Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0578–AA27

Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Proposed Rulemaking with request for comments.

SUMMARY: The United States Department of Agriculture (USDA) is issuing a proposed rule setting out certain categorical minimal effect exemptions (CMWs) under the wetland conservation provisions of the Food Security Act of 1985, as amended. This proposed rule identifies five (5) wetland conversion activities, which due to the type of wetlands or other criteria, would only have a minimal effect upon wetland functions and values, and thus would not render a producer ineligible for certain USDA program benefits. USDA is seeking comments from the public that will be considered in developing a final rule.

DATES: Comments must be received by June 24, 2002.

ADDRESSES: All comments concerning this proposed rule should be addressed to Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890, Attention: CMW rule, or by e-mail: *Floyd.Wood@usda.gov,* Attention: CMW rule. This rule may also be accessed, and comments submitted, through the Internet. Users can access the NRCS **Federal Register** home page and submit comments to the Web site *http://www.nrcs.usda.gov.* From the menu, select ''Farm Bill.''

FOR FURTHER INFORMATION CONTACT: Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, Phone: (202) 690–1588 or Fax: (202) 720–2143.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule was determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to section 6(a)(3) of Executive Order 12866, the Commodity Credit Corporation (CCC) and Natural Resources Conservation Service (NRCS) conducted an economic analysis of the potential impacts associated with this proposed rule. The economic analysis concluded that the past 11 years of experience in implementing the minimal effect exemptions demonstrates that the provisions will reduce the compliance burden upon landowners while protecting wetland functions and values. CCC and NRCS believe that identification of categorical minimal effects will improve implementation of the wetland conservation provisions by reducing unnecessary administrative burdens on producers and the USDA agencies. NRCS estimates that the use of the CMWs will reduce clients' savings of approximately 27,000 hours per year. Similar savings would be realized by NRCS in a reduction of resources necessary to prepare and analyze wetland conservation provision exemptions. A copy of this cost-benefit analysis is available upon request from Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule since it does not contain a major proposal requiring preparation of a regulatory analysis under the E.O. This regulation will not have a significant economic impact on a substantial number of small entities. This proposal will not alter or expand the wetland conservation provisions but allow activities already eligible for minimal effect exemptions to be reviewed and approved in a more expedited manner.

National Environmental Policy Act

It was determined through an environmental assessment that the issuance of this proposed rule will not have a significant impact upon the human environment. Copies of the environmental assessment may be obtained from Floyd Wood, Watersheds and Wetlands Division, Natural Resources Conservation Service, PO Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

No substantive changes were made by this proposed rule that affect the record keeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0004.

Executive Order 12788

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent with this proposed rule except that private persons and entities may be subject to such State and local laws outside of the Food Security Act of 1985. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at CFR parts 11, 614, 780, and 1900 Subpart B of this title, as appropriate, must be exercised and exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, the effects of this rulemaking action on State, local, and Tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector; therefore a statement under § 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Wetland Conservation Provisions

Title XII of the Food Security Act of 1985, as amended (the 1985 Act), encourages participants in USDA programs to protect highly erodible land and wetlands by linking eligibility for certain USDA program benefits to farming practices on highly erodible land and wetlands. In particular, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland.

However, the 1985 Act also provides that certain activities can be conducted in wetlands, so long as those activities have a minimal effect on the wetland's functions and values. That is, an action individually and in connection with all other similar actions, will have a minimal effect on the functional hydrological and biological values of the wetlands in the area, including the values to waterfowl and wildlife. Each NRCS State Office is led by a State conservationist, one of whose duties is to ensure that minimal effect determinations are completed according to the 1985 Act. NRCS conducts functional assessments of wetlands, using acceptable methodology for the area where the action is proposed, to ascertain the effects of the action on the hydrological and biological functions. The decision to grant a minimal effect exemption is based primarily on the magnitude of change in wetland functions as a result of the action.

The USDA issued a final rule implementing the WC provisions of the 1985 Act on September 17, 1987. These regulations, found at 7 CFR part 12, provided the terms of program ineligibility, described the several exemptions from ineligibility, outlined the responsibilities of the several USDA agencies involved in implementing the provisions, and generally established the framework for administration of the provisions. The field offices of NRCS have operated under the final rule since September 17, 1987, in making minimal effects determinations through functional assessment procedures.

The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), amended the 1985 Act and made some significant modifications to the WC provisions. In particular, the amendments made by the 1990 Act provided that in addition to the planting on a converted wetland violation rule, any person who in any crop year after November 28, 1990, converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect of making the production on an agricultural commodity possible, shall be ineligible for certain USDA program benefits for that crop year and all subsequent crop years until the wetland is restored or mitigated, unless exemptions to the Act apply.

The Federal Agriculture Improvement and Reform Act (the 1996 Act), enacted April 4, 1996, made several changes to increase the options available so producers could comply with WC provisions in their farming and ranching activities. USDA adopted these changes in an interim final rule for Part 12, published September 6, 1996, in the **Federal Register** Volume 61, Number 174, pages 47019–47038.

To increase program participants' certainty about whether an activity would qualify for a minimal effect exemption and to reduce the need for site-specific determinations, Congress required the Secretary of Agriculture to promulgate a regulation identifying categories of activities determined to minimally effect wetland functions and values. Section 322(c) of the 1996 Act, 16 U.S.C. 3822 d), directs the Secretary of Agriculture to identify, by regulation, ''categorical minimal effect exemptions on a regional basis to assist persons in avoiding a violation'' of the wetland conservation provisions. This change was not included in the interim final regulation, as it required additional technical analysis by USDA. This proposed rule implements the mandate found in section 322(c) of the 1996 Act and codified at 16 U.S.C. 3822(d). The CMW rule would also remain a separate rule to facilitate future modification, if necessary.

Categorical minimal effect exemptions are those categories of actions that can be taken in wetlands without loss of eligibility for certain USDA programs, because they have routinely been determined to have only a minimal effect on the functions of wetlands associated with that category. To qualify as a categorical minimal effect exemption under the 1996 Act, a proposed action must historically have been determined by NRCS, individually and collectively with all other similar actions authorized by the Secretary in the area, to have a minimal effect on the hydrological and biological functions of wetlands in the area, including values to waterfowl and wildlife. The presence of hydrological and biogeochemical functions is critical to the presence and maintenance of wetland floral and faunal communities and habitat. Additionally, NRCS uses the original scope and effect of prior hydrologic manipulation as a baseline to determine whether maintenance activities exceed the original scope and effect. Activities exceeding the original scope and effect will still be allowed when the manipulation qualifies for an USDA exemption, including the CMWs. Therefore, a decision to include a particular CMW is based on a historical analysis by NRCS at the local level on the presence and degree of hydrological and biogeochemical functions, the impact on those functions caused by installation of the proposed CMW, and the subsequent effects on associated floral and faunal communities.

Identification of CMWs

NRCS has 14 years of experience in making minimal effect determinations in the field, using approved functional assessment procedures, on a case-by-case basis. To begin the process of developing CMWs, each NRCS State conservationist reviewed past minimal effect activities to identify categories of where exemptions were routinely granted, developed proposed CMWs, and reviewed the proposed CMWs with the State Technical Committee (STC). The STC includes members of other Federal agencies, state natural resource agencies, producer organizations, and other groups, organizations, and private individuals. Each STC reviewed and made recommendations to their respective State conservationist about the proposed CMWs. The State conservationists then decided which CMWs would be proposed and forwarded them to the NRCS National Office for consideration. Based on the records of prior minimal effect determinations available to them, the State Conservationists proposed a total of 16 CMWs.

The NRCS National Office assembled an interdisciplinary team with representatives from each NRCS region and an U. S. Fish and Wildlife Service employee to review the 16 proposed CMWs to ensure they met statutory and regulatory requirements. NRCS requested that the U.S. Fish and Wildlife Service participate with this team to address the impacts of the alternatives on the wildlife habitat requirements, as well as to help satisfy potential impacts to species subject to the provisions of the Endangered Species Act. This review included all proposed CMWs as well as identifying any additional conditions necessary to ensure a CMWs had only minimal effects on wetland functions and values. In addition, all public comments concerning CMWs provisions received during the comment period for the Highly Erodible Lands/Wetland Interim Final Rule published September 6, 1996, were reviewed. As part of the review, the team used the NRCS Land Resource Regions and Major Land Resource Areas map to determine the regional applicability of the proposed CMWs. Each of the CMWs in the proposed rule has the applicable region identified based on the Land Resource Area and Major Land Resource Area codes, as well as a reference map. After review, the team agreed that the following 5 of the proposed 16 CMWs meet the requirements set forth in the 1996 Act. This rule proposes to amend subpart C of 7 CFR part 12 to include

the 5 CMWs. USDA finds that the identification of the following CMWs will improve the implementation of the WC provisions of the 1985 Act, as amended:

CMW #1—Removal of Woody Vegetation, Including Stumps from Natural Herbaceous Wetlands

USDA determined that small areas have developed into woody vegetation on prairie soils, usually through lack of maintenance practices. These areas exist because natural events such as wildfire and grazing, which would have resulted in the succession of a non-woody vegetative community, may no longer occur. The action implicates the application of the WC provisions because the removal of woody vegetation makes possible the production of an agricultural commodity in a wetland area. However, USDA determined that such action, when conducted under specified conditions identified in the proposed rule, will not have a significant impact on wildlife and fish habitat, will enhance the ''prairie wetland'' function by returning these areas to a more natural seral stage, and will not otherwise implicate the WC provisions. For sites where cropping is allowed to resume, cropping history will be verified using official USDA records, or in cases where records are not available, photographic evidence or other documentation.

CMW #2—Removal of Scattered Woody Vegetation, Including Stumps

USDA determined that based on past functional assessments, the removal of scattered woody vegetation, including stumps, from farmed, hayed, or grazed wetlands will have minimal effect on wetland functions and values, as long as the criteria for obtaining the exemption from ineligibility are followed. CMW #2 will apply to the removal of vegetation and stumps in wetlands that have already been significantly degraded, and are farmed, hayed, or grazed. This CMW shall only apply if woody vegetation is scattered within the wetland and comprises less than 5 percent canopy cover, when measured vertically on the subject portion of the wetland to be cleared. It shall not apply to any forested wetlands that were logged within 3 years previous to conducting the categorical minimal effect determinations, where such areas comprised trees 20 feet or taller that composed 30 percent or more of the dominant vegetation. These wetlands typically have reduced functions and values because of previous manipulation. Because of tree size, farmers will use other than normal farming operations to remove the trees and stumps, and the removal will generally be by mechanical means, such as bulldozers or trackhoes.

However, chemicals could also be used. USDA believes the direct impact will be the removal of scattered trees and stumps, along with the possibility of more tillage. Other impacts may include minor changes to wildlife and fish habitat, possible small changes in precipitation run-off, and removal of some invasive woody species.

CMW #3—Installation of Grassed Waterways for Erosion Control on non-Highly Erodible Croplands

USDA determined that this activity is carried out to control erosion in concentrated flow wetland areas, located in or between non-highly erodible fields. USDA determined that the direct impacts include short-term construction disturbance, decrease in erosion and sediment delivery, improvement in run-off water quality, and possibly some loss of degraded wetlands. USDA believes that the impacts to wildlife and fish habitat should be positive, since eroding areas will be permanently revegetated to native or other approved species. Based on past functional assessments, USDA determined that the installation of grassed waterways in these wetlands will have minimal effect on wetland functions and values, as long as all conditions as set forth in the proposed rule are met.

CMW #4—Terrace Construction for Erosion Control on Erodible Cropland

Since this activity may result in the manipulation of wetlands, a person could violate the wetland conservation provisions. Typically, these wetlands have already been altered in the past. USDA determined that the direct impacts include control of erosion, reduction of sediment moving off-site, and improvement of water quality. Other impacts may include partial diversion of runoff waters from wetlands located down slope from the activity. USDA has consistently found that impacts to wildlife and fisheries habitat will be minimal, since most of these areas are already in cropland. However, the activity may result in placement of fill within wetlands. Based on past functional assessments, USDA determined that the installation of terraces through these wetlands will have minimal effect on wetland functions and values, as long as all conditions set forth in the proposed rule are met.

CMW #5—Control or Removal of Exotic Invasive Woody Species, Including Stumps

USDA determined that the species listed under this CMW are either invasive or exotic, and generally have a negative environmental impact on wetland ecology. Most of these species colonize wetlands after some earlier disturbance has taken place. In many areas, the species invade the wetland and riparian zones, some of the most important and limited wildlife habitat. These species do not replace the habitat value of native vegetative species. In addition, the exotic species have minimal value for erosion control and bank stabilization, and may contribute to water quality and quantity problems.

The CMW provides that no additional alterations to the hydric conditions are allowed. USDA determined that these wetlands would function at an equal or higher level after the removal of the exotic invasive species, and when the wetland is being managed according to the criteria in the proposed rule. In addition, USDA believes indirect impacts from removal of these exotic species are positive because of protection from invasion to adjacent natural areas. Impacts to wildlife and fish habitat should be positive, since invasive, noxious vegetative species will be removed.

Some of these wetlands have been previously converted back to cropland or pastureland, with the approval of the Corps of Engineers, Fish and Wildlife Service, and NRCS. Based on assessment of these conversions, USDA determined that the removal of the species listed would have minimal effect on wetland functions and values, as long as all criteria are followed.

Mandatory Conditions of Exemption Eligibility

The proposed CMW exemptions are required by statute to provide farmers, ranchers and other landowners with needed flexibility to perform routine land maintenance on cropland and pastureland in a manner that will result in only minimal impacts to wetland functions. During the development of each CMW, specific conditional requirements were incorporated, which must be rigidly adhered to for an exemption to apply. These conditions will result in the safeguarding of threatened and endangered species habitat, protection of adjacent wetlands, streams and water bodies, enhancement of bio-diversity for native wetland flora, and assure exemption-related activities are implemented according to science-based standards and specifications. Of

the five proposed CMWs, No.'s 1, 2, 3 and 4 may only be used where farmed wetlands and farmed wetland pastures occur. These landuse wetlands have been previously and significantly degraded through normal agricultural activities such as annual tillage, haying or grazing. Additionally, many of the activities associated with the application of CMWs will result in direct benefits to wetlands, fish and wildlife habitat, and water quality. For example, CMW # 5 will allow the removal of exotic, invasive woody plants that have invaded wetlands and riparian zones. CMWs No.'s 3 and 4 will result in improved water quality by reducing erosion and sediment delivery to downstream wetlands, streams and tributaries.

Since each CMW was developed by incorporating numerous, mandatory restrictive conditions that should result in only limited impacts to wetland ecosystems, NRCS believes there is no need for the application of additional acreage limitations such as the one-half acre limitation used by the Corps for implementing nationwide permits under section 404 of the Clean Water Act. However, in order to enhance programmatic consistency between all other Federal, state and local wetland protection laws and the 1985 Act, NRCS is specifically soliciting comments from the public regarding possible acreage limitations for any or all of the CMWs.

Continued Coordination With Other Federal Agencies

Consistent with the intent expressed in the preamble to the current interim final rule (**Federal Register** Volume #61, Number 174), the changes proposed in this rule ''do not supersede the wetland protection authorities and responsibilities of the Environmental Protection Agency (EPA) or the Corps of Engineers (COE) under section 404 of the Clean Water Act.'' This proposed rule is promulgated under the authority of the 1985 Act, as amended, and therefore, does not affect the obligations of any person under other Federal statutes, or the legal authorities of any other Federal agency including, for example, EPA's authority to determine the geographic scope of Clean Water Act jurisdiction. Nonetheless, NRCS, the COE and EPA place a high priority on adopting procedures and policies that minimize duplication and inconsistencies between the wetland conservation provisions of the 1985 Act and the Clean Water Act section 404 programs. Any one who wishes to utilize the CMWs described in this proposed rule is advised to contact the local COE and State officials to ensure that activities meet any compliance requirements. Further, anyone wishing to come within the coverage of any of the CMWs must ensure that actions comply with all of the conditions set forth for the particular CMW.

List of Subjects in 7 CFR Part 12

Administrative practices and procedures, Wetlands.

PART 12—[AMENDED]

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.31 is amended by a new paragraph (e)(5) to read as follows:

§ 12.31 On-site wetland identification criteria.

* * * * *

(e) * * *

(5) Specific categorical minimal effect exemptions:

(i) Categorical minimal effect exemptions (CMWs) are those actions that have, individually and in connection with all other similar actions authorized by the Secretary in the area, a minimal effect on the functional hydrological and biological value of the wetlands in the area, including the value to waterfowl and wildlife. Both the hydrogeomorphic wetland classification system and the 1996 Act wetland determination labels identify the wetland types eligible for use with each CMW.

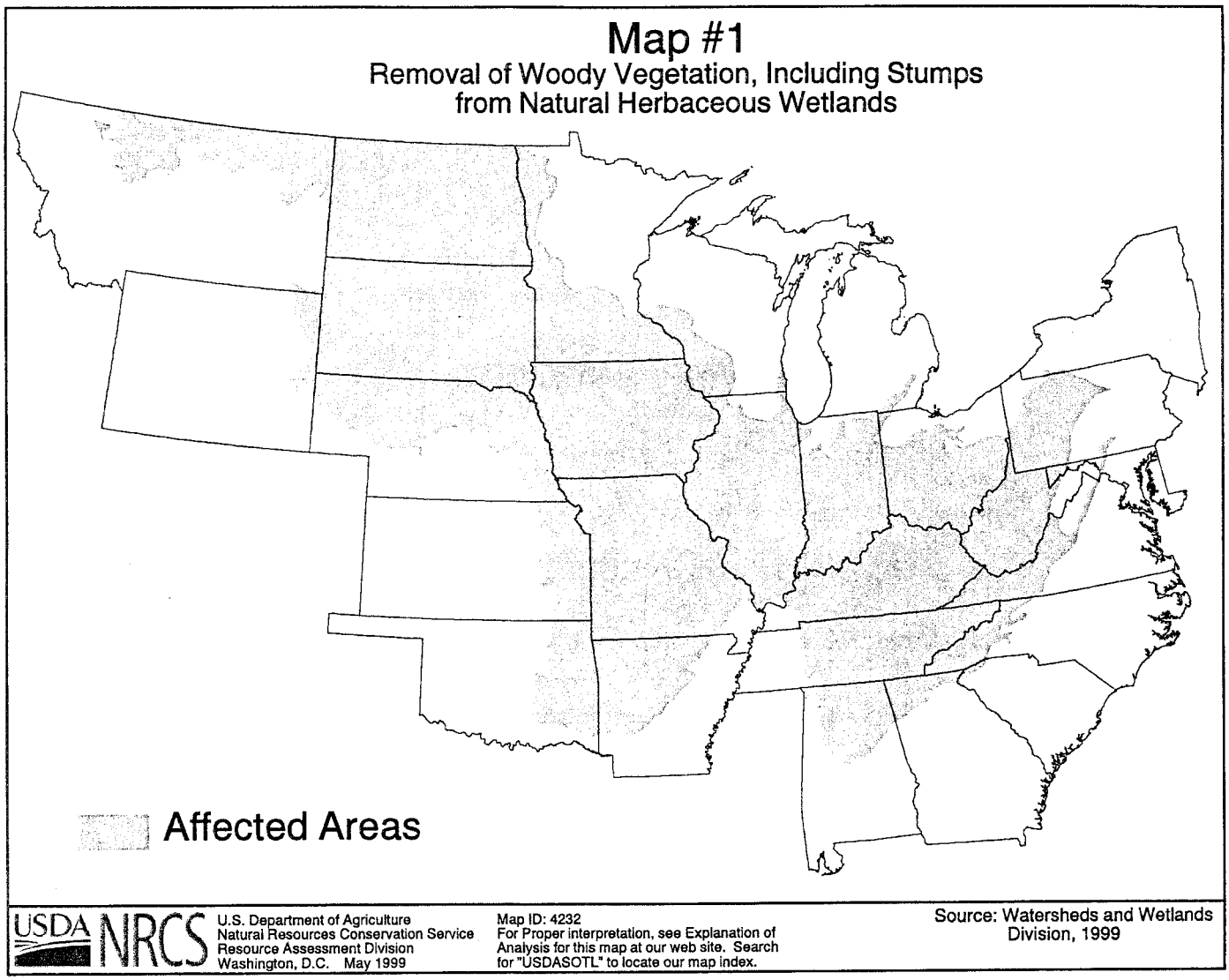
(ii) When participating in certain USDA programs, it is the person's responsibility to comply with applicable statutes and regulations. Caution should be exercised when manipulating or converting wetlands, to ensure that the actions taken meet the requirements of this part, including the specific conditions for an applicable CMW, in order to be in compliance with this part.

(iii) CMW #1—Removal of woody vegetation, including stumps from natural herbaceous wetlands:

(A) *Purpose*. CMW # 1 allows clearing of wetland areas that developed under native prairie vegetation, but have been invaded by woody vegetation.

(B) *1996 Act trigger*. The removal of woody vegetation (trees and stumps) makes possible the production of an agricultural commodity.

(C) *Scope*. CMW #1 shall only be applicable to the following land resource regions and Major Land Resource Areas (MLRAs): M, N, F, and G (58C & D, 60A, 61, 62, 63A and B, 64, 65, and 66). See Map #1.



(D) *Wetland types*. CMW #1 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as depressions, lacustrine fringe, riverine, or slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility*. The removal of the woody vegetation from the natural herbaceous wetlands must:

(*1*) Disturb only the soil necessary to complete the activity;

(*2*) Result in woody materials not being placed in waters of the United States;

(*3*) Not encompass greater than ½ acre of manipulation of woody vegetation per Farm Tract.

(4) Be on soils that formed under mid and tall grass prairie conditions;

(*5*) Not be cropped unless the majority of the manipulated portion of the wetland has a cropping history; and

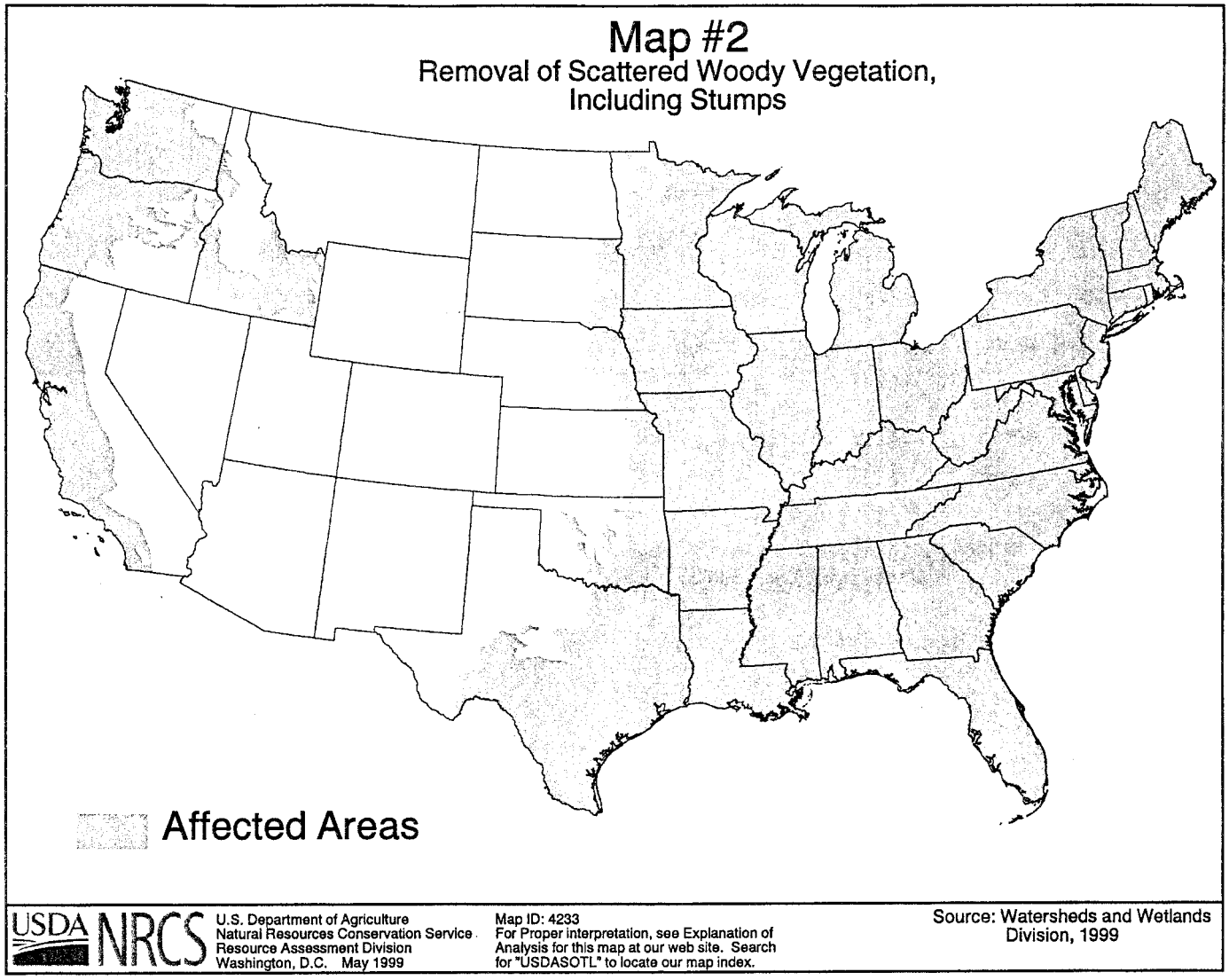
(*6*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(iv) CMW #2—Removal of scattered woody vegetation, including stumps:

(A) *Purpose*. CMW # 2 allows clearing of scattered woody vegetation in wetland areas that have previously been manipulated and are currently cropped, hayed, or grazed.

(B) *1996 Act trigger*. The removal of scattered woody vegetation and stumps from a wetland through means other than normal tillage operations.

(C) *Scope*. CMW #2 shall only be applicable to the following land resource regions and MLRAs: A, B, C, I, J, K, L, M, N, O, P, R, S, T, and U. See Map #2.



(D) *Wetland types*. CMW #2 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as depressions, lacustrine fringe, mineral soil flats, organic soil flats, riverine, or slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility*. The removal of scattered woody vegetation, including stumps must:

(*1*) Result in the stems and stumps not being placed in a waters of the United States;

(*2*) Be on wetland areas currently cropped, grazed or hayed;

(*3*) Disturb only the minimum area and soil necessary to complete the stem and stump removal;

(*4*) Be on areas where the woody vegetation is scattered, not clustered, and where woody vegetation comprises less than 5 percent canopy cover within the wetland, when measured vertically.

(*5*) Ensure that woody vegetation will be maintained adjacent to streams and water bodies at the minimum width as found in the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office;

(*6*) Be by means other than normal tillage operations;

(*7*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat; and

(*8*) Be used on other than clumps of woody vegetation.

(F) *Additional criteria*. Must not be on areas that have been logged within 3 years prior to conducting the categorical minimal effects determination, on sights where woody vegetation comprised of trees, 20 feet or taller that composed 30 percent or more of the dominant vegetation.

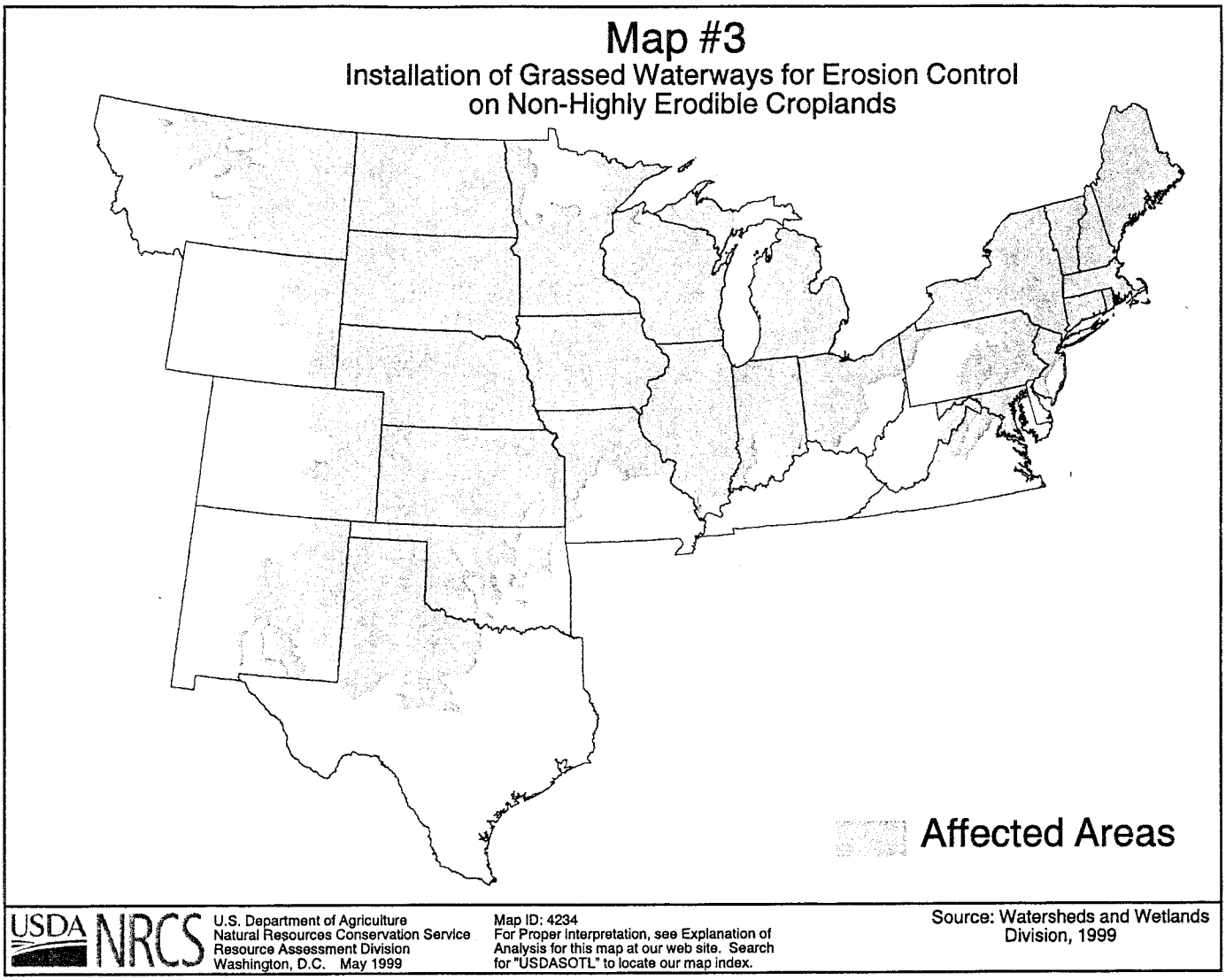
(v) CMW #3—Installation of grassed waterways for erosion control on non-highly erodible croplands:

(A) *Purpose*. CMW #3 allows grading, shaping, and revegetating areas for grassed waterways installation in or between non-highly erodible croplands to convey run-off water without causing erosion. In some instances, construction may include installation of non-perforated drainage tile in the grassed waterway, to convey water causing drainage area erosion.

(B) *1996 Act trigger*. The installation of a grassed waterway has the potential of converting adjacent wetland areas and making possible the production of an agricultural commodity. Additionally, the grading and shaping of the wetland for a grassed waterway may make the graded and shaped area capable of producing an agricultural commodity.

(C) *Scope*. CMW #3 shall be available in the following land resource regions

and MLRA(s): F, G, H, K (90, 91, 93, 94A), L, M, R, S. See Map #3.



(D) *Wetland types*. CMW #3 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as slope wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility*. The installation of grassed waterways must:

(*1*) Be only on drainageways carrying concentrated flow when needed to control gully erosion, or when the waterway is aggrading;

(*2*) Be designed and constructed in accordance with NRCS Field Office Technical Guide (FOTG) standard, which may be obtained at any local NRCS office;

(*3*) Not include the installation of perforated drainage tile within the waterway area;

(*4*) Not adversely affect adjacent wetlands;

(*5*) Not allow the waterway itself to be used for annual cropping;

(*6*) Not allow dredge or fill material to be placed in waters of the United States;

(*7*) Not allow the construction of a grass waterway through or otherwise convert depressional wetlands that occur along the waterway; and

(*8*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(F) *Additional criteria*.

(*1*) CMW #3 does not apply to wooded areas.

(*2*) The constructed waterway cannot reduce the size of the pre-construction permanently vegetated area by more than 10 percent.

(*3*) The waterway, once constructed, must be revegetated to an approved native or introduced seed mixture suitable for the site and accommodating wildlife needs whenever possible.

(*4*) The operation and management of the grassed waterway, including mowing or grazing of the waterway, must be in accordance with the NRCS standards and restrictions for grassed waterways as found in the FOTG, which may be obtained at any local NRCS office.

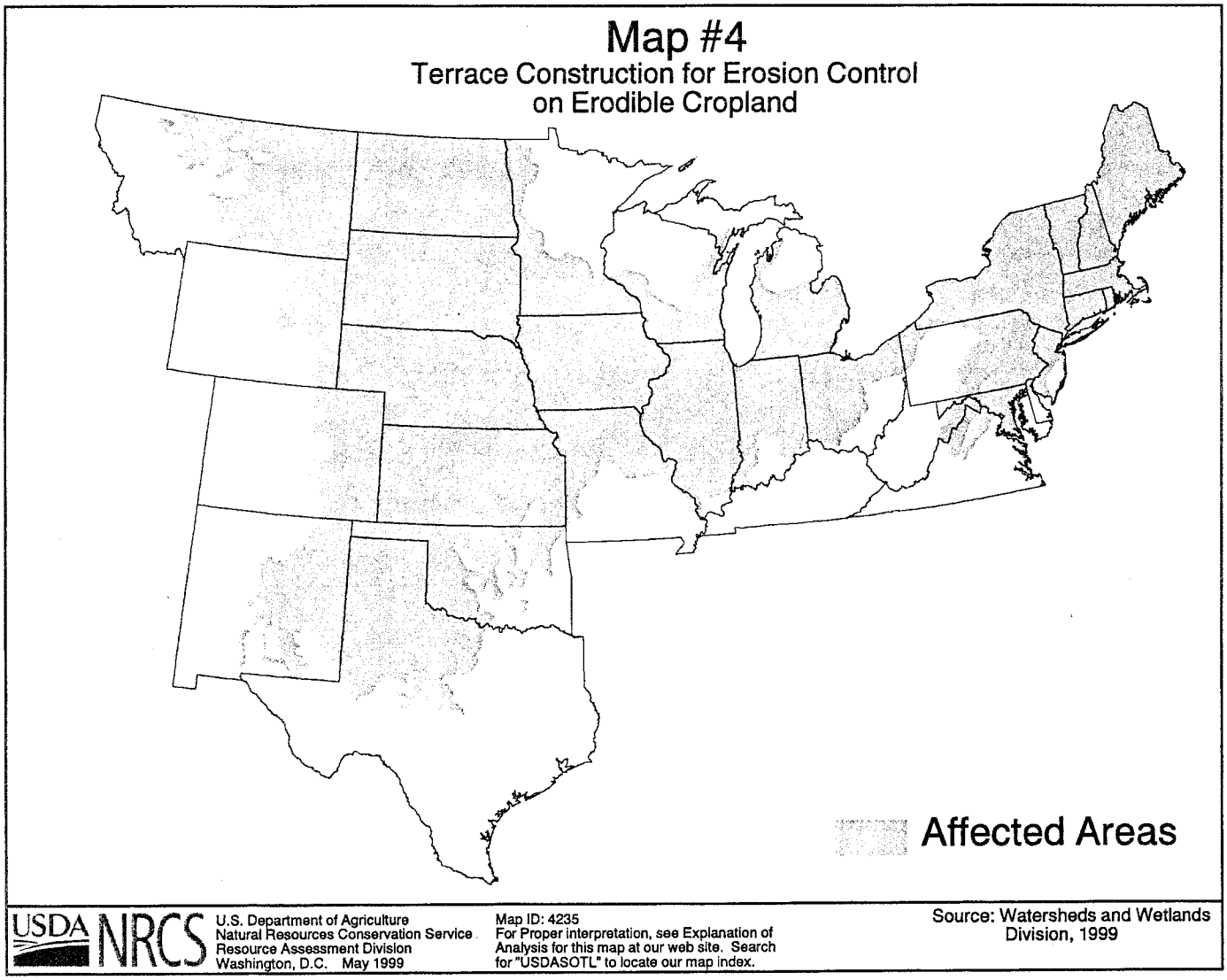
(vi) CMW #4—Terrace construction for erosion control on erodible cropland:

(A) *Purpose*. CMW #4 allows terrace construction for erosion control on erodible cropland.

(B) *1996 Act trigger*. This may be completed for the purpose of, or to make possible, the production of an

agricultural commodity by either manipulating a wetland in the field or by altering the hydrology of adjacent or downslope wetlands.

(C) *Scope*. CMW #4 shall be available only in the following land resource regions and MLRA(s): F, G, H, L, M, R, and S. See Map #4.



(D) *Wetland types*. CMW #4 may only be used on farmed wetlands and farmed wetland pastures, where such wetlands are identified as sloped wetlands under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility*. The terrace construction must:

(*1*) Be carried out only for the purpose of erosion control in fields where the erosion rate is greater than the tolerable ''T'' soil erosion rate, as identified in the NRCS Field Office Technical Guide;

(*2*) Be built with a non-erosive outlet, and according to practice standards in the NRCS Field Office Technical Guide, which may be obtained at any local NRCS office;

(*3*) Be drained with non-perforated tile if underground outlets for terraces are installed;

(*4*) Be designed to minimize adverse impacts to adjacent or downslope (not in the terraced field) wetlands;

(*5*) Precipitation run-off normally entering a down slope wetland should be maintained such that the wetland hydrological conditions are similar to pre-construction conditions;

(*6*) Be completed no closer to any off-site wetland, than the distance of one terrace spacing, according to NRCS Field Office Technical Guide; and

(*7*) Not be applied within occupied Federally protected threatened and endangered species habitat, or within Federally designated critical habitat.

(vii) CMW #5—Control or removal of exotic and/or invasive woody species, including stumps:

(A) *Purpose*. CMW #5 allows the removal of the following species: Australian pine (Casuarina equisetifolia), Brazilian pepper (Schinus terebinthifolius), Common chinaberry (Melia azedarach), Chinese tallowtree (Sapium sebiferum), melaleuca (Melaleuca quinquenervia), Russian olive (Elaeagnus augustiflora), and Saltcedar (Tamarix gallica).

(B) *1996 Act trigger*. The removal of stems, stumps, and roots of woody, invasive or exotic species by mechanical operations may make possible the production of an agricultural commodity.

(C) *Scope.* CMW #5 shall only be available in the land resource regions and MLRA(s) for the particular species as described in paragraph (f)(5) of this section.

(D) *Wetland types.* CMW #5 may be used on any wetland type, including all wetlands identified under the hydrogeomorphic classification system.

(E) *Conditions necessary to obtain exemption from ineligibility:*

(*1*) The control or removal of Chinese tallowtree in MLRA 150A & B, 151, and 152B (Map #5) must:

(*i*) Be carried out only on prairie soils;

(*ii*) Be on areas where the existing woody canopy is 80 percent or more in tallowtree cover;

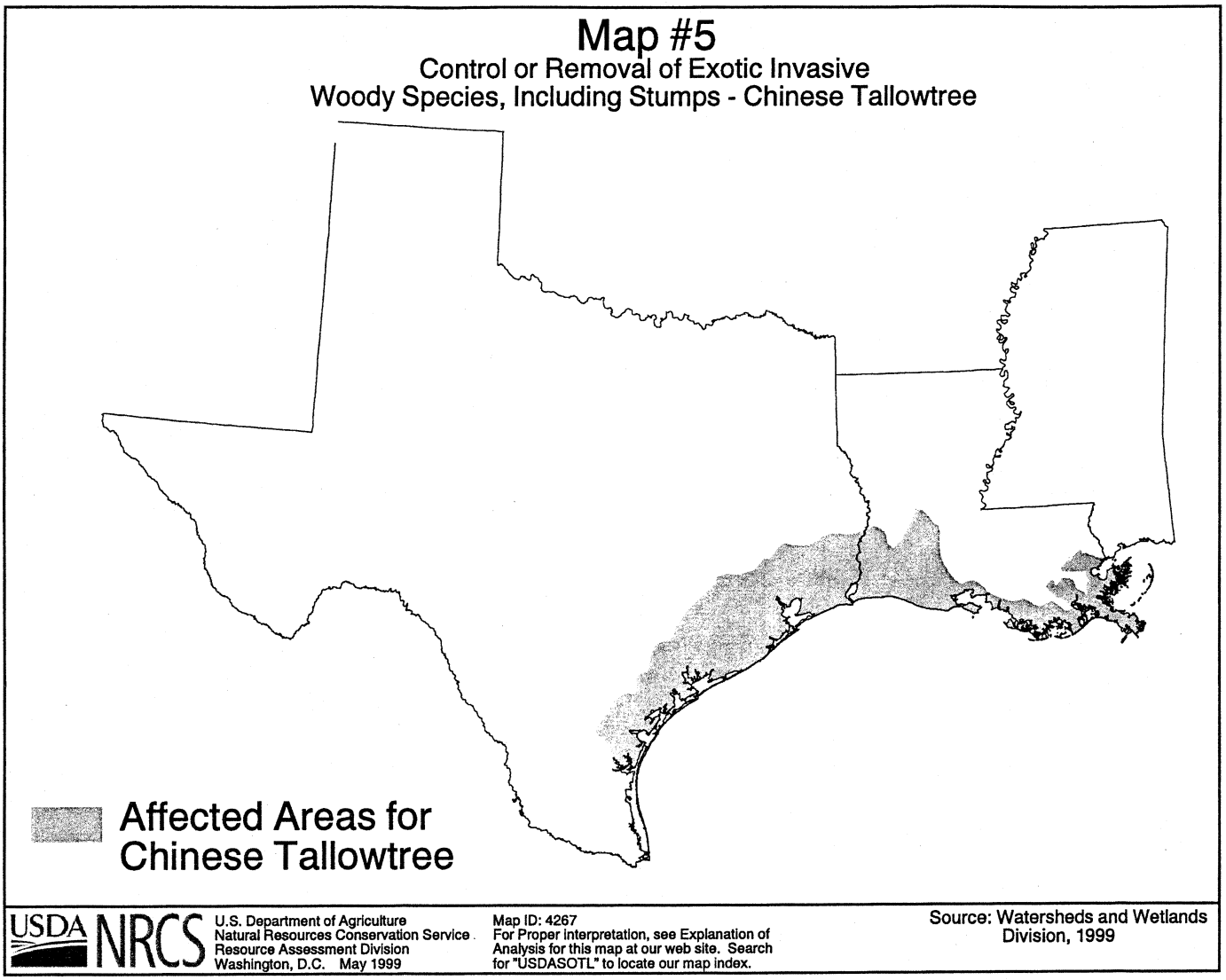
(*iii*) Limit the soil disturbance to the minimum necessary to complete activity;

(*iv*) Not remove any native woody species greater than 10 inches in diameter at breast height (dbh);

(*v*) Provide that materials removed are not disposed of in waters of the United States;

(*vi*) Maintain native woody vegetation adjacent to streams and water bodies at minimum widths in accordance with the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vii*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



(*2*) The control or removal of Australian pine, Brazilian pepper, Common chinaberry, Chinese tallowtree, and Melaleuca in MLRA 133A, 138, 152A, 153A, and Resource Region U (Map #6) must:

(*i*) Be on areas where the existing woody canopy is 50 percent or more of the invasive species alone, or in combination;

(*ii*) Be on areas that were previously farmed but are now considered abandoned;

(*iii*) Not include areas identified as prior converted cropland;

(*iv*) Provide that the management after removal of stems and stumps will include activities such as shallow water development, moist soil management, best management practices for water quality, and conservation practices for crop rotation;

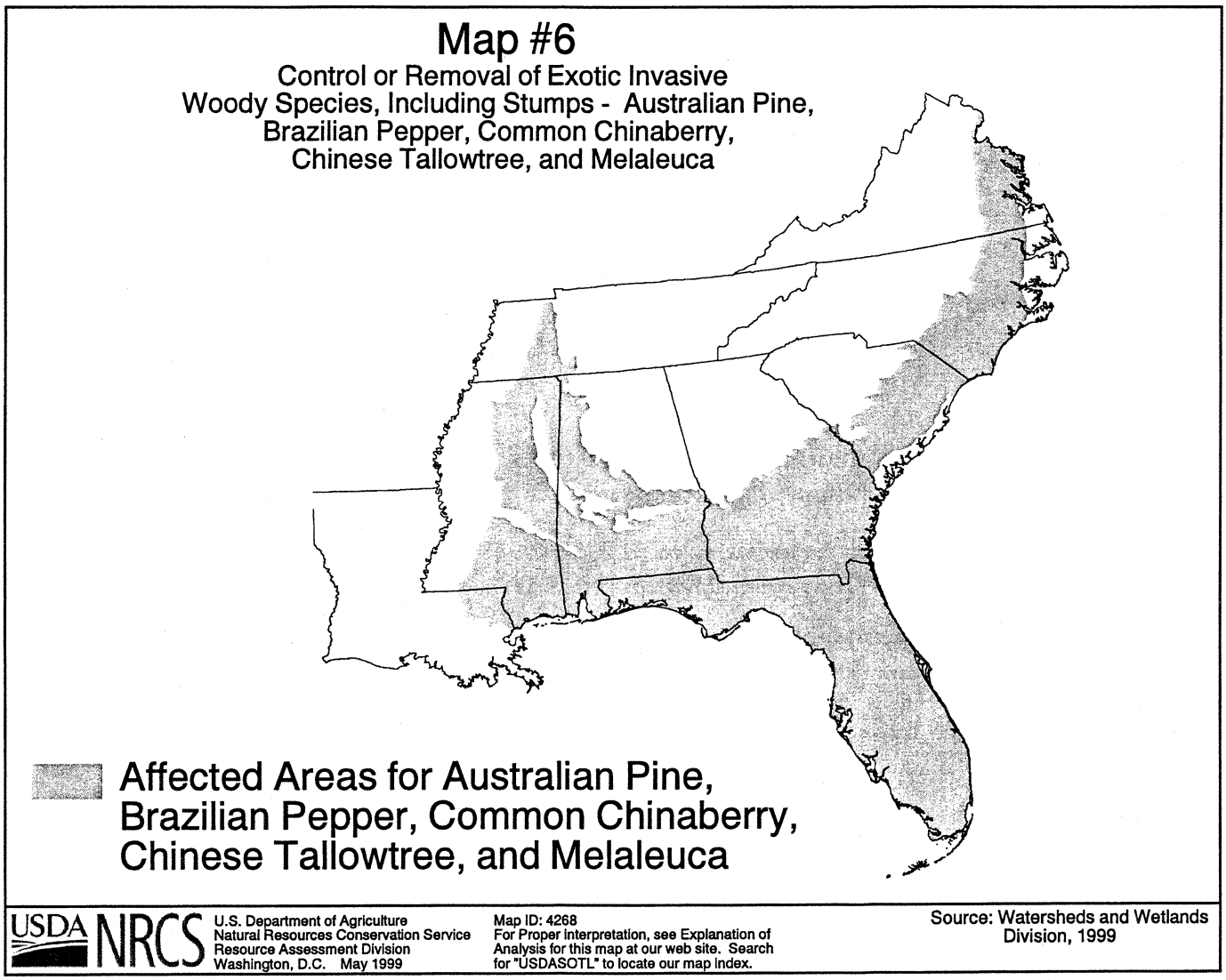
(*v*) Limit soil disturbance to the minimum necessary to complete activity;

(*vi*) Provide that materials removed are not disposed of in waters of the United States;

(*vii*) Prohibit cropping subsequent to removal of the invasive species if the area is historically wooded;

(*vii*) Maintain native woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer''; and

(*ix*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



(3) The control or removal of Saltcedar in Resource Regions C, D, E, F, G, H, and I (Map #7) must:

(*i*) Prohibit the removal of native woody species;

(*ii*) Limit soil disturbance to the minimum necessary to complete activity;

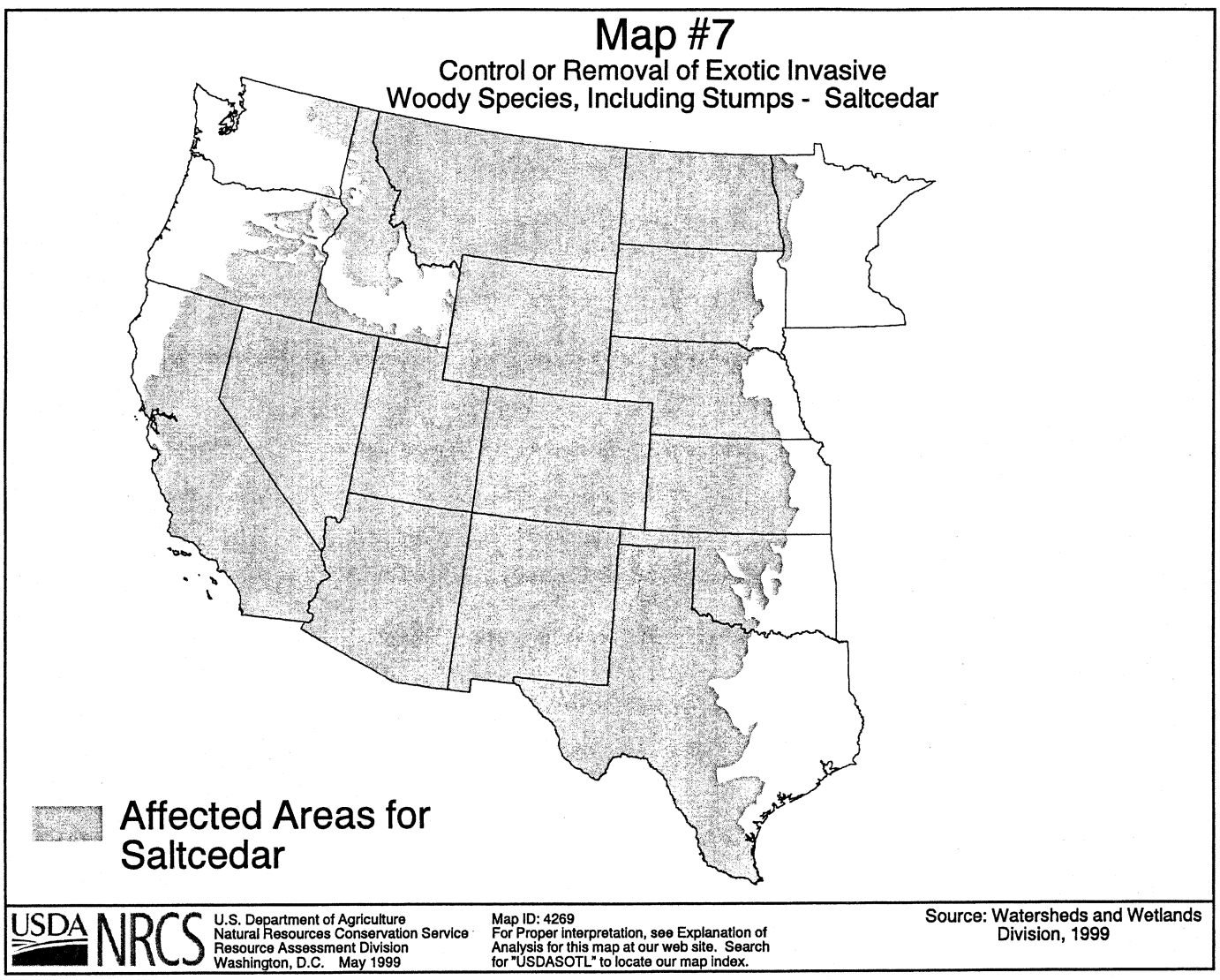
(*iii*) Prohibit cropping subsequent to the removal of the invasive species if the area is historically wooded;

(*iv*) Establish, to reduce re-invasion, permanent native herbaceous or woody cover if the area is not historically cropped;

(*v*) Provide that materials removed are not disposed of in waters of the United States;

(*vi*) Maintain woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the NRCS Field Office Technical Guide Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vii*) Not be applied if the area is occupied by federally protected threatened and endangered species.



(*4*) The control or removal of Russian olive in Resource Regions A, B, C, D, E, F, G, H, I, J, K, and M (Map #8) must:

(*i*) Prohibit the removal of native woody species;

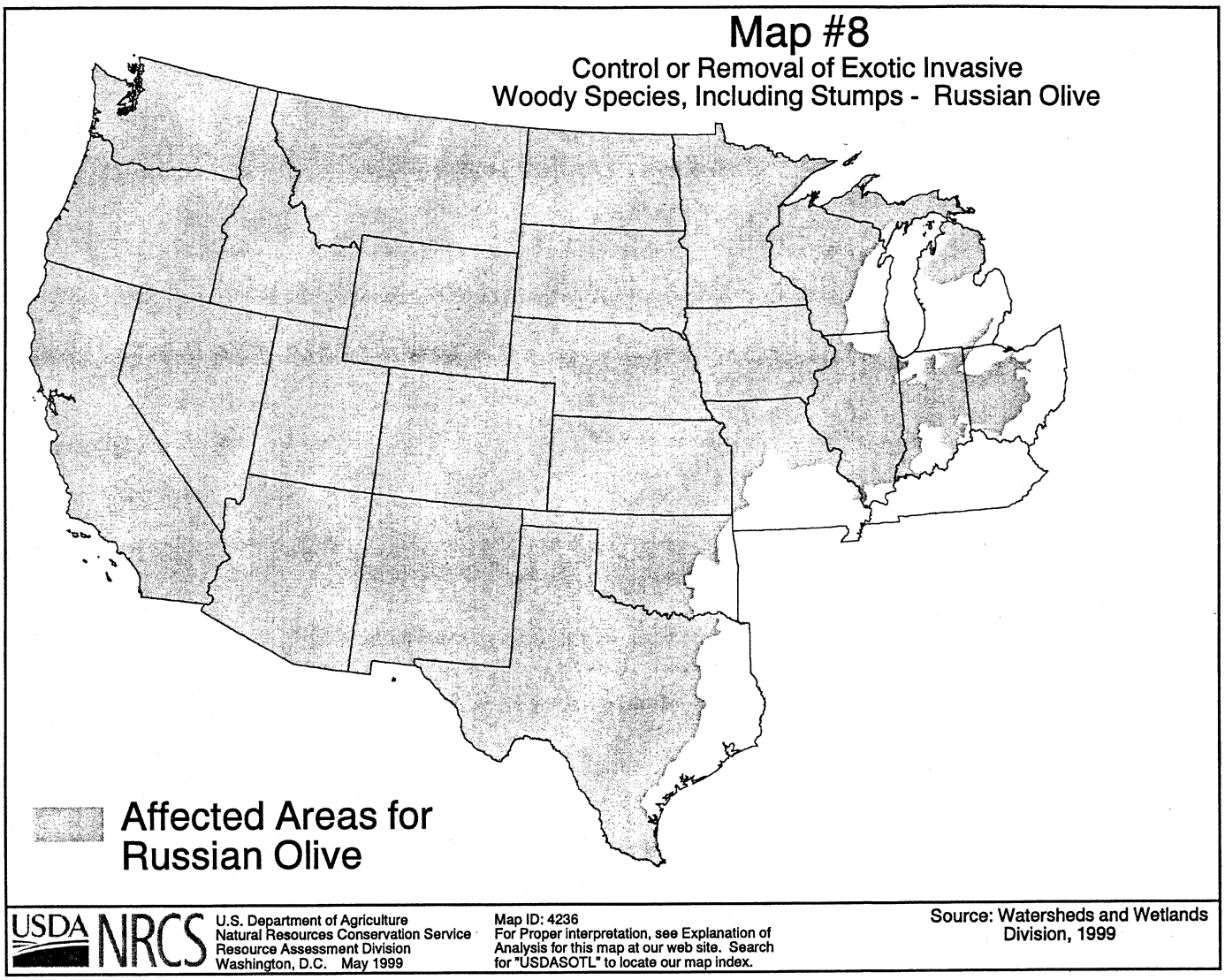
(*ii*) Limit soil disturbance to the minimum necessary to complete activity;

(*iii*) Prohibit cropping subsequent to the removal of the invasive species if area is historically wooded;

(*iv*) Provide that materials removed are not disposed of in waters of the United States; and

(*v*) Maintain woody vegetation adjacent to streams and water bodies at the minimum width prescribed by the FOTG, NRCS Practice Standard ''Riparian Forest Buffer'', which may be obtained at any local NRCS office; and

(*vi*) Not be applied if the area is occupied by Federally protected threatened and endangered species.



Signed at Washington, DC, on April 4, 2002.

Ann M. Veneman,

Secretary.

[FR Doc. 02–9700 Filed 4–22–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–3]

Proposed Revision of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Nuiqsut, AK. Two new Standard Instrument Approach Procedures (SIAP) have been established for the Nuiqsut Airport. The existing Class E airspace at Nuiqsut is insufficient to contain aircraft executing the new SIAPs. Adoption of this proposal would result in the addition and revision of Class E airspace at Nuiqsut, AK.

DATES: Comments must be received on or before June 7, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–3, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's home page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,