 4536674; 691673, 4536675;
691673, 4536675; 691641, 4536675;
691556, 4536672; 691543, 4536678;
691540, 4536680; 691534, 4536686;
691526, 4536694; 691522, 4536700;
691520, 4536705; 691517, 4536711;
691515, 4536715; 691513, 4536721;
691512, 4536724; 691512, 4536732;
691520, 4536738; 691520, 4536741;
691519, 4536745; 691520, 4536753;
691519, 4536760; 691514, 4536771;
691511, 4536774; 691501, 4536779;
691492, 4536781; 691486, 4536782;
691475, 4536781; 691459, 4536779;
691443, 4536778; 691426, 4536782;
691414, 4536787; 691404, 4536795;
691398, 4536806; 691395, 4536815;
691396, 4536826; 691399, 4536835;
691404, 4536841; 691412, 4536843;
691418, 4536844; 691430, 4536841;
691438, 4536839; 691447, 4536834;
691457, 4536828; 691467, 4536820;
691478, 4536814; 691489, 4536814;
691500, 4536823; 691505, 4536838;
691505, 4536847; 691503, 4536856;
691500, 4536865; 691499, 4536877;
691501, 4536889; 691505, 4536902;
691509, 4536915; 691515, 4536942;
691518, 4536946; 691528, 4536952;
691547, 4536971; 691540, 4536973;
691538, 4536976; 691534, 4536980;
691530, 4536986; 691525, 4536990;
691518, 4536997; 691513, 4537000;
691490, 4537017; 691480, 4537031;
691475, 4537038; 691469, 4537046;
691463, 4537054; 691459, 4537062;
691455, 4537066; 691451, 4537072;
691451, 4537074; 691448, 4537078;
691446, 4537080; 691442, 4537084;
691439, 4537089; 691426, 4537079;
691417, 4537075; 691414, 4537073;
691408, 4537074; 691401, 4537081;
691398, 4537084; 691394, 4537087;
691387, 4537090; 691382, 4537089;
691377, 4537084; 691371, 4537076;
691363, 4537068; 691354, 4537065;
691345, 4537066; 691336, 4537069;
691331, 4537074; 691326, 4537079;
691322, 4537082; 691316, 4537084;
691307, 4537084; 691304, 4537100;
691301, 4537108; 691294, 4537115;
691288, 4537123; 691284, 4537126;
691274, 4537131; 691263, 4537135;
691247, 4537139; 691234, 4537143;
691221, 4537144; 691209, 4537145;
691199, 4537150; 691186, 4537161;
691176, 4537169; 691169, 4537176;
691163, 4537181; 691156, 4537187;
691151, 4537191; 691144, 4537195;
691138, 4537197; 691133, 4537197;
691123, 4537193; 691110, 4537184;
691095, 4537174; 691080, 4537168;
691067, 4537164; 691056, 4537162;
691045, 4537161; 691034, 4537165;
691020, 4537175; 691002, 4537190;
690991, 4537196; 690979, 4537205;
690971, 4537211; 690966, 4537214;
690958, 4537217; 690954, 4537216;
690946, 4537216; 690934, 4537215;
690920, 4537215; 690909, 4537214;
690899, 4537214; 690897, 4537214;
690894, 4537212; 690867, 4537205;
690857, 4537203; 690850, 4537204;
690842, 4537204; 690833, 4537205;
690825, 4537205; 690819, 4537204;
690812, 4537203; 690811, 4537203;
690800, 4537202; 690784, 4537198;
690775, 4537194; 690768, 4537190;
690761, 4537186; 690751, 4537183;
690740, 4537183; 690731, 4537187;
690723, 4537192; 690717, 4537198;
690711, 4537207; 690703, 4537215;
690696, 4537224; 690687, 4537233;
690679, 4537240; 690673, 4537246;
690669, 4537251; 690666, 4537255;
690664, 4537259; 690662, 4537261;
690657, 4537273; 690653, 4537276;
690651, 4537277; 690650, 4537279;
690647, 4537280; 690632, 4537292;
690629, 4537294; 690622, 4537301;
690613, 4537310; 690608, 4537316;
690602, 4537322; 690598, 4537325;
690595, 4537328; 690592, 4537332;
690590, 4537333; 690588, 4537334;
690584, 4537336; 690577, 4537335;
690561, 4537340; 690555, 4537339;
690547, 4537338; 690541, 4537335;
690536, 4537333; 690529, 4537332;
690521, 4537335; 690513, 4537339;
690505, 4537346; 690498, 4537351;
690491, 4537358; 690484, 4537361;
690478, 4537364; 690473, 4537367;
690467, 4537369; 690464, 4537371;
690451, 4537378; 690444, 4537381;
690435, 4537381; 690427, 4537379;
690413, 4537376; 690406, 4537378;
690398, 4537380; 690389, 4537386;
690381, 4537392; 690374, 4537398;
690371, 4537401; 690359, 4537409;
690355, 4537412; 690341, 4537411;
690329, 4537411; 690319, 4537415;
690311, 4537419; 690305, 4537420;
690299, 4537422; 690298, 4537424;
690297, 4537426; 690270, 4537435;
690270, 4537434; 690254, 4537440;
690243, 4537444; 690228, 4537449;
690221, 4537451; 690214, 4537455;

690211, 4537458; 690204, 4537464;
690201, 4537468; 690201, 4537470;
690194, 4537476; 690192, 4537479;
690190, 4537486; 690186, 4537503;
690184, 4537515; 690181, 4537531;
690178, 4537541; 690175, 4537550;
690173, 4537555; 690174, 4537560;
690175, 4537563; 690178, 4537565;
690178, 4537565; 690174, 4537569;
690173, 4537579; 690174, 4537589;
690173, 4537601; 690172, 4537610;
690171, 4537623; 690168, 4537635;
690166, 4537643; 690162, 4537651;
690154, 4537659; 690147, 4537669;
690144, 4537680; 690144, 4537686;
690145, 4537694; 690154, 4537711;
690155, 4537711; 690164, 4537754;
690163, 4537758; 690165, 4537769;
690168, 4537778; 690175, 4537794;
690181, 4537804; 690191, 4537816;
690198, 4537823; 690203, 4537828;
690208, 4537834; 690209, 4537835;
690209, 4537838; 690209, 4537842;
690207, 4537846; 690204, 4537849;
690195, 4537848; 690186, 4537846;
690172, 4537845; 690167, 4537844;
690161, 4537846; 690159, 4537847;
690158, 4537850; 690157, 4537853;
690156, 4537860; 690162, 4537874;
690166, 4537879; 690170, 4537883;
690176, 4537886; 690187, 4537889;
690197, 4537891; 690203, 4537890;
690214, 4537888; 690221, 4537882;
690228, 4537874; 690232, 4537866;
690239, 4537856; 690243, 4537849;
690246, 4537840; 690248, 4537827;
690250, 4537813; 690254, 4537800;
690259, 4537783; 690264, 4537767;
690269, 4537752; 690272, 4537738;
690273, 4537721; 690275, 4537710;
690276, 4537699; 690273, 4537690;
690271, 4537683; 690269, 4537682;
690257, 4537655; 690264, 4537644;
690266, 4537637; 690268, 4537631;
690270, 4537624; 690271, 4537616;
690269, 4537609; 690262, 4537588;
690258, 4537564; 690268, 4537560;
690269, 4537559; 690298, 4537585;
690298, 4537586; 690298, 4537588;
690305, 4537588; 690313, 4537587;
690322, 4537583; 690333, 4537581;
690343, 4537583; 690351, 4537587;
690361, 4537594; 690367, 4537597;
690377, 4537597; 690387, 4537591;
690394, 4537581; 690400, 4537571;
690405, 4537559; 690410, 4537550;
690414, 4537542; 690422, 4537535;
690432, 4537531; 690444, 4537530;
690458, 4537531; 690471, 4537535;
690481, 4537537; 690500, 4537535;
690514, 4537531; 690526, 4537530;
690535, 4537530; 690543, 4537535;
690548, 4537540; 690551, 4537546;
690554, 4537549; 690560, 4537551;
690568, 4537550; 690576, 4537543;
690584, 4537532; 690597, 4537505;
690602, 4537496; 690608, 4537486;
690614, 4537475; 690623, 4537470;
690631, 4537469; 690637, 4537470;
690642, 4537471; 690648, 4537472;
690665, 4537475; 690677, 4537478;
690682, 4537479; 690682, 4537482;
690683, 4537488; 690679, 4537498;
690673, 4537505; 690659, 4537517;
690649, 4537528; 690644, 4537537;
690641, 4537548; 690638, 4537562;
690632, 4537577; 690628, 4537586;
690624, 4537592; 690616, 4537599;
690607, 4537602; 690595, 4537604;
690583, 4537606; 690567, 4537608;
690555, 4537609; 690540, 4537611;
690529, 4537613; 690521, 4537619;
690514, 4537627; 690503, 4537640;
690493, 4537650; 690486, 4537659;
690480, 4537667; 690473, 4537677;
690470, 4537682; 690459, 4537689;
690451, 4537691; 690441, 4537692;
690434, 4537691; 690424, 4537691;
690420, 4537690; 690413, 4537689;
690406, 4537688; 690400, 4537688;
690395, 4537688; 690392, 4537690;
690390, 4537693; 690388, 4537699;
690388, 4537706; 690388, 4537713;
690390, 4537722; 690390, 4537731;
690390, 4537738; 690390, 4537742;
690390, 4537747; 690391, 4537751;
690397, 4537758; 690405, 4537762;
690413, 4537761; 690422, 4537757;
690429, 4537751; 690434, 4537746;
690443, 4537745; 690451, 4537748;
690457, 4537750; 690462, 4537749;
690470, 4537747; 690478, 4537746;
690480, 4537745; 690485, 4537744;
690487, 4537742; 690488, 4537740;
690489, 4537734; 690483, 4537724;
690482, 4537722; 690480, 4537716;
690482, 4537710; 690489, 4537705;
690501, 4537707; 690514, 4537710;
690530, 4537715; 690539, 4537717;
690554, 4537717; 690566, 4537714;
690578, 4537711; 690594, 4537706;
690607, 4537701; 690618, 4537692;
690631, 4537685; 690646, 4537678;
690666, 4537663; 690682, 4537656;
690696, 4537654; 690706, 4537656;
690716, 4537660; 690723, 4537663;
690733, 4537666; 690743, 4537665;
690755, 4537660; 690764, 4537655;
690771, 4537650; 690777, 4537646;
690782, 4537643; 690785, 4537639;
690789, 4537634; 690791, 4537631;
690791, 4537627; 690791, 4537625;
690790, 4537622; 690802, 4537603;
690809, 4537597; 690816, 4537592;
690826, 4537586; 690834, 4537581;
690843, 4537577; 690850, 4537573;
690859, 4537567; 690866, 4537562;
690876, 4537557; 690885, 4537554;
690896, 4537551; 690905, 4537551;
690913, 4537549; 690916, 4537548;
690919, 4537546; 690921, 4537542;
690921, 4537537; 690926, 4537533;
690932, 4537529; 690935, 4537525;
690937, 4537520; 690937, 4537515;
690938, 4537513; 690947, 4537498;
690954, 4537488; 690961, 4537481;
690966, 4537475; 690974, 4537469;
690981, 4537465; 690991, 4537464;
691000, 4537465; 691007, 4537467;
691012, 4537469; 691015, 4537469;
691021, 4537469; 691022, 4537469;
691067, 4537476; 691075, 4537481;
691079, 4537486; 691086, 4537496;
691089, 4537503; 691091, 4537513;
691091, 4537522; 691090, 4537532;
691088, 4537542; 691085, 4537553;
691083, 4537566; 691082, 4537573;
691081, 4537580; 691080, 4537583;
691080, 4537588; 691078, 4537591;
691076, 4537595; 691073, 4537599;
691069, 4537601; 691060, 4537602;
691049, 4537604; 691036, 4537608;
691023, 4537614; 691013, 4537621;
691002, 4537634; 690995, 4537640;
690989, 4537645; 690974, 4537654;
690963, 4537663; 690958, 4537671;
690954, 4537680; 690950, 4537691;
690948, 4537702; 690944, 4537714;
690937, 4537726; 690931, 4537736;
690928, 4537739; 690913, 4537749;
690906, 4537754; 690898, 4537760;
690891, 4537766; 690885, 4537772;
690880, 4537777; 690875, 4537781;
690872, 4537782; 690868, 4537786;
690866, 4537791; 690864, 4537796;
690864, 4537802; 690863, 4537807;
690866, 4537811; 690868, 4537815;
690871, 4537816; 690875, 4537817;
690880, 4537816; 690889, 4537813;
690895, 4537810; 690900, 4537805;
690906, 4537802; 690914, 4537799;
690922, 4537797; 690930, 4537794;
690940, 4537790; 690951, 4537787;
690962, 4537782; 690970, 4537780;
690981, 4537776; 690990, 4537772;
690997, 4537766; 691003, 4537759;
691008, 4537753; 691013, 4537745;
691020, 4537734; 691025, 4537726;
691033, 4537714; 691036, 4537709;
691038, 4537706; 691041, 4537701;
691041, 4537700; 691044, 4537699;
691046, 4537697; 691065, 4537683;
691071, 4537682; 691080, 4537680;
691089, 4537675; 691104, 4537665;
691110, 4537662; 691118, 4537655;
691122, 4537647; 691126, 4537637;
691131, 4537625; 691136, 4537612;
691140, 4537601; 691145, 4537589;
691148, 4537580; 691151, 4537575;
691156, 4537567; 691166, 4537562;
691176, 4537561; 691183, 4537559;
691190, 4537558; 691199, 4537555;
691203, 4537552; 691207, 4537544;
691211, 4537536; 691214, 4537527;
691215, 4537519; 691215, 4537511;
691214, 4537503; 691211, 4537496;
691210, 4537494; 691210, 4537493;
691204, 4537488; 691211, 4537473;
691213, 4537466; 691214, 4537456;
691215, 4537448; 691213, 4537439;
691208, 4537434; 691203, 4537430;
691198, 4537429; 691193, 4537425;
691192, 4537418; 691194, 4537409;
691203, 4537403; 691208, 4537396;

691211, 4537390; 691213, 4537384; 691215, 4537379; 691222, 4537372; 691232, 4537371; 691246, 4537374; 691259, 4537378; 691270, 4537384; 691281, 4537392; 691290, 4537401; 691297, 4537409; 691305, 4537419; 691310, 4537431; 691313, 4537441; 691315, 4537454; 691315, 4537466; 691312, 4537481; 691306, 4537497; 691302, 4537510; 691297, 4537524; 691294, 4537536; 691289, 4537545; 691288, 4537551; 691286, 4537557; 691286, 4537564; 691287, 4537570; 691288, 4537573; 691292, 4537574; 691303, 4537572; 691313, 4537570; 691322, 4537570; 691329, 4537570; 691335, 4537572; 691340, 4537576; 691346, 4537581; 691354, 4537589; 691363, 4537597; 691367, 4537602; 691371, 4537606; 691375, 4537611; 691377, 4537615; 691377, 4537619; 691375, 4537622; 691366, 4537627; 691354, 4537632; 691344, 4537639; 691339, 4537645; 691332, 4537654; 691328, 4537665; 691323, 4537675; 691319, 4537681; 691312, 4537689; 691303, 4537699; 691299, 4537705; 691294, 4537714; 691289, 4537723; 691287, 4537729; 691286, 4537734; 691285, 4537741; 691287, 4537746; 691290, 4537754; 691294, 4537758; 691297, 4537758; 691300, 4537760; 691302, 4537762; 691304, 4537764; 691309, 4537767; 691303, 4537781; 691303, 4537787; 691303, 4537792; 691303, 4537796; 691305, 4537801; 691304, 4537804; 691305, 4537807; 691305, 4537808; 691305, 4537810; 691311, 4537818; 691307, 4537843; 691305, 4537856; 691302, 4537868; 691299, 4537877; 691297, 4537880; 691292, 4537883; 691284, 4537885; 691280, 4537886; 691276, 4537891; 691272, 4537900; 691270, 4537909; 691267, 4537919; 691264, 4537928; 691260, 4537940; 691252, 4537949; 691244, 4537958; 691237, 4537965; 691230, 4537972; 691222, 4537983; 691216, 4537995; 691211, 4538009; 691208, 4538026; 691208, 4538042; 691208, 4538055; 691208, 4538066; 691206, 4538076; 691200, 4538088; 691197, 4538095; 691193, 4538101; 691190, 4538104; 691188, 4538107; 691183, 4538111; 691171, 4538122; 691167, 4538126; 691161, 4538132; 691159, 4538140; 691158, 4538152; 691159, 4538166; 691160, 4538191; 691161, 4538201; 691162, 4538208; 691162, 4538215; 691074, 4538281; 691082, 4538281; 691074, 4538281; 691072, 4538296; 691073, 4538303; 691074, 4538313; 691077, 4538323; 691078, 4538329; 691080, 4538338; 691079, 4538348; 691075, 4538359; 691072, 4538367; 691068, 4538373; 691064, 4538377; 691061, 4538380; 691059, 4538383; 691057, 4538387; 691057, 4538393; 691059, 4538399; 691062, 4538403; 691071, 4538404; 691078, 4538404; 691089, 4538400; 691094, 4538395; 691097, 4538386; 691102, 4538375; 691107, 4538368; 691115, 4538360; 691128, 4538355; 691142, 4538352; 691158, 4538351; 691176, 4538354; 691188, 4538357; 691193, 4538360; 691200, 4538363; 691205, 4538364; 691209, 4538365; 691216, 4538366;

(vii) Note: Map of Unit 1 (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2: Little Salt Creek—Arbor Lake, Lancaster County, Nebraska.

(i) Tract 2a: 695582, 4530097; 695584, 4530093; 695585, 4530092; 695590,

4530091; 695596, 4530091; 695600, 4530088; 695602, 4530085; 695602, 4530078; 695598, 4530070; 695591, 4530064; 695583, 4530058; 695572, 4530054; 695561, 4530051; 695555, 4530050; 695547, 4530048; 695541, 4530045; 695538, 4530043; 695530, 4530040; 695515, 4530031; 695496, 4530025; 695488, 4530021; 695482, 4530016; 695476, 4530013; 695471, 4530009; 695465, 4530008; 695457, 4530008; 695450, 4530009; 695444, 4530012; 695439, 4530017; 695434, 4530023; 695432, 4530031; 695428, 4530042; 695426, 4530044; 695422, 4530044; 695418, 4530043; 695413, 4530044; 695411, 4530046; 695409, 4530050; 695409, 4530056; 695411, 4530061; 695417, 4530065; 695427, 4530068; 695434, 4530074; 695438, 4530080; 695439, 4530087; 695439, 4530092; 695439, 4530098; 695441, 4530104; 695443, 4530106; 695450, 4530107; 695458, 4530105; 695467, 4530103; 695478, 4530101; 695488, 4530099; 695496, 4530097; 695506, 4530099; 695513, 4530102; 695522, 4530107; 695528, 4530111; 695534, 4530116; 695540, 4530120; 695548, 4530122; 695558, 4530122; 695565, 4530124; 695571, 4530123; 695576, 4530122; 695580, 4530116; 695581, 4530109; 695582, 4530104; 695582, 4530097;

(ii) Tract 2b: 695752, 4530111; 695749, 4530108; 695745, 4530108; 695738, 4530109; 695729, 4530109; 695722, 4530108; 695716, 4530106; 695708, 4530104; 695701, 4530104; 695694, 4530104; 695689, 4530105; 695683, 4530106; 695671, 4530106; 695669, 4530107; 695664, 4530110; 695662, 4530115; 695659, 4530124; 695658, 4530135; 695659, 4530146; 695661, 4530154; 695665, 4530165; 695670, 4530172; 695677, 4530181; 695681, 4530185; 695689, 4530190; 695695, 4530195; 695704, 4530200; 695710, 4530203; 695715, 4530205; 695721, 4530206; 695731, 4530204; 695738, 4530200; 695743, 4530198; 695748, 4530194; 695752, 4530190; 695755, 4530184; 695758, 4530177; 695761, 4530171; 695763, 4530163; 695764, 4530155; 695764, 4530146; 695762, 4530136; 695760, 4530128; 695758, 4530122; 695756, 4530117; 695752, 4530111;

(iii) Tract 2c: 694948, 4530298; 694957, 4530298; 694967, 4530298; 694973, 4530300; 694978, 4530300; 694986, 4530300; 694988, 4530300; 694992, 4530300; 694996, 4530299; 694997, 4530299; 695013, 4530296; 695021, 4530293; 695028, 4530291; 695037, 4530291; 695046, 4530293; 695054, 4530297; 695060, 4530299; 695067, 4530301; 695074, 4530302; 695081, 4530302; 695086, 4530301; 695092, 4530298; 695096, 4530295; 695109, 4530291; 695121, 4530292; 695129, 4530292; 695137, 4530292; 695146, 4530291; 695153, 4530290; 695157, 4530289; 695163, 4530288; 695169, 4530285; 695172, 4530283; 695175, 4530278; 695178, 4530274; 695182, 4530267; 695184, 4530261; 695187, 4530255; 695190, 4530250; 695193, 4530242; 695200, 4530230; 695201, 4530228; 695200, 4530224; 695199, 4530221; 695197, 4530218; 695196, 4530216; 695194, 4530215; 695186, 4530209; 695176, 4530206; 695173, 4530204; 695169, 4530200; 695164, 4530196; 695160, 4530192; 695156, 4530189; 695147, 4530186; 695137, 4530186; 695127, 4530187; 695117, 4530190; 695109, 4530193; 695103, 4530198; 695099, 4530202; 695096, 4530208; 695092, 4530213; 695086, 4530216; 695083, 4530217; 695076, 4530217; 695071, 4530216; 695064, 4530216; 695060, 4530215; 695051, 4530206; 695053, 4530191; 695052, 4530187; 695048, 4530180; 695041, 4530177; 695034, 4530174; 695025, 4530171; 695016, 4530169; 695008, 4530166; 695000, 4530164; 694992, 4530162; 694984, 4530160; 694978, 4530160; 694972, 4530161; 694967, 4530163; 694960, 4530167; 694955, 4530170; 694950, 4530172; 694949, 4530173; 694926, 4530179; 694915, 4530181; 694913, 4530180; 694909, 4530176; 694907, 4530176; 694907, 4530175; 694903, 4530174; 694899, 4530174; 694899, 4530174; 694891, 4530177; 694885, 4530178; 694884, 4530178; 694873, 4530173; 694866, 4530170; 694859, 4530169; 694851, 4530167; 694839, 4530170; 694821, 4530178; 694815, 4530180; 694807, 4530182; 694801, 4530182; 694793, 4530182; 694785, 4530181; 694774, 4530179; 694766, 4530176; 694762, 4530174; 694756, 4530171; 694752, 4530169; 694750, 4530167; 694749, 4530165; 694747, 4530164; 694737, 4530175; 694735, 4530178; 694746, 4530203; 694752, 4530211; 694759, 4530218; 694766, 4530223; 694776, 4530229; 694783, 4530232; 694791, 4530235; 694795, 4530238; 694795, 4530243; 694795, 4530253; 694793, 4530264; 694792, 4530272; 694793, 4530281; 694795, 4530285; 694803, 4530290; 694822, 4530291; 694832, 4530291; 694846, 4530288; 694859, 4530286; 694869, 4530283; 694881, 4530285; 694890, 4530289; 694896, 4530293; 694905, 4530298; 694914, 4530300; 694925, 4530303; 694936, 4530302; 694948, 4530298;

(iv) Tract 2d: 694708, 4530350; 694706, 4530341; 694705, 4530336; 694703, 4530331; 694701, 4530326; 694699, 4530322; 694698, 4530321; 694697, 4530318; 694696, 4530316; 694697, 4530314; 694697, 4530313; 694699, 4530312; 694706, 4530302; 694708, 4530300; 694710, 4530297; 694712, 4530293; 694712, 4530290; 694712, 4530284; 694710, 4530279; 694708, 4530271; 694705, 4530263; 694703, 4530258; 694702, 4530255; 694698, 4530252; 694695, 4530250; 694692, 4530249; 694689, 4530251; 694684, 4530253; 694679, 4530257; 694676, 4530258; 694666, 4530264; 694650, 4530270; 694641, 4530271; 694633, 4530270; 694629, 4530270; 694624, 4530269; 694618, 4530269; 694614, 4530271; 694609, 4530275; 694605, 4530279; 694603, 4530283; 694601, 4530288; 694602, 4530292; 694604, 4530296; 694608, 4530301; 694615, 4530305; 694622, 4530305; 694631, 4530303; 694638, 4530301; 694649, 4530299; 694656, 4530298; 694663, 4530296; 694667, 4530296; 694670, 4530298; 694673, 4530302; 694672, 4530306; 694671, 4530313; 694668, 4530317; 694664, 4530320; 694658, 4530322; 694652, 4530324; 694646, 4530327; 694644, 4530329; 694642, 4530334; 694642, 4530336; 694643, 4530340; 694644, 4530344; 694646, 4530348; 694652, 4530349; 694661, 4530349; 694666, 4530347; 694671, 4530344; 694674, 4530344; 694677, 4530343; 694679, 4530346; 694682, 4530352; 694684, 4530357; 694686, 4530361; 694687, 4530365; 694690, 4530369; 694693, 4530372; 694697, 4530372; 694700, 4530370; 694703, 4530367; 694705, 4530363; 694706, 4530358; 694708, 4530350;

(v) Tract 2e: 694483, 4530368; 694487, 4530364; 694488, 4530362; 694491, 4530343; 694494, 4530332; 694493, 4530323; 694490, 4530315; 694485, 4530306; 694482, 4530299; 694481, 4530288; 694484, 4530276; 694486, 4530272; 694494, 4530266; 694502, 4530265; 694513, 4530265; 694521, 4530265; 694530, 4530264; 694538, 4530260; 694545, 4530257; 694550, 4530253; 694555, 4530247; 694561, 4530241; 694565, 4530236; 694567, 4530233; 694569, 4530231; 694570, 4530228; 694572, 4530227; 694581, 4530223; 694587, 4530217; 694591, 4530212; 694593, 4530207; 694591, 4530203; 694590, 4530200; 694586, 4530199; 694579, 4530196; 694575, 4530194; 694598, 4530176; 694605, 4530177; 694613, 4530178; 694622, 4530177; 694632, 4530176; 694645, 4530175; 694654, 4530177; 694661, 4530179; 694667, 4530181; 694675, 4530179; 694683, 4530176; 694688, 4530171; 694693, 4530163; 694697, 4530156; 694700, 4530150; 694704, 4530140; 694704, 4530135; 694704, 4530123; 694709, 4530112;

694706, 4530105; 694700, 4530098; 694696, 4530091; 694694, 4530086; 694693, 4530078; 694695, 4530070; 694673, 4530067; 694663, 4530063; 694656, 4530060; 694648, 4530056; 694639, 4530052; 694631, 4530049; 694622, 4530045; 694613, 4530041; 694605, 4530039; 694600, 4530037; 694593, 4530038; 694589, 4530039; 694586, 4530041; 694583, 4530042; 694582, 4530043; 694573, 4530048; 694570, 4530047; 694566, 4530045; 694564, 4530042; 694562, 4530037; 694561, 4530032; 694559, 4530026; 694557, 4530019; 694553, 4530014; 694548, 4530010; 694543, 4530007; 694540, 4530006; 694536, 4530004; 694534, 4530002; 694532, 4529998; 694531, 4529994; 694531, 4529991; 694532, 4529989; 694522, 4529987; 694517, 4529985; 694514, 4529985; 694511, 4529988; 694510, 4529993; 694508, 4530003; 694508, 4530016; 694509, 4530030; 694512, 4530044; 694515, 4530054; 694519, 4530066; 694523, 4530075; 694528, 4530084; 694533, 4530092; 694539, 4530099; 694544, 4530104; 694549, 4530106; 694535, 4530130; 694532, 4530129; 694523, 4530126; 694511, 4530125; 694502, 4530127; 694494, 4530131; 694488, 4530135; 694481, 4530143; 694475, 4530149; 694471, 4530156; 694468, 4530164; 694467, 4530171; 694466, 4530178; 694472, 4530197; 694472, 4530213; 694471, 4530219; 694469, 4530223; 694464, 4530226; 694459, 4530227; 694456, 4530227; 694453, 4530229; 694449, 4530233; 694448, 4530237; 694448, 4530246; 694448, 4530256; 694446, 4530266; 694440, 4530276; 694434, 4530286; 694428, 4530292; 694423, 4530299; 694417, 4530306; 694413, 4530312; 694408, 4530323; 694408, 4530331; 694410, 4530338; 694413, 4530342; 694420, 4530346; 694428, 4530350; 694433, 4530352; 694436, 4530355; 694437, 4530358; 694435, 4530364; 694431, 4530367; 694424, 4530368; 694415, 4530367; 694406, 4530368; 694400, 4530371; 694395, 4530378; 694391, 4530384; 694389, 4530390; 694387, 4530395; 694383, 4530406; 694400, 4530410; 694408, 4530409; 694420, 4530406; 694432, 4530403; 694444, 4530400; 694452, 4530396; 694458, 4530394; 694463, 4530391; 694468, 4530387; 694472, 4530382; 694476, 4530378; 694480, 4530372; 694483, 4530368;

(vi) Tract 2f: 695266, 4530562; 695266, 4530562; 695266, 4530562; 695266, 4530562; 695267, 4530587; 695267, 4530596; 695268, 4530603; 695271, 4530612; 695273, 4530619; 695275, 4530627; 695274, 4530640; 695272, 4530651; 695270, 4530660; 695267, 4530671; 695264, 4530679; 695263, 4530693; 695264, 4530705; 695266, 4530714; 695268, 4530723; 695267, 4530732; 695266, 4530743; 695265, 4530755; 695263, 4530766; 695262, 4530774; 695262, 4530782; 695263, 4530792; 695269, 4530799; 695274, 4530807; 695277, 4530813; 695278, 4530821; 695274, 4530830; 695270, 4530836; 695263, 4530846; 695260, 4530853; 695256, 4530860; 695256, 4530867; 695258, 4530877; 695261, 4530883; 695265, 4530888; 695267, 4530891; 695268, 4530896; 695267, 4530899; 695265, 4530903; 695264, 4530905; 695259, 4530917; 695258, 4530920; 695257, 4530927; 695255, 4530933; 695254, 4530940; 695254, 4530948; 695254, 4530954; 695255, 4530960; 695258, 4530964; 695259, 4530964; 695263, 4530964; 695267, 4530964; 695271, 4530963; 695275, 4530961; 695278, 4530958; 695284, 4530953; 695288, 4530951; 695293, 4530948; 695311, 4530942; 695321, 4530947; 695323, 4530952; 695325, 4530958; 695324, 4530964; 695321, 4530968; 695318, 4530972; 695315, 4530974; 695308, 4530977; 695302, 4530980; 695295, 4530982; 695287, 4530985; 695282, 4530987; 695275, 4530990; 695271, 4530995; 695270, 4531001; 695271, 4531006; 695274, 4531012; 695276, 4531015; 695278, 4531017; 695290, 4531020; 695302, 4531024; 695308, 4531024; 695314, 4531023; 695318, 4531022; 695322, 4531019; 695324, 4531017; 695327, 4531014; 695333, 4531011; 695340, 4531009; 695349, 4531011; 695355, 4531012; 695360, 4531012; 695365, 4531010; 695368, 4531007; 695372, 4531001; 695376, 4530996; 695380, 4530991; 695384, 4530988; 695387, 4530987; 695398, 4530981; 695402, 4530981; 695412, 4530983; 695419, 4530987; 695425, 4530991; 695430, 4530994; 695436, 4530994; 695445, 4530992; 695452, 4530989; 695459, 4530985; 695463, 4530979; 695466, 4530974; 695470, 4530966; 695475, 4530959; 695484, 4530953; 695491, 4530950; 695500, 4530948; 695509, 4530945; 695516, 4530942; 695522, 4530940; 695527, 4530936; 695529, 4530933; 695536, 4530924; 695545, 4530917; 695548, 4530913; 695550, 4530908; 695551, 4530904; 695551, 4530900; 695552, 4530897; 695552, 4530895; 695552, 4530892; 695564, 4530890; 695568, 4530887; 695572, 4530885; 695576, 4530882; 695580, 4530878; 695584, 4530872; 695586, 4530869; 695596, 4530862; 695608, 4530867; 695610, 4530873; 695611, 4530880; 695613, 4530884; 695616, 4530890; 695618, 4530894; 695627, 4530904; 695634, 4530909; 695640, 4530914; 695646, 4530917; 695650, 4530921; 695655, 4530924; 695661, 4530927; 695664, 4530927; 695667, 4530925; 695672, 4530920; 695674, 4530915; 695676, 4530908; 695676, 4530900; 695676, 4530892; 695675, 4530884; 695672, 4530872; 695667, 4530861; 695665, 4530856; 695665, 4530849; 695668, 4530839; 695674, 4530825; 695679, 4530818; 695685, 4530809; 695692, 4530801; 695696, 4530792; 695697, 4530779; 695698, 4530768; 695700, 4530754; 695702, 4530742; 695704, 4530731; 695708, 4530719; 695711, 4530708; 695714, 4530696; 695716, 4530683; 695714, 4530663; 695709, 4530649; 695702, 4530635; 695698, 4530627; 695692, 4530618; 695689, 4530608; 695686, 4530594; 695684, 4530577; 695684, 4530569; 695683, 4530559; 695680, 4530554; 695675, 4530545; 695670, 4530540; 695667, 4530536; 695666, 4530533; 695665, 4530530; 695664, 4530517; 695664, 4530514; 695663, 4530509; 695663, 4530491; 695676, 4530483; 695684, 4530482; 695690, 4530481; 695698, 4530479; 695705, 4530476; 695711, 4530473; 695717, 4530471; 695723, 4530469; 695728, 4530466; 695733, 4530462; 695736, 4530458; 695735, 4530451; 695731, 4530441; 695724, 4530432; 695714, 4530423; 695706, 4530417; 695693, 4530407; 695681, 4530397; 695669, 4530384; 695662, 4530374; 695657, 4530364; 695652, 4530356; 695646, 4530347; 695642, 4530339; 695636, 4530335; 695630, 4530332; 695623, 4530326; 695617, 4530320; 695609, 4530314; 695603, 4530311; 695597, 4530309; 695590, 4530308; 695586, 4530305; 695582, 4530300; 695580, 4530292; 695579, 4530284; 695579, 4530276; 695580, 4530268; 695582, 4530263; 695587, 4530257; 695594, 4530253; 695599, 4530250; 695604, 4530245; 695607, 4530241; 695609, 4530234; 695608, 4530226; 695607, 4530217; 695605, 4530208; 695600, 4530201; 695596, 4530195; 695591, 4530191; 695581, 4530189; 695574, 4530189; 695565, 4530191; 695559, 4530192; 695552, 4530193; 695544, 4530192; 695538, 4530184; 695533, 4530176; 695530, 4530172; 695528, 4530169; 695518, 4530178; 695514, 4530180; 695510, 4530182; 695506, 4530183; 695502, 4530187; 695492, 4530195; 695486, 4530201; 695483, 4530206; 695480, 4530213; 695477, 4530219; 695476, 4530222; 695474, 4530224; 695471, 4530227; 695467, 4530230; 695465, 4530230; 695463, 4530230; 695462, 4530230; 695453, 4530228; 695443, 4530224; 695441, 4530222; 695441, 4530219; 695441, 4530211; 695440, 4530203;

695440, 4530195; 695440, 4530189; 695438, 4530180; 695436, 4530173; 695434, 4530168; 695432, 4530162; 695425, 4530149; 695412, 4530154; 695407, 4530158; 695402, 4530166; 695398, 4530173; 695396, 4530182; 695393, 4530192; 695391, 4530202; 695390, 4530211; 695389, 4530221; 695389, 4530229; 695389, 4530234; 695390, 4530240; 695389, 4530244; 695389, 4530247; 695387, 4530249; 695379, 4530255; 695377, 4530256; 695375, 4530259; 695373, 4530261; 695372, 4530264; 695372, 4530267; 695371, 4530271; 695371, 4530279; 695368, 4530292; 695367, 4530298; 695366, 4530302; 695363, 4530305; 695360, 4530307; 695354, 4530307; 695347, 4530308; 695339, 4530307; 695333, 4530307; 695326, 4530305; 695320, 4530303; 695316, 4530301; 695313, 4530298; 695310, 4530296; 695307, 4530292; 695307, 4530289; 695308, 4530283; 695310, 4530271; 695311, 4530260; 695311, 4530249; 695310, 4530240; 695307, 4530234; 695306, 4530226; 695304, 4530218; 695302, 4530212; 695301, 4530209; 695299, 4530205; 695295, 4530204; 695289, 4530206; 695284, 4530210; 695281, 4530218; 695279, 4530230; 695277, 4530240; 695275, 4530250; 695275, 4530265; 695275, 4530284; 695274, 4530298; 695273, 4530312; 695272, 4530325; 695270, 4530337; 695268, 4530351; 695268, 4530365; 695266, 4530380; 695264, 4530395; 695261, 4530409; 695260, 4530422; 695260, 4530434; 695262, 4530446; 695264, 4530459; 695265, 4530467; 695264, 4530470; 695264, 4530479; 695263, 4530489; 695264, 4530498; 695265, 4530504; 695266, 4530517; 695267, 4530535; 695267, 4530540; 695267, 4530545; 695266, 4530551; 695266, 4530562;

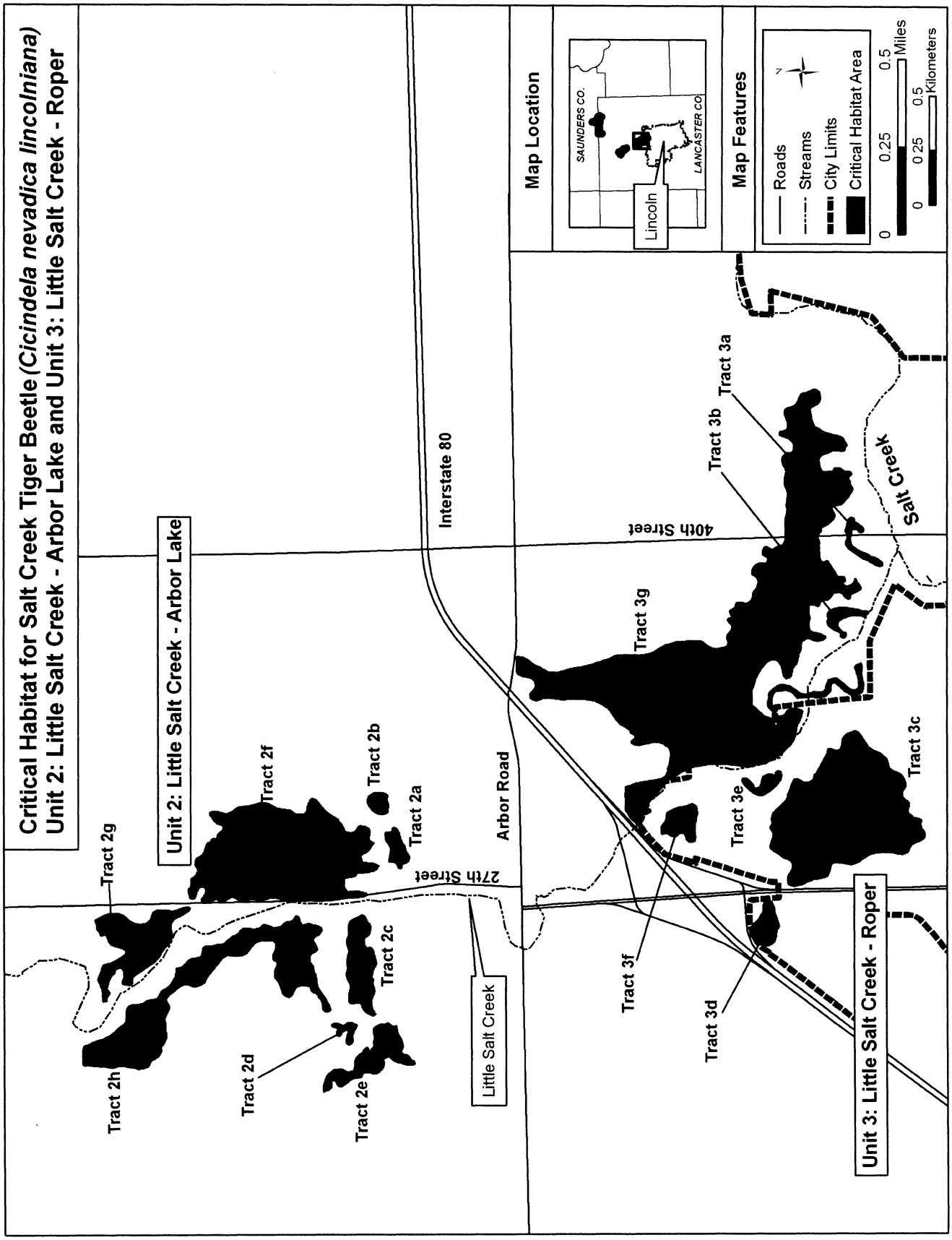
(vii) Tract 2g: 695180, 4531441; 695182, 4531436; 695184, 4531433; 695188, 4531427; 695193, 4531418; 695198, 4531408; 695203, 4531398; 695206, 4531388; 695209, 4531375; 695210, 4531361; 695209, 4531348; 695206, 4531336; 695202, 4531326; 695197, 4531314; 695191, 4531307; 695186, 4531301; 695179, 4531294; 695173, 4531284; 695169, 4531276; 695164, 4531266; 695161, 4531256; 695159, 4531246; 695160, 4531234; 695160, 4531221; 695167, 4531206; 695178, 4531196; 695185, 4531193; 695195, 4531190; 695206, 4531187; 695213, 4531183; 695219, 4531174; 695222, 4531165; 695224, 4531154; 695225, 4531141; 695225, 4531132; 695224, 4531122; 695223, 4531116; 695222, 4531114; 695220, 4531104; 695219, 4531097; 695220, 4531087; 695222, 4531077; 695227, 4531064; 695230, 4531058; 695232, 4531050; 695235, 4531044; 695237, 4531037; 695238, 4531027; 695239, 4531024; 695238, 4531017; 695236, 4531013; 695234, 4531011; 695232, 4531011; 695225, 4531011; 695221, 4531013; 695215, 4531018; 695209, 4531025; 695204, 4531034; 695199, 4531043; 695194, 4531053; 695189, 4531061; 695184, 4531072; 695178, 4531081; 695175, 4531085; 695172, 4531088; 695167, 4531091; 695161, 4531094; 695154, 4531096; 695145, 4531097; 695137, 4531098; 695127, 4531096; 695118, 4531094; 695110, 4531093; 695104, 4531093; 695097, 4531094; 695089, 4531097; 695081, 4531100; 695074, 4531104; 695066, 4531110; 695058, 4531117; 695053, 4531121; 695048, 4531125; 695045, 4531129; 695041, 4531131; 695039, 4531133; 695035, 4531136; 695030, 4531139; 695029, 4531139; 695011, 4531149; 695003, 4531154; 694998, 4531159; 694993, 4531164; 694988, 4531168; 694983, 4531172; 694971, 4531191; 694970, 4531193; 694967, 4531197; 694960, 4531207; 694954, 4531215; 694946, 4531226; 694939, 4531237; 694929, 4531252; 694922, 4531264; 694915, 4531272; 694906, 4531275; 694899, 4531275; 694890, 4531274; 694880, 4531280; 694877, 4531289; 694877, 4531295; 694878, 4531305; 694880, 4531316; 694883, 4531322; 694885, 4531325; 694889, 4531325; 694895, 4531324; 694903, 4531323; 694913, 4531319; 694925, 4531317; 694939, 4531318; 694950, 4531322; 694955, 4531328; 694955, 4531334; 694954, 4531338; 694949, 4531348; 694943, 4531354; 694938, 4531354; 694935, 4531353; 694932, 4531355; 694925, 4531363; 694921, 4531368; 694913, 4531374; 694902, 4531380; 694889, 4531384; 694877, 4531388; 694868, 4531389; 694860, 4531389; 694853, 4531384; 694848, 4531380; 694844, 4531378; 694839, 4531379; 694834, 4531382; 694829, 4531387; 694824, 4531391; 694816, 4531391; 694807, 4531392; 694806, 4531392; 694803, 4531399; 694802, 4531406; 694803, 4531411; 694805, 4531414; 694809, 4531414; 694816, 4531414; 694824, 4531414; 694838, 4531415; 694852, 4531417; 694862, 4531419; 694889, 4531432; 694896, 4531435; 694903, 4531438; 694913, 4531436; 694921, 4531431; 694932, 4531426; 694944, 4531421; 694955, 4531418; 694964, 4531416; 694970, 4531412; 694975, 4531403; 694979, 4531392; 694982, 4531380; 694987, 4531366; 694993, 4531353; 695000, 4531342; 695007, 4531330; 695014, 4531318; 695021, 4531310; 695028, 4531306; 695034, 4531309; 695037, 4531312; 695041, 4531317; 695045, 4531325; 695048, 4531333; 695050, 4531344; 695056, 4531359; 695061, 4531374; 695067, 4531381; 695076, 4531387; 695085, 4531390; 695095, 4531394; 695102, 4531397; 695106, 4531402; 695104, 4531408; 695103, 4531413; 695102, 4531419; 695105, 4531424; 695111, 4531427; 695119, 4531430; 695126, 4531435; 695130, 4531439; 695133, 4531441; 695139, 4531441; 695148, 4531441; 695155, 4531442; 695163, 4531445; 695170, 4531447; 695174, 4531447; 695177, 4531446; 695180, 4531441;

(viii) Tract 2h: 694552, 4531507; 694562, 4531506; 694570, 4531506; 694579, 4531505; 694589, 4531503; 694595, 4531502; 694599, 4531499; 694601, 4531496; 694603, 4531492; 694605, 4531484; 694608, 4531476; 694612, 4531469; 694617, 4531460; 694620, 4531453; 694625, 4531441; 694628, 4531432; 694631, 4531423; 694634, 4531414; 694638, 4531406; 694642, 4531399; 694651, 4531382; 694658, 4531373; 694661, 4531369; 694664, 4531365; 694669, 4531360; 694675, 4531352; 694681, 4531347; 694686, 4531341; 694691, 4531335; 694694, 4531330; 694698, 4531323; 694703, 4531317; 694712, 4531310; 694728, 4531308; 694737, 4531307; 694747, 4531307; 694754, 4531307; 694762, 4531306; 694768, 4531305; 694774, 4531304; 694779, 4531301; 694784, 4531296; 694787, 4531290; 694789, 4531283; 694791, 4531273; 694791, 4531264; 694792, 4531253; 694795, 4531243; 694799, 4531231; 694803, 4531222; 694810, 4531212; 694813, 4531202; 694815, 4531192; 694816, 4531182; 694818, 4531172; 694821, 4531166; 694826, 4531161; 694834, 4531156; 694842, 4531153; 694853, 4531146; 694860, 4531137; 694864, 4531128; 694869, 4531120; 694875, 4531112; 694885, 4531103; 694896, 4531096; 694908, 4531089; 694915, 4531085; 694924, 4531082; 694932, 4531081; 694939, 4531080; 694945, 4531079; 694950, 4531079; 694954, 4531078; 694957, 4531077; 694959, 4531075; 694960, 4531067; 694962, 4531059; 694964, 4531053; 694969, 4531045; 694976, 4531039; 694991, 4531024; 694995, 4531019; 694999, 4531014; 695002, 4531005; 695004, 4530997; 695005, 4530988; 695006, 4530978; 695008, 4530972; 695012, 4530966; 695017, 4530963; 695028, 4530961; 695036, 4530960; 695042, 4530959; 695047, 4530957; 695051, 4530955; 695055, 4530952; 695058, 4530945; 695059, 4530935; 695059, 4530924; 695059, 4530914; 695060, 4530908; 695063, 4530900; 695066, 4530893; 695067, 4530885;

695067, 4530876; 695068, 4530870; 695070, 4530862; 695073, 4530858; 695080, 4530849; 695095, 4530831; 695100, 4530825; 695104, 4530819; 695107, 4530812; 695110, 4530804; 695114, 4530798; 695117, 4530793; 695122, 4530791; 695124, 4530790; 695127, 4530788; 695129, 4530786; 695132, 4530782; 695132, 4530782; 695139, 4530772; 695141, 4530768; 695142, 4530757; 695141, 4530749; 695140, 4530738; 695138, 4530732; 695138, 4530715; 695142, 4530701; 695147, 4530691; 695151, 4530687; 695153, 4530685; 695156, 4530678; 695157, 4530672; 695154, 4530663; 695151, 4530655; 695148, 4530644; 695145, 4530635; 695143, 4530626; 695144, 4530616; 695146, 4530605; 695152, 4530595; 695156, 4530589; 695163, 4530583; 695167, 4530577; 695169, 4530571; 695171, 4530563; 695172, 4530555; 695176, 4530547; 695181, 4530541; 695183, 4530540; 695190, 4530537; 695195, 4530533; 695197, 4530527; 695193, 4530518; 695187, 4530513; 695179, 4530512; 695169, 4530510; 695161, 4530505; 695156, 4530501; 695155, 4530496; 695158, 4530489; 695160, 4530482; 695162, 4530472; 695159, 4530462; 695155, 4530452; 695153, 4530442; 695151, 4530434; 695150, 4530426; 695146, 4530419; 695143, 4530415; 695136, 4530411; 695130, 4530410; 695124, 4530411; 695116, 4530415; 695108, 4530422; 695105, 4530424; 695102, 4530431; 695100, 4530435; 695098, 4530440; 695096, 4530443; 695092, 4530447; 695087, 4530450; 695084, 4530450; 695081, 4530449; 695061, 4530437; 695057, 4530435; 695051, 4530432; 695045, 4530431; 695038, 4530431; 695032, 4530436; 695027, 4530443; 695024, 4530451; 695021, 4530457; 695017, 4530461; 695009, 4530465; 695002, 4530466; 694993, 4530467; 694984, 4530465; 694976, 4530457; 694968, 4530451; 694961, 4530449; 694951, 4530448; 694945, 4530447; 694936, 4530445; 694926, 4530440; 694916, 4530437; 694904, 4530435; 694894, 4530433; 694885, 4530432; 694876, 4530430; 694868, 4530428; 694863, 4530426; 694859, 4530423; 694847, 4530415; 694835, 4530406; 694829, 4530401; 694821, 4530396; 694813, 4530391; 694804, 4530387; 694798, 4530383; 694790, 4530379; 694785, 4530376; 694780, 4530374; 694772, 4530372; 694766, 4530371; 694763, 4530371; 694758, 4530377; 694756, 4530385; 694755, 4530392; 694756, 4530398; 694759, 4530403; 694763, 4530408; 694769, 4530411; 694775, 4530412; 694782, 4530412; 694791, 4530413; 694798, 4530414; 694803, 4530417; 694814, 4530423; 694821, 4530428; 694827, 4530432; 694830, 4530434; 694835, 4530437; 694838, 4530439; 694838, 4530440; 694844, 4530453; 694846, 4530456; 694850, 4530461; 694856, 4530464; 694862, 4530466; 694868, 4530468; 694871, 4530470; 694872, 4530474; 694874, 4530478; 694875, 4530489; 694874, 4530510; 694872, 4530518; 694869, 4530524; 694862, 4530532; 694855, 4530535; 694847, 4530539; 694839, 4530543; 694836, 4530545; 694831, 4530547; 694827, 4530550; 694825, 4530555; 694823, 4530562; 694823, 4530569; 694824, 4530574; 694827, 4530580; 694828, 4530583; 694834, 4530590; 694837, 4530592; 694840, 4530594; 694844, 4530596; 694849, 4530597; 694851, 4530597; 694853, 4530598; 694869, 4530603; 694873, 4530605; 694879, 4530607; 694884, 4530609; 694888, 4530610; 694896, 4530616; 694907, 4530626; 694909, 4530628; 694912, 4530630; 694920, 4530632; 694929, 4530632; 694937, 4530631; 694943, 4530629; 694950, 4530627; 694955, 4530625; 694960, 4530623; 694963, 4530622; 694964, 4530622; 694966, 4530620; 694977, 4530618; 694983, 4530621; 694987, 4530626; 694989, 4530631; 694993, 4530635; 694997, 4530638; 695003, 4530639; 695012, 4530639; 695020, 4530636; 695030, 4530632; 695038, 4530628; 695045, 4530626; 695050, 4530625; 695054, 4530625; 695068, 4530623; 695078, 4530632; 695079, 4530637; 695080, 4530642; 695080, 4530647; 695079, 4530651; 695079, 4530658; 695078, 4530672; 695079, 4530679; 695079, 4530689; 695076, 4530699; 695072, 4530708; 695068, 4530715; 695064, 4530720; 695057, 4530726; 695050, 4530732; 695044, 4530737; 695036, 4530743; 695028, 4530749; 695022, 4530755; 695018, 4530761; 695013, 4530774; 695011, 4530784; 695010, 4530794; 695010, 4530807; 695011, 4530818; 695012, 4530825; 695013, 4530832; 695013, 4530839; 695013, 4530845; 695007, 4530856; 694999, 4530865; 694989, 4530873; 694981, 4530879; 694970, 4530887; 694961, 4530895; 694951, 4530903; 694941, 4530912; 694929, 4530922; 694915, 4530933; 694904, 4530939; 694896, 4530943; 694888, 4530948; 694884, 4530953; 694879, 4530963; 694873, 4530975; 694870, 4530982; 694870, 4530990; 694870, 4530998; 694871, 4531004; 694874, 4531012; 694877, 4531022; 694880, 4531032; 694879, 4531041; 694877, 4531047; 694871, 4531059; 694864, 4531067; 694855, 4531079; 694846, 4531090; 694836, 4531101; 694830, 4531108; 694829, 4531110; 694824, 4531114; 694819, 4531118; 694815, 4531119; 694811, 4531119; 694804, 4531118; 694797, 4531115; 694791, 4531110; 694786, 4531108; 694779, 4531106; 694776, 4531106; 694769, 4531108; 694763, 4531111; 694756, 4531114; 694752, 4531115; 694750, 4531116; 694732, 4531126; 694725, 4531127; 694716, 4531126; 694705, 4531124; 694697, 4531123; 694686, 4531122; 694678, 4531122; 694671, 4531122; 694664, 4531122; 694654, 4531118; 694638, 4531120; 694631, 4531122; 694620, 4531126; 694610, 4531131; 694603, 4531135; 694599, 4531138; 694596, 4531141; 694592, 4531143; 694588, 4531144; 694587, 4531144; 694578, 4531142; 694568, 4531144; 694562, 4531148; 694555, 4531152; 694546, 4531160; 694540, 4531167; 694535, 4531177; 694530, 4531186; 694526, 4531191; 694520, 4531194; 694518, 4531195; 694510, 4531198; 694504, 4531201; 694500, 4531206; 694497, 4531213; 694493, 4531223; 694490, 4531233; 694489, 4531244; 694489, 4531254; 694492, 4531263; 694495, 4531276; 694499, 4531293; 694501, 4531304; 694503, 4531316; 694503, 4531330; 694501, 4531342; 694498, 4531352; 694496, 4531363; 694495, 4531375; 694498, 4531389; 694501, 4531405; 694502, 4531418; 694502, 4531430; 694503, 4531442; 694503, 4531453; 694504, 4531459; 694504, 4531464; 694505, 4531469; 694506, 4531472; 694506, 4531475; 694507, 4531478; 694507, 4531481; 694506, 4531490; 694505, 4531494; 694505, 4531497; 694506, 4531500; 694507, 4531502; 694509, 4531504; 694512, 4531505; 694518, 4531506; 694523, 4531506; 694529, 4531506; 694534, 4531506; 694540, 4531506; 694545, 4531506; 694552, 4531507;

(ix) Note: Map of Units 2 and 3 (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) Unit 3: Little Salt Creek—Roper, Lancaster County, Nebraska

(i) Tract 3a: 696998, 4528015; 697005, 4528012; 697012, 4528009; 697018,

4528008; 697022, 4528005; 697025, 4527999; 697027, 4527992; 697026, 4527986; 697025, 4527982; 697023, 4527980; 697019, 4527978; 697017, 4527977; 697007, 4527976; 697000, 4527963; 696996, 4527958; 696992, 4527952; 696987, 4527944; 696977, 4527936; 696972, 4527935; 696964, 4527936; 696960, 4527937; 696956, 4527940; 696953, 4527947; 696954, 4527956; 696959, 4527963; 696965, 4527967; 696968, 4527970; 696970, 4527974; 696970, 4527978; 696970, 4527986; 696969, 4527987; 696966, 4527988; 696963, 4527989; 696959, 4527991; 696957, 4527991; 696945, 4527991; 696943, 4527992; 696940, 4527993; 696937, 4527994; 696934, 4527996; 696930, 4527996; 696924, 4527996; 696917, 4527996; 696911, 4527996; 696904, 4527994; 696899, 4527990; 696894, 4527985; 696887, 4527977; 696881, 4527965; 696876, 4527957; 696870, 4527944; 696864, 4527931; 696862, 4527922; 696858, 4527916; 696850, 4527906; 696850, 4527901; 696846, 4527891; 696840, 4527879; 696835, 4527869; 696825, 4527856; 696820, 4527851; 696817, 4527849; 696811, 4527848; 696810, 4527848; 696802, 4527849; 696799, 4527855; 696798, 4527861; 696798, 4527870; 696803, 4527883; 696809, 4527891; 696812, 4527895; 696819, 4527909; 696826, 4527916; 696827, 4527921; 696829, 4527929; 696831, 4527936; 696837, 4527946; 696843, 4527955; 696852, 4527968; 696860, 4527981; 696867, 4527990; 696872, 4527998; 696877, 4528005; 696884, 4528011; 696894, 4528018; 696901, 4528021; 696909, 4528022; 696917, 4528021; 696923, 4528018; 696928, 4528016; 696937, 4528014; 696944, 4528014; 696948, 4528016; 696951, 4528018; 696955, 4528021; 696960, 4528023; 696972, 4528022; 696980, 4528019; 696984, 4528018; 696986, 4528017; 696992, 4528017; 696998, 4528015;

(ii) Tract 3b: 696551, 4528106; 696560, 4528102; 696573, 4528106; 696577, 4528105; 696582, 4528104; 696588, 4528102; 696595, 4528096; 696601, 4528087; 696607, 4528075; 696609, 4528068; 696612, 4528057; 696613, 4528045; 696614, 4528033; 696613, 4528023; 696612, 4528013; 696612, 4528004; 696610, 4527993; 696608, 4527983; 696606, 4527973; 696605, 4527966; 696603, 4527957; 696600, 4527947; 696599, 4527941; 696599, 4527935; 696598, 4527929; 696597, 4527926; 696597, 4527921; 696596, 4527918; 696596, 4527918; 696596, 4527916; 696587, 4527918; 696583, 4527920; 696580, 4527923; 696577, 4527924; 696573, 4527926; 696562, 4527923; 696571, 4527954; 696571, 4527963; 696572, 4527977; 696571, 4527989; 696569, 4527999; 696567, 4528008; 696563, 4528018; 696560, 4528027; 696558, 4528031; 696558, 4528034; 696554, 4528040; 696547, 4528047; 696541, 4528051; 696537, 4528052; 696533, 4528053; 696529, 4528054; 696526, 4528054; 696511, 4528042; 696509, 4528038; 696507, 4528037; 696505, 4528035; 696500, 4528032; 696498, 4528019; 696496, 4528017; 696493, 4528015; 696488, 4528015; 696483, 4528015; 696478, 4528016; 696474, 4528018; 696472, 4528022; 696471, 4528025; 696470, 4528029; 696470, 4528033; 696471, 4528037; 696474, 4528041; 696475, 4528044; 696480, 4528046; 696483, 4528046; 696487, 4528045; 696489, 4528045; 696491, 4528044; 696506, 4528071; 696510, 4528076; 696515, 4528086; 696521, 4528092; 696527, 4528099; 696533, 4528103; 696540, 4528106; 696544, 4528107; 696551, 4528106;

(iii) Tract 3c: 695565, 4528354; 695574, 4528353; 695580, 4528356; 695586, 4528359; 695593, 4528366; 695599, 4528367; 695606, 4528366; 695613, 4528361; 695619, 4528360; 695624, 4528359; 695632, 4528361; 695636, 4528361; 695641, 4528362; 695644, 4528361; 695663, 4528357; 695667, 4528353; 695675, 4528347; 695683, 4528338; 695693, 4528329; 695700, 4528322; 695707, 4528313; 695714, 4528306; 695722, 4528299; 695730, 4528293; 695741, 4528289; 695752, 4528286; 695763, 4528282; 695774, 4528277; 695782, 4528275; 695793, 4528271; 695802, 4528268; 695811, 4528263; 695814, 4528261; 695818, 4528260; 695822, 4528258; 695824, 4528256; 695826, 4528253; 695828, 4528245; 695826, 4528238; 695823, 4528232; 695822, 4528228; 695816, 4528219; 695813, 4528210; 695812, 4528203; 695811, 4528197; 695812, 4528189; 695814, 4528184; 695816, 4528179; 695821, 4528175; 695827, 4528170; 695832, 4528167; 695837, 4528167; 695842, 4528167; 695846, 4528165; 695846, 4528165; 695848, 4528159; 695942, 4528107; 695946, 4528107; 695954, 4528106; 695962, 4528102; 695966, 4528098; 695966, 4528094; 695966, 4528088; 695965, 4528083; 695963, 4528079; 695960, 4528069; 695958, 4528060; 695960, 4528050; 695963, 4528045; 695973, 4528042; 695981, 4528040; 695995, 4528039; 696008, 4528037; 696014, 4528033; 696021, 4528028; 696028, 4528022; 696037, 4528007; 696043, 4527992; 696046, 4527985; 696047, 4527977; 696047, 4527969; 696043, 4527964; 696034, 4527955; 696024, 4527948; 696014, 4527941; 696003, 4527934; 695996, 4527928; 695987, 4527924; 695979, 4527917; 695972, 4527911; 695966, 4527904; 695960, 4527891; 695954, 4527881; 695947, 4527866; 695939, 4527854; 695928, 4527841; 695919, 4527832; 695909, 4527827; 695899, 4527824; 695887, 4527822; 695876, 4527818; 695868, 4527809; 695864, 4527799; 695859, 4527786; 695854, 4527776; 695845, 4527766; 695836, 4527757; 695826, 4527751; 695811, 4527746; 695795, 4527744; 695783, 4527747; 695774, 4527753; 695768, 4527757; 695761, 4527761; 695751, 4527760; 695740, 4527755; 695731, 4527745; 695725, 4527736; 695718, 4527730; 695708, 4527729; 695698, 4527729; 695685, 4527732; 695676, 4527733; 695672, 4527733; 695669, 4527730; 695667, 4527728; 695654, 4527714; 695652, 4527711; 695649, 4527707; 695648, 4527699; 695646, 4527689; 695642, 4527680; 695638, 4527675; 695631, 4527673; 695625, 4527673; 695620, 4527675; 695617, 4527677; 695600, 4527673; 695590, 4527663; 695584, 4527659; 695575, 4527656; 695567, 4527654; 695559, 4527656; 695553, 4527658; 695547, 4527664; 695541, 4527673; 695536, 4527682; 695532, 4527693; 695529, 4527702; 695527, 4527706; 695522, 4527712; 695518, 4527718; 695514, 4527722; 695506, 4527725; 695496, 4527728; 695487, 4527733; 695483, 4527738; 695478, 4527750; 695476, 4527759; 695476, 4527768; 695477, 4527785; 695481, 4527799; 695485, 4527813; 695485, 4527827; 695485, 4527841; 695484, 4527866; 695482, 4527877; 695480, 4527888; 695478, 4527897; 695476, 4527906; 695472, 4527914; 695469, 4527921; 695462, 4527928; 695457, 4527936; 695450, 4527947; 695443, 4527956; 695438, 4527965; 695434, 4527974; 695430, 4527984; 695429, 4527991; 695429, 4528000; 695431, 4528012; 695432, 4528022; 695435, 4528042; 695436, 4528050; 695437, 4528058; 695437, 4528065; 695436, 4528070; 695434, 4528076; 695432, 4528080; 695428, 4528083; 695422, 4528086; 695414, 4528088; 695404, 4528090; 695395, 4528093; 695390, 4528094; 695383, 4528097; 695378, 4528100; 695373, 4528107; 695368, 4528118; 695365, 4528132; 695364, 4528144; 695363, 4528151; 695362, 4528155; 695360, 4528166; 695357, 4528172; 695354, 4528179; 695340, 4528211; 695337, 4528220; 695334, 4528228; 695332, 4528237; 695330, 4528244; 695329, 4528253; 695331, 4528261; 695332, 4528269; 695334, 4528275; 695336, 4528280; 695340, 4528284; 695343, 4528285;

695347, 4528287; 695353, 4528287; 695360, 4528288; 695371, 4528287; 695382, 4528284; 695393, 4528278; 695403, 4528271; 695412, 4528266; 695424, 4528264; 695434, 4528266; 695443, 4528270; 695450, 4528279; 695453, 4528289; 695457, 4528300; 695461, 4528308; 695466, 4528314; 695472, 4528320; 695476, 4528326; 695482, 4528336; 695489, 4528346; 695495, 4528354; 695502, 4528364; 695507, 4528368; 695515, 4528368; 695525, 4528365; 695533, 4528363; 695542, 4528361; 695555, 4528356; 695565, 4528354;

(iv) Tract 3d: 695160, 4528323; 695149, 4528321; 695141, 4528322; 695137, 4528325; 695132, 4528330; 695129, 4528332; 695119, 4528334; 695103, 4528336; 695093, 4528337; 695084, 4528340; 695076, 4528344; 695070, 4528348; 695064, 4528355; 695060, 4528363; 695058, 4528370; 695056, 4528380; 695055, 4528388; 695057, 4528396; 695062, 4528410; 695066, 4528420; 695072, 4528429; 695077, 4528435; 695083, 4528441; 695091, 4528446; 695098, 4528450; 695107, 4528452; 695115, 4528454; 695120, 4528455; 695127, 4528456; 695131, 4528455; 695139, 4528455; 695146, 4528453; 695150, 4528451; 695155, 4528448; 695167, 4528438; 695175, 4528426; 695180, 4528420; 695184, 4528417; 695187, 4528416; 695194, 4528412; 695204, 4528405; 695209, 4528403; 695218, 4528401; 695227, 4528401; 695236, 4528401; 695243, 4528400; 695252, 4528397; 695259, 4528393; 695264, 4528388; 695268, 4528381; 695269, 4528370; 695265, 4528362; 695260, 4528356; 695247, 4528349; 695237, 4528345; 695223, 4528343; 695209, 4528340; 695200, 4528337; 695190, 4528334; 695180, 4528330; 695169, 4528326; 695160, 4528323;

(v) Tract 3e: 695846, 4528350; 695841, 4528344; 695844, 4528344; 695849, 4528343; 695854, 4528341; 695858, 4528338; 695860, 4528335; 695863, 4528331; 695863, 4528327; 695863, 4528321; 695860, 4528316; 695858, 4528314; 695853, 4528312; 695845, 4528311; 695835, 4528310; 695827, 4528311; 695818, 4528315; 695811, 4528320; 695803, 4528325; 695789, 4528338; 695776, 4528351; 695770, 4528359; 695763, 4528367; 695747, 4528396; 695745, 4528408; 695747, 4528419; 695751, 4528430; 695757, 4528440; 695762, 4528448; 695773, 4528461; 695787, 4528477; 695795, 4528482; 695806, 4528491; 695810, 4528493; 695814, 4528495; 695815, 4528497; 695818, 4528497; 695822, 4528495; 695827, 4528491; 695829, 4528487; 695831, 4528482; 695829, 4528476; 695827, 4528468; 695820, 4528459; 695812, 4528450; 695806, 4528445; 695800, 4528441; 695792, 4528437; 695781, 4528431; 695790, 4528415; 695795, 4528411; 695803, 4528408; 695814, 4528406; 695823, 4528403; 695831, 4528401; 695837, 4528396; 695842, 4528391; 695846, 4528383; 695848, 4528372; 695848, 4528364; 695848, 4528356; 695846, 4528350;

(vi) Tract 3f: 695576, 4528864; 695583, 4528864; 695587, 4528864; 695595, 4528864; 695602, 4528863; 695606, 4528862; 695608, 4528861; 695613, 4528857; 695628, 4528846; 695637, 4528842; 695645, 4528841; 695652, 4528840; 695660, 4528839; 695666, 4528838; 695673, 4528832; 695677, 4528826; 695681, 4528818; 695686, 4528807; 695690, 4528798; 695693, 4528790; 695696, 4528781; 695698, 4528771; 695698, 4528763; 695700, 4528752; 695703, 4528743; 695706, 4528737; 695710, 4528728; 695711, 4528721; 695710, 4528712; 695706, 4528705; 695697, 4528698; 695688, 4528695; 695675, 4528694; 695662, 4528694; 695648, 4528697; 695633, 4528700; 695616, 4528704; 695601, 4528706; 695588, 4528707; 695576, 4528704; 695562, 4528703; 695551, 4528704; 695541, 4528705; 695535, 4528708; 695531, 4528714; 695530, 4528725; 695533, 4528735; 695537, 4528741; 695545, 4528748; 695553, 4528751; 695563, 4528754; 695567, 4528757; 695571, 4528763; 695572, 4528772; 695571, 4528778; 695565, 4528783; 695561, 4528786; 695557, 4528791; 695557, 4528800; 695560, 4528813; 695564, 4528824; 695567, 4528828; 695569, 4528831; 695572, 4528837; 695572, 4528842; 695570, 4528848; 695568, 4528854; 695568, 4528859; 695572, 4528863; 695576, 4528864;

(vii) Tract 3g: 696382, 4529523; 696387, 4529519; 696387, 4529517; 696387, 4529512; 696385, 4529506; 696384, 4529499; 696383, 4529491; 696379, 4529481; 696372, 4529468; 696364, 4529460; 696359, 4529455; 696352, 4529446; 696347, 4529433; 696344, 4529427; 696339, 4529417; 696336, 4529410; 696333, 4529405; 696328, 4529398; 696326, 4529392; 696324, 4529388; 696323, 4529385; 696322, 4529384; 696316, 4529376; 696316, 4529374; 696315, 4529371; 696316, 4529356; 696313, 4529341; 696314, 4529331; 696317, 4529323; 696320, 4529310; 696325, 4529295; 696329, 4529281; 696332, 4529264; 696335, 4529246; 696338, 4529232; 696342, 4529218; 696345, 4529201; 696349, 4529187; 696353, 4529172; 696357, 4529157; 696361, 4529143; 696366, 4529132; 696370, 4529123; 696372, 4529113; 696376, 4529101; 696380, 4529089; 696385, 4529082; 696389, 4529074; 696392, 4529064; 696394, 4529053; 696394, 4529034; 696396, 4529008; 696395, 4528995; 696393, 4528975; 696394, 4528956; 696395, 4528938; 696397, 4528925; 696401, 4528909; 696406, 4528898; 696416, 4528883; 696424, 4528870; 696430, 4528860; 696436, 4528851; 696440, 4528843; 696443, 4528830; 696446, 4528817; 696450, 4528806; 696454, 4528795; 696457, 4528780; 696457, 4528766; 696458, 4528751; 696460, 4528731; 696461, 4528714; 696461, 4528701; 696460, 4528687; 696458, 4528674; 696454, 4528669; 696447, 4528661; 696440, 4528652; 696435, 4528644; 696428, 4528632; 696424, 4528620; 696422, 4528607; 696425, 4528596; 696427, 4528584; 696431, 4528575; 696434, 4528565; 696437, 4528560; 696442, 4528557; 696450, 4528555; 696456, 4528558; 696464, 4528561; 696471, 4528564; 696477, 4528564; 696487, 4528559; 696499, 4528551; 696507, 4528544; 696513, 4528542; 696523, 4528540; 696530, 4528543; 696535, 4528547; 696539, 4528552; 696543, 4528555; 696547, 4528559; 696551, 4528561; 696556, 4528560; 696560, 4528556; 696564, 4528551; 696566, 4528544; 696567, 4528542; 696569, 4528539; 696577, 4528546; 696582, 4528548; 696587, 4528549; 696589, 4528550; 696594, 4528550; 696598, 4528548; 696600, 4528545; 696603, 4528540; 696605, 4528536; 696606, 4528533; 696610, 4528529; 696615, 4528526; 696621, 4528525; 696627, 4528523; 696632, 4528519; 696636, 4528513; 696636, 4528510; 696636, 4528503; 696636, 4528494; 696634, 4528488; 696631, 4528469; 696648, 4528449; 696653, 4528447; 696660, 4528446; 696669, 4528446; 696677, 4528444; 696687, 4528438; 696695, 4528432; 696706, 4528426; 696711, 4528423; 696717, 4528422; 696723, 4528420; 696726, 4528419; 696728, 4528418; 696737, 4528422; 696742, 4528424; 696745, 4528426; 696750, 4528431; 696754, 4528437; 696758, 4528443; 696761, 4528447; 696765, 4528449; 696768, 4528450; 696774, 4528449; 696782, 4528447; 696787, 4528446; 696794, 4528443; 696801, 4528438; 696806, 4528433; 696810, 4528427; 696814, 4528420; 696816, 4528415; 696816, 4528381; 696829, 4528377; 696832, 4528376; 696834, 4528376; 696837, 4528375; 696837, 4528374; 696841, 4528383; 696843, 4528385; 696845, 4528389; 696853, 4528399; 696854, 4528401; 696857, 4528403; 696862, 4528403; 696868, 4528402; 696879, 4528398; 696885, 4528395; 696889, 4528392; 696892, 4528388;

696893, 4528385; 696893, 4528382;
696892, 4528378; 696890, 4528375;
696887, 4528370; 696884, 4528365;
696878, 4528354; 696888, 4528342;
696892, 4528334; 696896, 4528325;
696899, 4528314; 696903, 4528307;
696909, 4528303; 696917, 4528299;
696929, 4528297; 696942, 4528297;
696954, 4528297; 696966, 4528297;
696979, 4528298; 696989, 4528299;
696999, 4528298; 697009, 4528298;
697017, 4528297; 697027, 4528295;
697034, 4528294; 697041, 4528293;
697046, 4528293; 697048, 4528292;
697060, 4528288; 697063, 4528289;
697067, 4528291; 697073, 4528293;
697078, 4528293; 697081, 4528293;
697083, 4528294; 697089, 4528292;
697095, 4528291; 697100, 4528291;
697109, 4528290; 697121, 4528287;
697130, 4528287; 697139, 4528288;
697150, 4528290; 697159, 4528294;
697170, 4528298; 697181, 4528301;
697192, 4528301; 697203, 4528301;
697213, 4528299; 697221, 4528297;
697233, 4528296; 697242, 4528296;
697252, 4528300; 697261, 4528305;
697268, 4528309; 697279, 4528312;
697288, 4528313; 697298, 4528311;
697304, 4528309; 697309, 4528306;
697314, 4528302; 697318, 4528298;
697320, 4528293; 697323, 4528288;
697324, 4528281; 697325, 4528268;
697331, 4528262; 697339, 4528259;
697347, 4528259; 697354, 4528258;
697361, 4528259; 697367, 4528263;
697376, 4528270; 697383, 4528277;
697389, 4528288; 697395, 4528305;
697399, 4528316; 697403, 4528324;
697411, 4528325; 697418, 4528323;
697423, 4528318; 697425, 4528311;
697428, 4528299; 697432, 4528289;
697438, 4528286; 697447, 4528285;
697458, 4528287; 697470, 4528289;
697480, 4528294; 697495, 4528299;
697509, 4528301; 697519, 4528299;
697525, 4528296; 697529, 4528290;
697532, 4528281; 697536, 4528268;
697542, 4528256; 697547, 4528249;
697562, 4528239; 697579, 4528232;
697584, 4528230; 697590, 4528227;
697595, 4528223; 697598, 4528217;
697600, 4528203; 697605, 4528192;
697608, 4528183; 697614, 4528174;
697617, 4528166; 697618, 4528159;
697613, 4528147; 697605, 4528139;
697592, 4528134; 697582, 4528133;
697566, 4528133; 697557, 4528136;
697550, 4528140; 697543, 4528147;
697539, 4528156; 697536, 4528161;
697533, 4528167; 697530, 4528172;
697525, 4528177; 697520, 4528180;
697467, 4528169; 697446, 4528160;
697445, 4528159; 697441, 4528151;
697436, 4528141; 697425, 4528126;
697420, 4528114; 697417, 4528103;
697413, 4528090; 697408, 4528075;
697406, 4528064; 697402, 4528048;
697395, 4528034; 697388, 4528026;
697379, 4528022; 697373, 4528020;
697368, 4528015; 697361, 4528010;
697352, 4528011; 697346, 4528020;
697335, 4528021; 697330, 4528023;
697327, 4528028; 697326, 4528037;
697329, 4528059; 697330, 4528066;
697329, 4528076; 697324, 4528087;
697318, 4528101; 697314, 4528111;
697311, 4528120; 697307, 4528127;
697300, 4528134; 697294, 4528138;
697286, 4528139; 697279, 4528138;
697270, 4528137; 697264, 4528136;
697257, 4528134; 697251, 4528133;
697246, 4528131; 697241, 4528128;
697237, 4528118; 697238, 4528108;
697240, 4528101; 697241, 4528092;
697241, 4528087; 697238, 4528083;
697235, 4528079; 697250, 4528075;
697252, 4528073; 697255, 4528063;
697253, 4528045; 697251, 4528039;
697245, 4528032; 697242, 4528025;
697241, 4528015; 697241, 4528004;
697234, 4527993; 697228, 4527991;
697224, 4527990; 697220, 4527992;
697215, 4527995; 697211, 4527999;
697208, 4528004; 697198, 4528001;
697192, 4527998; 697187, 4527997;
697185, 4527997; 697181, 4527997;
697174, 4527993; 697169, 4527990;
697160, 4527984; 697150, 4527984;
697139, 4527991; 697126, 4527999;
697117, 4528005; 697109, 4528013;
697093, 4528026; 697088, 4528031;
697083, 4528036; 697080, 4528044;
697078, 4528052; 697077, 4528063;
697077, 4528069; 697071, 4528076;
697065, 4528079; 697060, 4528077;
697055, 4528074; 697050, 4528072;
697042, 4528068; 697032, 4528066;
697026, 4528067; 697012, 4528075;
696994, 4528097; 696985, 4528109;
696980, 4528117; 696973, 4528131;
696970, 4528130; 696968, 4528129;
696961, 4528130; 696957, 4528131;
696955, 4528132; 696948, 4528140;
696934, 4528143; 696927, 4528141;
696918, 4528138; 696910, 4528137;
696899, 4528138; 696889, 4528138;
696878, 4528139; 696868, 4528138;
696859, 4528138; 696852, 4528137;
696847, 4528136; 696838, 4528134;
696832, 4528132; 696827, 4528129;
696823, 4528129; 696820, 4528128;
696824, 4528116; 696826, 4528112;
696828, 4528106; 696828, 4528099;
696822, 4528096; 696812, 4528089;
696800, 4528083; 696786, 4528074;
696779, 4528068; 696771, 4528063;
696763, 4528059; 696758, 4528055;
696756, 4528052; 696756, 4528046;
696756, 4528038; 696756, 4528033;
696755, 4528027; 696751, 4528022;
696743, 4528020; 696734, 4528019;
696728, 4528021; 696719, 4528029;
696713, 4528019; 696713, 4528011;
696714, 4528004; 696715, 4527998;
696717, 4527993; 696722, 4527987;
696727, 4527984; 696730, 4527983;
696733, 4527982; 696736, 4527981;
696740, 4527980; 696744, 4527978;
696745, 4527977; 696746, 4527974;
696735, 4527969; 696730, 4527966;
696727, 4527964; 696723, 4527960;
696719, 4527957; 696714, 4527953;
696708, 4527949; 696701, 4527947;
696696, 4527949; 696691, 4527952;
696685, 4527960; 696680, 4527968;
696678, 4527974; 696675, 4527980;
696673, 4527984; 696672, 4527988;
696669, 4527992; 696665, 4527995;
696662, 4527996; 696656, 4527996;
696653, 4527996; 696650, 4527999;
696649, 4528003; 696648, 4528009;
696651, 4528014; 696655, 4528021;
696662, 4528026; 696675, 4528038;
696677, 4528045; 696677, 4528049;
696676, 4528058; 696676, 4528065;
696674, 4528071; 696671, 4528074;
696665, 4528079; 696659, 4528083;
696654, 4528087; 696647, 4528094;
696644, 4528102; 696643, 4528109;
696643, 4528116; 696643, 4528123;
696640, 4528127; 696636, 4528130;
696630, 4528134; 696624, 4528136;
696618, 4528139; 696615, 4528143;
696615, 4528148; 696616, 4528155;
696620, 4528160; 696623, 4528166;
696622, 4528174; 696622, 4528179;
696619, 4528183; 696614, 4528186;
696607, 4528186; 696599, 4528186;
696578, 4528183; 696569, 4528182;
696559, 4528181; 696548, 4528183;
696540, 4528185; 696533, 4528186;
696524, 4528185; 696514, 4528183;
696507, 4528179; 696502, 4528173;
696498, 4528161; 696497, 4528152;
696495, 4528143; 696493, 4528134;
696490, 4528125; 696486, 4528118;
696480, 4528110; 696474, 4528108;
696467, 4528111; 696462, 4528118;
696459, 4528125; 696457, 4528134;
696456, 4528143; 696456, 4528152;
696457, 4528163; 696461, 4528173;
696466, 4528183; 696468, 4528188;
696467, 4528198; 696455, 4528213;
696451, 4528216; 696444, 4528220;
696436, 4528222; 696423, 4528221;
696415, 4528221; 696407, 4528224;
696401, 4528228; 696396, 4528232;
696391, 4528231; 696382, 4528232;
696374, 4528237; 696370, 4528237;
696359, 4528238; 696352, 4528241;
696348, 4528243; 696342, 4528248;
696326, 4528259; 696320, 4528260;
696313, 4528260; 696302, 4528263;
696293, 4528268; 696287, 4528274;
696285, 4528282; 696284, 4528287;
696283, 4528291; 696284, 4528293;
696285, 4528294; 696286, 4528296;
696295, 4528303; 696305, 4528307;
696316, 4528309; 696326, 4528311;
696336, 4528314; 696344, 4528316;
696349, 4528319; 696354, 4528322;
696360, 4528328; 696363, 4528330;
696365, 4528332; 696370, 4528346;

696369, 4528354; 696367, 4528360;
696361, 4528372; 696353, 4528380;
696345, 4528388; 696335, 4528397;
696323, 4528406; 696310, 4528414;
696297, 4528420; 696282, 4528427;
696267, 4528432; 696255, 4528435;
696244, 4528439; 696231, 4528443;
696216, 4528445; 696203, 4528447;
696192, 4528446; 696182, 4528445;
696173, 4528444; 696167, 4528445;
696116, 4528391; 696114, 4528382;
696109, 4528372; 696105, 4528362;
696097, 4528356; 696089, 4528352;
696081, 4528347; 696075, 4528343;
696071, 4528340; 696068, 4528337;
696080, 4528331; 696088, 4528330;
696096, 4528331; 696103, 4528334;
696111, 4528337; 696117, 4528340;
696122, 4528345; 696130, 4528352;
696137, 4528360; 696145, 4528369;
696156, 4528377; 696167, 4528379;
696178, 4528377; 696192, 4528374;
696203, 4528374; 696214, 4528372;
696222, 4528369; 696231, 4528361;
696239, 4528352; 696252, 4528333;
696259, 4528316; 696259, 4528304;
696257, 4528288; 696254, 4528276;
696248, 4528267; 696240, 4528254;
696233, 4528246; 696228, 4528237;
696219, 4528222; 696216, 4528215;
696215, 4528203; 696218, 4528190;
696227, 4528166; 696228, 4528165;
696228, 4528163; 696228, 4528162;
696228, 4528151; 696228, 4528145;
696228, 4528138; 696228, 4528133;
696228, 4528127; 696229, 4528123;
696231, 4528118; 696233, 4528116;
696235, 4528114; 696237, 4528113;
696240, 4528112; 696253, 4528110;
696258, 4528109; 696261, 4528107;
696266, 4528105; 696271, 4528104;
696275, 4528102; 696279, 4528100;
696282, 4528098; 696283, 4528094;
696284, 4528090; 696286, 4528081;
696289, 4528070; 696288, 4528060;
696282, 4528049; 696275, 4528041;
696271, 4528034; 696262, 4528026;
696255, 4528018; 696247, 4528007;
696240, 4528000; 696237, 4527993;
696235, 4527980; 696236, 4527973;
696239, 4527969; 696245, 4527965;
696249, 4527962; 696256, 4527961;
696264, 4527962; 696270, 4527964;
696278, 4527965; 696282, 4527964;
696307, 4527970; 696308, 4527972;
696310, 4527974; 696317, 4527974;
696323, 4527975; 696328, 4527976;
696331, 4527979; 696336, 4527980;
696341, 4527979; 696346, 4527976;
696350, 4527970; 696352, 4527966;
696354, 4527963; 696355, 4527959;
696359, 4527950; 696344, 4527943;
696334, 4527942; 696329, 4527943;
696321, 4527944; 696315, 4527946;
696276, 4527939; 696274, 4527938;
696269, 4527938; 696264, 4527936;
696256, 4527936; 696244, 4527936;
696235, 4527937; 696226, 4527940;
696217, 4527946; 696213, 4527954;
696210, 4527962; 696208, 4527973;
696206, 4527985; 696208, 4527996;
696212, 4528005; 696219, 4528017;
696224, 4528024; 696231, 4528032;
696239, 4528040; 696247, 4528048;
696255, 4528058; 696262, 4528066;
696264, 4528072; 696263, 4528076;
696260, 4528080; 696257, 4528083;
696253, 4528084; 696247, 4528085;
696242, 4528086; 696229, 4528085;
696219, 4528091; 696213, 4528096;
696209, 4528101; 696204, 4528108;
696201, 4528114; 696198, 4528120;
696197, 4528128; 696196, 4528136;
696196, 4528145; 696196, 4528155;
696196, 4528161; 696195, 4528164;
696199, 4528171; 696196, 4528192;
696196, 4528192; 696196, 4528193;
696196, 4528196; 696196, 4528195;
696196, 4528197; 696196, 4528204;
696196, 4528207; 696195, 4528214;
696194, 4528219; 696194, 4528228;
696193, 4528236; 696193, 4528242;
696197, 4528248; 696200, 4528249;
696206, 4528252; 696212, 4528258;
696218, 4528265; 696224, 4528274;
696227, 4528282; 696228, 4528295;
696227, 4528307; 696227, 4528316;
696226, 4528326; 696224, 4528335;
696221, 4528340; 696216, 4528345;
696210, 4528348; 696204, 4528351;
696197, 4528353; 696188, 4528355;
696179, 4528355; 696172, 4528354;
696165, 4528353; 696157, 4528351;
696149, 4528347; 696140, 4528344;
696130, 4528337; 696113, 4528324;
696118, 4528306; 696122, 4528298;
696126, 4528296; 696136, 4528291;
696142, 4528284; 696146, 4528277;
696149, 4528269; 696152, 4528258;
696153, 4528249; 696150, 4528238;
696146, 4528230; 696142, 4528220;
696140, 4528217; 696138, 4528214;
696137, 4528212; 696109, 4528220;
696100, 4528223; 696089, 4528227;
696077, 4528234; 696065, 4528240;
696053, 4528241; 696042, 4528243;
696030, 4528245; 696016, 4528250;
696003, 4528255; 695988, 4528260;
695978, 4528269; 695969, 4528280;
695962, 4528288; 695952, 4528297;
695941, 4528307; 695921, 4528334;
695916, 4528342; 695910, 4528353;
695904, 4528365; 695901, 4528371;
695898, 4528376; 695892, 4528385;
695890, 4528396; 695889, 4528412;
695888, 4528425; 695886, 4528436;
695885, 4528446; 695883, 4528460;
695881, 4528469; 695879, 4528481;
695880, 4528495; 695882, 4528507;
695890, 4528571; 695890, 4528585;
695891, 4528597; 695891, 4528617;
695889, 4528636; 695882, 4528685;
695880, 4528699; 695877, 4528714;
695873, 4528727; 695870, 4528737;
695866, 4528745; 695860, 4528753;
695854, 4528765; 695833, 4528799;
695828, 4528810; 695821, 4528821;
695815, 4528827; 695807, 4528835;
695799, 4528841; 695788, 4528850;
695778, 4528859; 695771, 4528866;
695764, 4528873; 695755, 4528879;
695747, 4528885; 695738, 4528892;
695733, 4528897; 695727, 4528903;
695723, 4528910; 695722, 4528911;
695720, 4528914; 695716, 4528917;
695715, 4528918; 695714, 4528919;
695700, 4528914; 695681, 4528930;
695672, 4528934; 695658, 4528938;
695649, 4528942; 695642, 4528946;
695638, 4528951; 695632, 4528953;
695626, 4528957; 695621, 4528960;
695611, 4528964; 695618, 4528976;
695622, 4528982; 695627, 4528989;
695633, 4528994; 695638, 4529000;
695647, 4529007; 695656, 4529011;
695666, 4529015; 695676, 4529020;
695685, 4529022; 695697, 4529024;
695709, 4529025; 695719, 4529027;
695728, 4529027; 695737, 4529028;
695746, 4529029; 695754, 4529028;
695760, 4529028; 695768, 4529026;
695775, 4529022; 695782, 4529016;
695786, 4529012; 695794, 4529004;
695798, 4528996; 695802, 4528989;
695804, 4528983; 695804, 4528978;
695806, 4528970; 695809, 4528963;
695810, 4528957; 695810, 4528954;
695822, 4528886; 695825, 4528870;
695827, 4528863; 695833, 4528852;
695839, 4528843; 695848, 4528836;
695857, 4528833; 695867, 4528833;
695878, 4528831; 695891, 4528827;
695900, 4528824; 695913, 4528822;
695926, 4528821; 695935, 4528820;
695945, 4528820; 695954, 4528822;
695963, 4528826; 695968, 4528831;
695974, 4528839; 695980, 4528847;
695984, 4528854; 695987, 4528862;
695990, 4528872; 695990, 4528884;
695989, 4528895; 695986, 4528909;
695984, 4528923; 695981, 4528937;
695977, 4528950; 695976, 4528962;
695977, 4528974; 695978, 4528980;
695980, 4528986; 695983, 4528991;
695986, 4528996; 695990, 4529000;
695994, 4529000; 696000, 4528997;
696004, 4528991; 696007, 4528986;
696014, 4528982; 696019, 4528983;
696026, 4528987; 696029, 4528994;
696031, 4528999; 696033, 4529001;
696038, 4529005; 696042, 4529005;
696044, 4529004; 696070, 4529040;
696070, 4529042; 696074, 4529048;
696079, 4529055; 696086, 4529060;
696094, 4529067; 696101, 4529072;
696108, 4529077; 696116, 4529083;
696138, 4529097; 696145, 4529105;
696151, 4529113; 696157, 4529123;
696162, 4529129; 696166, 4529136;
696170, 4529143; 696173, 4529151;
696178, 4529164; 696182, 4529176;
696184, 4529188; 696185, 4529203;
696187, 4529219; 696187, 4529234;
696186, 4529244; 696188, 4529269;

696187, 4529280; 696186, 4529296; 696186, 4529309; 696186, 4529320; 696187, 4529328; 696187, 4529339; 696190, 4529348; 696191, 4529354; 696191, 4529361; 696191, 4529365; 696192, 4529367; 696192, 4529371; 696192, 4529373; 696191, 4529382; 696192, 4529386; 696191, 4529389; 696191, 4529394; 696191, 4529398; 696185, 4529413; 696181, 4529426; 696183, 4529438; 696185, 4529448; 696190, 4529456; 696193, 4529459; 696198, 4529461; 696205, 4529462; 696215, 4529459; 696223, 4529454; 696230, 4529447; 696238, 4529440; 696246, 4529435; 696257, 4529436; 696266, 4529439; 696274, 4529444; 696276, 4529447; 696279, 4529450; 696282, 4529453; 696283, 4529453; 696283, 4529460; 696285, 4529466; 696287, 4529473; 696289, 4529484; 696291, 4529495; 696295, 4529505; 696301, 4529515; 696304, 4529520; 696310, 4529522; 696318, 4529522; 696327, 4529522; 696335, 4529523; 696349, 4529523; 696363, 4529524; 696376, 4529523; 696382, 4529523;

(viii) Note: Map of Unit 3 is provided at paragraph (7)(ix) of this entry.

(9) Unit 4: Jack Sinn—Rock Creek, Lancaster and Saunders Counties, Nebraska.

(i) Tract 4a: 698696, 4546073; 698716, 4546073; 698725, 4546074; 698733, 4546072; 698745, 4546068; 698753, 4546065; 698769, 4546054; 698781, 4546042; 698795, 4546021; 698802, 4546011; 698806, 4546005; 698811, 4546003; 698816, 4546001; 698820, 4546002; 698827, 4546004; 698832, 4546006; 698836, 4546006; 698844, 4546005; 698850, 4546004; 698855, 4546005; 698862, 4546007; 698866, 4546009; 698869, 4546012; 698874, 4546020; 698877, 4546027; 698883, 4546036; 698887, 4546039; 698893, 4546042; 698899, 4546045; 698902, 4546045; 698909, 4546044; 698919, 4546038; 698929, 4546024; 698941, 4546017; 698948, 4546013; 698955, 4546010; 698960, 4546009; 698966, 4546008; 698969, 4546007; 698978, 4546005; 698985, 4546009; 698993, 4546013; 699000, 4546017; 699008, 4546019; 699018, 4546023; 699030, 4546027; 699039, 4546027; 699046, 4546027; 699053, 4546025; 699061, 4546021; 699072, 4546017; 699083, 4546016; 699089, 4546012; 699093, 4546007; 699096, 4546002; 699097, 4545995; 699097, 4545991; 699094, 4545986; 699090, 4545982; 699086, 4545978; 699080, 4545975; 699072, 4545974; 699068, 4545973; 699060, 4545971; 699054, 4545968; 699049, 4545965; 699045, 4545959; 699040, 4545952; 699037, 4545945; 699032, 4545935; 699026, 4545928; 699020, 4545925; 699011, 4545921; 699001, 4545916; 698995, 4545914; 698988, 4545914; 698979, 4545913; 698973, 4545909; 698967, 4545906; 698958, 4545901; 698948, 4545885; 698943, 4545878; 698936, 4545861; 698934, 4545838; 698946, 4545838; 698961, 4545838; 698970, 4545841; 698982, 4545846; 698997, 4545852; 699012, 4545860; 699031, 4545867; 699038, 4545858; 699044, 4545846; 699046, 4545839; 699047, 4545831; 699047, 4545823; 699045, 4545820; 699042, 4545816; 699039, 4545814; 699030, 4545812; 699023, 4545807; 699013, 4545806; 699003, 4545806; 698983, 4545797; 698975, 4545798; 698967, 4545796; 698961, 4545793; 698954, 4545788; 698951, 4545785; 698944, 4545778; 698934, 4545764; 698912, 4545736; 698906, 4545722; 698899, 4545717; 698898, 4545710; 698897, 4545701; 698898, 4545694; 698898, 4545690; 698900, 4545682; 698900, 4545672; 698901, 4545661; 698902, 4545653; 698903, 4545648; 698903, 4545648; 698907, 4545646; 698914, 4545647; 698926, 4545651; 698935, 4545654; 698953, 4545653; 698950, 4545640; 698949, 4545625; 698946, 4545603; 698943, 4545580; 698939, 4545557; 698934, 4545540; 698926, 4545524; 698921, 4545512; 698913, 4545507; 698901, 4545503; 698888, 4545503; 698874, 4545504; 698866, 4545489; 698863, 4545484; 698859, 4545479; 698854, 4545474; 698850, 4545474; 698845, 4545472; 698838, 4545471; 698831, 4545469; 698813, 4545460; 698795, 4545444; 698787, 4545439; 698780, 4545428; 698775, 4545420; 698772, 4545414; 698770, 4545406; 698770, 4545397; 698771, 4545387; 698774, 4545362; 698779, 4545340; 698780, 4545335; 698781, 4545329; 698781, 4545321; 698782, 4545310; 698782, 4545299; 698781, 4545289; 698780, 4545274; 698780, 4545260; 698782, 4545250; 698784, 4545236; 698785, 4545228; 698783, 4545215; 698782, 4545207; 698780, 4545191; 698776, 4545175; 698768, 4545149; 698765, 4545139; 698762, 4545130; 698761, 4545119; 698761, 4545109; 698762, 4545086; 698763, 4545077; 698764, 4545065; 698763, 4545058; 698760, 4545049; 698757, 4545044; 698744, 4545028; 698724, 4545013; 698713, 4545003; 698709, 4544998; 698705, 4544992; 698701, 4544985; 698699, 4544978; 698697, 4544972; 698697, 4544964; 698694, 4544959; 698692, 4544956; 698686, 4544953; 698676, 4544946; 698669, 4544942; 698662, 4544939; 698654, 4544933; 698646, 4544928; 698639, 4544920; 698634, 4544910; 698628, 4544890; 698620, 4544868; 698628, 4544864; 698632, 4544860; 698635, 4544852; 698636, 4544846; 698636, 4544841; 698632, 4544838; 698629, 4544836; 698626, 4544836; 698619, 4544837; 698610, 4544849; 698516, 4544847; 698412, 4544848; 698414, 4544857; 698415, 4544870; 698416, 4544873; 698421, 4544895; 698411, 4544904; 698404, 4544909; 698402, 4544924; 698401, 4545010; 698401, 4545076; 698400, 4545183; 698403, 4545252; 698403, 4545337; 698403, 4545408; 698401, 4545495; 698402, 4545558; 698406, 4545612; 698403, 4545663; 698402, 4545729; 698404, 4545810; 698406, 4545866; 698406, 4545890; 698406, 4545932; 698405, 4545976; 698407, 4546025; 698419, 4546030; 698426, 4546032; 698430, 4546034; 698444, 4546040; 698453, 4546042; 698466, 4546043; 698478, 4546040; 698495, 4546033; 698504, 4546029; 698509, 4546030; 698517, 4546031; 698523, 4546035; 698528, 4546037; 698533, 4546043; 698538, 4546048; 698542, 4546053; 698549, 4546060; 698556, 4546069; 698562, 4546076; 698573, 4546086; 698586, 4546095; 698602, 4546098; 698615, 4546101; 698625, 4546104; 698634, 4546102; 698640, 4546101; 698650, 4546097; 698658, 4546092; 698667, 4546086; 698674, 4546080; 698684, 4546075; 698696, 4546073;

(ii) Tract 4b: 700784, 4546113; 700789, 4546099; 700792, 4546088; 700794, 4546075; 700791, 4546060; 700787, 4546048; 700783, 4546038; 700774, 4546032; 700758, 4546027; 700740, 4546022; 700727, 4546015; 700715, 4546004; 700704, 4545992; 700695, 4545976; 700689, 4545963; 700682, 4545950; 700674, 4545938; 700660, 4545924; 700646, 4545915; 700632, 4545907; 700612, 4545902; 700591, 4545899; 700573, 4545895; 700557, 4545890; 700547, 4545880; 700540, 4545867; 700538, 4545853; 700537, 4545839; 700531, 4545824; 700524, 4545818; 700506, 4545810; 700493, 4545806; 700478, 4545806; 700466, 4545808; 700459, 4545814; 700452, 4545822; 700445, 4545832; 700439, 4545839; 700429, 4545843; 700415, 4545844; 700402, 4545842; 700390, 4545844; 700380, 4545850; 700373, 4545858; 700366, 4545865; 700359, 4545872; 700352, 4545874; 700342, 4545877; 700318, 4545875; 700307, 4545871; 700293, 4545865; 700281, 4545861; 700268, 4545856; 700256, 4545856; 700244, 4545860; 700237, 4545861; 700215, 4545858; 700200, 4545855; 700179, 4545843; 700165, 4545836; 700153, 4545832; 700142, 4545833; 700129, 4545831; 700116, 4545825; 700109, 4545819; 700094, 4545809; 700081, 4545806; 700066, 4545809; 700049, 4545807;

700038, 4545805; 700027, 4545805; 700018, 4545808; 700016, 4545813; 700015, 4545822; 700017, 4545841; 700023, 4545855; 700027, 4545866; 700034, 4545874; 700045, 4545879; 700059, 4545879; 700069, 4545881; 700083, 4545887; 700097, 4545894; 700112, 4545899; 700126, 4545902; 700144, 4545905; 700163, 4545906; 700189, 4545903; 700209, 4545901; 700229, 4545900; 700249, 4545902; 700264, 4545908; 700278, 4545915; 700288, 4545922; 700300, 4545928; 700317, 4545936; 700361, 4545952; 700384, 4545961; 700398, 4545968; 700411, 4545974; 700422, 4545982; 700433, 4545989; 700443, 4545994; 700454, 4545994; 700466, 4545993; 700481, 4545994; 700490, 4545996; 700497, 4546000; 700500, 4546008; 700500, 4546018; 700499, 4546028; 700496, 4546037; 700491, 4546044; 700481, 4546050; 700468, 4546052; 700458, 4546055; 700449, 4546060; 700445, 4546067; 700442, 4546077; 700443, 4546089; 700444, 4546095; 700450, 4546102; 700468, 4546109; 700477, 4546113; 700486, 4546115; 700495, 4546115; 700508, 4546116; 700519, 4546118; 700531, 4546120; 700545, 4546123; 700559, 4546125; 700572, 4546123; 700581, 4546122; 700591, 4546124; 700598, 4546126; 700605, 4546128; 700615, 4546132; 700637, 4546116; 700652, 4546111; 700668, 4546112; 700677, 4546114; 700688, 4546118; 700694, 4546123; 700699, 4546129; 700704, 4546132; 700713, 4546135; 700727, 4546136; 700740, 4546133; 700752, 4546131; 700763, 4546129; 700773, 4546127; 700779, 4546122; 700784, 4546113;

(iii) Tract 4c: 699777, 4546178; 699783, 4546168; 699790, 4546156; 699798, 4546147; 699810, 4546141; 699822, 4546136; 699830, 4546132; 699841, 4546126; 699849, 4546120; 699855, 4546111; 699857, 4546100; 699858, 4546088; 699853, 4546074; 699845, 4546058; 699834, 4546045; 699826, 4546036; 699816, 4546025; 699803, 4546014; 699794, 4546005; 699784, 4545993; 699776, 4545979; 699773, 4545968; 699772, 4545962; 699775, 4545951; 699779, 4545946; 699787, 4545940; 699795, 4545937; 699798, 4545937; 699801, 4545934; 699805, 4545929; 699784, 4545920; 699778, 4545920; 699770, 4545918; 699766, 4545914; 699762, 4545911; 699746, 4545927; 699744, 4545930; 699740, 4545939; 699739, 4545947; 699742, 4545963; 699748, 4545977; 699754, 4545988; 699763, 4545998; 699775, 4546009; 699785, 4546019; 699793, 4546026; 699801, 4546036; 699807, 4546044; 699811, 4546050; 699815, 4546060; 699821, 4546068; 699825, 4546078; 699826, 4546083; 699826, 4546090; 699825, 4546097; 699820, 4546103; 699809, 4546109; 699797, 4546110; 699788, 4546113; 699782, 4546122; 699779, 4546133; 699775, 4546138; 699768, 4546140; 699760, 4546144; 699756, 4546150; 699754, 4546158; 699754, 4546165; 699753, 4546170; 699752, 4546170; 699744, 4546172; 699733, 4546169; 699724, 4546161; 699717, 4546154; 699709, 4546149; 699696, 4546145; 699684, 4546142; 699671, 4546139; 699661, 4546135; 699655, 4546129; 699646, 4546118; 699639, 4546105; 699639, 4546098; 699643, 4546081; 699644, 4546073; 699642, 4546065; 699641, 4546059; 699634, 4546045; 699627, 4546029; 699623, 4546017; 699621, 4546002; 699618, 4545991; 699616, 4545983; 699615, 4545977; 699611, 4545972; 699608, 4545968; 699602, 4545963; 699600, 4545963; 699594, 4545963; 699588, 4545962; 699583, 4545964; 699577, 4545965; 699571, 4545968; 699565, 4545972; 699560, 4545978; 699555, 4545986; 699552, 4545991; 699546, 4546008; 699542, 4546024; 699540, 4546038; 699536, 4546055; 699527, 4546075; 699521, 4546089; 699511, 4546100; 699504, 4546107; 699497, 4546111; 699484, 4546114; 699457, 4546112; 699449, 4546112; 699439, 4546109; 699428, 4546104; 699423, 4546100; 699418, 4546095; 699414, 4546089; 699409, 4546081; 699406, 4546066; 699404, 4546061; 699402, 4546059; 699399, 4546060; 699395, 4546062; 699392, 4546063; 699390, 4546068; 699387, 4546076; 699386, 4546084; 699386, 4546094; 699386, 4546102; 699388, 4546113; 699395, 4546124; 699399, 4546131; 699403, 4546136; 699410, 4546142; 699433, 4546149; 699455, 4546150; 699467, 4546154; 699481, 4546152; 699499, 4546146; 699506, 4546143; 699513, 4546138; 699523, 4546129; 699532, 4546120; 699537, 4546115; 699542, 4546104; 699547, 4546095; 699550, 4546082; 699555, 4546069; 699561, 4546052; 699572, 4546024; 699579, 4546008; 699584, 4546003; 699588, 4546000; 699601, 4546001; 699601, 4546029; 699604, 4546036; 699606, 4546041; 699611, 4546053; 699615, 4546065; 699616, 4546080; 699616, 4546097; 699617, 4546110; 699619, 4546121; 699625, 4546131; 699632, 4546141; 699643, 4546150; 699658, 4546154; 699667, 4546158; 699681, 4546165; 699691, 4546174; 699700, 4546182; 699712, 4546189; 699722, 4546195; 699731, 4546198; 699742, 4546199; 699753, 4546199; 699760, 4546194; 699767, 4546186; 699777, 4546178;

(iv) Tract 4d: 701389, 4546232; 701381, 4546222; 701438, 4546226; 701441, 4546228; 701446, 4546228; 701448, 4546228; 701457, 4546225; 701461, 4546231; 701468, 4546239; 701472, 4546242; 701474, 4546244; 701479, 4546248; 701482, 4546249; 701488, 4546249; 701492, 4546248; 701495, 4546249; 701495, 4546249; 701505, 4546261; 701511, 4546263; 701518, 4546264; 701525, 4546264; 701533, 4546261; 701539, 4546255; 701544, 4546245; 701548, 4546238; 701555, 4546233; 701565, 4546229; 701573, 4546227; 701580, 4546223; 701586, 4546218; 701589, 4546212; 701589, 4546206; 701582, 4546198; 701583, 4546185; 701583, 4546184; 701596, 4546181; 701599, 4546177; 701600, 4546158; 701598, 4546144; 701597, 4546134; 701594, 4546123; 701591, 4546115; 701586, 4546108; 701579, 4546104; 701567, 4546101; 701551, 4546099; 701537, 4546098; 701521, 4546092; 701511, 4546082; 701503, 4546070; 701493, 4546055; 701489, 4546048; 701481, 4546038; 701474, 4546028; 701467, 4546018; 701460, 4546009; 701452, 4546001; 701447, 4545998; 701444, 4545995; 701439, 4545995; 701435, 4545999; 701432, 4546005; 701429, 4546010; 701427, 4546018; 701425, 4546023; 701427, 4546031; 701431, 4546039; 701436, 4546047; 701440, 4546055; 701443, 4546062; 701444, 4546070; 701444, 4546081; 701443, 4546084; 701436, 4546089; 701429, 4546092; 701422, 4546097; 701418, 4546104; 701414, 4546116; 701413, 4546124; 701414, 4546135; 701418, 4546148; 701421, 4546155; 701425, 4546164; 701428, 4546171; 701431, 4546176; 701432, 4546180; 701432, 4546188; 701432, 4546189; 701369, 4546194; 701369, 4546194; 701357, 4546193; 701343, 4546193; 701331, 4546194; 701322, 4546195; 701275, 4546175; 701283, 4546167; 701290, 4546157; 701299, 4546147; 701308, 4546138; 701315, 4546130; 701320, 4546123; 701323, 4546119; 701326, 4546110; 701329, 4546098; 701329, 4546091; 701340, 4546095; 701342, 4546094; 701345, 4546092; 701347, 4546090; 701349, 4546085; 701352, 4546079; 701353, 4546068; 701351, 4546056; 701348, 4546043; 701342, 4546027; 701333, 4546014; 701322, 4546003; 701306, 4545995; 701291, 4545988; 701270, 4545982; 701250, 4545977; 701228, 4545972; 701208, 4545967; 701185, 4545960; 701165, 4545955; 701148, 4545951; 701139, 4545948; 701132, 4545947; 701126, 4545949; 701122, 4545951; 701120, 4545954; 701119, 4545958; 701119, 4545963; 701131, 4545970; 701145, 4545976;

701159, 4545982; 701169, 4545990; 701174, 4545996; 701177, 4546003; 701181, 4546010; 701191, 4546014; 701207, 4546018; 701216, 4546022; 701223, 4546028; 701226, 4546034; 701224, 4546042; 701219, 4546046; 701209, 4546051; 701207, 4546055; 701206, 4546061; 701211, 4546069; 701221, 4546072; 701231, 4546073; 701240, 4546074; 701252, 4546077; 701248, 4546092; 701248, 4546100; 701248, 4546109; 701250, 4546119; 701251, 4546125; 701252, 4546130; 701253, 4546135; 701252, 4546142; 701249, 4546147; 701242, 4546154; 701229, 4546161; 701216, 4546167; 701205, 4546172; 701195, 4546177; 701187, 4546180; 701182, 4546182; 701180, 4546184; 701180, 4546187; 701178, 4546191; 701179, 4546194; 701182, 4546198; 701188, 4546202; 701199, 4546202; 701209, 4546200; 701220, 4546197; 701292, 4546219; 701292, 4546222; 701295, 4546226; 701302, 4546230; 701307, 4546230; 701312, 4546229; 701317, 4546228; 701321, 4546225; 701328, 4546224; 701336, 4546219; 701344, 4546231; 701344, 4546236; 701342, 4546241; 701341, 4546245; 701341, 4546254; 701344, 4546264; 701347, 4546272; 701353, 4546279; 701361, 4546284; 701369, 4546288; 701378, 4546290; 701385, 4546290; 701392, 4546289; 701397, 4546286; 701402, 4546280; 701404, 4546274; 701405, 4546267; 701405, 4546260; 701402, 4546251; 701398, 4546243; 701394, 4546237; 701389, 4546232;

(v) Tract 4e: 703097, 4546215; 703095, 4546208; 703095, 4546196; 703096, 4546183; 703098, 4546171; 703101, 4546160; 703107, 4546150; 703112, 4546145; 703122, 4546142; 703130, 4546142; 703136, 4546143; 703153, 4546145; 703164, 4546146; 703171, 4546147; 703179, 4546148; 703189, 4546150; 703194, 4546149; 703198, 4546146; 703200, 4546143; 703202, 4546138; 703204, 4546131; 703204, 4546124; 703203, 4546118; 703201, 4546112; 703199, 4546106; 703198, 4546100; 703202, 4546086; 703205, 4546074; 703205, 4546074; 703161, 4546071; 703137, 4546072; 703137, 4546043; 703157, 4546008; 703170, 4545997; 703168, 4545988; 703169, 4545981; 703175, 4545979; 703181, 4545977; 703189, 4545974; 703197, 4545969; 703198, 4545963; 703201, 4545949; 703208, 4545936; 703213, 4545921; 703212, 4545906; 703208, 4545899; 703199, 4545894; 703191, 4545893; 703185, 4545895; 703132, 4545967; 703084, 4546028; 703072, 4546066; 703041, 4546051; 703009, 4546024; 702961, 4545994; 702924, 4545972; 702914, 4545880; 702925, 4545838; 702923, 4545836; 702921, 4545825; 702920, 4545812; 702922, 4545794; 702928, 4545784; 702930, 4545777; 702929, 4545769; 702925, 4545763; 702921, 4545757; 702915, 4545754; 702908, 4545750; 702899, 4545746; 702887, 4545742; 702876, 4545740; 702865, 4545739; 702854, 4545741; 702837, 4545752; 702830, 4545759; 702827, 4545766; 702826, 4545779; 702826, 4545780; 702856, 4545857; 702872, 4545878; 702862, 4545934; 702848, 4545989; 702801, 4546000; 702766, 4545977; 702742, 4545931; 702746, 4545886; 702751, 4545874; 702750, 4545869; 702751, 4545853; 702753, 4545840; 702759, 4545827; 702763, 4545819; 702762, 4545814; 702758, 4545808; 702754, 4545804; 702747, 4545804; 702738, 4545807; 702731, 4545812; 702727, 4545818; 702722, 4545829; 702717, 4545838; 702710, 4545844; 702705, 4545847; 702693, 4545848; 702625, 4545934; 702526, 4545955; 702459, 4545968; 702386, 4545999; 702363, 4545999; 702362, 4546000; 702357, 4546011; 702352, 4546016; 702349, 4546021; 702344, 4546025; 702337, 4546029; 702332, 4546031; 702321, 4546034; 702315, 4546036; 702307, 4546037; 702301, 4546038; 702280, 4546038; 702266, 4546038; 702256, 4546036; 702247, 4546032; 702238, 4546029; 702233, 4546024; 702229, 4546015; 702229, 4546009; 702231, 4546003; 702235, 4545996; 702242, 4545992; 702250, 4545989; 702261, 4545988; 702276, 4545986; 702290, 4545981; 702295, 4545974; 702294, 4545969; 702290, 4545964; 702290, 4545960; 702293, 4545955; 702302, 4545945; 702310, 4545936; 702317, 4545921; 702318, 4545915; 702315, 4545907; 702313, 4545904; 702307, 4545902; 702296, 4545901; 702283, 4545901; 702270, 4545902; 702258, 4545903; 702245, 4545907; 702237, 4545911; 702234, 4545916; 702231, 4545927; 702229, 4545939; 702227, 4545948; 702223, 4545957; 702217, 4545971; 702210, 4545981; 702202, 4545988; 702192, 4545991; 702184, 4545993; 702173, 4545994; 702159, 4545996; 702146, 4545999; 702136, 4546005; 702127, 4546015; 702118, 4546023; 702108, 4546026; 702097, 4546025; 702082, 4546025; 702073, 4546026; 702063, 4546031; 702059, 4546037; 702049, 4546044; 702036, 4546047; 702024, 4546047; 702013, 4546044; 701997, 4546040; 701981, 4546038; 701971, 4546039; 701961, 4546044; 701953, 4546049; 701945, 4546054; 701935, 4546060; 701924, 4546066; 701912, 4546073; 701900, 4546079; 701892, 4546086; 701891, 4546087; 701886, 4546097; 701887, 4546104; 701890, 4546110; 701899, 4546114; 701909, 4546117; 701915, 4546121; 701980, 4546084; 702085, 4546064; 702113, 4546063; 702113, 4546063; 702113, 4546059; 702114, 4546056; 702117, 4546054; 702119, 4546053; 702126, 4546052; 702133, 4546052; 702140, 4546052; 702151, 4546054; 702159, 4546055; 702166, 4546057; 702176, 4546061; 702184, 4546069; 702188, 4546075; 702187, 4546079; 702184, 4546086; 702219, 4546104; 702250, 4546155; 702334, 4546162; 702350, 4546138; 702357, 4546132; 702365, 4546130; 702379, 4546131; 702392, 4546132; 702404, 4546130; 702415, 4546124; 702422, 4546117; 702429, 4546110; 702450, 4546096; 702462, 4546097; 702476, 4546097; 702490, 4546099; 702505, 4546099; 702516, 4546097; 702530, 4546096; 702546, 4546095; 702562, 4546094; 702576, 4546096; 702590, 4546099; 702607, 4546103; 702653, 4546101; 702665, 4546099; 702682, 4546100; 702693, 4546103; 702710, 4546107; 702728, 4546110; 702741, 4546110; 702758, 4546109; 702770, 4546104; 702780, 4546097; 702789, 4546089; 702801, 4546085; 702816, 4546089; 702823, 4546094; 702828, 4546101; 702838, 4546106; 702849, 4546109; 702860, 4546112; 702870, 4546117; 702881, 4546126; 702887, 4546132; 702965, 4546131; 703012, 4546142; 703030, 4546165; 703029, 4546188; 703041, 4546209; 703063, 4546216; 703071, 4546209; 703072, 4546216; 703074, 4546227; 703077, 4546238; 703079, 4546247; 703085, 4546253; 703094, 4546258; 703104, 4546260; 703112, 4546261; 703119, 4546262; 703126, 4546264; 703130, 4546264; 703136, 4546266; 703138, 4546268; 703140, 4546273; 703139, 4546281; 703139, 4546289; 703140, 4546298; 703141, 4546306; 703143, 4546312; 703146, 4546314; 703152, 4546317; 703156, 4546317; 703161, 4546317; 703166, 4546315; 703169, 4546312; 703169, 4546306; 703168, 4546297; 703169, 4546285; 703168, 4546271; 703162, 4546258; 703153, 4546249; 703145, 4546244; 703133, 4546240; 703119, 4546234; 703110, 4546228; 703104, 4546223; 703097, 4546215;

(vi) Tract 4f: 701018, 4546521; 701025, 4546516; 701031, 4546509; 701035, 4546497; 701036, 4546487; 701039, 4546475; 701045, 4546464; 701054, 4546454; 701069, 4546442; 701085, 4546431; 701121, 4546421; 701139, 4546419; 701158, 4546417; 701174, 4546416; 701187, 4546415; 701198, 4546413; 701208, 4546412; 701217, 4546408; 701220, 4546405; 701222, 4546401; 701223, 4546396;

701223, 4546392; 701223, 4546388;
701223, 4546384; 701223, 4546382;
701222, 4546378; 701211, 4546385;
701207, 4546385; 701202, 4546384;
701196, 4546380; 701190, 4546369;
701186, 4546360; 701180, 4546350;
701173, 4546344; 701167, 4546340;
701156, 4546338; 701144, 4546337;
701137, 4546337; 701128, 4546338;
701118, 4546336; 701108, 4546335;
701101, 4546336; 701096, 4546338;
701086, 4546338; 701081, 4546324;
701077, 4546318; 701070, 4546312;
701061, 4546306; 701049, 4546302;
701038, 4546299; 701027, 4546300;
701016, 4546300; 701009, 4546295;
701003, 4546286; 700997, 4546280;
700990, 4546274; 700979, 4546272;
700970, 4546273; 700963, 4546276;
700953, 4546279; 700944, 4546280;
700935, 4546279; 700929, 4546277;
700926, 4546274; 700918, 4546268;
700927, 4546263; 700930, 4546260;
700932, 4546254; 700933, 4546247;
700931, 4546242; 700924, 4546236;
700912, 4546231; 700903, 4546229;
700890, 4546228; 700879, 4546229;
700866, 4546229; 700859, 4546230;
700854, 4546233; 700852, 4546236;
700850, 4546243; 700851, 4546248;
700851, 4546255; 700848, 4546259;
700836, 4546260; 700829, 4546259;
700822, 4546258; 700815, 4546257;
700810, 4546258; 700809, 4546259;
700781, 4546246; 700768, 4546248;
700763, 4546251; 700757, 4546258;
700750, 4546265; 700743, 4546268;
700729, 4546271; 700718, 4546270;
700705, 4546268; 700695, 4546266;
700684, 4546263; 700675, 4546258;
700670, 4546251; 700667, 4546243;
700666, 4546231; 700662, 4546223;
700656, 4546217; 700645, 4546214;
700635, 4546210; 700623, 4546199;
700614, 4546191; 700583, 4546171;
700575, 4546169; 700566, 4546166;
700560, 4546164; 700554, 4546163;
700547, 4546162; 700542, 4546166;
700540, 4546171; 700537, 4546178;
700535, 4546184; 700533, 4546189;
700531, 4546193; 700528, 4546196;
700525, 4546199; 700522, 4546200;
700517, 4546203; 700500, 4546195;
700493, 4546194; 700485, 4546193;
700474, 4546192; 700466, 4546192;
700459, 4546194; 700454, 4546197;
700448, 4546200; 700441, 4546201;
700434, 4546199; 700425, 4546195;
700417, 4546191; 700408, 4546187;
700398, 4546181; 700392, 4546179;
700385, 4546176; 700378, 4546174;
700374, 4546173; 700373, 4546174;
700357, 4546150; 700351, 4546147;
700341, 4546145; 700329, 4546142;
700320, 4546140; 700308, 4546138;
700299, 4546133; 700292, 4546128;
700282, 4546124; 700275, 4546115;
700271, 4546110; 700267, 4546107;
700261, 4546101; 700256, 4546099;
700248, 4546096; 700245, 4546096;
700231, 4546087; 700223, 4546087;
700214, 4546088; 700204, 4546090;
700200, 4546092; 700196, 4546095;
700188, 4546100; 700182, 4546104;
700177, 4546107; 700169, 4546107;
700162, 4546107; 700156, 4546108;
700145, 4546113; 700144, 4546112;
700140, 4546111; 700134, 4546111;
700128, 4546114; 700125, 4546119;
700125, 4546120; 700104, 4546121;
700097, 4546122; 700092, 4546126;
700088, 4546135; 700085, 4546141;
700083, 4546151; 700081, 4546159;
700078, 4546169; 700073, 4546182;
700066, 4546193; 700055, 4546203;
700048, 4546210; 700040, 4546217;
700033, 4546222; 700028, 4546224;
700025, 4546227; 700025, 4546229;
699990, 4546189; 699988, 4546182;
699979, 4546176; 699969, 4546173;
699961, 4546173; 699955, 4546176;
699945, 4546176; 699936, 4546186;
699929, 4546188; 699921, 4546187;
699910, 4546182; 699900, 4546179;
699893, 4546177; 699886, 4546178;
699881, 4546182; 699880, 4546187;
699882, 4546192; 699886, 4546198;
699891, 4546201; 699895, 4546203;
699922, 4546240; 699916, 4546237;
699908, 4546239; 699903, 4546244;
699896, 4546245; 699882, 4546240;
699874, 4546241; 699866, 4546246;
699859, 4546257; 699854, 4546267;
699848, 4546277; 699843, 4546283;
699839, 4546287; 699830, 4546290;
699818, 4546288; 699807, 4546282;
699798, 4546277; 699787, 4546278;
699778, 4546282; 699768, 4546283;
699756, 4546277; 699744, 4546267;
699735, 4546260; 699722, 4546254;
699698, 4546250; 699689, 4546252;
699679, 4546255; 699670, 4546258;
699662, 4546259; 699651, 4546256;
699642, 4546249; 699635, 4546240;
699633, 4546236; 699628, 4546229;
699621, 4546225; 699615, 4546223;
699601, 4546223; 699595, 4546220;
699595, 4546220; 699587, 4546219;
699579, 4546216; 699572, 4546208;
699568, 4546204; 699559, 4546200;
699549, 4546196; 699529, 4546192;
699521, 4546192; 699513, 4546193;
699503, 4546192; 699480, 4546195;
699457, 4546199; 699423, 4546197;
699408, 4546199; 699400, 4546199;
699397, 4546200; 699382, 4546202;
699372, 4546202; 699367, 4546202;
699364, 4546202; 699361, 4546200;
699359, 4546200; 699350, 4546195;
699344, 4546192; 699316, 4546183;
699310, 4546184; 699308, 4546183;
699299, 4546181; 699293, 4546178;
699285, 4546174; 699272, 4546169;
699261, 4546166; 699253, 4546166;
699248, 4546166; 699243, 4546166;
699238, 4546166; 699229, 4546163;
699215, 4546155; 699209, 4546152;
699205, 4546152; 699202, 4546153;
699199, 4546158; 699193, 4546165;
699190, 4546167; 699182, 4546174;
699174, 4546176; 699166, 4546179;
699158, 4546179; 699144, 4546177;
699119, 4546173; 699115, 4546173;
699110, 4546173; 699105, 4546175;
699102, 4546176; 699099, 4546180;
699096, 4546184; 699095, 4546190;
699094, 4546196; 699093, 4546202;
699090, 4546203; 699087, 4546204;
699083, 4546202; 699070, 4546197;
699064, 4546195; 699059, 4546193;
699053, 4546189; 699033, 4546176;
699028, 4546171; 699025, 4546167;
699020, 4546164; 699017, 4546162;
699011, 4546159; 699005, 4546158;
698999, 4546158; 698994, 4546158;
698984, 4546160; 698980, 4546161;
698977, 4546161; 698973, 4546160;
698969, 4546159; 698957, 4546150;
698948, 4546142; 698946, 4546140;
698942, 4546138; 698938, 4546138;
698927, 4546141; 698917, 4546145;
698906, 4546148; 698898, 4546153;
698891, 4546158; 698889, 4546160;
698887, 4546164; 698886, 4546170;
698884, 4546181; 698887, 4546190;
698890, 4546193; 698893, 4546193;
698903, 4546192; 698916, 4546190;
698934, 4546190; 698949, 4546191;
698960, 4546191; 698971, 4546194;
698982, 4546196; 698993, 4546198;
699008, 4546205; 699018, 4546210;
699022, 4546215; 699023, 4546220;
699024, 4546226; 699022, 4546234;
699019, 4546239; 699013, 4546244;
699006, 4546247; 699000, 4546248;
698989, 4546246; 698976, 4546247;
698969, 4546239; 698962, 4546235;
698956, 4546234; 698953, 4546234;
698928, 4546234; 698905, 4546232;
698883, 4546230; 698863, 4546231;
698854, 4546231; 698849, 4546230;
698845, 4546227; 698839, 4546223;
698821, 4546208; 698816, 4546202;
698809, 4546197; 698796, 4546193;
698780, 4546190; 698769, 4546188;
698762, 4546190; 698754, 4546189;
698747, 4546187; 698739, 4546181;
698733, 4546178; 698723, 4546177;
698717, 4546176; 698709, 4546176;
698702, 4546180; 698694, 4546184;
698685, 4546190; 698676, 4546198;
698669, 4546207; 698662, 4546215;
698653, 4546223; 698647, 4546227;
698638, 4546233; 698623, 4546240;
698613, 4546245; 698603, 4546250;
698593, 4546251; 698584, 4546252;
698571, 4546251; 698559, 4546246;
698559, 4546242; 698559, 4546236;
698557, 4546231; 698554, 4546224;
698552, 4546220; 698547, 4546211;
698543, 4546205; 698538, 4546197;
698534, 4546192; 698534, 4546188;
698535, 4546182; 698537, 4546174;
698540, 4546167; 698544, 4546162;

698550, 4546159; 698556, 4546158; 698572, 4546159; 698559, 4546133; 698549, 4546115; 698541, 4546105; 698524, 4546096; 698501, 4546091; 698468, 4546083; 698446, 4546070; 698434, 4546065; 698424, 4546062; 698416, 4546063; 698410, 4546063; 698408, 4546141; 698410, 4546191; 698411, 4546216; 698412, 4546240; 698413, 4546250; 698411, 4546265; 698408, 4546282; 698405, 4546293; 698401, 4546313; 698403, 4546329; 698393, 4546334; 698391, 4546336; 698388, 4546342; 698386, 4546349; 698385, 4546361; 698385, 4546371; 698392, 4546378; 698395, 4546383; 698396, 4546386; 698396, 4546390; 698395, 4546402; 698391, 4546427; 698390, 4546448; 698390, 4546460; 698394, 4546470; 698403, 4546478; 698411, 4546482; 698419, 4546486; 698438, 4546485; 698460, 4546486; 698480, 4546489; 698506, 4546492; 698533, 4546494; 698540, 4546495; 698551, 4546497; 698559, 4546496; 698566, 4546493; 698577, 4546482; 698584, 4546475; 698591, 4546470; 698595, 4546468; 698603, 4546467; 698611, 4546466; 698618, 4546471; 698640, 4546484; 698648, 4546488; 698657, 4546495; 698669, 4546497; 698679, 4546498; 698687, 4546496; 698695, 4546493; 698701, 4546489; 698709, 4546488; 698742, 4546485; 698777, 4546487; 698832, 4546488; 698891, 4546491; 698944, 4546492; 699004, 4546496; 699049, 4546494; 699110, 4546500; 699218, 4546503; 699320, 4546505; 699421, 4546505; 699587, 4546513; 699988, 4546508; 699988, 4546506; 700033, 4546506; 700033, 4546506; 700039, 4546507; 700238, 4546510; 700245, 4546509; 700252, 4546502; 700261, 4546492; 700270, 4546487; 700277, 4546480; 700287, 4546473; 700301, 4546467; 700308, 4546460; 700318, 4546453; 700330, 4546447; 700343, 4546446; 700355, 4546440; 700365, 4546432; 700374, 4546429; 700386, 4546428; 700400, 4546426; 700413, 4546430; 700420, 4546432; 700425, 4546436; 700428, 4546442; 700430, 4546454; 700429, 4546468; 700429, 4546477; 700431, 4546487; 700435, 4546496; 700442, 4546503; 700453, 4546507; 700464, 4546509; 700474, 4546510; 700486, 4546511; 700489, 4546511; 700534, 4546513; 700546, 4546512; 700556, 4546512; 700564, 4546511; 700565, 4546511; 700565, 4546508; 700566, 4546503; 700563, 4546499; 700559, 4546488; 700557, 4546481; 700559, 4546471; 700564, 4546463; 700572, 4546458; 700586, 4546460; 700597, 4546458; 700606, 4546453; 700612, 4546443; 700617, 4546436; 700632, 4546431; 700664, 4546430; 700675, 4546427; 700687, 4546425; 700695, 4546421; 700708, 4546417; 700725, 4546416; 700745, 4546414; 700760, 4546415; 700774, 4546417; 700788, 4546420; 700801, 4546423; 700810, 4546426; 700817, 4546430; 700820, 4546436; 700820, 4546446; 700818, 4546456; 700819, 4546469; 700823, 4546482; 700824, 4546493; 700825, 4546503; 700826, 4546511; 700829, 4546517; 700838, 4546523; 700849, 4546523; 700896, 4546521; 700919, 4546524; 700936, 4546525; 700945, 4546525; 700949, 4546525; 700966, 4546525; 700981, 4546525; 701000, 4546524; 701010, 4546524; 701018, 4546521; 699928, 4546248; 699925, 4546244; 699932, 4546252; 699933, 4546259; 699932, 4546257; 699928, 4546248;

(vii) Tract 4g: 701602, 4546442; 701600, 4546428; 701597, 4546415; 701592, 4546405; 701586, 4546395; 701578, 4546386; 701567, 4546378; 701556, 4546373; 701547, 4546372; 701534, 4546374; 701521, 4546377; 701505, 4546383; 701494, 4546389; 701484, 4546395; 701473, 4546402; 701460, 4546408; 701445, 4546411; 701431, 4546414; 701415, 4546414; 701401, 4546414; 701391, 4546415; 701384, 4546416; 701377, 4546418; 701372, 4546421; 701369, 4546424; 701367, 4546428; 701367, 4546432; 701371, 4546435; 701379, 4546437; 701389, 4546437; 701398, 4546437; 701410, 4546437; 701422, 4546436; 701429, 4546435; 701437, 4546433; 701447, 4546432; 701456, 4546432; 701475, 4546434; 701493, 4546438; 701512, 4546444; 701527, 4546451; 701539, 4546460; 701547, 4546468; 701553, 4546478; 701558, 4546489; 701561, 4546500; 701563, 4546510; 701565, 4546519; 701568, 4546525; 701570, 4546531; 701573, 4546535; 701578, 4546539; 701583, 4546539; 701588, 4546539; 701595, 4546534; 701598, 4546528; 701599, 4546518; 701600, 4546507; 701598, 4546493; 701596, 4546482; 701595, 4546472; 701597, 4546460; 701600, 4546452; 701602, 4546442;

(viii) Tract 4h: 703217, 4546589; 703217, 4546586; 703217, 4546579; 703049, 4546561; 702942, 4546563; 702869, 4546558; 702844, 4546498; 702818, 4546496; 702872, 4546437; 702928, 4546418; 702978, 4546411; 703039, 4546410; 703095, 4546436; 703144, 4546479; 703218, 4546537; 703218, 4546519; 703216, 4546517; 703212, 4546515; 703210, 4546512; 703206, 4546510; 703200, 4546506; 703192, 4546498; 703186, 4546493; 703171, 4546473; 703188, 4546474; 703194, 4546477; 703200, 4546478; 703203, 4546478; 703205, 4546477; 703206, 4546471; 703204, 4546466; 703199, 4546458; 703192, 4546450; 703182, 4546443; 703172, 4546437; 703164, 4546433; 703156, 4546430; 703149, 4546428; 703142, 4546428; 703141, 4546429; 703139, 4546435; 703135, 4546434; 703129, 4546431; 703123, 4546428; 703118, 4546423; 703111, 4546415; 703107, 4546405; 703103, 4546387; 703095, 4546382; 703088, 4546378; 703082, 4546375; 703074, 4546371; 703062, 4546366; 703051, 4546363; 703036, 4546359; 703021, 4546356; 703006, 4546353; 702992, 4546350; 702979, 4546347; 702966, 4546345; 702954, 4546346; 702943, 4546350; 702925, 4546354; 702924, 4546357; 702924, 4546358; 702921, 4546364; 702918, 4546373; 702914, 4546386; 702910, 4546397; 702903, 4546402; 702892, 4546407; 702880, 4546410; 702865, 4546413; 702855, 4546419; 702850, 4546427; 702844, 4546434; 702836, 4546437; 702822, 4546437; 702809, 4546440; 702801, 4546449; 702793, 4546458; 702781, 4546464; 702768, 4546472; 702764, 4546481; 702762, 4546493; 702762, 4546499; 702764, 4546504; 702769, 4546508; 702776, 4546512; 702785, 4546514; 702796, 4546515; 702811, 4546517; 702826, 4546521; 702835, 4546531; 702835, 4546540; 702833, 4546546; 702828, 4546547; 702817, 4546549; 702807, 4546549; 702796, 4546548; 702785, 4546545; 702768, 4546545; 702753, 4546545; 702735, 4546547; 702721, 4546550; 702715, 4546557; 702715, 4546564; 702716, 4546570; 702718, 4546573; 702720, 4546574; 702723, 4546575; 702727, 4546576; 702733, 4546577; 702742, 4546579; 702750, 4546580; 702762, 4546578; 702771, 4546577; 702785, 4546577; 702797, 4546580; 702807, 4546583; 702818, 4546586; 702831, 4546589; 702842, 4546591; 702849, 4546591; 702860, 4546587; 703205, 4546592; 703210, 4546593; 703215, 4546592; 703217, 4546590; 703217, 4546589;

(ix) Tract 4i: 704760, 4546632; 704759, 4546528; 704759, 4546503; 704757, 4546504; 704757, 4546463; 704759, 4546463; 704759, 4546435; 704751, 4546435; 704745, 4546436; 704737, 4546436; 704723, 4546436; 704708, 4546436; 704693, 4546437; 704676, 4546438; 704651, 4546439; 704611, 4546438; 704596, 4546439; 704580, 4546440; 704567, 4546437; 704548, 4546430; 704533, 4546428; 704516, 4546430; 704503, 4546433; 704489, 4546440; 704478, 4546444; 704468, 4546444; 704456, 4546442; 704444, 4546439; 704430, 4546434; 704416, 4546431; 704398, 4546427; 704381, 4546424; 704361, 4546421; 704342, 4546421; 704329, 4546422;

704318, 4546425; 704304, 4546435;
704289, 4546434; 704278, 4546456;
704240, 4546480; 704187, 4546472;
704136, 4546441; 704137, 4546396;
704167, 4546390; 704206, 4546403;
704264, 4546386; 704303, 4546371;
704316, 4546313; 704309, 4546288;
704358, 4546279; 704381, 4546306;
704439, 4546354; 704483, 4546377;
704545, 4546377; 704584, 4546378;
704588, 4546328; 704599, 4546295;
704651, 4546314; 704692, 4546344;
704762, 4546389; 704763, 4546387;
704762, 4546381; 704761, 4546372;
704761, 4546359; 704761, 4546342;
704705, 4546307; 704662, 4546281;
704665, 4546258; 704701, 4546251;
704723, 4546227; 704761, 4546227;
704761, 4546216; 704761, 4546201;
704763, 4546181; 704764, 4546161;
704764, 4546137; 704765, 4546123;
704765, 4546106; 704764, 4546091;
704765, 4546056; 704766, 4546038;
704766, 4546022; 704766, 4546008;
704765, 4545994; 704766, 4545983;
704767, 4545974; 704765, 4545968;
704761, 4545963; 704757, 4545960;
704749, 4545957; 704741, 4545956;
704734, 4545954; 704732, 4545953;
704731, 4545945; 704730, 4545934;
704729, 4545922; 704727, 4545909;
704725, 4545901; 704720, 4545898;
704709, 4545894; 704703, 4545898;
704699, 4545904; 704698, 4545911;
704696, 4545920; 704696, 4545929;
704696, 4545937; 704694, 4545946;
704693, 4545951; 704690, 4545957;
704685, 4545961; 704679, 4545962;
704669, 4545965; 704657, 4545965;
704645, 4545964; 704636, 4545960;
704629, 4545953; 704622, 4545947;
704615, 4545934; 704612, 4545925;
704608, 4545914; 704608, 4545903;
704610, 4545895; 704610, 4545892;
704608, 4545889; 704607, 4545883;
704609, 4545876; 704611, 4545868;
704611, 4545861; 704609, 4545853;
704607, 4545843; 704604, 4545837;
704602, 4545834; 704598, 4545832;
704590, 4545831; 704587, 4545834;
704583, 4545842; 704580, 4545857;
704578, 4545866; 704577, 4545873;
704571, 4545879; 704564, 4545884;
704557, 4545888; 704551, 4545891;
704547, 4545896; 704545, 4545902;
704544, 4545914; 704548, 4545924;
704551, 4545932; 704553, 4545937;
704553, 4545945; 704548, 4545952;
704543, 4545959; 704542, 4545968;
704545, 4545977; 704552, 4545982;
704564, 4545983; 704574, 4545986;
704578, 4545992; 704580, 4546009;
704585, 4546021; 704598, 4546029;
704611, 4546033; 704624, 4546037;
704636, 4546041; 704652, 4546042;
704664, 4546041; 704676, 4546037;
704689, 4546037; 704698, 4546040;
704709, 4546044; 704719, 4546050;
704729, 4546057; 704738, 4546065;
704742, 4546074; 704742, 4546085;
704740, 4546096; 704735, 4546109;
704727, 4546122; 704723, 4546130;
704720, 4546139; 704719, 4546147;
704719, 4546155; 704720, 4546161;
704722, 4546164; 704727, 4546169;
704729, 4546170; 704732, 4546173;
704726, 4546180; 704723, 4546184;
704715, 4546189; 704708, 4546194;
704702, 4546198; 704694, 4546202;
704689, 4546205; 704681, 4546209;
704678, 4546214; 704675, 4546224;
704672, 4546228; 704662, 4546233;
704650, 4546236; 704640, 4546237;
704629, 4546235; 704617, 4546233;
704605, 4546232; 704592, 4546230;
704581, 4546232; 704569, 4546233;
704562, 4546234; 704554, 4546235;
704548, 4546236; 704543, 4546235;
704538, 4546235; 704535, 4546236;
704533, 4546236; 704533, 4546236;
704524, 4546234; 704520, 4546234;
704515, 4546234; 704508, 4546234;
704499, 4546232; 704494, 4546229;
704489, 4546225; 704487, 4546219;
704486, 4546212; 704485, 4546204;
704482, 4546197; 704471, 4546189;
704463, 4546170; 704454, 4546161;
704444, 4546153; 704435, 4546148;
704427, 4546144; 704415, 4546141;
704406, 4546137; 704399, 4546130;
704393, 4546125; 704388, 4546119;
704380, 4546116; 704373, 4546115;
704365, 4546116; 704354, 4546116;
704347, 4546111; 704341, 4546105;
704336, 4546098; 704332, 4546094;
704325, 4546088; 704323, 4546087;
704317, 4546085; 704313, 4546085;
704312, 4546088; 704310, 4546092;
704310, 4546097; 704311, 4546103;
704317, 4546113; 704326, 4546125;
704332, 4546133; 704334, 4546136;
704335, 4546139; 704338, 4546147;
704338, 4546154; 704337, 4546160;
704333, 4546165; 704325, 4546169;
704315, 4546171; 704305, 4546175;
704298, 4546178; 704297, 4546179;
704294, 4546184; 704291, 4546193;
704292, 4546204; 704294, 4546213;
704296, 4546220; 704294, 4546225;
704286, 4546234; 704279, 4546236;
704272, 4546240; 704268, 4546248;
704262, 4546256; 704256, 4546261;
704249, 4546264; 704239, 4546266;
704220, 4546261; 704210, 4546257;
704200, 4546251; 704189, 4546243;
704181, 4546235; 704175, 4546225;
704168, 4546215; 704162, 4546207;
704155, 4546203; 704143, 4546201;
704135, 4546202; 704126, 4546206;
704119, 4546209; 704112, 4546210;
704102, 4546209; 704094, 4546207;
704093, 4546207; 704086, 4546203;
704086, 4546222; 704088, 4546234;
704089, 4546240; 704091, 4546246;
704092, 4546255; 704078, 4546258;
704068, 4546261; 704061, 4546266;
704058, 4546268; 704055, 4546272;
704052, 4546276; 704050, 4546281;
704048, 4546286; 704046, 4546293;
704048, 4546301; 704042, 4546301;
704036, 4546304; 704029, 4546314;
704026, 4546326; 704026, 4546340;
704026, 4546354; 704028, 4546367;
704032, 4546382; 704037, 4546396;
704043, 4546406; 704050, 4546414;
704058, 4546419; 704068, 4546419;
704078, 4546416; 704086, 4546409;
704091, 4546401; 704098, 4546391;
704108, 4546405; 704109, 4546410;
704109, 4546418; 704109, 4546424;
704106, 4546432; 704103, 4546437;
704101, 4546443; 704099, 4546455;
704099, 4546455; 704096, 4546455;
704093, 4546457; 704086, 4546459;
704077, 4546462; 704066, 4546463;
704056, 4546463; 704044, 4546462;
704032, 4546455; 704027, 4546449;
704023, 4546439; 704019, 4546431;
704015, 4546418; 704011, 4546399;
704008, 4546387; 704004, 4546371;
703999, 4546351; 703994, 4546334;
703990, 4546301; 703978, 4546297;
703974, 4546302; 703971, 4546307;
703969, 4546315; 703965, 4546323;
703963, 4546328; 703960, 4546334;
703956, 4546339; 703953, 4546344;
703950, 4546347; 703945, 4546351;
703938, 4546353; 703931, 4546352;
703926, 4546347; 703924, 4546341;
703924, 4546333; 703925, 4546322;
703930, 4546311; 703937, 4546299;
703942, 4546290; 703948, 4546279;
703951, 4546269; 703952, 4546258;
703949, 4546242; 703943, 4546231;
703933, 4546222; 703916, 4546217;
703899, 4546212; 703882, 4546210;
703866, 4546211; 703841, 4546215;
703830, 4546217; 703816, 4546219;
703802, 4546219; 703791, 4546217;
703780, 4546213; 703771, 4546208;
703767, 4546203; 703764, 4546198;
703762, 4546190; 703762, 4546187;
703762, 4546184; 703771, 4546185;
703790, 4546182; 703798, 4546179;
703806, 4546177; 703819, 4546173;
703832, 4546169; 703847, 4546165;
703866, 4546161; 703877, 4546159;
703891, 4546158; 703906, 4546157;
703915, 4546159; 703925, 4546162;
703936, 4546168; 703945, 4546174;
703941, 4546158; 703934, 4546150;
703921, 4546142; 703906, 4546136;
703889, 4546133; 703875, 4546129;
703864, 4546122; 703852, 4546113;
703842, 4546100; 703836, 4546084;
703830, 4546071; 703824, 4546064;
703817, 4546058; 703811, 4546056;
703804, 4546057; 703799, 4546062;
703797, 4546067; 703797, 4546072;
703799, 4546075; 703802, 4546079;
703803, 4546082; 703802, 4546086;
703797, 4546090; 703793, 4546092;
703791, 4546094; 703790, 4546099;
703789, 4546106; 703792, 4546111;

703794, 4546118; 703796, 4546124; 703795, 4546130; 703794, 4546135; 703791, 4546139; 703785, 4546144; 703780, 4546146; 703733, 4546145; 703740, 4546111; 703742, 4546096; 703743, 4546083; 703743, 4546067; 703742, 4546055; 703739, 4546040; 703734, 4546027; 703727, 4546015; 703719, 4546005; 703710, 4545998; 703699, 4545993; 703687, 4545989; 703677, 4545988; 703679, 4545980; 703679, 4545974; 703678, 4545968; 703676, 4545966; 703667, 4545964; 703654, 4545963; 703644, 4545967; 703638, 4545968; 703630, 4545966; 703627, 4545963; 703627, 4545960; 703630, 4545956; 703635, 4545952; 703638, 4545948; 703638, 4545943; 703635, 4545940; 703632, 4545937; 703626, 4545934; 703620, 4545930; 703618, 4545926; 703619, 4545922; 703620, 4545910; 703623, 4545908; 703627, 4545906; 703631, 4545904; 703641, 4545900; 703649, 4545896; 703656, 4545893; 703670, 4545889; 703687, 4545882; 703700, 4545875; 703708, 4545869; 703715, 4545858; 703720, 4545847; 703725, 4545832; 703730, 4545818; 703736, 4545799; 703741, 4545785; 703746, 4545768; 703752, 4545754; 703759, 4545743; 703768, 4545735; 703777, 4545728; 703789, 4545721; 703799, 4545715; 703807, 4545708; 703812, 4545702; 703816, 4545693; 703819, 4545681; 703819, 4545673; 703816, 4545666; 703812, 4545663; 703808, 4545662; 703805, 4545663; 703802, 4545664; 703797, 4545668; 703792, 4545674; 703775, 4545692; 703765, 4545702; 703755, 4545713; 703733, 4545740; 703726, 4545746; 703718, 4545746; 703707, 4545748; 703698, 4545753; 703694, 4545760; 703690, 4545773; 703690, 4545782; 703692, 4545790; 703695, 4545801; 703694, 4545811; 703689, 4545818; 703683, 4545824; 703675, 4545826; 703669, 4545825; 703662, 4545821; 703658, 4545816; 703652, 4545809; 703647, 4545805; 703637, 4545801; 703627, 4545801; 703618, 4545803; 703607, 4545807; 703602, 4545812; 703598, 4545820; 703593, 4545830; 703583, 4545834; 703573, 4545833; 703562, 4545831; 703548, 4545831; 703541, 4545833; 703548, 4545846; 703552, 4545868; 703539, 4545891; 703514, 4545893; 703467, 4545892; 703437, 4545886; 703412, 4545876; 703391, 4545877; 703381, 4545878; 703370, 4545880; 703361, 4545882; 703353, 4545886; 703345, 4545890; 703339, 4545892; 703334, 4545891; 703328, 4545884; 703321, 4545875; 703310, 4545868; 703302, 4545867; 703295, 4545869; 703289, 4545874; 703285, 4545881; 703276, 4545887; 703265, 4545889; 703256, 4545891; 703251, 4545894; 703249, 4545899; 703250, 4545906; 703255, 4545919; 703255, 4545928; 703251, 4545936; 703243, 4545940; 703239, 4545948; 703239, 4545954; 703244, 4545961; 703251, 4545965; 703263, 4545966; 703282, 4545963; 703298, 4545964; 703315, 4545967; 703325, 4545972; 703336, 4545975; 703344, 4545975; 703347, 4545975; 703350, 4545973; 703354, 4545969; 703356, 4545969; 703358, 4545972; 703360, 4545974; 703361, 4545977; 703361, 4545985; 703360, 4545990; 703358, 4545994; 703356, 4545997; 703350, 4546002; 703345, 4546004; 703374, 4546019; 703405, 4546043; 703398, 4546098; 703361, 4546163; 703286, 4546236; 703260, 4546291; 703261, 4546292; 703263, 4546303; 703267, 4546308; 703274, 4546310; 703281, 4546309; 703289, 4546305; 703294, 4546301; 703296, 4546296; 703299, 4546289; 703301, 4546278; 703304, 4546268; 703309, 4546257; 703315, 4546251; 703328, 4546247; 703335, 4546246; 703378, 4546188; 703432, 4546121; 703472, 4546076; 703512, 4546055; 703512, 4546053; 703516, 4546046; 703521, 4546041; 703529, 4546037; 703536, 4546031; 703543, 4546027; 703554, 4546019; 703563, 4546014; 703573, 4546013; 703589, 4546020; 703586, 4546022; 703579, 4546029; 703570, 4546037; 703561, 4546046; 703554, 4546056; 703551, 4546063; 703549, 4546071; 703549, 4546082; 703551, 4546095; 703556, 4546104; 703566, 4546115; 703573, 4546122; 703581, 4546128; 703592, 4546135; 703597, 4546139; 703607, 4546152; 703625, 4546150; 703633, 4546150; 703641, 4546152; 703649, 4546155; 703655, 4546159; 703660, 4546163; 703664, 4546167; 703669, 4546181; 703669, 4546184; 703669, 4546198; 703668, 4546212; 703667, 4546223; 703666, 4546234; 703666, 4546241; 703664, 4546249; 703652, 4546257; 703641, 4546261; 703630, 4546262; 703618, 4546265; 703605, 4546268; 703590, 4546271; 703578, 4546273; 703570, 4546274; 703560, 4546276; 703552, 4546276; 703543, 4546273; 703540, 4546269; 703536, 4546262; 703535, 4546253; 703533, 4546247; 703527, 4546241; 703519, 4546238; 703511, 4546238; 703503, 4546240; 703495, 4546242; 703494, 4546246; 703490, 4546257; 703488, 4546269; 703485, 4546281; 703482, 4546287; 703478, 4546292; 703473, 4546298; 703466, 4546302; 703456, 4546301; 703449, 4546297; 703440, 4546289; 703432, 4546286; 703420, 4546290; 703414, 4546298; 703408, 4546304; 703399, 4546307; 703388, 4546308; 703378, 4546311; 703369, 4546317; 703364, 4546323; 703349, 4546342; 703343, 4546353; 703340, 4546361; 703338, 4546370; 703335, 4546382; 703331, 4546387; 703326, 4546391; 703321, 4546400; 703318, 4546412; 703311, 4546432; 703306, 4546441; 703302, 4546448; 703289, 4546457; 703281, 4546461; 703270, 4546464; 703261, 4546465; 703254, 4546468; 703250, 4546470; 703249, 4546472; 703247, 4546477; 703247, 4546516; 703248, 4546515; 703248, 4546588; 703499, 4546594; 703498, 4546596; 704053, 4546612; 704057, 4546612; 704067, 4546612; 704079, 4546612; 704089, 4546612; 704101, 4546612; 704117, 4546612; 704136, 4546613; 704154, 4546614; 704172, 4546614; 704193, 4546613; 704214, 4546613; 704234, 4546612; 704253, 4546610; 704274, 4546610; 704293, 4546612; 704309, 4546615; 704320, 4546616; 704326, 4546615; 704339, 4546609; 704339, 4546609; 704342, 4546605; 704344, 4546602; 704347, 4546598; 704352, 4546594; 704359, 4546590; 704369, 4546587; 704379, 4546585; 704390, 4546585; 704400, 4546589; 704410, 4546597; 704419, 4546604; 704429, 4546609; 704444, 4546613; 704457, 4546617; 704471, 4546620; 704487, 4546619; 704502, 4546616; 704512, 4546612; 704517, 4546607; 704517, 4546599; 704514, 4546591; 704514, 4546583; 704517, 4546577; 704525, 4546572; 704529, 4546571; 704537, 4546571; 704548, 4546575; 704558, 4546580; 704568, 4546587; 704575, 4546595; 704582, 4546605; 704589, 4546614; 704601, 4546622; 704615, 4546624; 704627, 4546624; 704641, 4546620; 704652, 4546617; 704669, 4546615; 704682, 4546617; 704693, 4546620; 704713, 4546626; 704724, 4546634; 704731, 4546637; 704739, 4546639; 704746, 4546640; 704751, 4546639; 704757, 4546637; 704758, 4546635; 704760, 4546632;

(x) Tract 4j: 705755, 4546121; 705768, 4546082; 705807, 4546037; 705849, 4546006; 705848, 4546004; 705850, 4545994; 705853, 4545987; 705858, 4545977; 705869, 4545962; 705876, 4545955; 705881, 4545951; 705887, 4545947; 705894, 4545943; 705898, 4545941; 705904, 4545943; 705910, 4545950; 705914, 4545956; 705917, 4545962; 705919, 4545967; 705920, 4545973; 705919, 4545978; 705936, 4545973; 705936, 4545969; 705938, 4545959; 705937, 4545949; 705931, 4545938; 705924, 4545930; 705916, 4545926; 705909, 4545924; 705853, 4545938; 705792, 4545978; 705750, 4546016; 705730, 4545996; 705727, 4545924; 705731, 4545836; 705747, 4545803; 705750, 4545780; 705743,

4545776; 705735, 4545769; 705731, 4545755; 705729, 4545741; 705725, 4545732; 705719, 4545724; 705711, 4545721; 705703, 4545720; 705698, 4545723; 705695, 4545732; 705694, 4545744; 705695, 4545755; 705694, 4545768; 705695, 4545779; 705695, 4545787; 705694, 4545794; 705693, 4545800; 705691, 4545803; 705682, 4545808; 705671, 4545811; 705661, 4545810; 705647, 4545809; 705640, 4545807; 705634, 4545806; 705628, 4545807; 705624, 4545809; 705620, 4545810; 705611, 4545809; 705606, 4545803; 705599, 4545812; 705595, 4545818; 705590, 4545827; 705584, 4545838; 705581, 4545846; 705580, 4545861; 705582, 4545870; 705584, 4545878; 705589, 4545889; 705594, 4545899; 705597, 4545907; 705596, 4545917; 705593, 4545933; 705594, 4545942; 705598, 4545948; 705600, 4545957; 705597, 4545966; 705593, 4545975; 705588, 4545983; 705582, 4545993; 705579, 4546002; 705576, 4546015; 705572, 4546025; 705568, 4546039; 705566, 4546053; 705565, 4546064; 705569, 4546077; 705573, 4546089; 705581, 4546104; 705588, 4546119; 705590, 4546131; 705592, 4546144; 705589, 4546153; 705586, 4546162; 705580, 4546169; 705573, 4546178; 705567, 4546185; 705563, 4546194; 705557, 4546204; 705549, 4546216; 705521, 4546246; 705509, 4546259; 705499, 4546270; 705490, 4546282; 705483, 4546297; 705480, 4546312; 705480, 4546327; 705482, 4546341; 705485, 4546358; 705488, 4546374; 705489, 4546388; 705489, 4546404; 705485, 4546415; 705478, 4546424; 705470, 4546431; 705464, 4546434; 705448, 4546439; 705437, 4546445; 705424, 4546452; 705410, 4546460; 705401, 4546465; 705387, 4546473; 705372, 4546483; 705359, 4546493; 705347, 4546502; 705334, 4546511; 705321, 4546520; 705306, 4546529; 705297, 4546535; 705285, 4546543; 705273, 4546552; 705263, 4546564; 705253, 4546573; 705244, 4546577; 705234, 4546579; 705222, 4546576; 705214, 4546573; 705208, 4546566; 705204, 4546557; 705202, 4546545; 705199, 4546525; 705195, 4546514; 705193, 4546509; 705190, 4546502; 705186, 4546493; 705181, 4546483; 705173, 4546474; 705166, 4546467; 705154, 4546455; 705172, 4546454; 705172, 4546453; 705202, 4546453; 705226, 4546467; 705225, 4546467; 705229, 4546472; 705235, 4546483; 705240, 4546499; 705240, 4546509; 705238, 4546517; 705236, 4546523; 705234, 4546529; 705235, 4546535; 705237, 4546538; 705245, 4546539; 705252, 4546538; 705261, 4546534; 705266, 4546526; 705269, 4546515; 705272, 4546501; 705274, 4546492; 705279, 4546483; 705288, 4546476; 705299, 4546472; 705309, 4546471; 705320, 4546469; 705331, 4546466; 705345, 4546457; 705354, 4546449; 705367, 4546443; 705381, 4546439; 705399, 4546434; 705412, 4546431; 705425, 4546427; 705438, 4546423; 705446, 4546417; 705452, 4546408; 705456, 4546395; 705458, 4546380; 705458, 4546362; 705455, 4546349; 705452, 4546336; 705449, 4546325; 705449, 4546315; 705450, 4546306; 705453, 4546300; 705458, 4546293; 705465, 4546281; 705469, 4546269; 705473, 4546258; 705478, 4546251; 705490, 4546242; 705499, 4546234; 705509, 4546221; 705517, 4546207; 705523, 4546195; 705529, 4546185; 705533, 4546180; 705541, 4546177; 705548, 4546171; 705555, 4546162; 705558, 4546150; 705557, 4546137; 705555, 4546120; 705551, 4546107; 705547, 4546093; 705542, 4546081; 705538, 4546071; 705531, 4546059; 705527, 4546051; 705524, 4546040; 705525, 4546027; 705531, 4546011; 705540, 4546001; 705550, 4545993; 705558, 4545987; 705564, 4545981; 705569, 4545975; 705571, 4545968; 705569, 4545955; 705563, 4545942; 705554, 4545926; 705547, 4545913; 705539, 4545903; 705533, 4545891; 705530, 4545877; 705529, 4545861; 705531, 4545847; 705533, 4545834; 705534, 4545821; 705533, 4545811; 705529, 4545804; 705521, 4545798; 705512, 4545796; 705506, 4545796; 705501, 4545799; 705496, 4545801; 705487, 4545799; 705481, 4545794; 705472, 4545788; 705463, 4545786; 705455, 4545788; 705448, 4545790; 705435, 4545794; 705422, 4545787; 705416, 4545782; 705407, 4545775; 705396, 4545769; 705383, 4545764; 705372, 4545759; 705358, 4545756; 705345, 4545754; 705333, 4545750; 705317, 4545740; 705317, 4545740; 705312, 4545745; 705309, 4545748; 705303, 4545753; 705296, 4545757; 705288, 4545761; 705282, 4545764; 705275, 4545766; 705269, 4545766; 705256, 4545770; 705245, 4545766; 705242, 4545764; 705238, 4545762; 705233, 4545760; 705230, 4545759; 705219, 4545760; 705219, 4545755; 705219, 4545751; 705217, 4545746; 705215, 4545741; 705212, 4545736; 705208, 4545734; 705205, 4545731; 705202, 4545728; 705200, 4545724; 705199, 4545720; 705200, 4545714; 705201, 4545710; 705202, 4545706; 705205, 4545702; 705210, 4545700; 705216, 4545697; 705222, 4545695; 705230, 4545694; 705239, 4545692; 705247, 4545690; 705253, 4545687; 705258, 4545682; 705263, 4545673; 705265, 4545666; 705266, 4545659; 705265, 4545652; 705263, 4545643; 705261, 4545637; 705260, 4545629; 705260, 4545624; 705261, 4545617; 705264, 4545614; 705267, 4545611; 705272, 4545608; 705278, 4545602; 705283, 4545596; 705286, 4545590; 705287, 4545584; 705286, 4545576; 705285, 4545568; 705283, 4545562; 705281, 4545558; 705279, 4545552; 705279, 4545546; 705279, 4545541; 705280, 4545536; 705284, 4545527; 705288, 4545520; 705291, 4545515; 705303, 4545500; 705300, 4545488; 705300, 4545484; 705313, 4545482; 705322, 4545480; 705329, 4545478; 705337, 4545475; 705345, 4545472; 705350, 4545467; 705354, 4545460; 705355, 4545452; 705354, 4545444; 705353, 4545438; 705356, 4545431; 705359, 4545426; 705362, 4545417; 705362, 4545406; 705361, 4545396; 705356, 4545386; 705353, 4545380; 705350, 4545375; 705346, 4545372; 705343, 4545370; 705340, 4545368; 705336, 4545380; 705332, 4545383; 705328, 4545385; 705321, 4545389; 705316, 4545394; 705312, 4545401; 705310, 4545408; 705309, 4545416; 705309, 4545424; 705308, 4545432; 705309, 4545438; 705303, 4545448; 705294, 4545438; 705288, 4545429; 705282, 4545416; 705278, 4545403; 705275, 4545392; 705274, 4545380; 705275, 4545368; 705278, 4545360; 705282, 4545351; 705289, 4545344; 705294, 4545337; 705298, 4545329; 705299, 4545320; 705297, 4545306; 705293, 4545297; 705287, 4545285; 705282, 4545272; 705282, 4545264; 705284, 4545255; 705290, 4545243; 705293, 4545240; 705298, 4545236; 705302, 4545234; 705307, 4545231; 705308, 4545230; 705311, 4545228; 705316, 4545211; 705325, 4545208; 705327, 4545206; 705330, 4545200; 705332, 4545193; 705334, 4545184; 705337, 4545176; 705340, 4545170; 705344, 4545157; 705344, 4545143; 705343, 4545129; 705342, 4545116; 705341, 4545104; 705339, 4545095; 705338, 4545087; 705340, 4545076; 705342, 4545069; 705345, 4545063; 705349, 4545055; 705352, 4545043; 705352, 4545035; 705351, 4545030; 705351, 4545026; 705353, 4545021; 705357, 4545015; 705360, 4545011; 705360, 4545004; 705359, 4545001; 705356, 4544999; 705350, 4544999; 705344, 4544999; 705339, 4544999; 705335, 4544999; 705331, 4544999; 705329, 4544999; 705328, 4545000; 705327, 4545000; 705324, 4545001; 705312, 4545002; 705307, 4545002; 705301, 4545002; 705293, 4545001; 705287, 4545003; 705280, 4545007; 705277, 4545011; 705274, 4545023; 705274, 4545032; 705275, 4545038; 705277, 4545046; 705278,

4545055; 705278, 4545065; 705274, 4545080; 705268, 4545094; 705253, 4545121; 705247, 4545133; 705243, 4545145; 705240, 4545161; 705240, 4545175; 705242, 4545189; 705247, 4545201; 705254, 4545215; 705257, 4545226; 705257, 4545241; 705256, 4545257; 705251, 4545269; 705246, 4545276; 705242, 4545282; 705235, 4545288; 705231, 4545297; 705231, 4545305; 705233, 4545317; 705231, 4545328; 705227, 4545341; 705227, 4545353; 705229, 4545364; 705234, 4545376; 705240, 4545384; 705246, 4545392; 705255, 4545402; 705262, 4545410; 705265, 4545420; 705267, 4545432; 705264, 4545445; 705264, 4545455; 705264, 4545468; 705266, 4545477; 705267, 4545484; 705267, 4545494; 705267, 4545505; 705266, 4545516; 705265, 4545532; 705262, 4545549; 705262, 4545557; 705259, 4545565; 705254, 4545574; 705249, 4545579; 705243, 4545585; 705233, 4545593; 705221, 4545601; 705200, 4545622; 705193, 4545629; 705186, 4545637; 705182, 4545648; 705179, 4545659; 705175, 4545666; 705169, 4545672; 705158, 4545677; 705151, 4545684; 705143, 4545695; 705135, 4545707; 705126, 4545717; 705118, 4545724; 705111, 4545730; 705081, 4545761; 705070, 4545769; 705059, 4545773; 705050, 4545773; 705044, 4545772; 705038, 4545770; 705030, 4545770; 705022, 4545773; 705018, 4545777; 705012, 4545783; 705009, 4545791; 705006, 4545799; 705006, 4545800; 705070, 4545821; 705120, 4545864; 705197, 4545924; 705274, 4545961; 705287, 4546009; 705283, 4546013; 705282, 4546036; 705279, 4546084; 705259, 4546080; 705236, 4546061; 705231, 4546053; 705211, 4546057; 705218, 4546078; 705154, 4546095; 705128, 4546061; 705111, 4546061; 705069, 4546047; 705058, 4546039; 705049, 4546044; 705000, 4546042; 704985, 4546014; 704993, 4545981; 704992, 4545980; 704969, 4545959; 704964, 4545971; 704957, 4545980; 704954, 4545985; 704944, 4545992; 704933, 4545987; 704929, 4545987; 704928, 4545988; 704920, 4545981; 704916, 4545979; 704912, 4545981; 704912, 4545980; 704912, 4545974; 704910, 4545970; 704905, 4545966; 704894, 4545962; 704885, 4545960; 704876, 4545959; 704864, 4545958; 704855, 4545958; 704850, 4545960; 704847, 4545962; 704839, 4545968; 704817, 4545962; 704809, 4545963; 704804, 4545965; 704800, 4545968; 704799, 4545971; 704798, 4545973; 704793, 4546267; 704794, 4546293; 704819, 4546264; 704834, 4546236; 704841, 4546194; 704837, 4546146; 704832, 4546088; 704842, 4546035; 704860, 4545996; 704867, 4545996; 704909, 4546008; 704912, 4546045; 704888, 4546067; 704890, 4546140; 704923, 4546189; 704954, 4546221; 704990, 4546250; 705072, 4546236; 705123, 4546238; 705122, 4546264; 705116, 4546331; 705091, 4546330; 705027, 4546348; 704971, 4546375; 704916, 4546383; 704854, 4546393; 704795, 4546415; 704795, 4546427; 704796, 4546457; 704813, 4546455; 704845, 4546454; 704897, 4546450; 704949, 4546444; 704988, 4546425; 705013, 4546412; 705045, 4546390; 705064, 4546394; 705078, 4546408; 705098, 4546446; 705114, 4546476; 705097, 4546497; 705064, 4546491; 705009, 4546488; 704971, 4546507; 704942, 4546531; 704908, 4546562; 704887, 4546591; 704879, 4546589; 704878, 4546563; 704883, 4546535; 704867, 4546513; 704830, 4546498; 704798, 4546499; 704799, 4546516; 704799, 4546545; 704839, 4546550; 704843, 4546573; 704841, 4546603; 704845, 4546641; 704902, 4546642; 704953, 4546599; 704989, 4546567; 705022, 4546552; 705052, 4546550; 705086, 4546558; 705110, 4546572; 705147, 4546574; 705175, 4546571; 705182, 4546583; 705208, 4546589; 705203, 4546608; 705184, 4546629; 705175, 4546649; 705192, 4546649; 705226, 4546651; 705242, 4546650; 705256, 4546648; 705268, 4546646; 705338, 4546547; 705428, 4546489; 705500, 4546443; 705527, 4546362; 705530, 4546352; 705523, 4546336; 705525, 4546304; 705557, 4546273; 705566, 4546248; 705600, 4546185; 705621, 4546156; 705612, 4546102; 705605, 4546050; 705637, 4545949; 705659, 4545895; 705689, 4545912; 705694, 4545992; 705697, 4546111; 705698, 4546111; 705712, 4546158; 705681, 4546218; 705630, 4546292; 705619, 4546366; 705604, 4546421; 705540, 4546481; 705491, 4546526; 705413, 4546573; 705382, 4546602; 705365, 4546641; 705377, 4546643; 705385, 4546647; 705391, 4546650; 705398, 4546654; 705404, 4546656; 705411, 4546656; 705417, 4546653; 705420, 4546647; 705419, 4546639; 705417, 4546628; 705418, 4546620; 705424, 4546607; 705437, 4546592; 705452, 4546582; 705491, 4546565; 705503, 4546560; 705513, 4546557; 705526, 4546553; 705538, 4546550; 705546, 4546544; 705552, 4546535; 705559, 4546522; 705568, 4546510; 705579, 4546498; 705588, 4546487; 705598, 4546480; 705611, 4546471; 705622, 4546461; 705631, 4546449; 705638, 4546436; 705643, 4546425; 705645, 4546422; 705650, 4546408; 705654, 4546395; 705658, 4546381; 705660, 4546369; 705660, 4546359; 705664, 4546347; 705667, 4546342; 705675, 4546331; 705679, 4546323; 705683, 4546314; 705683, 4546292; 705685, 4546280; 705687, 4546271; 705694, 4546259; 705714, 4546246; 705721, 4546237; 705725, 4546229; 705729, 4546218; 705731, 4546206; 705736, 4546195; 705745, 4546183; 705749, 4546175; 705755, 4546121;

(xi) Tract 4k: 705162, 4546811; 705173, 4546744; 705106, 4546730; 705075, 4546704; 705137, 4546704; 705207, 4546698; 705306, 4546696; 705306, 4546696; 705308, 4546688; 705311, 4546678; 705000, 4546667; 704931, 4546687; 704873, 4546735; 704855, 4546781; 704812, 4546813; 704812, 4546814; 704812, 4546820; 704811, 4546826; 704808, 4546830; 704802, 4546831; 704793, 4546827; 704791, 4546825; 704750, 4546834; 704750, 4546838; 704748, 4546849; 704747, 4546861; 704748, 4546874; 704752, 4546882; 704762, 4546890; 704773, 4546896; 704782, 4546898; 704788, 4546902; 704796, 4546906; 704803, 4546913; 704807, 4546923; 704807, 4546936; 704807, 4546946; 704870, 4546886; 704920, 4546847; 704958, 4546774; 705006, 4546748; 705048, 4546766; 705076, 4546799; 705084, 4546840; 705084, 4546893; 705062, 4546927; 705046, 4546957; 705056, 4546960; 705070, 4546959; 705080, 4546953; 705087, 4546947; 705095, 4546942; 705103, 4546941; 705112, 4546940; 705122, 4546937; 705132, 4546930; 705140, 4546923; 705149, 4546917; 705156, 4546913; 705163, 4546904; 705167, 4546894; 705164, 4546888; 705161, 4546883; 705159, 4546875; 705161, 4546864; 705165, 4546856; 705168, 4546854; 705162, 4546811;

(xii) Tract 4l: 702925, 4547900; 702933, 4547900; 702939, 4547902; 702948, 4547887; 702968, 4547865; 703001, 4547844; 703038, 4547835; 703043, 4547832; 703049, 4547829; 703054, 4547824; 703066, 4547809; 703087, 4547807; 703094, 4547806; 703100, 4547805; 703102, 4547805; 703103, 4547598; 703106, 4547564; 703105, 4547558; 703104, 4547555; 703099, 4547554; 703093, 4547555; 703086, 4547558; 703078, 4547562; 703069, 4547567; 703061, 4547572; 703045, 4547581; 703030, 4547586; 703016, 4547588; 703001, 4547587; 702990, 4547582; 702980, 4547578; 702953, 4547563; 702940, 4547560; 702927, 4547563; 702923, 4547568; 702922, 4547572; 702924, 4547584; 702926, 4547593; 702928, 4547599; 702935, 4547608; 702954, 4547624; 702961, 4547647; 702928, 4547653; 702897, 4547665; 702859, 4547666; 702857, 4547669; 702851, 4547678;

702847, 4547690; 702845, 4547700; 702846, 4547713; 702849, 4547727; 702849, 4547727; 702874, 4547742; 702907, 4547765; 702913, 4547822; 702912, 4547846; 702882, 4547872; 702874, 4547884; 702876, 4547891; 702880, 4547899; 702884, 4547906; 702893, 4547910; 702901, 4547911; 702911, 4547909; 702917, 4547907; 702921, 4547904; 702925, 4547900;

(xiii) Tract 4m: 703489, 4548057; 703478, 4548055; 703470, 4548054; 703464, 4548053; 703456, 4548057; 703453, 4548053; 703450, 4548052; 703444, 4548048; 703440, 4548044; 703432, 4548039; 703423, 4548034; 703411, 4548027; 703401, 4548021; 703388, 4548016; 703383, 4548016; 703381, 4548020; 703369, 4548005; 703365, 4547997; 703360, 4547989; 703355, 4547980; 703352, 4547973; 703353, 4547966; 703355, 4547961; 703357, 4547956; 703358, 4547949; 703335, 4547941; 703324, 4547935; 703316, 4547924; 703311, 4547910; 703309, 4547893; 703309, 4547877; 703312, 4547860; 703316, 4547842; 703320, 4547824; 703322, 4547808; 703319, 4547790; 703314, 4547773; 703308, 4547760; 703307, 4547744; 703308, 4547727; 703305, 4547714; 703302, 4547696; 703299, 4547677; 703299, 4547661; 703303, 4547648; 703311, 4547637; 703324, 4547630; 703338, 4547627; 703351, 4547623; 703360, 4547615; 703371, 4547599; 703375, 4547590; 703384, 4547577; 703388, 4547570; 703390, 4547553; 703393, 4547528; 703396, 4547508; 703395, 4547491; 703387, 4547473; 703376, 4547460; 703366, 4547450; 703358, 4547431; 703357, 4547415; 703355, 4547402; 703350, 4547393; 703339, 4547384; 703333, 4547374; 703330, 4547358; 703325, 4547344; 703315, 4547334; 703305, 4547326; 703293, 4547315; 703284, 4547306; 703258, 4547283; 703246, 4547274; 703231, 4547262; 703219, 4547253; 703207, 4547244; 703200, 4547234; 703199, 4547223; 703205, 4547211; 703219, 4547203; 703233, 4547197; 703240, 4547189; 703241, 4547173; 703237, 4547159; 703229, 4547148; 703214, 4547137; 703202, 4547123; 703197, 4547114; 703195, 4547103; 703198, 4547089; 703208, 4547073; 703221, 4547055; 703229, 4547044; 703236, 4547034; 703241, 4547026; 703247, 4547019; 703254, 4547005; 703256, 4547008; 703260, 4547012; 703263, 4547015; 703268, 4547023; 703273, 4547036; 703276, 4547050; 703276, 4547064; 703272, 4547074; 703267, 4547084; 703265, 4547099; 703267, 4547113; 703269, 4547126; 703275, 4547135; 703283, 4547145; 703292, 4547154; 703300, 4547162; 703327, 4547122; 703369, 4547100; 703416, 4547101; 703435, 4547128; 703465, 4547184; 703526, 4547199; 703620, 4547221; 703684, 4547237; 703726, 4547259; 703768, 4547339; 703811, 4547361; 703765, 4547387; 703726, 4547409; 703698, 4547449; 703699, 4547518; 703682, 4547530; 703674, 4547567; 703674, 4547612; 703659, 4547670; 703638, 4547662; 703611, 4547629; 703573, 4547594; 703542, 4547552; 703500, 4547509; 703469, 4547465; 703466, 4547441; 703447, 4547421; 703420, 4547372; 703381, 4547360; 703381, 4547363; 703378, 4547375; 703376, 4547393; 703376, 4547406; 703382, 4547419; 703390, 4547430; 703399, 4547444; 703405, 4547461; 703412, 4547479; 703417, 4547499; 703423, 4547516; 703431, 4547532; 703433, 4547542; 703462, 4547562; 703520, 4547619; 703543, 4547688; 703578, 4547749; 703593, 4547795; 703592, 4547837; 703585, 4547867; 703569, 4547901; 703579, 4547960; 703616, 4547995; 703610, 4548075; 703610, 4548075; 703615, 4548091; 703619, 4548104; 703626, 4548112; 703633, 4548121; 703638, 4548128; 703638, 4548136; 703636, 4548142; 703633, 4548146; 703625, 4548153; 703629, 4548167; 703631, 4548173; 703632, 4548179; 703633, 4548187; 703633, 4548192; 703631, 4548198; 703629, 4548204; 703628, 4548208; 703627, 4548223; 703643, 4548220; 703653, 4548216; 703659, 4548212; 703663, 4548203; 703664, 4548189; 703664, 4548177; 703668, 4548164; 703669, 4548163; 703657, 4548152; 703656, 4548102; 703651, 4548021; 703654, 4547960; 703679, 4547937; 703713, 4547896; 703741, 4547895; 703748, 4547897; 703744, 4547885; 703737, 4547873; 703730, 4547860; 703723, 4547844; 703715, 4547831; 703706, 4547821; 703700, 4547810; 703695, 4547788; 703697, 4547780; 703703, 4547772; 703704, 4547765; 703702, 4547753; 703696, 4547739; 703691, 4547727; 703691, 4547716; 703693, 4547701; 703699, 4547689; 703705, 4547679; 703708, 4547671; 703708, 4547657; 703702, 4547642; 703701, 4547628; 703705, 4547619; 703709, 4547612; 703706, 4547599; 703702, 4547589; 703701, 4547580; 703707, 4547570; 703716, 4547564; 703724, 4547561; 703732, 4547556; 703735, 4547549; 703733, 4547539; 703717, 4547527; 703731, 4547526; 703734, 4547525; 703736, 4547522; 703739, 4547517; 703740, 4547512; 703740, 4547503; 703740, 4547492; 703740, 4547486; 703743, 4547478; 703746, 4547476; 703753, 4547476; 703759, 4547482; 703761, 4547490; 703761, 4547498; 703766, 4547509; 703776, 4547513; 703786, 4547514; 703799, 4547515; 703808, 4547514; 703818, 4547513; 703823, 4547513; 703829, 4547511; 703833, 4547508; 703836, 4547506; 703837, 4547501; 703837, 4547485; 703862, 4547492; 703871, 4547492; 703884, 4547494; 703890, 4547495; 703900, 4547496; 703909, 4547494; 703915, 4547491; 703922, 4547483; 703923, 4547473; 703920, 4547464; 703906, 4547454; 703894, 4547448; 703883, 4547442; 703874, 4547434; 703868, 4547427; 703865, 4547416; 703866, 4547405; 703869, 4547394; 703874, 4547381; 703883, 4547373; 703895, 4547371; 703910, 4547371; 703925, 4547374; 703938, 4547378; 703950, 4547382; 703961, 4547387; 703971, 4547391; 703976, 4547393; 703985, 4547396; 703993, 4547397; 704001, 4547396; 704009, 4547393; 704015, 4547387; 704017, 4547380; 704017, 4547367; 704015, 4547356; 704010, 4547342; 704002, 4547323; 703996, 4547313; 703987, 4547304; 703980, 4547298; 703972, 4547291; 703965, 4547281; 703962, 4547274; 703962, 4547268; 703962, 4547265; 703968, 4547258; 703979, 4547255; 703991, 4547256; 704023, 4547256; 704036, 4547255; 704049, 4547253; 704060, 4547249; 704070, 4547246; 704075, 4547242; 704082, 4547231; 704082, 4547218; 704080, 4547205; 704080, 4547196; 704085, 4547184; 704089, 4547174; 704091, 4547160; 704089, 4547141; 704084, 4547125; 704079, 4547109; 704080, 4547094; 704084, 4547084; 704087, 4547079; 704089, 4547069; 704089, 4547064; 704090, 4547057; 704090, 4547056; 704099, 4547054; 704100, 4547054; 704106, 4547050; 704111, 4547044; 704114, 4547039; 704117, 4547033; 704121, 4547025; 704124, 4547021; 704130, 4547015; 704131, 4547014; 704135, 4547009; 704137, 4547005; 704138, 4547001; 704138, 4546999; 704136, 4546992; 704154, 4546981; 704178, 4546974; 704202, 4546969; 704224, 4546963; 704245, 4546959; 704268, 4546957; 704290, 4546955; 704306, 4546956; 704320, 4546958; 704332, 4546961; 704345, 4546963; 704355, 4546962; 704367, 4546954; 704377, 4546941; 704409, 4546916; 704430, 4546912; 704446, 4546908; 704466, 4546904; 704477, 4546901; 704491, 4546892; 704493, 4546886; 704500, 4546877; 704507, 4546870; 704518, 4546866; 704534, 4546863; 704567, 4546797; 704638, 4546765; 704729, 4546782; 704729, 4546746; 704727, 4546732; 704727, 4546724; 704728, 4546719; 704728, 4546712; 704727, 4546705; 704727, 4546692; 704727, 4546685; 704728, 4546679;

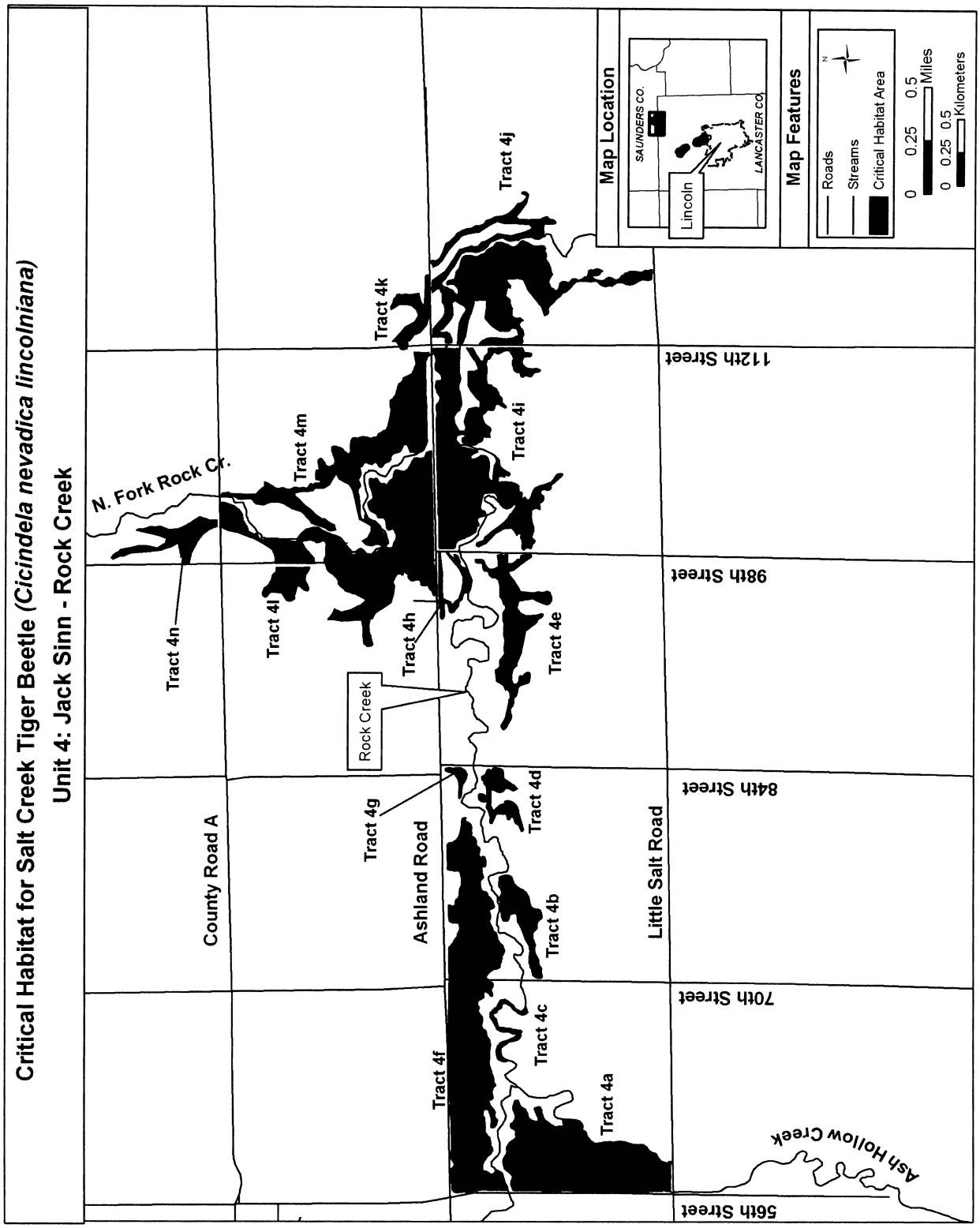
704729, 4546674; 704729, 4546670;
704728, 4546669; 704725, 4546668;
704723, 4546668; 704717, 4546669;
704703, 4546671; 704701, 4546675;
704698, 4546681; 704696, 4546686;
704694, 4546689; 704690, 4546691;
704684, 4546693; 704678, 4546694;
704659, 4546696; 704654, 4546696;
704653, 4546696; 704641, 4546695;
704631, 4546694; 704623, 4546694;
704606, 4546696; 704576, 4546698;
704521, 4546701; 704500, 4546702;
704480, 4546702; 704455, 4546701;
704434, 4546699; 704410, 4546698;
704351, 4546691; 704333, 4546689;
704315, 4546690; 704297, 4546694;
704283, 4546692; 704265, 4546693;
704243, 4546693; 704219, 4546693;
704201, 4546691; 704155, 4546688;
704139, 4546686; 704124, 4546685;
704108, 4546684; 704090, 4546685;
704073, 4546685; 704056, 4546686;
704044, 4546686; 704028, 4546689;
704010, 4546693; 703997, 4546699;
703987, 4546705; 703979, 4546716;
703973, 4546727; 703966, 4546741;
703955, 4546761; 703957, 4546764;
703962, 4546769; 703969, 4546774;
703972, 4546777; 703973, 4546783;
703971, 4546804; 704011, 4546822;
704024, 4546829; 704030, 4546843;
704030, 4546843; 704029, 4546851;
704024, 4546857; 704019, 4546860;
704010, 4546863; 704000, 4546868;
703983, 4546878; 703976, 4546885;
703971, 4546893; 703966, 4546903;
703963, 4546915; 703962, 4546924;
703958, 4546935; 703955, 4546938;
703947, 4546945; 703939, 4546949;
703928, 4546951; 703917, 4546953;
703905, 4546957; 703900, 4546964;
703893, 4546985; 703889, 4546995;
703884, 4547001; 703874, 4547007;
703864, 4547013; 703856, 4547023;
703858, 4547032; 703867, 4547042;
703879, 4547048; 703887, 4547054;
703894, 4547063; 703894, 4547074;
703888, 4547080; 703883, 4547084;
703880, 4547089; 703879, 4547100;
703882, 4547110; 703887, 4547121;
703892, 4547131; 703892, 4547136;
703892, 4547144; 703890, 4547149;
703886, 4547153; 703878, 4547156;
703872, 4547160; 703866, 4547167;
703861, 4547177; 703857, 4547180;
703849, 4547180; 703840, 4547178;
703826, 4547174; 703814, 4547173;
703799, 4547175; 703792, 4547177;
703792, 4547177; 703776, 4547185;
703762, 4547194; 703744, 4547185;
703744, 4547185; 703741, 4547183;
703736, 4547182; 703734, 4547181;
703734, 4547181; 703727, 4547179;
703715, 4547180; 703705, 4547184;
703698, 4547187; 703692, 4547192;
703685, 4547195; 703670, 4547196;
703661, 4547194; 703653, 4547191;
703642, 4547189; 703626, 4547187;
703612, 4547185; 703594, 4547183;
703576, 4547183; 703555, 4547183;
703535, 4547182; 703520, 4547181;
703505, 4547179; 703491, 4547176;
703479, 4547171; 703468, 4547166;
703463, 4547159; 703463, 4547155;
703464, 4547151; 703468, 4547149;
703474, 4547148; 703481, 4547148;
703490, 4547148; 703503, 4547143;
703497, 4547130; 703488, 4547127;
703478, 4547119; 703472, 4547112;
703466, 4547102; 703459, 4547089;
703451, 4547074; 703441, 4547062;
703426, 4547047; 703414, 4547037;
703395, 4547025; 703375, 4547013;
703348, 4546992; 703344, 4546988;
703331, 4546984; 703316, 4546983;
703304, 4546983; 703293, 4546981;
703285, 4546980; 703275, 4546981;
703258, 4546985; 703253, 4546972;
703252, 4546965; 703251, 4546953;
703253, 4546946; 703259, 4546937;
703266, 4546934; 703274, 4546931;
703287, 4546929; 703294, 4546925;
703303, 4546919; 703314, 4546914;
703327, 4546911; 703340, 4546911;
703355, 4546914; 703367, 4546918;
703378, 4546923; 703388, 4546931;
703391, 4546935; 703393, 4546940;
703392, 4546945; 703389, 4546950;
703387, 4546954; 703384, 4546958;
703382, 4546966; 703384, 4546972;
703392, 4546979; 703407, 4546984;
703423, 4546986; 703436, 4546987;
703449, 4546989; 703458, 4546992;
703465, 4546997; 703473, 4547001;
703477, 4547005; 703478, 4547012;
703478, 4547023; 703477, 4547029;
703477, 4547036; 703478, 4547044;
703482, 4547049; 703491, 4547053;
703500, 4547058; 703506, 4547063;
703516, 4547076; 703520, 4547087;
703523, 4547096; 703527, 4547101;
703537, 4547109; 703545, 4547113;
703553, 4547116; 703572, 4547122;
703581, 4547124; 703587, 4547124;
703591, 4547122; 703602, 4547112;
703612, 4547100; 703621, 4547089;
703628, 4547086; 703642, 4547085;
703654, 4547088; 703670, 4547093;
703684, 4547096; 703695, 4547100;
703708, 4547106; 703720, 4547110;
703728, 4547113; 703733, 4547114;
703741, 4547115; 703748, 4547116;
703756, 4547115; 703763, 4547115;
703769, 4547113; 703772, 4547110;
703775, 4547108; 703776, 4547104;
703775, 4547099; 703774, 4547091;
703772, 4547086; 703771, 4547083;
703768, 4547080; 703775, 4547071;
703776, 4547069; 703776, 4547067;
703777, 4547062; 703776, 4547059;
703773, 4547053; 703770, 4547049;
703763, 4547045; 703752, 4547038;
703744, 4547033; 703738, 4547028;
703737, 4547021; 703736, 4547015;
703737, 4547006; 703737, 4547000;
703733, 4546992; 703726, 4546983;
703737, 4546973; 703745, 4546969;
703756, 4546962; 703764, 4546953;
703771, 4546944; 703777, 4546938;
703785, 4546934; 703797, 4546933;
703808, 4546932; 703820, 4546928;
703826, 4546927; 703833, 4546923;
703836, 4546921; 703839, 4546914;
703840, 4546906; 703838, 4546896;
703835, 4546884; 703831, 4546871;
703830, 4546863; 703831, 4546854;
703832, 4546847; 703836, 4546841;
703841, 4546834; 703848, 4546827;
703872, 4546809; 703881, 4546806;
703895, 4546799; 703903, 4546795;
703910, 4546790; 703920, 4546785;
703925, 4546780; 703930, 4546773;
703932, 4546765; 703932, 4546756;
703931, 4546746; 703928, 4546736;
703927, 4546725; 703930, 4546712;
703935, 4546703; 703942, 4546698;
703950, 4546694; 703957, 4546691;
703966, 4546688; 703973, 4546684;
703977, 4546679; 703980, 4546672;
703982, 4546667; 703983, 4546661;
703985, 4546649; 703333, 4546631;
703154, 4546626; 703154, 4546629;
703118, 4546624; 703118, 4546619;
702982, 4546615; 702982, 4546615;
702891, 4546611; 702891, 4546614;
702891, 4546616; 702891, 4546618;
702892, 4546623; 702895, 4546631;
702898, 4546633; 702904, 4546636;
702909, 4546637; 702928, 4546639;
702927, 4546640; 702928, 4546644;
702933, 4546652; 702940, 4546658;
702946, 4546661; 702952, 4546663;
702968, 4546672; 702965, 4546681;
702965, 4546687; 702966, 4546696;
702968, 4546709; 702969, 4546720;
702975, 4546727; 702986, 4546726;
702994, 4546725; 703003, 4546730;
703009, 4546737; 703010, 4546745;
703009, 4546754; 703002, 4546775;
703001, 4546788; 703003, 4546796;
703008, 4546805; 703016, 4546812;
703023, 4546817; 703030, 4546819;
703056, 4546824; 703055, 4546829;
703059, 4546836; 703063, 4546840;
703067, 4546844; 703070, 4546848;
703070, 4546851; 703066, 4546856;
703059, 4546856; 703051, 4546855;
703047, 4546857; 703044, 4546860;
703044, 4546865; 703048, 4546871;
703051, 4546875; 703053, 4546883;
703053, 4546893; 703053, 4546898;
703046, 4546905; 703038, 4546909;
703031, 4546915; 703025, 4546920;
703016, 4546922; 703007, 4546925;
702999, 4546928; 702991, 4546930;
702983, 4546929; 702978, 4546927;
702967, 4546923; 702965, 4546920;
702895, 4546927; 702837, 4546945;
702809, 4546984; 702755, 4547063;
702713, 4547086; 702717, 4547093;
702716, 4547097; 702710, 4547101;
702703, 4547103; 702694, 4547105;
702686, 4547107; 702672, 4547111;
702659, 4547112; 702646, 4547111;

702639, 4547110; 702627, 4547108; 702612, 4547105; 702599, 4547102; 702582, 4547095; 702566, 4547090; 702550, 4547087; 702531, 4547083; 702520, 4547083; 702512, 4547088; 702509, 4547096; 702507, 4547107; 702507, 4547116; 702510, 4547126; 702514, 4547134; 702519, 4547140; 702527, 4547149; 702530, 4547153; 702545, 4547151; 702596, 4547157; 702658, 4547156; 702702, 4547168; 702705, 4547205; 702698, 4547258; 702694, 4547315; 702706, 4547366; 702707, 4547420; 702710, 4547419; 702713, 4547417; 702718, 4547412; 702724, 4547406; 702733, 4547400; 702734, 4547398; 702746, 4547388; 702754, 4547383; 702777, 4547374; 702784, 4547372; 702791, 4547372; 702765, 4547319; 702780, 4547256; 702823, 4547170; 702855, 4547133; 702867, 4547149; 702890, 4547198; 702899, 4547201; 702907, 4547238; 702924, 4547290; 702935, 4547300; 702949, 4547315; 702962, 4547328; 702972, 4547337; 702983, 4547343; 702985, 4547342; 702995, 4547342; 703004, 4547344; 703014, 4547349; 703025, 4547357; 703034, 4547367; 703043, 4547378; 703053, 4547391; 703062, 4547405; 703072, 4547415; 703080, 4547422; 703103, 4547430; 703103, 4547429; 703134, 4547443; 703137, 4547446; 703144, 4547449; 703154, 4547451; 703161, 4547449; 703168, 4547447; 703176, 4547442; 703184, 4547437; 703193, 4547436; 703205, 4547438; 703219, 4547439; 703237, 4547438; 703255, 4547436; 703271, 4547435; 703282, 4547435; 703291, 4547439; 703298, 4547448; 703300, 4547461; 703299, 4547465; 703296, 4547472; 703293, 4547478; 703289, 4547488; 703288, 4547501; 703290, 4547509; 703297, 4547519; 703303, 4547531; 703306, 4547547; 703307, 4547551; 703295, 4547616; 703248, 4547589; 703172, 4547523; 703144, 4547518; 703139, 4547521; 703137, 4547520; 703134, 4547523; 703134, 4547526; 703133, 4547542; 703128, 4547550; 703128, 4547555; 703128, 4547559; 703128, 4547564; 703129, 4547568; 703130, 4547571; 703133, 4547579; 703133, 4547594; 703133, 4547596; 703132, 4547603; 703133, 4547603; 703133, 4547604; 703135, 4547622; 703133, 4547621; 703133, 4547629; 703133, 4547649; 703134, 4547649; 703132, 4547757; 703131, 4547758; 703130, 4547810; 703131, 4547815; 703175, 4547811; 703230, 4547836; 703244, 4547854; 703248, 4547852; 703289, 4547922; 703289, 4547924; 703310, 4547963; 703339, 4548041; 703363, 4548105; 703377, 4548166; 703397, 4548216; 703414, 4548217; 703438, 4548218; 703470, 4548219; 703532, 4548221; 703589, 4548225; 703593, 4548211; 703594, 4548204; 703590, 4548190; 703585, 4548175; 703579, 4548162; 703574, 4548148; 703570, 4548135; 703565, 4548122; 703560, 4548115; 703553, 4548107; 703546, 4548097; 703539, 4548087; 703530, 4548079; 703523, 4548072; 703512, 4548066; 703504, 4548061; 703496, 4548058; 703489, 4548057; 703746, 4546901; 703746, 4546899; 703746, 4546900; 703746, 4546901;

(xiv) Tract 4n: 703213, 4548983; 703212, 4548980; 703214, 4548981; 703216, 4548980; 703224, 4548972; 703227, 4548972; 703247, 4548891; 703261, 4548823; 703258, 4548757; 703244, 4548695; 703279, 4548634; 703314, 4548625; 703333, 4548677; 703347, 4548724; 703374, 4548847; 703375, 4548847; 703379, 4548849; 703382, 4548846; 703387, 4548837; 703389, 4548824; 703388, 4548810; 703388, 4548793; 703394, 4548778; 703398, 4548770; 703404, 4548759; 703406, 4548742; 703405, 4548728; 703403, 4548717; 703402, 4548703; 703408, 4548686; 703410, 4548670; 703410, 4548669; 703383, 4548606; 703387, 4548541; 703416, 4548480; 703482, 4548378; 703456, 4548298; 703458, 4548249; 703407, 4548248; 703379, 4548312; 703344, 4548357; 703290, 4548395; 703205, 4548437; 703135, 4548453; 703132, 4548456; 703126, 4548466; 703122, 4548472; 703120, 4548476; 703118, 4548481; 703117, 4548485; 703116, 4548490; 703116, 4548494; 703117, 4548499; 703119, 4548502; 703127, 4548503; 703137, 4548501; 703147, 4548500; 703157, 4548497; 703165, 4548496; 703171, 4548497; 703173, 4548501; 703179, 4548508; 703174, 4548519; 703184, 4548518; 703236, 4548529; 703279, 4548537; 703254, 4548586; 703225, 4548663; 703217, 4548736; 703208, 4548835; 703200, 4548891; 703182, 4548942; 703181, 4548946; 703180, 4548961; 703176, 4548977; 703173, 4548986; 703168, 4548996; 703164, 4549006; 703161, 4549012; 703159, 4549017; 703158, 4549021; 703157, 4549026; 703159, 4549030; 703165, 4549034; 703171, 4549034; 703179, 4549030; 703191, 4549020; 703200, 4549009; 703206, 4549000; 703210, 4548992; 703213, 4548983

(xi) Note: Map of Unit 4 (Map 4) follows:

BILLING CODE 4310–55–P



* * * * *

Dated: November 29, 2007.

Mitchell Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–5980 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
December 12, 2007

Part IV

The President

Proclamation 8210—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2007

Federal Register
Vol. 72, No. 238
Wednesday, December 12, 2007

Presidential Documents

Title 3—

The President

Proclamation 8210 of December 6, 2007

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2007

By the President of the United States of America

A Proclamation

Americans value deeply our ability to speak, assemble, and worship freely. As a Nation, we can help freedom-loving people everywhere build a world in which these rights are honored and respected. During Human Rights Day, Bill of Rights Day, and Human Rights Week, we celebrate the freedoms guaranteed to all Americans and protected in our Constitution's Bill of Rights.

Many of these fundamental freedoms are still denied to people in countries around the world. The United States continues to stand with those who work to build democracy and secure the blessings of liberty. Individuals are struggling to create free societies in Cuba, Belarus, and Syria. And the day will come when they, and the citizens of other lands such as North Korea, Iran, Zimbabwe, and Sudan, will no longer be restricted from practicing their faith, voicing their opinions, and enjoying the many blessings of freedom.

Freedom and dignity are God's gifts, and during Human Rights Day, Bill of Rights Day, and Human Rights Week, we look forward with confidence to the eventual triumph of human rights for all mankind.

NOW, THEREFORE, I , GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2007, as Human Rights Day; December 15, 2007, as Bill of Rights Day; and the week beginning December 10, 2007, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–6050
Filed 12–11–07; 8:53 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 72, No. 238

Wednesday, December 12, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67831–68040 3
68041–68470 4
68471–68742 5
68743–69136 6
69137–69568 7
69569–70218 10
70219–70478 11
70479–70762 12

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8207 68041
8208 68469
8209 69135
8210 70761

Executive Orders:
11582 (See 13453) 70477
13453 70477

5 CFR

530 67831
575 67831

7 CFR

205 ..... 69569, 70479
246 68966
301 69137
305 70219
613 68743
905 68471
983 69139
1924 70220
1944 70220
3550 70220

Proposed Rules:
51 68542
319 70237
915 69624
930 70240
944 69624
948 70244

10 CFR

Ch. I 68043
19 68043
20 68043
50 68043

12 CFR

3 69288
208 69288
220 70486
225 69288
325 69288
559 69288
560 69288
563 69288
567 69288
620 68060

Proposed Rules:
1750 68656

14 CFR

11 68473
13 68473
17 68473
23 ..... 69572, 69574, 69577, 69579
26 ..... 68618, 70486
36 68473
39 ..... 67841, 67843, 67845, 67847, 69572, 69574, 69577, 69579, 69583, 69585, 69587, 69590, 69591, 69593, 69595, 69598, 69600, 69601, 69604, 69606, 69608, 69610, 69612, 69614
91 68473
97 68062
121 70486
129 70486
139 68473
150 68473
193 68473
404 68473
406 68473

Proposed Rules:
1 68763
23 68763
25 68763
39 ..... 67864, 67866, 67868, 67870, 67873, 67998, 68106, 68108, 68764, 68766, 69628, 69630, 69635, 70247, 70249
71 69638
91 68763
121 68763
125 68763
135 68763
139 68763

15 CFR

740 70509
772 70509

17 CFR

240 ..... 69554, 70450

18 CFR

Proposed Rules:
410 67875

20 CFR

401 69616
402 69616

Proposed Rules:
404 70527

21 CFR

20 69108
25 69108
201 69108
202 69108
207 69108
210 68064
211 68064
225 69108
226 69108
500 69108
510 ..... 68477, 69108
511 69108
515 69108
516 69108
520 68477

522 69142
558 ....68478, 68479, 69108
1300 67850
1308 69618
Proposed Rules:
133 70251
210 ....68111, 68113
211 ....68111, 68113

23 CFR
630 68480

25 CFR
36 68491

26 CFR
Proposed Rules:
1 67878

28 CFR
50 69143

29 CFR
102 68502
Proposed Rules:
4041 68542
4042 68542

30 CFR
701 68000
773 68000
774 68000
778 68000
843 68000
847 68000

31 CFR
351 67853
353 67853
359 67853
360 67853
363 67853

32 CFR
68 70222

33 CFR
110 70513
117 ....68503, 69144, 70515, 70516
165 ....68504, 68506
Proposed Rules:
117 ....68118, 68548

34 CFR
75 69145

37 CFR
Proposed Rules:
201 70529

38 CFR
3 68507
17 68070

40 CFR
49 69618
52 ....67854, 68072, 68508, 68511, 68515, 69148, 69621
81 ....68515, 70222
94 68518
97 68515
131 70517
174 ....68525, 68744
180 ....68529, 68534, 68662, 69150
271 70229
300 68075
Proposed Rules:
9 69522
52 ....67878, 68118, 68119, 68551, 69175, 70255, 70540
60 69175
63 70543
81 70255
94 69522
271 70266

41 CFR
302-4 70234
Proposed Rules:
102-39 70266

42 CFR
411 68075
422 68700
423 68700
424 68075
431 68077
440 68077
441 68077

43 CFR
Proposed Rules:
2800 70376
2880 70376
2920 70376

44 CFR
64 ....68748, 68750
67 ....68768, 68769, 68784, 68795, 68806
Proposed Rules:
67 68752

47 CFR
54 67858
73 67859
Proposed Rules:
73 67880

48 CFR
216 69158
227 69159
252 69159
Proposed Rules:
225 69176
228 69177
231 ....69176, 69177
252 69177

49 CFR
564 68234
571 ....68234, 68442
630 68756

50 CFR
17 70648
229 ....67859, 67861
300 ....68093, 68762
648 ....68095, 68096, 70235
660 ....68097, 69162
Proposed Rules:
17 ....69034, 70269, 70284, 70716
300 70286
600 70286
622 68551
679 ....68810, 68833
697 70286

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 12, 2007

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

License exceptions temporary imports, exports, and reexports (TMP) and baggage (BAG); eligible items expansion; published 12-12-07

FEDERAL RESERVE SYSTEM

Credit by brokers and dealers (Regulation T):

Interpretation cross-reference correction; published 12-12-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Louisiana; published 12-12-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; sale and disposal:

Special forest products and forest botanical products; comments due by 12-21-07; published 10-22-07 [FR E7-20658]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Commerce Control List—

Export and reexport license applications, classification requests, encryption review requests, etc.; mandatory electronic filing; comments due by 12-18-07; published 10-19-07 [FR E7-20655]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic shark; comments due by 12-17-07; published 11-15-07 [FR E7-22377]

Northeastern United States Fisheries—

Atlantic Surfclam and Ocean Quahog; comments due by 12-17-07; published 11-15-07 [FR E7-22381]

International fisheries regulations:

Northwest Atlantic Fisheries Organization Regulatory Area; fish quotas and effort allocation; comments due by 12-19-07; published 12-4-07 [FR E7-23518]

COMMODITY FUTURES TRADING COMMISSION

Federal speculative position limits; revision; comments due by 12-21-07; published 11-21-07 [FR E7-22681]

DEFENSE DEPARTMENT

Military service academies; policy guidance and oversight; revisions; comments due by 12-17-07; published 10-18-07 [FR 07-05157]

DEFENSE DEPARTMENT

Engineers Corps

Reports and guidance documents; availability, etc.:

Comprehensive Everglades Restoration Plan; memoranda; comments due by 12-17-07; published 10-17-07 [FR 07-05110]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:

Cost and quality of fuels for electric plants; monthly report (Form No. 423); elimination; comments due by 12-20-07; published 11-20-07 [FR E7-22550]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-19-07; published 11-19-07 [FR E7-22447]

Air progams:

Outer Continental Shelf regulations—

California; consistency update; comments due by 12-17-07; published 11-16-07 [FR E7-22457]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 12-17-07; published 11-15-07 [FR E7-21811]

Clean Air Interstate Rule; implementation —

Automatic withdrawal provisions; comments due by 12-17-07; published 11-2-07 [FR E7-20849]

Automatic withdrawal provisions; comments due by 12-17-07; published 11-2-07 [FR E7-20845]

Maine; comments due by 12-21-07; published 11-21-07 [FR E7-22596]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Hearing aid-compatible mobile handsets; American National Standards Institute Accredited Standards Committee petition; comments due by 12-21-07; published 11-21-07 [FR E7-22657]

Local exchange carriers; just and reasonable rates establishment; comments due by 12-17-07; published 11-15-07 [FR E7-22342]

Satellite communications—

Ancillary terrestrial components; comments due by 12-19-07; published 11-19-07 [FR E7-22567]

Radio broadcast services:

Multichannel video and cable television service; program access rules and examination of programming tying arrangements; comments due by 12-17-07; published 10-31-07 [FR 07-05388]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Administrative rulings and decisions:

Ozone-depleting substances—

Epinephrine; removal of essential use designation; meeting; comments due by 12-19-07; published 11-8-07 [FR 07-05593]

HOMELAND SECURITY DEPARTMENT

U.S. Customs and Border Protection

Passenger Vessel Services Act; non-coastwise-qualified vessels violation interpretation; Hawaiian coastwise cruises; comments due by 12-21-07; published 11-21-07 [FR E7-22788]

U.S.-Bahrain Free Trade Agreement:

Preferential tariff treatment, other provisions, and comment request; comments due by 12-17-07; published 10-16-07 [FR 07-05062]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Training and service requirements; comments due by 12-17-07; published 9-17-07 [FR E7-18191]

INTERIOR DEPARTMENT

Fish and Wildlife Service

National Wildlife Refuge System:

Refuge-specific public use regulations—

Upper Mississippi River National Wildlife and Fish Refuge; comments due by 12-17-07; published 10-17-07 [FR E7-20423]

NUCLEAR REGULATORY COMMISSION

Nuclear power plants; early site permits, standard design certifications, and combined licenses:

Aircraft impacts; rigorous assessment requirement for new nuclear power reactor designs; comments due by 12-17-07; published 10-3-07 [FR 07-04886]

Production and utilization facilities; domestic licensing:

Pressurized thermal shock events; alternate fracture toughness protection requirements; comments due by 12-17-07; published 10-3-07 [FR 07-04887]

PENSION BENEFIT GUARANTY CORPORATION

Employee Retirement Income Security Act:

Administrative review of agency decisions; comments due by 12-17-

07; published 10-18-07 [FR E7-20538]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance, and aged, blind, and disabled—

Compassionate allowances for rare diseases; hearing; comments due by 12-21-07; published 11-6-07 [FR E7-21828]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Flight simulation training device initial and continuing qualification and use; comments due by 12-21-07; published 10-22-07 [FR 07-04884]

Airworthiness directives:

Airbus; comments due by 12-20-07; published 11-20-07 [FR E7-22634]

Airbus; correction; comments due by 12-17-07; published 11-13-07 [FR E7-21996]

ATR; comments due by 12-19-07; published 11-19-07 [FR E7-22546]

BAE Systems (Operations) Ltd.; comments due by 12-20-07; published 11-20-07 [FR E7-22631]

Bell Helicopter Textron Canada; comments due by 12-17-07; published 11-16-07 [FR E7-22440]

Bombardier; comments due by 12-21-07; published 11-21-07 [FR E7-22726]

Eclipse Aviation Corp.; comments due by 12-18-07; published 10-19-07 [FR E7-20630]

MD Helicopters, Inc.; comments due by 12-18-07; published 10-19-07 [FR E7-20680]

Saab; comments due by 12-20-07; published 11-20-07 [FR E7-22630]

SAAB; comments due by 12-21-07; published 11-21-07 [FR E7-22729]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Fuel system integrity; comments due by 12-17-07; published 11-2-07 [FR E7-21600]

TREASURY DEPARTMENT

Comptroller of the Currency

National banks:

Securities; reporting and disclosure requirements; comments due by 12-17-07; published 10-18-07 [FR E7-20600]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Treasury Tax and Loan Program; reorganization and enhancement; comments due by 12-18-07; published 10-19-07 [FR 07-05135]

TREASURY DEPARTMENT

U.S.-Bahrain Free Trade Agreement:

Preferential tariff treatment, other provisions, and comment request; comments due by 12-17-07; published 10-16-07 [FR 07-05062]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Calistoga, Napa County, CA; comments due by 12-20-07; published 11-20-07 [FR E7-22715]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 50/P.L. 110–132

Multinational Species Conservation Funds Reauthorization Act of 2007 (Dec. 6, 2007; 121 Stat. 1360)

H.R. 465/P.L. 110–133

Asian Elephant Conservation Reauthorization Act of 2007 (Dec. 6, 2007; 121 Stat. 1362)

Last List December 3, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.