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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AJ45

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on behalf of the President's Pay Agent to link the definitions of General Schedule locality pay area boundaries to the geographic scope of the new metropolitan statistical area definitions established by the Office of Management and Budget. This regulation also establishes new criteria for evaluating areas adjacent to locality pay areas for inclusion in the pay area. The regulations retain all of the existing locality pay areas, which are expanded to include a number of additional locations.

DATES: Effective date: December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the contiguous United States and the District of Columbia. By law, locality pay is set by comparing GS pay rates with non-Federal pay rates for the same levels of work in each locality pay area. Non-Federal pay levels are estimated by means of salary surveys conducted by the Bureau of Labor Statistics (BLS). Currently, there are 32 locality pay areas: 31 separate metropolitan locality pay areas and a Rest of U.S. (RUS) locality pay area that consists of all locations in the contiguous United States that are not part of one of the 31 separate metropolitan locality pay areas.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, which submits annual recommendations to the President's Pay Agent about the locality pay program.

On October 28, 2003, the Council recommended that the Pay Agent adopt new metropolitan statistical areas established by OMB as the basis for defining locality pay areas and new criteria for evaluating adjacent areas for inclusion in the locality pay area. The planned changes in locality pay area boundaries based on the Council's recommendations were published in the **Federal Register** on September 22, 2004, and the Pay Agent reviewed comments received through November 8, 2004, the end of the comment period.

Based on the Council's recommendations, the Pay Agent is issuing final regulations that use county-based Metropolitan Statistical Area (MSA) and Combined Statistical Area (CSA) definitions established by OMB as the basis for defining GS locality pay areas. MSA and CSA definitions can be found at *http://www.whitehouse.gov/omb/bulletins/fy04/b04–03.html.*

The Council also recommended and the Pay Agent is adopting new criteria for evaluating adjacent areas for inclusion in a locality pay area. The criteria are:

1. *For adjacent MSAs and CSAs:* To be included in an adjacent locality pay area, an adjacent MSA or CSA currently in the RUS locality pay area must have at least 1,500 GS employees and an employment interchange measure of at least 7.5 percent.

2. *For adjacent counties that are not part of a multi-county MSA or CSA:* To be included in an adjacent locality pay area, an adjacent county that is currently in the RUS locality pay area must have at least 400 GS employees and an employment interchange measure of at least 7.5 percent.

3. *For Federal facilities that cross locality pay area boundaries:* To be included in an adjacent locality pay area, that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying locality pay area.

The Council also recommended and the Pay Agent is adopting the rule that any county (or partial county in the case of portions of York County, ME) currently included in a metropolitan locality pay area will be retained in the locality pay area if the county or partial county has an employment interchange measure of 15 percent or more with the area covered by the new MSA or CSA definition. ''Employment interchange measure'' is defined by OMB as ''the sum of the percentage of employed residents of the smaller entity who work in the larger entity and the percentage of the employment in the smaller entity that is accounted for by workers who reside in the larger entity.''

Noting the disparity between Federal and non-Federal pay levels in the Kansas City, St. Louis, and Orlando locality pay areas as compared to the disparity in the RUS locality pay area, the Council recommended that the Pay Agent discontinue these three locality pay areas. The Pay Agent tentatively agreed to this change in its 2003 report to the President. Upon further review, however, the Pay Agent determined that it would be advisable to continue to monitor the disparity between Federal and non-Federal pay levels in the Kansas City, St. Louis, and Orlando areas before determining whether those areas should be discontinued. The Pay Agent asked the Federal Salary Council to review this matter. In its recommendation letter of October 21, 2004, the Council concluded that these three areas should be discontinued in

2006. OPM currently intends to publish a proposed rule on behalf of the Pay Agent next year to implement this recommendation of the Federal Salary Council.

Impact and Implementation

Overall, the changes in locality pay area boundaries move about 17,000 GS employees to metropolitan locality pay areas from the RUS locality pay area and retain about 16,000 GS employees in metropolitan locality pay areas that would have been excluded if only the new MSA definitions were used.

Comments on the Proposed Rule

OPM received 113 comments on the proposed regulations, including comments from Members of Congress from Massachusetts and Virginia and comments from three Federal agencies. The commenters generally supported the planned changes in locality pay areas.

Many of the commenters cited high living costs as the justification for higher locality pay. However, living costs are not directly considered in setting locality pay or defining locality pay areas. Locality pay is set by comparing General Schedule and non-Federal pay for the same levels of work to allow the Government to recruit and retain an adequate workforce. Locality pay is not designed to equalize living standards for GS employees across the country. Since living costs are just one of many factors that affect the supply of and demand for labor, they are not considered separately.

Some commenters suggested that other locations also should be added to a higher paying locality pay area. These locations include Beale Air Force Base in Yuba County, CA; Berks County, PA; Clinton County, OH; Cumberland County, ME; El Paso County, CO; Jefferson County, WA; Lancaster, PA; Mendocino County, CA; and Portland, ME. We have not adopted these suggestions because these locations do not meet the criteria established for being added to an adjacent locality pay area and because BLS is unable to conduct full-scale salary surveys in any of these locations.

The Pay Agent notes that employees in Mendocino County, CA, used census data to measure Federal employment. The Federal Salary Council's criterion for inclusion in a locality pay area is based on the number of GS employees in an area. Census data include other Federal employees, such as uniformed military, blue-collar employees, and U.S. Postal Service employees.

One commenter suggested that GS employment should not be used as a criterion for evaluating areas or that provisions should be allowed for exceptions if a strong rationale exists. The Pay Agent agrees with the Federal Salary Council that the number of GS employees in the area under consideration is an important factor in assessing areas and defers to the Council's judgment on the matter. The Pay Agent also concludes that exceptions to established rules should be avoided.

Several commenters suggested that the boundaries of GS locality pay areas should coincide with the boundaries of certain Federal Wage System (FWS) local wage areas. There are 32 GS locality pay areas and more than 130 FWS areas. Salary surveys for the GS program are conducted by the Bureau of Labor Statistics, are expensive to conduct, and therefore cover fewer areas. Those for the FWS program are conducted by the Department of Defense, cover jobs that are more readily matched to non-Federal jobs, and include more areas. The Pay Agent concludes that there is no basis for requiring that the boundaries of the GS locality pay areas coincide with the boundaries of the FWS local wage areas.

One commenter expressed concern that delays in the Pay Agent's plans to merge the Kansas City, St. Louis, and Orlando locality pay areas with the Rest of U.S. locality pay area might delay plans to expand the existing small-scale salary survey of Austin, TX. The 1-year delay in discontinuing these three locality pay areas has not affected BLS' plans to expand its salary surveys.

One Federal agency sub-element commented that it is not experiencing recruitment and retention problems in Huntsville and that the Huntsville area should not be expanded. The same agency wished to retain the St. Louis locality pay area and expand the Chicago and Indianapolis areas in order to assist its recruitment efforts. While recruitment and retention issues are certainly important to the Government as an employer, they are not the basis for establishing or defining locality pay areas. The Pay Agent concludes that one agency sub-element's experience in a few areas should not affect the general methodology used to define the locality pay areas for all Federal agencies.

One agency commented that expanding locality pay area boundaries could result in changes in special rates entitlements. OPM will address that issue in guidance we plan to issue later this year regarding the January 2005 pay adjustment.

At its public meeting on September 27, 2004, and in its written recommendations of October 21, 2004, the Federal Salary Council noted that the York-Hanover-Gettysburg, PA CSA now meets the MSA/CSA criteria to be included in the Washington-Baltimore locality pay area. The Council recommended that the Pay Agent add the York area to the Washington-Baltimore locality pay area as part of this regulatory review. We also received written comments, including comments from the Department of Defense (the largest Federal agency in the area), supporting this recommendation. The final rule incorporates the York-Hanover-Gettysburg, PA CSA into the Washington-Baltimore locality pay area.

Waiver of Delay in Effective Date

In order to give practical effect to these regulations at the earliest possible moment, I find that good cause exists for making this rule effective immediately upon publication in the **Federal Register**. The delay in effective date is waived so that affected agencies and employees may benefit from the new locality pay area definitions on the effective date of the January 2005 GS pay adjustment.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2); Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356; Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 1306, 63 FR 68151, 3 CFR, 1998 Comp., p. 224; Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the FEPCA, Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, the definition of *CMSA* is removed, a definition of *CSA* is added in alphabetical order, and the definition of *MSA* is revised to read as follows:

§ 531.602 Definitions.

* * * * *

CSA means the geographic scope of a Combined Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 04–03, plus any areas subsequently added to the CSA by OMB.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 04–03, plus any areas subsequently added to the MSA by OMB.

* * * * *

■ 3. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for purposes of this subpart:

(1) Atlanta-Sandy Springs-Gainesville, GA–AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA–AL CSA;

(2) Boston-Worcester-Manchester, MA–NH–ME–RI—consisting of the Boston-Worcester-Manchester, MA–NH CSA, plus the Providence-New Bedford-Fall River, RI–MA MSA, Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(3) Chicago-Naperville-Michigan City, IL–IN–WI—consisting of the Chicago-Naperville-Michigan City, IL–IN–WI CSA;

(4) Cincinnati-Middletown-Wilmington, OH–KY–IN—consisting of the Cincinnati-Middletown-Wilmington, OH–KY–IN CSA;

(5) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(6) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(7) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(8) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(9) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA and Weld County, CO;

(10) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(11) Hartford-West Hartford-Willimantic, CT–MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(12) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(13) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(14) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(15) Kansas City-Overland Park-Kansas City, MO–KS—consisting of the Kansas City-Overland Park-Kansas City, MO–KS CSA;

(16) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(17) Miami-Fort Lauderdale-Miami Beach, FL—consisting of the Miami-Fort Lauderdale-Miami Beach, FL MSA, plus Monroe County, FL;

(18) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(19) Minneapolis-St. Paul-St. Cloud, MN–WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN–WI CSA;

(20) New York-Newark-Bridgeport, NY–NJ–CT–PA—consisting of the New York-Newark-Bridgeport, NY–NJ–CT–PA CSA, plus Monroe County, PA, and Warren County, NJ;

(21) Orlando-The Villages, FL—consisting of the Orlando-The Villages, FL CSA;

(22) Philadelphia-Camden-Vineland, PA–NJ–DE–MD—consisting of the Philadelphia-Camden-Vineland, PA–NJ–DE–MD CSA, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(23) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(24) Portland-Vancouver-Beaverton, OR–WA—consisting of the Portland-Vancouver-Beaverton, OR–WA MSA, plus Marion County, OR, and Polk County, OR;

(25) Richmond, VA—consisting of the Richmond, VA MSA;

(26) Sacramento—Arden-Arcade—Truckee, CA–NV—consisting of the Sacramento—Arden-Arcade—Truckee, CA–NV CSA, plus Carson City, NV;

(27) St. Louis-St. Charles-Farmington, MO–IL—consisting of the St. Louis-St. Charles-Farmington, MO–IL CSA;

(28) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(29) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(30) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA;

(31) Washington-Baltimore-Northern Virginia, DC–MD–PA–VA–WV—consisting of the Washington-Baltimore-Northern Virginia, DC–MD–VA–WV CSA, plus the Hagerstown-Martinsburg, MD–WV MSA, the York-Hanover-Gettysburg, PA CSA, Culpeper County, VA, and King George County, VA; and

(32) Rest of U.S.—consisting of those portions of the continental United States not located within another locality pay area.

■ 4. In § 531.606, paragraph (g) is revised to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(g) In the event of a change in the geographic coverage of a locality pay area as a result of the addition by OMB of a new area(s) to the definition of an MSA or CSA or as the result of any change made by the President's Pay Agent in the definition of a locality pay area, the effective date of any change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first pay period beginning on or after January 1 of the next calendar year. Any area removed by OMB from coverage within an MSA or CSA that serves as the basis for defining a locality pay area must be reviewed by the Federal Salary Council and the President's Pay Agent before a decision is made regarding the locality pay status of that area.

* * * * *

[FR Doc. 04–27660 Filed 12–16–04; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 1806, 1822, 1902, 1925, 1930, 1940, 1942, 1944, 1951, 1955, 1956, 1965, 3560, and 3565

RIN 0575–AC13

Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: The Rural Housing Service is correcting an interim final rule published on November 26, 2004, (69 FR 69032–69176). This action is taken to correct an error regarding the comment period and effective date of the rule as stated in the preamble.

DATES: *Effective Date:* November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–1660.

SUPPLEMENTARY INFORMATION:

Need for Correction

The preamble of the interim final rule lists a comment period and effective date that conflicts with the **DATES** section. This document corrects that information.

Correction of Publication

In the interim rule document published November 26, 2004, (69 FR 69032–69176), make the following correction.

On page 69034, third column, revise the ''Discussion of the Interim Final Rule'' section to read as follows:

Discussion of the Interim Final Rule

This interim final rule combines the provisions of the Streamlining and Consolidation of the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs Proposed Rule published on June 2, 2003, and the Operating Assistance for Off-Farm Migrant Farmworker Projects Proposed Rule published on November 2, 2000.

RHS is issuing this regulation as an interim final rule, with an effective date 90 days after publication in the **Federal Register**, given that these regulatory changes are very extensive, affect all aspects of the programs, and seek to achieve significant streamlining of the programs' regulatory provisions. Delaying implementation of the rule to allow more time for further consideration would not be in the best interest of the direct MFH program or its recipients. All provisions of this regulation are adopted on an interim final basis, are subject to a 30-day comment period, and will remain in effect until the Agency adopts a final rule.

Dated: December 3, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–27604 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA–2003–16137; Airspace Docket 03–ANM–07]

Establishment of Class E Airspace; Lexington, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will establish Class E airspace at Lexington, OR. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Lexington Airport, Lexington, OR, makes this action necessary to add Class E airspace. This Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the containment and safety of Instrument Flight Rules (IFR) aircraft transitioning to/from the en route environment and executing these SIAP procedures.

DATES: *Effective Dates:* 0901 UTC, January 20, 2005

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Operations, Airspace Branch, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 21, 2003, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) to add Class E airspace at Lexington OR (69 FR 19317). A new RNAV GPS SIAP at the Lexington Airport makes it necessary to add controlled airspace for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing these SIAP procedures.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Lexington Airport, Lexington, OR. A new RNAV GPS SIAP at Lexington Airport makes it necessary for additional controlled airspace extending upward from 700 feet or more above the surface of the earth for the containment and safety of IFR aircraft transitioning to/from the en route environment and executing these SIAP procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Lexington, OR [Add]

Lexington Airport, Lexington, OR
(Lat. 45°27′15″N., long. 119°41′25″W.)

The airspace extending upward from 700 feet above the surface of the earth within a 7.0 mile radius of the Lexington Airport; that airspace extending upward from 1200 feet above the surface of the earth beginning at lat. 45°14′00″N., long 119°33′00″W.; to lat. 45°39′26″N., long. 121°08′59″W.; to lat. 45°48′00″N., long. 121°06′30″W.; to lat. 45°38′52″N., long. 120°09′08″W.; to lat. 45°36′12″N., long. 119°45′28″W.; to lat. 45°43′09″N., long. 119°11′57″W.; to lat. 45°31′26″N., long. 119°06′04″W.; thence to the beginning; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on November 26, 2004.

Suzanne Alexander,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 04–27686 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9164]

RIN 1545–BC33

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning requirements for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. The temporary regulations provide guidance on the definition and effects of a prohibited allocation under section 409(p), identification of disqualified persons and determination of a nonallocation year, calculation of synthetic equity under section 409(p)(5), and standards for determining whether a transaction is an avoidance or evasion of section 409(p). These temporary regulations generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 17, 2004.

Applicability Dates: These temporary regulations are applicable with respect to plan years beginning on or after January 1, 2005, but see § 1.409–1T(i)(2) for specific exceptions.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 409(p) was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38) (2001) to address concerns about ownership structures involving S corporations and ESOPs that concentrate the benefits of the ESOP, directly or indirectly, in a small number of persons. Under the statute, an ESOP is generally permitted to hold S corporation stock, provided that the ESOP benefits a sufficiently broad-based group of employees.

Section 4975(e)(7) provides that an ESOP is a defined contribution plan that is designed to invest primarily in qualifying employer securities and that is either a stock bonus plan which is qualified, or a stock bonus plan and money purchase pension plan both of which are qualified, under section 401(a). A plan is not treated as an ESOP under the Internal Revenue Code (Code) unless it meets the following requirements, to the extent applicable: Section 409(e) (relating to participants' voting rights if the employer has a registration-type class of securities); section 409(h) (relating to participants' right to receive employer securities; put options); section 409(o) (relating to participants' distribution rights and payment requirements); section 409(n) (relating to securities received in transactions to which section 1042 applies); section 409(p) (relating to prohibited allocations of securities in an S corporation); and section 664(g) (relating to qualified gratuitous transfers of qualified employer securities). As authorized by section 4975(e)(7), additional requirements for ESOPs are imposed under § 54.4975–11 of the Excise Tax Regulations.

Section 511 imposes an income tax on unrelated business taxable income (UBTI), as defined in section 512. Section 512(e)(1) generally provides that an interest in an S corporation held by an organization described in section 1361(c)(6), including a qualified plan, is treated as an interest in an unrelated trade or business. However, section 512(e)(3) has an exception for employer securities held by an ESOP, so that an ESOP of an S corporation generally does not have UBTI under section 512 with respect to the S corporation stock held by the ESOP.

Section 409(p)(1) requires an ESOP holding employer securities consisting of stock in an S corporation to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person, as defined in section 409(p). Section 409(p)(3)(A) provides that a ''nonallocation year'' includes any plan year during which the ownership of the S corporation is so concentrated among disqualified persons that they own or are deemed to own at least 50 percent of its shares. Section 409(p)(4) provides, in general, that whether someone is a ''disqualified person'' depends on a person's deemed-owned shares of S corporation stock held by an ESOP (deemed-owned ESOP shares). Section 409(p)(4) provides, in general, that a ''disqualified person'' means any person whose deemed-owned ESOP shares are at least 10 percent of the number of deemed-owned ESOP shares or for whom the aggregate number of deemed-owned ESOP shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares.

The determination of whether someone is a disqualified person and whether a plan year is a nonallocation year is also made separately taking into account synthetic equity. Synthetic equity is a general classification unique to section 409(p). The provisions relating to synthetic equity do not modify the rules relating to S corporations, *e.g.*, the circumstances in which options or similar interests are treated as creating a second class of stock. H.R. Conf. Rep. No. 107–84, at 102 n. 52. Under the rules for the treatment of synthetic equity at section 409(p)(5), if a person owns synthetic equity in an S corporation, then the

shares of stock in such corporation on which such synthetic equity is based are treated as outstanding stock in such corporation, and as deemed-owned shares of such person, ''if such treatment of synthetic equity *of 1 or more such persons* results in . . . the treatment of any person as a disqualified person or * * * the treatment of any year as a nonallocation year.'' [Emphasis added.]

Section 409(p)(7)(A) authorizes the Secretary to prescribe such regulations as may be necessary to carry out the purposes of section 409(p). Section 409(p)(7)(B) provides that the Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p).

Section 4979A imposes a 50 percent excise tax on certain prohibited allocations in an ESOP, including any allocation of employer securities that violates section 409(p), and on any synthetic equity owned by a disqualified person during a nonallocation year under section 409(p). In addition, section 4979A includes special rules for the first nonallocation year of an ESOP under which the excise tax applies with respect to all deemed-owned ESOP shares and all synthetic equity of disqualified persons, even if there is no prohibited allocation in that year. Section 4979A(a)(3), (a)(4), and (e)(2)(C). Thus, for example, any unallocated shares in an ESOP loan suspense account that are treated as deemed-owned shares of a disqualified person pursuant to section 409(p)(4)(C) are taken into account in determining the amount involved under 4979A(e)(2)(C). In addition, under section 4979A(e)(3)(D), a special statute of limitations applies to the first year of an ESOP that is a nonallocation year.

Temporary regulations under section 409(p) were issued on July 21, 2003 (68 FR 42970). The text of those temporary regulations also served as the text of a notice of proposed rulemaking published at 68 FR 43058. The 2003 regulations provide guidance on identifying disqualified persons, determining whether an ESOP has a nonallocation year, and on the definition of synthetic equity under section 409(p)(5).

In January 2004, the IRS issued Rev. Rul. 2004–4 (2004–6 I.R.B. 414) which addresses three factual situations involving an S corporation with qualified subchapter S subsidiaries (QSUBs). Pursuant to the authority of section 409(p)(7)(B) and § 1.409(p)–1T(c)(3) of the 2003 regulations, Rev. Rul. 2004–4 states that a nonallocation year occurs and the individual is a disqualified person in any case in which (i) shares of an S corporation are employer securities held by an ESOP, (ii) the profits of the S corporation generated by the business activities of a specific individual are accumulated and held for the benefit of that individual in a QSUB or similar entity (such as a limited liability company), (iii) these profits are not paid to the individual as compensation within 2½ months after the end of the year in which earned, and (iv) the individual has rights to acquire shares of stock (or similar interests) of the QSUB or similar entity representing 50 percent or more of the fair market value of the stock of such QSUB or similar entity. Rev. Rul. 2004–4 also provides that such individual's right to acquire shares of stock (or similar interests) of the QSUB or similar entity is synthetic equity. Accordingly, Rev. Rul. 2004–4 holds in each of the three factual situations that, for purposes of sections 409(p) and 4979A, certain individuals are disqualified persons, the ESOP has a nonallocation year, and the disqualified persons are treated as owning synthetic equity in the form of their options to acquire shares of the corresponding QSUB.[1]

Rev. Rul. 2004–4 also stated that Treasury and the IRS intend to reflect the guidance in that revenue ruling in regulations under section 409(p), effective for plan years ending after October 20, 2003, and that it is expected that the regulations would apply to similar transactions that have the effect of reserving profits from an individual's business activities to provide similar tax benefits to the individual, either with the use of a QSUB or through the use of another method.

Comments were received on the 2003 regulations. A public hearing on the 2003 regulations was held on November 17, 2003. After consideration of comments received and views expressed at the hearing, and taking into account Rev. Rul. 2004–4 and that section 409(p) applies to all ESOPs for plan years beginning on or after January 1, 2005, these new temporary regulations are being issued effective generally for plan years that begin on or after January 1, 2005, subject to a number of special effective date and transition rules that are described in this preamble under the heading *Effective date.*

Explanation of Provisions

Definition of Prohibited Allocation

In order to satisfy section 409(p), an ESOP holding employer securities consisting of stock in an S corporation must provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue under the ESOP, or be allocated directly or indirectly under any plan of the employer (including the ESOP) meeting the requirements of section 401(a), for the benefit of any disqualified person. This requirement has two elements; it prohibits accruals and allocations. These regulations provide two new terms, impermissible accrual and impermissible allocation, to reflect these two elements. Under the regulations, if there is an impermissible accrual or an impermissible allocation, then there is a prohibited allocation in violation of this requirement.

Under the definition of impermissible accrual in these regulations, there is a prohibited allocation to the extent (and only to the extent) that employer securities consisting of stock in an S corporation owned by the ESOP and any assets attributable thereto are held under the ESOP for the benefit of a disqualified person during a nonallocation year. This rule was recommended by a commentator. For this purpose, assets attributable to S corporation securities include not only S corporation stock held in a disqualified person's account in the ESOP, but also any distributions, within the meaning of section 1368, made on S corporation stock held in a disqualified person's account in the ESOP (including earnings thereon), plus any proceeds from the sale of S corporation securities held for a disqualified person's account in the ESOP (including any earnings thereon).

Under the definition of impermissible allocation, prohibited allocations include any allocation for a disqualified person directly or indirectly under any plan of the employer qualified under section 401(a) that occurs during a nonallocation year to the extent that a contribution or other annual addition is

[1] Rev. Rul. 2004–4 also states that arrangements that are the same as, or substantially similar to, the following transaction are identified as ''listed transactions'' for purposes of §§ 1.6011–4(b)(2), 301.6111–2(b)(2) and 301.6112–1(b)(2), effective January 23, 2004: any transaction in which (i) at least 50 percent of the outstanding shares of an S corporation are employer securities held by an ESOP, (ii) the profits of the S corporation generated by the business activities of a specific individual are accumulated and held for the benefit of that individual in a QSUB or similar entity (such as a limited liability company), (iii) these profits are not paid to the individual as compensation within 2½ months after the end of the year in which earned, and (iv) the individual has rights to acquire shares of stock (or similar interests) of the QSUB or similar entity representing 50 percent or more of the fair market value of the stock of such QSUB or similar entity.

made, or the disqualified person otherwise accrues additional benefits, under the ESOP or any other plan of the employer qualified under section 401(a) (including a release and allocation of assets from a suspense account, as described at § 54.4975–11(c) and (d)) that, for the nonallocation year, would otherwise have been added to the account of the disqualified person under the ESOP and invested in employer securities consisting of stock in an S corporation owned by the ESOP but for a provision in the ESOP to comply with section 409(p).

Effect of a Prohibited Allocation

Under section 409(p)(2) and these regulations, if there is a prohibited allocation, then the amount of the prohibited allocation is treated as distributed to the disqualified person at the time of the prohibited allocation. Accordingly, the fair market value of the disqualified person's account under the ESOP would generally be included in his or her gross income (to the extent in excess of his or her allocable investment in the contract, if any, under section 72). The additional income tax imposed by section 72(t) would also apply if the disqualified person is less than age 59½ (and no other exception applies).

Like a deemed distribution under section 72(p),[2] a deemed distribution under section 409(p) is not an actual distribution from the ESOP. Thus, the amount of the prohibited allocation is not an eligible rollover distribution and, for purposes of applying sections 72 and 402 with respect to any subsequent distribution from the ESOP, the amount previously taken into account by the disqualified person as income as a result of the deemed distribution is treated as an investment in the contract.

Under these regulations, if there is a nonallocation year and there are prohibited allocations in that year, the plan would fail to satisfy the requirements of section 4975(e)(7) and would cease to be an ESOP. As a result, not only would the plan lose the prohibited transaction exemption for loans to an ESOP under section 4975(d)(3) of the Code and section 408(b)(3) of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), but also the exception in section 512(e)(3) would cease to apply to the plan, so that the plan would owe income tax as a result of unrelated business taxable income under section 512 with respect to S corporation stock held by the plan from and after the date of the prohibited allocation. [3] Other consequences include imposition of an excise tax under section 4979A and, assuming that the plan's provisions do not permit a prohibited allocation under section 409(p), loss of tax qualification for failure to operate the plan in accordance with its terms.

Prevention of a Nonallocation Year

As part of the regulations that were proposed in 2003, comments were requested with respect to issues raised by S corporation ESOPs established by March 14, 2001, that will need to comply with the requirements of section 409(p) beginning in 2005, including transition approaches for ESOPs that become subject to section 409(p) in 2005. One commentator requested a transition rule under which nonqualified deferred compensation would be disregarded if it was granted at a time when it was not synthetic equity and was distributed within 12 months after it became synthetic equity.

These issues are particularly important because compliance with the requirements of section 409(p) is required on a current operational basis, as well as a plan document basis. Thus, for example, if S corporation shares are held in a disqualified person's account during a nonallocation year, then there is a failure to satisfy section 409(p), without regard to whether the terms of the ESOP prohibit such actions or require preventative action to be taken. Factors that might be considered in determining whether there has been a failure to comply with the requirements of section 409(p) on a current operational basis include, for example, the exercise of voting rights of shares in the disqualified person's account, distributions from the S corporation to the disqualified person's account, and plan account statements showing allocations to the disqualified person's account.

A plan might choose to take a number of steps before the beginning of a year in order to ensure that the year is not a nonallocation year, such as steps to prevent an individual from becoming a disqualified person. These include:

- Reduction of synthetic equity, *e.g.*, by cancellation or distribution of the synthetic equity.
- A sale of the S corporation securities held in the participant's ESOP account so that the account is not invested in S corporation stock.
- A distribution of the S corporation securities held in the participant's account from the ESOP to the participant. Such a distribution is only permissible to the extent the amount is otherwise permitted to be distributed (*e.g.*, for amounts that are subject to section 401(k), the distribution does not violate the distribution restrictions of section 401(k)(2)(B)(i)).
- A transfer of the S corporation securities held for the participant under the ESOP into a separate portion of the plan that is not an ESOP (as permitted under § 54.4975–11(a)(5) of the Excise Tax Regulations) or to another qualified plan of the employer that is not an ESOP.

Any of these steps must satisfy applicable legal and qualification requirements, including the nondiscrimination requirements of section 401(a)(4).[4] These regulations provide that, if a transfer is made from an ESOP to a separate portion of the plan or to another qualified plan of the employer that is not an ESOP in order to prevent a nonallocation year, then both the ESOP and the plan that is not an ESOP will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the transfer. Further, subsequent to the transfer, the plan that is not an ESOP will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the benefits, rights, or features with respect to the transferred benefits if those benefits, rights, or features would satisfy the requirements of § 1.401(a)(4)–4 if the mandatory disaggregation rule for ESOPs at § 1.410(b)–7(c)(2) did not apply.

In the event of such a transfer, the transferee plan would be subject to tax on unrelated business taxable income with respect to its pro rata share of income from the S corporation securities, with that expense to be charged to the account holding the transferred amount. However, the ESOP would be able to continue to satisfy the requirements of section 4975(e)(7) and the allocations could be made for the participant for the year.

Determination of Nonallocation Year

Under section 409(p), a nonallocation year generally means a plan year during

[2] *See* § 1.72(p)–1, Q&A–11 and 12.

[3] It should be noted that transactions that give rise to loss of the prohibited transaction exemptions under section 4975(d)(3) of the Internal Revenue Code and section 408(b)(3) of Title I of ERISA for loans to an ESOP could also give rise to other prohibited transactions under section 4975 of the Internal Revenue Code, as well as violations of Title I of ERISA, including prohibited transactions under section 406 of Title I of ERISA, resulting in, among other things, the assessment of additional excise taxes under section 4975(a) and (b) of the Internal Revenue Code, as well as civil penalties under section 502(i) of ERISA.

[4] Further, any sale or transfer of plan assets must comply with the requirements of part 4 of subtitle B of title I of ERISA.

which on any date disqualified persons own 50 percent or more of the stock in the S corporation, separately applied by taking into account all outstanding shares of stock in the S corporation (including shares held by the ESOP) and by taking into account all outstanding shares of stock in the S corporation and synthetic equity. These regulations include some changes from the rules in the 2003 regulations for purposes of determining whether there is a nonallocation year.

The 2003 regulations generally treat a person as owning outstanding non-ESOP stock that the person has the right to acquire, but only in very limited cases. These regulations treat a person as owning outstanding non-ESOP stock that the person has the right to acquire unless the actual owner is a person who is subject to Federal income tax, the right is one that would not be taken into account in determining whether an S corporation has a second class of stock under § 1.1361–1(l)(2)(iii) or (l)(4)(iii)(C), and a principal purpose of the right is not to avoid or evade a nonallocation year under section 409(p).

Other differences from the 2003 regulations include a change relating to synthetic equity (discussed in this preamble under the heading *Determination of disqualified persons on person-by-person basis)* and, in response to comments, clarification that, if any share is treated as owned by more than one person, then that share is counted as a single share and that share is treated as owned by disqualified persons if any of the owners is a disqualified person.

Determination of Disqualified Persons on Person-by-Person Basis

Under the 2003 regulations, a person's synthetic equity shares are added to his or her deemed-owned ESOP shares to determine whether he or she is a disqualified person. This total number of shares is then compared with the total outstanding synthetic equity shares in determining whether that person is a disqualified person. The 2003 regulations were criticized for this approach in the case of options because it allowed options held by other shareholders to dilute the interests of the person being tested and prevent them from being treated as a disqualified person.

These regulations change this approach by looking only at the synthetic equity of the person being tested to determine if he or she is a disqualified person. In addition, a nonallocation year occurs as a result of synthetic equity if the total share ownership of disqualified persons (actual ownership, deemed-owned ESOP shares, plus synthetic equity) is at least 50 percent of the total shares outstanding plus the synthetic equity of disqualified persons. This 'person-by-person approach' is more consistent with the statutory rule that synthetic equity is counted for one person if it results in any person being treated as a disqualified person.

The person-by-person approach applies to synthetic equity in the form of nonqualified deferred compensation, as well as in the form of options or other rights related to stock. This approach prevents dilution of the disqualified person's ownership and also addresses a known abuse identified by several commentators involving stock options or stock appreciation rights that are unlikely to be exercised. In this abuse, the S corporation issues a large number of stock options or stock appreciation rights to lower paid employees which are only exercisable at a strike price far exceeding even the likely future value of the shares or the strike price is periodically reset to exceed the expected value during the term of the option or right. These options or rights would never be exercised by the employees, but are designed to count as synthetic equity shares in order to prevent shareholders who actually have the right to own 10 percent or more of the S corporation from being treated as disqualified persons. Several commentators urged Treasury and the IRS to prevent this abuse. Under the person-by person approach adopted in these regulations, these options or rights would be ignored in determining whether other shareholders were disqualified persons and would not prevent persons who have actual rights to become 10 percent shareholders from being treated as disqualified persons.

Synthetic Equity

These regulations are generally similar to the 2003 regulations regarding what constitutes synthetic equity. Differences include the expansion of the definition of synthetic equity to include the right to acquire stock or assets of a related entity and an exclusion for nonqualified deferred compensation that was taken into account before January 1, 2005, for purposes of the Federal Insurance Contributions Act (FICA) and that was outstanding before the first date on which the ESOP acquired any employer securities.

Determination of Number of Shares of Synthetic Equity

The 2003 regulations include rules under which the number of synthetic equity shares attributed for a stock option is based on the number of shares that are subject to that option. The same rule also applies to any other synthetic equity that is determined by reference to shares of stock of the S corporation but for which payment is made in cash or other property. These regulations provide that in the case of synthetic equity determined by reference to shares of stock in the S corporation, the number of shares of synthetic equity depends on the gross number of shares deliverable pursuant to the synthetic equity. In the case of synthetic equity determined by reference to S corporation shares but payable in cash or other property (other than S corporation shares), the number of synthetic equity shares treated as owned is equal to the number of shares of stock having a fair market value equal to the cash or other property paid (disregarding lapse restrictions as described in § 1.83–3(i)). Accordingly, the number of shares of synthetic equity attributed for a stock appreciation right (payable in stock or in cash) equals the number of shares having a value equal to the appreciation at the time of measurement (determined without regard to lapse restrictions).

In addition, the 2003 regulations provide that rights to acquire stock or interests in an entity related to the S corporation are treated as synthetic equity if the interests in the related entity are the only significant assets of the S corporation and the S corporation is the only significant owner of the related entity. These regulations broaden that rule by providing that synthetic equity includes all rights to acquire stock or similar interests in a related entity to the extent of the S corporation's ownership. The regulations provide that synthetic equity also includes a right to acquire assets of an S corporation or a related entity other than either rights to acquire goods, services, or property at fair market value in the ordinary course of business or fringe benefits excluded from gross income under section 132.

In the case of synthetic equity that is not determined by reference to shares of stock of the S corporation (or shares of stock or similar interests in a related entity), the 2003 regulations provided that the person who is entitled to the synthetic equity is treated as owning a number of shares of stock in the S corporation equal to the present value of the synthetic equity (with such value determined without regard to any lapse restriction as defined under the section 83 regulations) divided by the fair market value of a share of the S corporation's stock as of the same date. These regulations include a similar rule,

but include three rules that were not in the 2003 regulations.

First, these regulations include a special rule with respect to voting rights. While sections 409(l) and 4975(e)(7) generally require that the employer securities of an ESOP have voting rights at least equal to the voting rights of that class of common stock having the greatest voting rights (assuming the employer has no stock readily traded on an established securities market), there might be rights to acquire a class of shares that are not currently outstanding and that have greater voting rights. Under these regulations, if a synthetic equity right includes (directly or indirectly) a right to purchase or receive shares of S corporation stock that have per-share voting rights greater than the per-share voting rights of one or more shares of S corporation stock held by the ESOP, then the number of shares of deemed owned synthetic equity attributable to such right is at least equal to the number of shares that would have the same voting rights if such shares had the same per-share voting rights as shares held by the ESOP.

Second, like the 2003 regulations, these regulations permit the number of synthetic equity shares for nonqualified deferred compensation (that is not determined by reference to shares of stock of the S corporation or shares of stock or similar interests in a related entity) to be determined as of the first day of the ESOP's plan year, or any other reasonable determination date or dates during a plan year that is consistently used by the ESOP for this purpose for all persons. These regulations require that the date used be reasonably representative of the share value of the S corporation's stock. The number of shares of synthetic equity treated as owned for any period from a determination date through the date immediately preceding the next following determination date is the number of shares treated as owned on the first day of that period. In addition, these regulations include a new rule intended to address concerns expressed in the comments regarding administrative and planning difficulties that arise from a daily, or even annual, determination of synthetic equity shares where the number is affected both by the potential volatility of the S corporation stock value and separately by the potential volatility of the nonqualified deferred compensation. Under these regulations, the ESOP may provide, on a reasonable and consistent basis used by the ESOP for this purpose for all persons, that the number of shares of synthetic equity treated as owned on an identified determination date remain constant for the period from that determination date until the date that is immediately preceding the third anniversary of the identified determination date. As new grants are made during this three-year period, the appropriate number of shares of synthetic equity resulting from the new grant would be determined at the next determination date, which would likewise remain constant during the remainder of the same three-year period. However, the ESOP must recalculate the number of shares of this type of synthetic equity at least every three years, based on the S corporation share value on the applicable determination date and the aggregate present value of nonqualified deferred compensation on that determination date. The regulations include an example illustrating this rule.

Third, these regulations include a new rule for cases in which the ESOP does not own all of the stock of the S corporation. This rule reflects the view that the dilutive effect of synthetic equity only affects an ESOP to the extent of the ESOP's ownership interest in the S corporation. Under this rule, the number of synthetic shares otherwise determined is reduced ratably to the extent that shares of the S corporation are owned by a person who is not an ESOP (and who is subject to Federal income taxes). For example, if an S corporation has 200 outstanding shares, of which individual A owns 50 shares and the ESOP owns the other 150 shares, and individual B would be treated as owning 200 synthetic equity shares of the S corporation but for the special rule for cases in which the ESOP does not own all of the stock of the S corporation, then the number of synthetic shares treated as owned by B is decreased from 200 to 150 (because the ESOP only owns 75% of the outstanding stock of the S corporation, rather than 100%).

Avoidance or Evasion of Section 409(p)

These regulations include a standard for determining whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p). Under this standard, whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p) is determined by taking into account all the surrounding facts and circumstances. An avoidance or evasion of section 409(p) does not occur where the ESOP receives the economic benefits of ownership in the S corporation, taking into account all features of the ownership of the S corporation's outstanding stock and related obligations (including synthetic equity), any shareholders who are taxable entities, and the rights of the ESOP, to determine whether, to the extent of the ESOP's stock ownership, the ESOP receives the economic benefits of ownership in the S corporation that occur during the period that stock of the S corporation is owned by the ESOP. Among the factors indicating that the ESOP receives these economic benefits include shareholder voting rights, the right to receive distributions made to shareholders, and the right to benefit from the profits earned by the S corporation, including the extent to which actual distributions of profits are made from the S corporation to the ESOP and the extent to which the ESOP's ownership interest in undistributed profits and future profits is subject to dilution as a result of synthetic equity, for example, the ESOP's ownership interest is not subject to dilution if the total amount of synthetic equity is a relatively small portion of the total number of shares and deemed-owned shares of the S corporation.

This standard is promulgated pursuant to the authority of Treasury and the IRS to act promptly to issue guidance to prevent ownership structures that deny an ESOP the economic benefits of ownership and, in addition, these regulations identify certain specific ownership structures that constitute an avoidance or evasion of section 409(p). Specifically, the regulations identify the transactions described in Rev. Rul. 2004–4 as being an avoidance or evasion of section 409(p) and provide that there is a nonallocation year not only in the situations described in the revenue ruling but also in situations in which profits are segregated using a method other than QSUBs. Under the regulations, the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p), and a nonallocation year results, in any case in which (i) the profits of the S corporation generated by the business activities of a specific individual or individuals are substantially accumulated and held for the benefit of that individual or individuals on a tax-deferred basis within an entity related to the S corporation, such as a partnership, trust, or corporation (such as in a subsidiary that is a disregarded entity), or through any other method that has the same effect of segregating profits for the

benefit of such individual or individuals (such as nonqualified deferred compensation), (ii) the individual or individuals for whom profits are segregated have rights to acquire 50 percent or more of those profits directly or indirectly (for example, by purchase of the subsidiary), and (iii) a nonallocation year would occur if this section were separately applied with respect to either the separate entity or whatever method has the effect of segregating profits of the individual or individuals, treating such entity as a separate S corporation owned by an ESOP (or in the case of any other method of segregation of profits by treating those profits as the only assets of a separate S corporation owned by an ESOP). This conclusion both reflects the holding in Rev. Rul. 2004–4 (discussed in this preamble under the heading *Background*) and treats similar transactions as resulting in a nonallocation year, as Rev. Rul. 2004–4 indicated would be reflected in these regulations.

Effective Dates

These temporary regulations are applicable for plan years beginning on or after January 1, 2005. However, there are a number of special effective date and transition rules.

These regulations preserve the rules of the 2003 temporary regulations with respect to plan years beginning before January 1, 2005, with the new rules in these regulations to apply thereafter. However, as described in this section, the rules in these regulations dealing with ownership structures that constitute an avoidance or evasion of section 409(p), including the rules relating to structures similar to those addressed in Rev. Rul. 2004–4, apply for plan years ending on or after December 31, 2004.

Under the transition rules, ESOP shares that are held for a disqualified person before the first plan year beginning on or after January 1, 2005 will not be treated as an impermissible accrual in 2005 if the shares are disposed of before July 1, 2005 (*e.g.*, by distribution or transfer to a non-ESOP) and no amount is contributed for the benefit of the disqualified person under any plan of the employer intended to meet the requirements of section 401(a) (including the ESOP) during the period from the first day of the first plan year beginning on or after January 1, 2005 through June 30, 2005. However, even if no amount is allocated to a disqualified person during this period, but this period is part of the first nonallocation year of the ESOP, an excise tax will apply under section 4979A with respect to either ESOP shares held for a disqualified person or synthetic equity that is treated as owned under these regulations on the first day of the plan year, regardless of whether there is an impermissible accrual or impermissible allocation. See section 4979A(a)(3), (a)(4), and (e)(2)(C).

Under another transition rule, the new person-by-person rules in these regulations on how to determine whether a person is a disqualified person and whether a year is a nonallocation year generally do not go into effect until July 1, 2005. However, comments indicated that the 2003 regulations could be easily avoided or evaded by granting options or stock appreciation rights with artificially high strike prices or where the strike price is periodically increased to exceed the expected value before the option or right is to expire. Thus, with respect to the period from (and including) December 31, 2004 through June 30, 2005, the new rules apply to plans under which a nonallocation year would occur under the 2003 temporary regulations if synthetic equity were to exclude stock options, stock appreciation rights, or similar rights to acquire shares of the S corporation or a related entity where the facts and circumstances indicate that there is no reasonable likelihood that the holder of the right will receive the shares (or equivalent value), *e.g.*, cases in which the option is based on an exercise price that is more than 200% of the fair market value of the shares on the date of grant or a stock appreciation right is payable only if the appreciation exceeds 100% of the fair market value of the shares on the date of grant. This special rule applies for plan years ending on or after December 31, 2004 in order to ensure that an employer cannot avoid or evade the purposes of section 409(p)—even for the calendar year 2004—by using artificial grants that are unlikely to ever be paid.

Under a third transition rule, the new rules in these regulations, including the rules relating to the right to receive shares with disproportional voting rights, do not go into effect until July 1, 2005, if there would be no prohibited allocation before then under these regulations if the new rules in these regulations relating to the right to receive shares with disproportional voting rights were disregarded.

Further, the IRS will permit plans to rely on the exception for pre-ESOP nonqualified deferred compensation for periods before January 1, 2005, (described in this preamble under the heading *Synthetic Equity*).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.409(p)–1T is also issued under 26 U.S.C. 409(p)(7). * * *

■ Par. 2. Section 1.409(p)–1T is revised to read as follows:

§ 1.409(p)–1T Prohibited allocation of securities in an S corporation (temporary).

(a) *Organization of this section.* Section 409(p) applies if a nonallocation year occurs in an employee stock ownership plan (ESOP), as defined in section 4975(e)(7), that holds shares of stock of an S corporation, as defined in section 1361, that are employer securities as defined in section 409(l). Paragraph (b) of this section sets forth the general rule under section 409(p)(1) and (2) prohibiting any accrual or allocation to a disqualified person in a nonallocation year. Paragraph (c) of this section sets forth rules under section

409(p)(3), (5), and (7) for determining whether a year is a nonallocation year, generally based on whether disqualified persons own at least 50 percent of the shares of the S corporation, either taking into account only the outstanding shares of the S corporation (including shares held by the ESOP) or taking into account both the outstanding shares and synthetic equity of the S corporation. Paragraphs (d), (e), and (f) of this section contain definitions of disqualified person under section 409(p)(4) and (5), deemed-owned ESOP shares under section 409(p)(4)(C), and synthetic equity under section 409(p)(6)(C). Paragraph (g) of this section contains a standard for determining when the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). The definitions used in section 409(p) and this section are also applicable for purposes of section 4979A, which imposes an excise tax on certain events, including a nonallocation year under section 409(p).

(b) *Prohibited allocation in a nonallocation year*—(1) *General rule.* An ESOP holding employer securities consisting of stock in an S corporation must provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue under the ESOP, or be allocated directly or indirectly under any plan of the employer (including the ESOP) meeting the requirements of section 401(a), for the benefit of any disqualified person (a prohibited allocation).

(2) *Additional rules*—(i) *Prohibited allocation definition.* For purposes of section 409(p)(2)(A) and paragraph (b)(1) of this section, there is a prohibited allocation (*i.e.*, assets accrue or are allocated as prohibited under paragraph (b)(1) of this section) if there is either an impermissible accrual as defined in paragraph (b)(2)(ii) of this section or an impermissible allocation as defined in paragraph (b)(2)(iii) of this section. The amount of the prohibited allocation is equal to the sum of the impermissible accrual plus the amount of the impermissible allocation (if any).

(ii) *Impermissible accrual.* There is an impermissible accrual to the extent (and only to the extent) that employer securities consisting of stock in an S corporation owned by the ESOP and any assets attributable thereto are held under the ESOP for the benefit of a disqualified person during a nonallocation year. For this purpose, assets attributable to S corporation securities include any distributions, within the meaning of section 1368, made on S corporation stock held in a disqualified person's account in the ESOP (including earnings thereon), plus any proceeds from the sale of S corporation securities held for a disqualified person's account in the ESOP (including any earnings thereon). Thus, for example, in the event of a nonallocation year, all S corporation shares and all other ESOP assets attributable to S corporation stock, including distributions, sales proceeds, and earnings on either the distribution or proceeds, held for the account of such disqualified person in the ESOP during that year are an impermissible accrual for the benefit of that person, whether attributable to contributions in the current year or in prior years.

(iii) *Impermissible allocation.* An impermissible allocation means any allocation for a disqualified person directly or indirectly under any plan of the employer qualified under section 401(a) that occurs during a nonallocation year to the extent that a contribution or other annual addition is made, or the disqualified person otherwise accrues additional benefits, under the ESOP or any other plan of the employer qualified under section 401(a) (including a release and allocation of assets from a suspense account, as described at § 54.4975–11(c) and (d) of this chapter) that, for the nonallocation year, would otherwise have been added to the account of the disqualified person under the ESOP and invested in employer securities consisting of stock in an S corporation owned by the ESOP but for a provision in the ESOP to comply with section 409(p).

(iv) *Effects of prohibited allocation*—(A) *Deemed distribution.* If there is a prohibited allocation, the amount of the prohibited allocation, as determined under this paragraph (b)(2), is treated as distributed from the ESOP (or other plan of the employer) to the disqualified person on the first day of the plan year on which there is an impermissible accrual or on the date of the allocation in the case of an additional impermissible accrual or impermissible allocation during the plan year but after the first day of the plan year. Thus, the fair market value of assets in the disqualified person's account that constitutes an impermissible accrual or allocation is included in gross income (to the extent in excess of any investment in the contract allocable to such amount) and is subject to any additional income tax that applies under section 72(t). A deemed distribution under this paragraph (b)(2)(iv)(A) is not an actual distribution from the ESOP. Thus, the amount of the prohibited allocation is not an eligible rollover distribution under section 402(c). However, for purposes of applying sections 72 and 402 with respect to any subsequent distribution from the ESOP, the amount that the disqualified person previously took into account as income as a result of the deemed distribution is treated as an investment in the contract.

(B) *Other effects.* If there is a prohibited allocation, then the plan fails to satisfy the requirements of section 4975(e)(7) and ceases to be an ESOP. In such a case, the exemption from the excise tax on prohibited transactions for loans to leveraged ESOPs contained in section 4975(d)(3) would cease to apply to any loan (with the result that the employer would owe an excise tax with respect to the previously exempt loan) and, further, the exception in section 512(e)(3) would not apply to the plan (with the result that the plan may owe income tax as a result of unrelated business taxable income under section 512 with respect to S corporation stock held by the plan). See also section 4979A(a) which imposes an excise tax in certain events, including a prohibited allocation under section 409(p).

(v) *Prevention of prohibited allocation.*—(A) *Transfer of account to non-ESOP.* An ESOP may prevent a nonallocation year or a prohibited allocation during a nonallocation year by permitting assets (including S corporation securities) allocated to the account of a disqualified person (or a person reasonably expected to become a disqualified person absent a transfer described in this paragraph (b)(2)(v)(A)) to be transferred into a separate portion of the plan that is not an ESOP, as described in § 54.4975–11(a)(5) of this chapter, or to another plan of the employer that satisfies the requirements of section 401(a) (and that is not an ESOP). In the event of such a transfer involving S corporation securities, the recipient plan is subject to tax on unrelated business taxable income under section 512.

(B) *Relief from nondiscrimination requirement.* Pursuant to this paragraph (b)(2)(v)(B), if a transfer described in paragraph (b)(2)(v)(A) of this section is made from an ESOP to a separate portion of the plan or to another qualified plan of the employer that is not an ESOP, then both the ESOP and the plan or portion of a plan that is not an ESOP will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the transfer. Further, subsequent to the transfer, that plan will not fail to satisfy the requirements of § 1.401(a)(4)–4 merely because of the benefits, rights, or features with respect to the transferred benefits if those

benefits, rights, or features would satisfy the requirements of § 1.401(a)(4)–4 if the mandatory disaggregation rule for ESOPs at § 1.410(b)–7(c)(2) did not apply.

(c) *Nonallocation year*—(1) *Definition generally.* For purposes of section 409(p) and this section, a *nonallocation year* means a plan year of an ESOP during which, at any time, the ESOP holds any employer securities that are shares of an S corporation and either—

(i) Disqualified persons own at least 50 percent of the number of outstanding shares of stock in the S corporation (including deemed-owned ESOP shares); or

(ii) Disqualified persons own at least 50 percent of the sum of:

(A) The outstanding shares of stock in the S corporation (including deemed-owned ESOP shares), plus

(B) The shares of synthetic equity in the S corporation owned by disqualified persons.

(2) *Attribution rules.* For purposes of this paragraph (c), the rules of section 318(a) apply to determine ownership of shares in the S corporation (including deemed-owned ESOP shares) and synthetic equity. However, for this purpose, section 318(a)(4) (relating to options to acquire stock) is disregarded and, in applying section 318(a)(1), the members of an individual's family include members of the individual's family under paragraph (d)(2) of this section. In addition, an individual is treated as owning deemed-owned ESOP shares of that individual notwithstanding the employee trust exception in section 318(a)(2)(B)(i). If the attribution rules in paragraph (f)(1) of this section apply, then the rules of paragraph (f)(1) of this section are applied before the rules of this paragraph (c)(2).

(3) *Special rule for avoidance or evasion.* (i) The ownership structures described in paragraph (g)(3) of this section result in a nonallocation year. In addition, under the ownership structures described in paragraph (g)(3) of this section, the individual referred to in paragraph (g)(3) of this section is treated as a disqualified person and that person's interest in the separate entity is treated as synthetic equity.

(ii) Under section 409(p)(7)(B), the Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter), may provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). For any year that is a nonallocation year under this paragraph (c)(3), the Commissioner may treat any person as a disqualified person. See paragraph (g) of this section for guidance regarding when the principal purpose of an ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p).

(4) *Special rule for certain stock rights.* (i) For purposes of paragraph (c)(1) of this section, a person is treated as owning stock that the person has a right to acquire if, at all times during the period when such right is effective, the stock that the person has the right to acquire is both issued and outstanding and is held by persons other than the ESOP, the S corporation, or a related entity (as defined in paragraph (f)(3) of this section).

(ii) This paragraph (c)(4) applies only if treating persons as owning the shares described in paragraph(c)(4)(i) of this section results in a nonallocation year. This paragraph (c)(4) does not apply to a right to acquire stock of an S corporation held by a shareholder subject to Federal income tax that, under § 1.1361–1(l)(2)(iii) or (l)(4)(iii)(C), would not be taken into account in determining if an S corporation has a second class of stock provided that a principal purpose of the right is not the avoidance or evasion of section 409(p). Under the last sentence of paragraph (f)(2)(i) of this section, this paragraph (c)(4)(ii) does not apply for purposes of determining ownership of deemed-owned ESOP shares or whether an interest constitutes synthetic equity.

(5) *Application with respect to shares treated as owned by more than one person.* For purposes of applying paragraph (c)(1) of this section, if, by application of the rules of paragraph (c)(2), (c)(4), or (f)(1) of this section, any share is treated as owned by more than one person, then that share is counted as a single share and that share is treated as owned by disqualified persons if any of the owners is a disqualified person.

(6) *Effect of nonallocation year.* See paragraph (b) of this section for a prohibition applicable during a nonallocation year. See also section 4979A for an excise tax applicable in certain cases, including section 4979A(a)(3) and (4) which applies during a nonallocation year (whether or not there is a prohibited allocation during the year).

(d) *Disqualified persons*—(1) *General definition.* For purposes of section 409(p) and this section, a *disqualified person* means any person for whom—

(i) The number of such person's deemed-owned ESOP shares of the S corporation is at least 10 percent of the number of the deemed-owned ESOP shares of the S corporation;

(ii) The aggregate number of such person's deemed-owned ESOP shares and synthetic equity shares of the S corporation is at least 10 percent of the sum of:

(A) The total number of deemed-owned ESOP shares, and

(B) The person's synthetic equity shares of the S corporation;

(iii) The aggregate number of the S corporation's deemed-owned ESOP shares of such person and of the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares of the S corporation; or

(iv) The aggregate number of the S corporation's deemed-owned ESOP shares and synthetic equity shares of such person and of the members of such person's family is at least 20 percent of the sum of:

(A) The total number of deemed-owned ESOP shares, and

(B) The synthetic equity shares of the S corporation owned by such person and the members of such person's family.

(2) *Treatment of family members; definition*—(i) *Rule.* Each member of the family of any person who is a disqualified person under paragraph (d)(1)(iii) or (iv) of this section is a disqualified person.

(ii) *General definition.* For purposes of section 409(p) and this section, *member of the family* means, with respect to an individual—

(A) The spouse of the individual;

(B) An ancestor or lineal descendant of the individual or the individual's spouse;

(C) A brother or sister of the individual or of the individual's spouse and any lineal descendant of the brother or sister; and

(D) The spouse of any individual described in paragraph (d)(2)(ii)(B) or (C) of this section.

(iii) *Spouse.* A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance is not treated as such individual's spouse under paragraph (d)(2)(ii)(A) of this section.

(iv) *Attribution rules.* For purposes of this paragraph (d), the rules of section 318(a) apply to determine ownership of shares in the S corporation (including deemed-owned ESOP shares) and synthetic equity. However, for this purpose, section 318(a)(4) (relating to options to acquire stock) is disregarded and, in applying section 318(a)(1), the members of an individual's family

include members of the individual's family under paragraph (d)(2)(ii) of this section. In addition, an individual is treated as owning deemed-owned ESOP shares of that individual notwithstanding the employee trust exception in section 318(a)(2)(B)(i). If the attribution rules in paragraph (f)(1) of this section apply, then the rules of paragraph (f)(1) of this section are applied before the rules of this paragraph (d)(2).

(3) *Special rule for certain nonallocation years.* See paragraph (c)(3) of this section (relating to avoidance or evasion of section 409(p)) for special rules permitting certain persons to be treated as disqualified persons in certain nonallocation years.

(4) *Example.* The rules of this paragraph (d) are illustrated by the following example:

Example. (i) *Facts.* An S corporation has 800 outstanding shares of which 100 are owned by individual O and 700 are held in an employee stock ownership plan (ESOP) during 2005, including 200 shares held in the ESOP account of O, 65 shares held in the ESOP account of participant P, and 40 shares held in the ESOP account of participant Q who is P's spouse. The S corporation has no synthetic equity.

(ii) *Conclusion.* O is a disqualified person during 2005 because O's account in the ESOP holds at least 10 percent of the shares owned by the ESOP (200 is 28.6 percent of 700). In addition, P is a disqualified person during 2005 because, under paragraph (d)(2) of this section, P is treated as owning the shares held by Q and P's total deemed-owned shares are thus at least 10 percent of the shares owned by the plan (65 plus 40 is more than 10 percent of 700). In addition, Q is a disqualified person as a result of the rules in paragraph (d)(2) of this section. As a result, disqualified persons own at least 50 percent of the outstanding shares of the S corporation during 2005 (O's 100 directly owned shares, O's 200 deemed-owned shares, P's 65 deemed-owned shares, plus Q's 40 deemed owned shares are 50.6 percent of 800).

(e) *Deemed-owned ESOP shares.* For purposes of section 409(p) and this section, a person is treated as owning his or her deemed-owned ESOP shares.

Deemed-owned ESOP shares mean, with respect to any person—

(1) Any shares of stock in the S corporation constituting employer securities that are allocated to such person's account under the ESOP; and

(2) Such person's share of the stock in the S corporation that is held by the ESOP but is not allocated to the account of any participant or beneficiary (with such person's share to be determined in the same proportion as the shares released and allocated from a suspense account, as described at § 54.4975–11(c) and (d) of this chapter, under the ESOP for the most recently ended plan year for which there were shares released and allocated from a suspense account, or if there has been no such prior release and allocation from a suspense account, then determined in proportion to a reasonable estimate of the shares that would be released and allocated in the first year of loan repayment).

(f) *Synthetic equity*—(1) *Ownership of synthetic equity.* For purposes of section 409(p) and this section, synthetic equity is treated as owned by a person in the same manner as stock is treated as owned by a person, directly or under the rules of section 318(a)(2) and (3). *Synthetic equity* means the rights described in paragraph (f)(2) of this section.

(2) *Synthetic equity*—(i) *Rights to acquire stock of the S corporation.* Synthetic equity includes any stock option, warrant, restricted stock, deferred issuance stock right, stock appreciation right payable in stock, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Rights to acquire stock in an S corporation with respect to stock that is, at all times during the period when such rights are effective, both issued and outstanding and held by persons (who are subject to federal income taxes) other than the ESOP, the S corporation, or a related entity are not synthetic equity (but see paragraph (c)(4) of this section).

(ii) *Special rule for certain stock rights. Synthetic equity* also includes a right to a future payment (payable in cash or any other form other than stock of the S corporation) from an S corporation that is based on the value of the stock of the S corporation, such as appreciation in such value. Thus, synthetic equity includes a stock appreciation right with respect to stock of an S corporation that is payable in cash or a phantom stock unit with respect to stock of an S corporation that is payable in cash.

(iii) *Rights to acquire interests in or assets of an S corporation or a related entity.* Synthetic equity includes a right to acquire stock or other similar interests in a related entity to the extent of the S corporation's ownership. Synthetic equity also includes a right to acquire assets of an S corporation or a related entity other than either rights to acquire goods, services, or property at fair market value in the ordinary course of business or fringe benefits excluded from gross income under section 132.

(iv) *Special rule for nonqualified deferred compensation.* (A) Synthetic equity also includes any of the following with respect to an S corporation or a related entity: any remuneration to which section 404(a)(5) applies; remuneration for which a deduction would be permitted under section 404(a)(5) if separate accounts were maintained; any right to receive property to which section 83 applies (including a payment to a trust described in section 402(b) or to an annuity described in section 403(c)) in a future year for the performance of services; any transfer of property (to which section 83 applies) in connection with the performance of services to the extent that the property is not substantially vested within the meaning of § 1.83–3(i) by the end of the plan year in which transferred; and a split-dollar life insurance arrangement under § 1.61–22(b) entered into in connection with the performance of services (other than one under which, at all times, the only economic benefit that will be provided under the arrangement is current life insurance protection as described in § 1.61–22(d)(3)). Synthetic equity also includes any other remuneration for services under a plan, or method or arrangement, deferring the receipt of compensation to a date that is after the 15th day of the 3rd calendar month after the end of the entity's taxable year in which the related services are rendered. However, synthetic equity does not include benefits under a plan that is an eligible retirement plan within the meaning of section 402(c)(8)(B).

(B) For purposes of applying paragraph (f)(2)(iv)(A) of this section with respect to an ESOP, synthetic equity does not include any interest described in such paragraph (f)(2)(iv)(A) of this section to the extent that—

(*1*) The interest is nonqualified deferred compensation (within the meaning of section 3121(v)(2)) that was outstanding on December 17, 2004;

(*2*) The interest is an amount that was taken into account (within the meaning of § 31.3121(v)(2)–1(d) of this chapter) prior to January 1, 2005, for purposes of taxation under chapter 21 of the Internal Revenue Code (or income attributable thereto); and

(*3*) The interest was held before the first date on which the ESOP acquires any employer securities.

(v) *No overlap among shares of deemed-owned ESOP shares or synthetic equity.* Synthetic equity under this paragraph (f)(2) does not include shares that are deemed-owned ESOP shares (or any rights with respect to deemed-owned ESOP shares to the extent such rights are specifically permitted under section 409(h)). In addition, synthetic equity under a specific subparagraph of this paragraph (f)(2) does not include anything that is

synthetic equity under paragraph (f)(2)(i), (ii), (iii) or (iv) of this section.

(3) *Related entity.* For purposes of this paragraph (f), *related entity* means any entity in which the S corporation holds an interest and which is a partnership, a trust, an eligible entity that is disregarded as an entity that is separate from its owner under § 301.7701–3 of this chapter, or a Qualified Subchapter S Subsidiary under section 1361(b)(3).

(4) *Number of synthetic shares*—(i) *Synthetic equity determined by reference to S corporation shares.* In the case of synthetic equity that is determined by reference to shares of stock of the S corporation, the person who is entitled to the synthetic equity is treated as owning the number of shares of stock deliverable pursuant to such synthetic equity. In the case of synthetic equity that is determined by reference to shares of stock of the S corporation, but for which payment is made in cash or other property (besides stock of the S corporation), the number of shares of synthetic equity treated as owned is equal to the number of shares of stock having a fair market value equal to the cash or other property (disregarding lapse restrictions as described in § 1.83–3(i)). Where such synthetic equity is a right to purchase or receive S corporation shares, the corresponding number of shares of synthetic equity is determined without regard to lapse restrictions as described in § 1.83–3(i) or to any amount required to be paid in exchange for the shares. Thus, for example, if a corporation grants an employee of an S corporation an option to purchase 100 shares of the corporation's stock, exercisable in the future only after the satisfaction of certain performance conditions, the employee is the deemed owner of 100 synthetic equity shares of the corporation as of the date the option is granted. If the same employee were granted 100 shares of restricted S corporation stock (or restricted stock units), subject to forfeiture until the satisfaction of performance or service conditions, the employee would likewise be the deemed owner of 100 synthetic equity shares from the grant date. However, if the same employee were granted a stock appreciation right with regard to 100 shares of S corporation stock (whether payable in stock or in cash), the number of synthetic equity shares the employee is deemed to own equals the number of shares having a value equal to the appreciation at the time of measurement (determined without regard to lapse restrictions).

(ii) *Synthetic equity determined by reference to shares in a related entity.* In the case of synthetic equity that is determined by reference to shares of stock (or similar interests) in a related entity, the person who is entitled to the synthetic equity is treated as owning shares of stock of the S corporation with the same aggregate value as the number of shares of stock (or similar interests) of the related entity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)).

(iii) *Other synthetic equity*—(A) *General rule.* In the case of any synthetic equity to which neither paragraph (f)(4)(i) nor paragraph (f)(4)(ii) of this section apply, the person who is entitled to the synthetic equity is treated as owning on any date a number of shares of stock in the S corporation equal to the present value (on that date) of the synthetic equity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)) divided by the fair market value of a share of the S corporation's stock as of that date.

(B) *Special rules*—(*1*) *Use of annual or more frequent determination dates.* For purposes of this paragraph (f)(4)(iii), while the determination of whether there is a nonallocation year depends on day-by-day determinations under paragraph (c) of this section, the number of shares of S corporation stock treated as owned by a person who is entitled to synthetic equity to which this paragraph (f)(4)(iii) applies is permitted to be determined only annually (or more frequently), as of the first day of the ESOP's plan year or as of any other reasonable determination date or dates during a plan year. If the ESOP so provides, the number of shares of synthetic equity to which this paragraph (f)(4)(iii) applies that are treated as owned by that person for any period from a given determination date through the date immediately preceding the next following determination date is the number of shares treated as owned on the given determination date.

(*2*) *Use of triannual recalculations.* In addition, if the terms of the ESOP so provide, then the number of shares of synthetic equity with respect to grants of synthetic equity to which this paragraph (f)(4)(iii) applies may be fixed for a specified period from a determination date identified under the ESOP through a date that is not later than the day before the determination date that is on or immediately preceding the third anniversary of the identified determination date. Additional accruals, allocations, or grants (to which this paragraph (f)(4)(iii) applies) that are made during such three-year period are taken into account on each determination date during that period, based on the number of synthetic equity shares resulting from the additional accrual, allocation, or grant (determined as of the determination date on or next following the date of the accrual, allocation, or grant). However, the ESOP must provide for the number of shares of synthetic equity to which this paragraph (f)(4)(iii) applies to be re-determined not less frequently than every three years, based on the S corporation share value on a determination date that is not later than the third anniversary of the identified determination date and the aggregate present value of the synthetic equity to which this paragraph (f)(4)(iii) applies (including all grants made during the three-year period) on that determination date. See *Example 3* of paragraph (h) of this section for an example illustrating this paragraph (f)(4)(iii)(B)(*2*).

(*3*) *Conditions for application of rules.* Paragraph (f)(4)(iii)(B) of this section only applies with respect to grants of synthetic equity to which this paragraph (f)(4)(iii) applies. In addition, paragraph (f)(4)(iii)(B)(*1*) of this section applies only if the fair market value of a share of the S corporation securities on any determination date is not unrepresentative of the value of the S corporation securities throughout the rest of the plan year and only if the terms of the ESOP include provisions conforming to paragraph (f)(4)(iii)(B)(*1*) of this section which are consistently used by the ESOP for all persons. In addition, paragraph (f)(4)(iii)(B)(*2*) of this section applies only if the terms of the ESOP include provisions conforming to paragraphs (f)(4)(iii)(B)(*1*) and (*2*) of this section which are consistently used by the ESOP for all persons.

(iv) *Adjustment of number of synthetic equity shares where ESOP owns less than 100% of S corporation.* Under this paragraph (f)(4)(iv), the number of synthetic shares otherwise determined under this paragraph (f)(4) is decreased ratably to the extent that shares of the S corporation are owned by a person who is not an ESOP (and who is subject to Federal income taxes). For example, if an S corporation has 200 outstanding shares, of which individual A owns 50 shares and the ESOP owns the other 150 shares, and individual B would be treated under this paragraph (f)(4) as owning 200 synthetic equity shares of the S corporation but for this paragraph (f)(4)(iv), then, under the rule of this paragraph (f)(4)(iv), the number of synthetic shares treated as owned by B under this paragraph (f)(4) is decreased from 200 to 150 (because the ESOP only owns 75% of the outstanding

stock of the S corporation, rather than 100%).

(v) *Special rule for shares with greater voting power than ESOP shares.* Notwithstanding any other provision of this paragraph (f)(4), if a synthetic equity right includes (directly or indirectly) a right to purchase or receive shares of S corporation stock that have per-share voting rights greater than the per-share voting rights of one or more shares of S corporation stock held by the ESOP, then the number of shares of deemed owned synthetic equity attributable to such right is not less than the number of shares that would have the same voting rights if the shares had the same per-share voting rights as shares held by the ESOP with the least voting rights. For example, if shares of S corporation stock held by the ESOP have one voting right per share, then an individual who holds an option to purchase one share with 100 voting rights is treated as owning 100 shares of synthetic equity.

(g) *Avoidance or evasion of section 409(p) involving synthetic equity*—(1) *General rule.* Paragraph (g)(2) of this section sets forth a standard for determining whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p). Paragraph (g)(3) of this section identifies certain specific ownership structures that constitute an avoidance or evasion of section 409(p). See also paragraph (c)(3) of this section for a rule under which the ownership structures in paragraph (g)(3) result in a nonallocation year for purposes of section 409(p).

(2) *Standard for determining when there is an avoidance or evasion of section 409(p) involving synthetic equity*— For purposes of section 409(p) and this section, whether the principal purpose of the ownership structure of an S corporation involving synthetic equity constitutes an avoidance or evasion of section 409(p) is determined by taking into account all the surrounding facts and circumstances, including all features of the ownership of the S corporation's outstanding stock and related obligations (including synthetic equity), any shareholders who are taxable entities, and the cash distributions made to shareholders, to determine whether, to the extent of the ESOP's stock ownership, the ESOP receives the economic benefits of ownership in the S corporation that occur during the period that stock of the S corporation is owned by the ESOP. Among the factors indicating that the ESOP receives these economic benefits include shareholder voting rights, the right to receive distributions made to shareholders, and the right to benefit from the profits earned by the S corporation, including the extent to which actual distributions of profits are made from the S corporation to the ESOP and the extent to which the ESOP's ownership interest in undistributed profits and future profits is subject to dilution as a result of synthetic equity, for example, the ESOP's ownership interest is not subject to dilution if the total amount of synthetic equity is a relatively small portion of the total number of shares and deemed-owned shares of the S corporation.

(3) *Specific transactions that constitute an avoidance or evasion of section 409(p) involving segregated profits.* Taking into account the standard in paragraph (g)(2) of this section, the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p) in any case in which—

(i) The profits of the S corporation generated by the business activities of a specific individual or individuals are not provided to the ESOP, but are instead substantially accumulated and held for the benefit of that individual or individuals on a tax-deferred basis within an entity related to the S corporation, such as a partnership, trust, or corporation (such as in a subsidiary that is a disregarded entity), or any other method that has the same effect of segregating profits for the benefit of such individual or individuals (such as nonqualified deferred compensation described in paragraph (f)(2)(iv) of this section);

(ii) The individual or individuals for whom profits are segregated have rights to acquire 50 percent or more of those profits directly or indirectly (for example, by purchase of the subsidiary); and

(iii) A nonallocation year would occur if this section were separately applied with respect to either the separate entity or whatever method has the effect of segregating profits of the individual or individuals, treating such entity as a separate S corporation owned by an ESOP (or in the case of any other method of segregation of profits by treating those profits as the only assets of a separate S corporation owned by an ESOP).

(h) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Relating to determination of disqualified persons and nonallocation year if there is no synthetic equity. (i) *Facts.* Corporation X is a calendar year S corporation that maintains an ESOP. X has a single class of common stock, of which there are a total of 1,200 shares outstanding. X has no synthetic equity. In 2006, individual A, who is not an employee of X (and is not related to any employee of X), owns 100 shares directly, individual B owns 100 shares directly, and the remaining 1,000 shares are owned by an ESOP maintained by X for its employees. The ESOP's 1,000 shares are allocated to the accounts of individuals who are employees of X (none of whom are related), as set forth in columns 1 and 2 in the following table:

1 Shareholders	2 Deemed-owned ESOP shares (total of 1,000)	3 Percentage deemed-owned ESOP shares	4 Disqualified person
B	330	33	Yes.
C	145	14.5	Yes.
D	75	7.5	No.
E	30	3	No.
F	20	2	No.
Other participants	400 (none exceed 10 shares)	1 or less	No.

(ii) *Conclusion with respect to disqualified persons.* As shown in column 4 in the table above, individuals B and C are disqualified persons for 2006 under paragraph (d)(1) of this section because each owns at least 10% of X's deemed-owned ESOP shares.

(iii) *Conclusion with respect to nonallocation year.* However, 2006 is not a nonallocation year under section 409(p) because disqualified persons do not own at least 50% of X's outstanding shares (the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, plus C's 145 deemed-owned ESOP shares equal only 47.9% of the 1,200 outstanding shares of X).

Example 2. Relating to determination of disqualified persons and nonallocation year if there is synthetic equity. (i) *Facts.* The facts are the same as in *Example 1*, except that, as shown in column 4 of the table in this

example 2, individuals E and F have options to acquire 110 and 130 shares, respectively, of the common stock of X from X:

1 Shareholders	2 Deemed-owned ESOP shares (total of 1,000)	3 Percentage deemed-owned ESOP shares	4 Options (240)	5 Shareholder percentage of deemed-owned ESOP plus synthetic equity shares	6 Disqualified person
B	330	33			Yes (col. 3).
C	145	14.5			Yes (col. 3).
D	75	7.5			No.
E	30	3	110	11.1% ([30 + 91.7] divided by 1,091.7).	Yes (col. 5).
F	20	2	130	11.6% ([20 + 108.3] divided by 1,108.3).	Yes (col. 5).
Other participants	400 (none exceeds 10 shares).	1 or less			No.

(ii) *Conclusion with respect to disqualified persons.* Applying the rule of paragraph (f)(4)(iv) of this section, E's option to acquire 110 shares of the S corporation converts into 91.7 shares of synthetic equity (110 times the ratio of the 1,000 deemed-owned ESOP shares to the sum of the 1,000 deemed-owned ESOP shares plus the 200 shares held outside the ESOP by A and B). Similarly, F's option to acquire 130 shares of the S corporation converts into 108.3 shares of synthetic equity (130 times the ratio of the 1,000 deemed-owned ESOP shares to the sum of the 1,000 deemed-owned ESOP shares plus the 200 shares held outside the ESOP by A and B). Accordingly, as shown in column 6 in the table above, individual E's synthetic equity shares are counted in determining whether E is a disqualified person for 2006, and individual F's synthetic equity shares are counted in determining whether F is a disqualified person for 2006, but the synthetic equity shares owned by any person do not affect the calculation for any other person's ownership of shares. Accordingly, individuals B, C, E, and F are disqualified persons for 2006.

(iii) *Conclusion with respect to nonallocation year.* The 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, E's 30 deemed-owned ESOP shares, E's 91.7 synthetic equity shares, F's 20 deemed-owned ESOP shares, plus F's 108.3 synthetic equity shares total 825, which equals 58.9% of 1,400, which is the sum of the 1,200 outstanding shares of X and the 200 shares of synthetic equity shares of X held by disqualified persons. Thus, 2006 is a nonallocation year for X's ESOP under section 409(p) because disqualified persons own at least 50% of the total shares of outstanding stock of X and the total synthetic equity shares of X held by disqualified persons. In addition, independent of the preceding conclusion, 2006 would be a nonallocation year because disqualified persons own at least 50% of X's outstanding shares because the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, E's 30 deemed-owned ESOP shares, plus F's 20 deemed-owned ESOP shares equal 52.1% of the 1,200 outstanding shares of X.

Example 3. Relating to determination of number of shares of synthetic equity. (i) *Facts.* Corporation Y is a calendar year S corporation that maintains an ESOP. Y has a single class of common stock, of which there are a total of 1,000 shares outstanding, all of which are owned by the ESOP. Y has no synthetic equity, except for four grants of nonqualified deferred compensation that are made to an individual during the period from 2005 through 2011, as set forth in column 2 in the following table, and the ESOP uses the special rules in paragraph (f)(4)(iii) of this section to determine the number of shares of synthetic equity owned by that individual, as shown in columns 4 and 5:

1 Determination date	2 Present value of nonqualified deferred compenstion	3 Share value on determination date	4 New shares of synthetic equity on determination	5 Aggregate number of synthetic equity shares
January 1, 2005	A grant is made on January 1, 2005 with a present value of $1,000. An additional grant of nonqualified deferred compensation with a present value of $775 is made on March 1, 2005.	$10 per share	100	100
January 1, 2006	An additional grant is made on December 31, 2005 which has a present value of $800 on January 1, 2006. The March 1, 2005 grant has a present value on January 1, 2006 of $800.	$8 per share	200	300
January 1, 2007	No new grants made	$12 per share		300
January 1, 2008	An additional grant is made on December 31, 2007 which has a present value of $3,000 on January 1, 2008. The grants made during 2005 through 2007 have an aggregate present value on January 1, 2008 of $3,750.	$15 per share	200	450
January 1, 2009	No new grants are made	$11 per share		450
January 1, 2010	No new grants are made	$22 per share		450
January 1, 2011	No new grants are made. The grants made during 2005 through 2008 have an aggregate present value on January 1, 2011 of $7,600.	$20 per share		380

(ii) *Conclusion.* The grant made on January 1, 2005, is treated as 100 shares until the determination date in 2008. The grant made on March 1, 2005, is not taken into account until the 2006 determination date and its present value on that date, along with the then present value of the grant made on the preceding day, is treated as a number of shares that are based on the $8 per share value on the 2006 determination date, with the resulting number of shares continuing to apply until the determination date in 2008.

On the January 1, 2008, determination date, the grant made on the preceding day is taken into account at its present value of $3,000 on January 1, 2008 and the $15 per share value on that date with the resulting number of shares (200) continuing to apply until the next determination date. In addition, on the January 1, 2008, determination date, the number of shares determined under other grants made between January 1, 2005 and December 31, 2007, must be revalued. Accordingly, the aggregate value of all nonqualified deferred compensation granted during that period is determined to be $3750 on January 1, 2008, and the corresponding number of shares of synthetic equity based on the $15 per share value is determined to be 250 shares on the 2008 determination date, with the resulting aggregate number of shares (450) continuing to apply until the determination date in 2011. On the January 1, 2011, determination date, the aggregate value of all nonqualified deferred compensation is determined to be $7,600 and the corresponding number of shares of synthetic equity based on the $20 per share value on the 2011 determination date is determined to be 380 shares (with the resulting number of shares continuing to apply until the determination date in 2014, assuming no further grants are made).

(i) *Effective dates*—(1) *Statutory effective date.* (i) Except as otherwise provided in paragraph (i)(1)(ii) of this section, section 409(p) applies for plan years ending after March 14, 2001.

(ii) If an ESOP holding stock in an S corporation was established on or before March 14, 2001, and the election under section 1362(a) with respect to that S corporation was in effect on March 14, 2001, section 409(p) applies for plan years beginning on or after January 1, 2005.

(2) *Regulation effective date*—(i) *General effective date.* Except as otherwise provided in paragraph (i)(2)(ii) of this section, this section applies for plan years beginning on or after January 1, 2005.

(ii) *Rules for plan years beginning before January 1, 2005.* (A) Except as provided in this paragraph (i)(2)(ii), § 1.409(p)–1T as in effect prior to December 17, 2004 (*see* § 1.409(p)–1T in 26 CFR part 1 revised as of April 1, 2004) applies for plan years ending after October 20, 2003, and beginning before January 1, 2005.

(B) Paragraphs (c)(3) and (g) of this section apply for plan years ending on or after December 31, 2004, but do not apply with respect to an interest held in a qualified subchapter S subsidiary (QSUB) of an S corporation or another entity to which paragraph (g)(3) of this section applies before March 15, 2004 if:

(*1*) All interests in the entity held by individuals who would be disqualified persons under paragraph (g)(3) of this section or under guidance issued by the Commissioner before March 15, 2004 are distributed to those individuals as compensation on or before March 15, 2004 and

(2) No such individual has been a participant in the ESOP of the S corporation at any time after October 20, 2003 and before March 15, 2004.

(C) Paragraph (f)(2)(iv)(B) of this section (providing that synthetic equity does not include certain preexisting nonqualified deferred compensation) applies for plan years ending before January 1, 2005.

(D) Paragraph (f)(4)(iv) of this section (permitting an adjustment of the number of synthetic equity shares where an ESOP owns less than 100% of an S corporation) applies for plan years ending before January 1, 2005.

(E) In no event does this paragraph (i)(2)(ii) apply for any plan year ending before January 1, 2005, for an ESOP holding stock in an S corporation that was established on or before March 14, 2001, if the election under section 1362(a) with respect to that S Corporation was in effect on March 14, 2001.

(iii) *Transition rules.* (A) Assets held in the account of a disqualified person as of the last day of the first plan year beginning before January 1, 2005, will not be treated as an impermissible accrual with respect to that disqualified person under paragraph (b)(2)((ii) of this section for the first plan year beginning on or after January 1, 2005, to the extent those assets are not held in that person's account on or after July 1, 2005. Thus, for example, to the extent the assets allocated to the account of a disqualified person as of the last day of the first plan year beginning before January 1, 2005, are transferred to a non-ESOP portion of the plan as described in paragraph (b)(2)(v)(A) of this section before July 1, 2005, those assets will not be treated as an impermissible accrual under paragraph (b)(2)((ii) of this section for the period from the first day of the first plan year beginning on or after January 1, 2005 through June 30, 2005. However, see section 4979A(a)(3), (a)(4), and (e)(2)(C) for excise tax provisions that apply to all deemed-owned shares during the first nonallocation year for the ESOP.

(B) An individual is not treated as a disqualified person during the period from the first day of the first plan year beginning on or after January 1, 2005 through June 30, 2005 if that person would not be a disqualified person during that period under the modified rules of this paragraph (i)(2)(iii)(B) as of any date during that same period. Further, solely for the purpose of determining whether the first plan year beginning on or after January 1, 2005 is a nonallocation year under section 409(p) and this section, if that plan year would not have been a nonallocation year under the modified rules of this paragraph (i)(2)(iii)(B), then synthetic equity that is not owned by a person on July 1, 2005 is disregarded during the period from the first day of the first plan year beginning on or after January 1, 2005 through June 30, 2005. For purposes of this paragraph (i)(2)(iii)(B), the *modified rules of this paragraph (i)(2)(iii)(B)* are the rules in § 1.409(p)–1T as in effect prior to December 17, 2004 (see § 1.409(p)–1T in 26 CFR Part 1 revised as of April 1, 2004), modified to exclude from the definition of synthetic equity any stock option, stock appreciation right (payable in cash or stock), or similar rights with respect to shares of the S corporation or a related entity where the facts and circumstances indicate that there is no reasonable likelihood that the holder of the right will receive the shares (or equivalent value). For this purpose, there is no reasonable likelihood that the holder of the right will receive the shares (or equivalent value) in any case in which the option is based on an exercise price that is more than 200% of the fair market value of the shares on the date of grant or the right (in the case of a stock appreciation right or similar right to acquire shares of the S corporation or a related entity) is payable only if the appreciation exceeds 100% of the fair market value of the shares on the date of grant.

(C) For the period from the first day of the first plan year beginning on or after January 1, 2005 through June 30, 2005, there is no nonallocation year under this section if there would be no nonallocation year under this section during that period if this section were applied without regard to paragraph (f)(4)(v) of this section (relating to voting rights).

(D) This paragraph (iii) does not apply to an ESOP for which the first plan year beginning on or after January 1, 2005 begins after June 30, 2005.

Approved: December 7, 2004.

Mark M. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 04–27294 Filed 12–16–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 515, 538 and 560

Cuban Assets Control Regulations, Sudanese Sanctions Regulations, and Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is revising the Cuban Assets Control Regulations, the Sudanese Sanctions Regulations, and the Iranian Transactions Regulations to add general licenses pertaining to certain publishing activities.

DATES: *Effective Date:* December 17, 2004. Comments may be submitted at any time.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.treas.gov/offices/enforcement/ofac/comment.html.*
- Fax: Chief of Records, 202/622–1657.
- Mail: Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the FR Doc. number that appears at the end of this document. Comments received will be posted without change to *http://www.treas.gov/ofac,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. To read background documents or comments received, go to *http://www.treas.gov/ofac.*

FOR FURTHER INFORMATION CONTACT: Chief of Policy Planning and Program Management, tel. 202/622–2500, Chief of Licensing, tel.: 202/622–2480, Chief of Compliance, tel. 202/622–2490, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov.* It may also be accessed by modem dialup at 202/512–1387 followed by typing ''/GO/FAC.'' Paper copies of this document can be obtained by calling the Government Printing Office at 202/512–1530. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or via FTP at *ofacftp.treas.gov.* Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

The Cuban Assets Control Regulations, 31 CFR part 515 (the ''CACR''), were issued by the U.S. Government on July 8, 1963, under the Trading with the Enemy Act (50 U.S.C. App. 5 *et seq.*) (TWEA), in response to certain hostile actions by the Cuban Government. Since that time, U.S. policy toward Cuba has been to encourage a rapid and peaceful transition to democracy. The TWEA sanctions are intended to isolate the Cuban Government economically and deprive it of U.S. dollars that the Cuban Government would otherwise use to maintain or strengthen its repressive apparatus, enforce its information blockade on the Cuban people, and arrange for a succession and the continuation of the totalitarian Communist government.

The Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), implement Executive Order 13067, issued on November 3, 1997, pursuant to, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA). In the order, the President declared a national emergency with respect to the policies and actions of the Government of Sudan, ''including continued support for international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence of human rights violations, including slavery and the denial of religious freedom.'' To deal with this national emergency, Executive Order 13067 imposed trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of U.S. persons.

The Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), implement a series of Executive orders, beginning with Executive Order 12957, issued on March 15, 1995. In that order, the President declared a national emergency pursuant to IEEPA to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with this threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, the President issued Executive Order 12959 imposing comprehensive trade sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

The Treasury Department's Office of Foreign Assets Control (''OFAC'') is amending the CACR, SSR and ITR to authorize certain activities relating to publishing that otherwise entail the prohibited exportation of services to, or prohibited importation of services from, Cuba, Sudan or Iran.

With certain exceptions, the exportation and importation of information and informational materials to or from any country are exempt from regulation by the President under TWEA and IEEPA. See 50 U.S.C. App. 5(b)(4) and 50 U.S.C. 1702(b)(3), respectively. OFAC is issuing the new general licenses set forth at 31 CFR 515.577, 31 CFR 538.529 and 31 CFR 560.538 to authorize transactions not already exempt from regulation that directly support the publishing and marketing of manuscripts, books, journals, and newspapers, in paper or electronic format.

Each of the general licenses is similar in structure and scope, authorizing a variety of activities relating to publishing with appropriate exceptions, such as those for the governments of

each of the sanctioned countries. Section 515.545, a pre-existing general license pertaining to information and informational materials remains in effect, but is being revised to include a note referring to the further authorizations contained in § 515.577.

Public Participation

Because the amendment of the CACR, ITR and SSR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. However, OFAC encourages interested persons who wish to comment to do so in writing. The address for submitting comments appears in the **ADDRESSES** section near the beginning of this document. OFAC will not accept public comments written in languages other than English or accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. OFAC will return such submissions to the originator. All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than March 17, 2005, and will be obtainable from OFAC's Internet Home Page at *http://www.treas.gov/ofac.* If that service is unavailable, written requests for copies may be sent to Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Chief, Records Division.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 31 CFR parts 560 and 538 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 515

Administrative practice and procedure, Cuba, Exports, Foreign trade, Imports, Information.

31 CFR Part 538

Administrative practice and procedure, Exports, Foreign trade, Imports, Information, Sudan.

31 CFR Part 560

Administrative practice and procedure, Exports, Foreign trade, Imports, Information, Iran.

■ For the reasons set forth in the Preamble, 31 CFR parts 515, 538 and 560 are amended as follows:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Section 515.545 is amended by adding a note at the end of the section to read as follows:

§ 515.545 Transactions related to information and informational materials.

* * * * *

Note to § 515.545. With respect to transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals and newspapers, see § 515.577.

■ 3. Add a new § 515.577 to subpart E to read as follows:

§ 515.577 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, persons subject to the jurisdiction of the United States are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers (collectively, ''written publications''), in paper or electronic format. This section does not apply if the parties to the transactions described in this paragraph include the Government of Cuba. For the purposes of this section, the term ''Government of Cuba'' includes the state and the Government of Cuba, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Cuba; any person occupying the positions identified in § 515.570(a)(3); employees of the Ministry of Justice; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Cuba'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are not prohibited, provided that persons subject to the jurisdiction of the United States ensure that they are not engaging, without specific authorization, in the activities identified in paragraph (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3) Augmenting written publications through the addition of items such as photographs, artwork, translation, and explanatory text;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described above. For example, this section does not authorize persons subject to the jurisdiction of the United States:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of

information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Cuba;

(3) To engage in the exportation or importation of goods, other than information and informational materials, to or from Cuba;

(4) To operate a publishing house, sales outlet, or other office in Cuba; or

(5) To engage in transactions related to travel to, from and within Cuba.

(c) This section does not authorize persons subject to the jurisdiction of the United States to engage the services of publishing houses or translators in Cuba unless such activity is primarily for the dissemination of written publications in Cuba.

(d) This section does not authorize:

(1) Transactions for the development, production, design, or marketing of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (ITAR), the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of information subject to license application requirements under the EAR. These EAR license application requirements cover not only the exportation of information controlled on the Commerce Control List, 15 CFR part 774, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used, directly or indirectly, with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users, as provided in the Commerce Department's end-user and end-use based controls set forth at 15 CFR part 744; or

(5) The exportation of information subject to licensing requirements under the ITAR, or exchanges of information that are subject to regulation by other government agencies.

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) for purposes necessary and ordinarily incident to the publishing and marketing of written publications.

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 4. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; E.O. 13067, 62 FR 59989; 3 CFR, 1997 Comp., p. 230.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 5. Add a new § 538.529 to subpart E to read as follows:

§ 538.529 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers (collectively, ''written publications''), in paper or electronic format. This section does not apply if the parties to the transactions described in this paragraph include the Government of Sudan. For the purposes of this section, the term ''Government of Sudan'' includes the state and the Government of Sudan, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Sudan; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Sudan'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are not prohibited, provided that U.S. persons ensure that they are not engaging, without specific authorization, in the activities identified in paragraph (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3) Augmenting written publications through the addition of items such as photographs, artwork, translation, and explanatory text;

(4) Substantive and artistic editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described above. For example, this section does not authorize U.S. persons:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Sudan;

(3) To engage in the exportation or importation of goods, other than information and informational materials, to or from Sudan; or

(4) To operate a publishing house, sales outlet, or other office in Sudan.

(c) This section does not authorize U.S. persons to engage the services of publishing houses or translators in Sudan unless such activity is primarily for the dissemination of written publications in Sudan.

(d) This section does not authorize:

(1) Transactions for the development, production, design, or marketing of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (TAR), the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of information subject to license application requirements under the EAR. These EAR license application requirements cover not only the exportation of information controlled on the Commerce Control List, 15 CFR part 774, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used, directly or indirectly, with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users, as provided in the Commerce Department's end-user and end-use based controls set forth at 15 CFR part 744; or

(5) The exportation of information subject to licensing requirements under the ITAR, or exchanges of information that are subject to regulation by other government agencies.

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 6. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995, Comp., 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 7. Add a new § 560.538 to subpart E to read as follows:

§ 560.538 Authorized transactions necessary and ordinarily incident to publishing.

(a) To the extent that such activities are not exempt from this part, and subject to the restrictions set forth in paragraphs (b) through (d) of this section, U.S. persons are authorized to engage in all transactions necessary and ordinarily incident to the publishing and marketing of manuscripts, books, journals, and newspapers (collectively, ''written publications''), in paper or electronic format. This section does not apply if the parties to the transactions described in this paragraph include the Government of Iran. For the purposes of this section, the term ''Government of Iran'' includes the state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof, which includes the Central Bank of Islamic Republic of Iran; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing with respect to the transactions described in this paragraph. For the purposes of this section, the term ''Government of Iran'' does not include any academic and research institutions and their personnel. Pursuant to this section, the following activities are not prohibited, provided that U.S. persons ensure that they are not engaging, without specific authorization, in the activities identified in paragraph (d) of this section:

(1) Commissioning and making advance payments for identifiable written publications not yet in existence, to the extent consistent with industry practice;

(2) Collaborating on the creation and enhancement of written publications;

(3) Augmenting written publications through the addition of items such as photographs, artwork, translation, and explanatory text;

(4) Substantive editing of written publications;

(5) Payment of royalties for written publications;

(6) Creating or undertaking a marketing campaign to promote a written publication; and

(7) Other transactions necessary and ordinarily incident to the publishing and marketing of written publications as described in this paragraph (a).

(b) This section does not authorize transactions involving the provision of goods or services not necessary and ordinarily incident to the publishing and marketing of written publications as described above. For example, this section does not authorize U.S. persons:

(1) To provide or receive individualized or customized services (including, but not limited to, accounting, legal, design, or consulting services), other than those necessary and ordinarily incident to the publishing and marketing of written publications, even though such individualized or customized services are delivered through the use of information and informational materials;

(2) To create or undertake for any person a marketing campaign with respect to any service or product other than a written publication, or to create or undertake a marketing campaign of any kind for the benefit of the Government of Iran;

(3) To engage in the exportation or importation of goods, other than information and informational materials, to or from Iran; or

(4) To operate a publishing house, sales outlet, or other office in Iran.

(c) This section does not authorize U.S. persons to engage the services of publishing houses or translators in Iran unless such activity is primarily for the dissemination of written publications in Iran.

(d) This section does not authorize:

(1) Transactions for the development, production, design, or marketing of software;

(2) Transactions for the development, production, design, or marketing of technology specifically controlled by the International Traffic in Arms Regulations, 22 CFR parts 120 through 130 (ITAR), the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), or the Department of Energy Regulations set forth at 10 CFR part 810.

(3) The exportation of information or technology subject to the authorization requirements of 10 CFR part 810, or Restricted Data as defined in section 11 y. of the Atomic Energy Act of 1954, as amended, or of other information, data, or technology the release of which is controlled under the Atomic Energy Act and regulations therein;

(4) The exportation of information subject to license application requirements under the EAR. These EAR license application requirements cover not only the exportation of information controlled on the Commerce Control List, 15 CFR part 774, but also the exportation of any information subject to the EAR where a U.S. person knows or has reason to know that the information will be used, directly or indirectly, with respect to certain nuclear, missile, chemical and biological weapons, and nuclear-maritime end-uses. In addition, U.S. persons are precluded from exporting any information subject to the EAR to certain restricted end-users, as provided in the Commerce Department's end-user and end-use based controls set forth at 15 CFR part 744; or

(5) The exportation of information subject to licensing requirements under the ITAR, or exchanges of information that are subject to regulation by other government agencies.

Dated: December 10, 2004.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: December 13, 2004.

Juan C. Zarate,

Assistant Secretary, Terrorist Financing and Financial Crimes, Department of the Treasury.

[FR Doc. 04–27717 Filed 12–14–04; 5:07 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–223]

RIN 1625–AA–09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations and request for comments.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the Dominion Boulevard (US 17) Bridge across the Southern Branch of the Elizabeth River, at AICW mile 8.8, at Chesapeake, Virginia. Under this temporary 90-day deviation, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw of the bridge will open every hour on the half hour. During the temporary deviation, the bridge will continue to open on signal for commercial vessels that provide a two-hour advance notice and will open on demand at all times for commercial vessels carrying liquefied flammable gas or other hazardous materials.

The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comments from the public.

DATES: This deviation is effective from 8:30 a.m. on December 13, 2004, to 4 p.m. on March 13, 2005. Comments must reach the Coast Guard on or before March 14, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The Commander (obr), Fifth Coast Guard District maintains the public docket for this test schedule. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

Request for Comments

We encourage you to participate in this test deviation by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this test deviation CGD05–04–223, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

FOR FURTHER INFORMATION CONTACT: Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: In an effort to ease vehicle traffic congestion as a result of recent vessel openings of the drawbridge, the Coast Guard has issued a temporary deviation from the drawbridge regulations to test for a period of 90 days an alternate drawbridge operation schedule.

Under this 90-day temporary deviation, effective from December 13, 2004 to March 13, 2005, the Dominion Boulevard (US 17) Bridge, mile 8.8 in Chesapeake, shall open on signal for commercial vessels that provide a two-hour advance notice and will open on demand at all times for commercial vessels carrying liquefied flammable gas or other hazardous materials. From December 13, 2004 to March 13, 2005, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need be opened only every hour on the half hour.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: December 10, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 04–27676 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7849–9]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Final Rule.

DATES: *Effective Date:* This final rule is effective December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Marta Jordan at (202) 566–1049.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Final Rule, which appeared in the **Federal Register** on August 23, 2004 (69 FR 51892). The affected regulations are codified at 40 CFR part 451. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to

amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 23, 2004, **Federal Register** notice.

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of December 17, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 4, 2004.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding the heading and entry below in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Concentrated Aquatic Animal Production Point Source Category	
451.3	2040–0258
451.11(d)	2040–0258
451.21(g)	2040–0258
* * * * *	

[FR Doc. 04–27663 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–KY–0001–200425(a); FRL–7848–9]

Approval and Promulgation of Implementation Plans Kentucky: 1-Hour Ozone Maintenance Plan Update for Edmonson Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Today's action consists of two distinct but related final rulemakings briefly characterized here and further discussed in the **SUPPLEMENTARY INFORMATION** section of this rule. First, EPA is approving revisions to the Edmonson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, in draft form on February 19, 2004, and in final form on August 24, 2004. The August 24, 2004, SIP revision provides the 10-year update to the original 1-hour ozone maintenance plans for three 1-hour ozone maintenance areas, including the Edmonson County Maintenance Area, and also provides revised 2004 motor vehicle emission budgets (MVEBs) and establishes 2015 MVEBs. Through this action, EPA is providing notification of its determination that the Edmonson County portion of the Commonwealth's SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the 10-year update for the 1-hour ozone maintenance plan for Edmonson County Maintenance Area. Secondly, EPA is providing information on the status of its transportation conformity adequacy determination for the new MVEBs for the year 2015 that are contained in the 10-year update to the 1-hour ozone maintenance plan for the Edmonson County Area. In today's action, EPA is only addressing the portion of the SIP revision for Edmonson County. EPA will take separate action to address the other portions of the SIP revision.

DATES: This direct final rule is effective February 15, 2005, without further notice, unless EPA receives adverse comment by January 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2004–

KY–0001, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *delatorre.rosymar@epa.gov.*

4. Fax: 404–562–9019.

5. Mail: ''R04–OAR–2004–KY–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

6. Hand Delivery or Courier: Deliver your comments to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2004–KY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–8965, *delatorre.rosymar@epa.gov*, or Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562 9040, *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency, Commonwealth of Kentucky, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403.

II. What Is the Background for This Action?

The air quality maintenance plan is a requirement of the 1990 CAA for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS) to assure their continued maintenance of that standard. Eight years after redesignation to attainment, section 175A(b) of the CAA requires the state to submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period (this is known as the second 10-year plan). This second 10-year plan updates the original 10-year 1-hour ozone maintenance plan for the next 10-year period.

EPA designated Edmonson County, Kentucky as marginal nonattainment for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694), effective on January 6, 1992. EPA approved the redesignation of Edmonson County to attainment for the 1-hour ozone standard, on November 3, 1994 (60 FR 47092), effective on January 3, 1995. In this same rulemaking, EPA also approved the Edmonson County's plan for maintaining the 1-hour ozone NAAQS for the time period 1994 through 2004.

On February 19, 2004, Kentucky submitted to EPA a draft SIP revision for parallel processing to provide for the 10-year update to the original maintenance plans for five 1-hour ozone maintenance areas as required by section 175A(b) of the CAA. Specific to the Edmonson County Maintenance Area, the draft revision provided an update to the Edmonson County 1-Hour Ozone Maintenance plan for the next 10 years, *i.e.*, 2005 through 2015. This draft 10-year update for the Edmonson County

Maintenance Area included updated MVEBs for the year 2004 and established new MVEBs for the year 2015. While EPA did not have the opportunity to parallel process this draft submittal, EPA did begin the Adequacy Process for the newly-established 2015 MVEBs. The Adequacy comment period for the 2015 MVEBs began on February 24, 2004, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*). The Adequacy comment period for these MVEBs ended March 25, 2004. No requests for this submittal or adverse comments on this submittal were received during the Adequacy comment period. Please see the Adequacy Section of this rulemaking for further explanation on this process.

While EPA can initiate the Adequacy process with a draft submittal, EPA cannot conclude this process until a final submittal is received. On August 24, 2004, Kentucky submitted to EPA a final SIP revision for the 10-year update to the original maintenance plans for three 1-hour ozone maintenance areas as required by section 175A(b) of the CAA. This final submittal includes the updated MVEBs for the year 2004 and establishes new MVEBs for the year 2015.

III. What Is EPA's Analysis of the Edmonson County Maintenance Area's Second 10-Year Plan?

The Commonwealth's August 24, 2004, final SIP revision includes a second 10-year maintenance plan for the Edmonson County Maintenance Area, and indicates continued maintenance of the 1-hour ozone standard through 2015. In this submittal, Kentucky opted to use 1990 as the comparison year to demonstrate continued maintenance. While use of the 1990 emission inventory appears to demonstrate continued maintenance for the 1-hour ozone standard with regard to the volatile organic compound (VOC) precursor inventory, the use of the 1990 emission inventory does not appear to demonstrate continued maintenance for the 1-hour ozone standard with regard to the nitrogen oxide (NO_X) precursor inventory because the total NO_X emissions levels in 2000 is higher than those in 1990. However, the revision includes new ozone precursor emission inventory for 2000 for Edmonson County which reflect updated emission controls applicable for the area, and projected emissions for 2004, 2005, 2009, 2012, and 2015.

In the September 4, 1992, EPA guidance document, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' EPA encourages the use of updated emission inventories to verify continued attainment. As the Commonwealth mentions in its submittal, the 2000 emission inventories are updated, and are being provided as a part of the August 24, 2004, final SIP revision. This area was attainment for the 1-hour ozone standard in 2000, so EPA believes that these emission inventories also indicate attainment for the area, and can be used for comparison purposes for demonstrating continued maintenance in the projected years of 2004, 2005, 2009, 2012, and 2015. The level of the projected emissions for all projected years for both the NO_X and VOC precursors is below the level of emissions for these precursors in 2000. Therefore, EPA believes that this is a sufficient demonstration of continued maintenance for the 1-hour ozone standard for the Edmonson County area. Furthermore, this area is currently in attainment for the more stringent 8-hour ozone standard. This rationale is consistent with the September 4, 1992, EPA Guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

EPA is processing the Edmonson County portion of Kentucky's SIP revision and is approving the Edmonson County 10-year update for its 1-hour ozone maintenance plan, including approval of the updated 2004 MVEBs and the newly-established 2015 MVEBs, because EPA has determined that the Plan complies with the requirements of Section 175A of the CAA. The following two tables provide emissions data and projections calculated, using MOBILE6.2, for the ozone precursors, VOC and NO_X. Italicized figures in Tables 1 and 2 highlight data comprising the 2004 and 2015 MVEBs, also presented in Table 3.

TABLE 1.—EDMONSON COUNTY 1-HOUR OZONE MAINTENANCE AREA VOC EMISSIONS (TONS PER DAY)

[Year 1990, 2000 emission inventory and projected VOC emissions (2004–2015)]

County	1990	2000	2004	2005	2009	2012	2015
Point	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.74	0.89	0.93	0.94	0.98	1.02	1.05
Highway	1.57	0.73	0.60	0.55	0.45	0.38	0.33
Non-Hwy	0.45	0.27	0.26	0.25	0.23	0.23	0.23
Edmonson	2.76	1.89	1.79	1.74	1.66	1.63	1.61
Safety Margin	N/A	N/A	0.10	0.15	0.23	0.26	0.28

TABLE 2.—EDMONSON COUNTY 1-HOUR OZONE MAINTENANCE AREA NO_X EMISSIONS (TONS PER DAY)

[Year 1990, 2000 emission inventory and projected NO_X emissions (2004–2015)]

County	1990	2000	2004	2005	2009	2012	2015
Point	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Area	0.04	0.06	0.06	0.06	0.06	0.07	0.07
Highway	1.08	1.09	0.95	0.91	0.72	0.56	0.43
Non-Hwy	0.37	0.52	0.48	0.48	0.43	0.40	0.38
Edmonson	1.49	1.67	1.49	1.45	1.21	1.03	0.88
Safety Margin	N/A	N/A	0.18	0.22	0.46	0.64	0.79

Under 40 CFR 93.101, the term *safety margin* is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard.

The emissions from point, area, nonroad, and mobile sources in 2000 equal 1.89 tons per day (tpd) of VOC for Edmonson County. Projected VOC emissions out to the year 2015 equal 1.61 tpd of VOC. The available safety margin for VOC is calculated to be the difference between these amounts or, in this case, 0.28 tpd of VOC for 2015. By this same method, 0.79 tpd (*i.e.*, 1.67 tpd less 0.88 tpd) is the safety margin for NO_X for 2015. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin credit, or a portion thereof, can be allocated to the transportation sector. The total emission level must stay below the attainment level to be acceptable. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained.

As mentioned previously, the Commonwealth's August 24, 2004, final SIP revision also updates the MVEBs for the Edmonson County Maintenance Area for 2004, and establishes new MVEBs for 2015. Because EPA did not provide a separate notice regarding the adequacy of the 2015 MVEBs, EPA is taking the opportunity through this rulemaking to announce that it has determined that the 2015 MVEBs are adequate for use to determine transportation conformity. See section V of this rulemaking for more information on EPA's Adequacy Process and determination for this area.

IV. What Are the MVEBs for the Edmonson County Maintenance Area?

Maintenance plans and other control strategy SIPs create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and how to revise the MVEBs.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not ''conform,'' most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

In this revision, Kentucky used MOBILE6.2 to update the Edmonson County MVEBs for 2004, in addition to establishing MVEBs for VOC and NO_X for the year 2015. The MVEBs have been defined for 2004 and 2015 in the Commonwealth's submittal, and are presented in Table 3 below.

TABLE 3

	NO_X	VOC
2004	0.95	0.60
2015	0.43	0.33

For the 2004 and 2015 MVEBs, the values for a given year are equal to the on-road mobile source projected level of emissions for that year (*i.e.*, none of the available safety margins for VOC and NO_X were allocated to the MVEBs). The MVEBs are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 2000 base year emissions. In no case are the projected total emissions from mobile sources for any year greater than the base year emissions totals for either VOC or NO_X.

As part of this final approval, EPA is approving both the revisions to the 2004 MVEBs and the newly-established 2015 MVEBs for the Edmonson County Maintenance Area. Upon EPA approval of the revised 2004 and new 2015 MVEBs in this final rulemaking, the Edmonson maintenance area must use the revised and new MVEBs for future transportation conformity determinations, effective on the effective date of this direct final rulemaking.

V. What Is an Adequacy Determination and What Is the Status of EPA's Adequacy Determination for the Edmonson Maintenance Area's New MVEB for the Year 2015?

Until a MVEB in a SIP submittal is approved by EPA, it cannot be used for transportation conformity purposes unless EPA makes an affirmative finding that the MVEBs contained therein are ''adequate.'' Once EPA affirmatively finds the submitted MVEBs adequate for transportation conformity purposes, those MVEBs can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP even though EPA approval of the SIP revision containing those MVEBs has not yet been finalized. EPA's substantive criteria for determining ''adequacy'' of MVEBs in submitted SIPs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' of MVEBs in submitted SIPs consists of three basic steps: public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance is incorporated into EPA's June 30, 2003, proposed rulemaking entitled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (68 FR 38974). Additionally, this guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Edmonson County Maintenance Area's draft second 10-year maintenance plan submissions contained new proposed VOC and NO_X MVEBs for the year 2015. The availability of the draft SIP submission with these 2015 MVEBs was announced for public comment on EPA's adequacy Web page on February 24, 2004, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2015 MVEBs for the Edmonson County Maintenance Area closed on March 25, 2004. EPA did not receive any adverse comments, and in this rulemaking, is making a determination that the adequacy criteria for the 2015 MVEB have been met. Additionally, EPA through this rulemaking is approving those MVEBs for use to determine transportation conformity.

VI. Final Action

EPA is approving Kentucky's August 24, 2004, SIP revision pertaining to the Edmonson County Maintenance Area's 10-year update for its 1-hour ozone maintenance plan, and is providing notice that it has determined the 2015 VOC and NO_X MVEBs to be adequate under the requirements of 40 CFR 93.118(e)(4). Additionally, through this action, EPA is approving the revised 2004 MVEBs and the newly-established 2015 MVEBs for the Edmonson County area. The revised 2004 MVEBs are 0.60

tpd for VOC and 0.95 tpd for NO_X; the 2015 MVEBs are 0.33 tpd for VOC and 0.43 tpd for NO_X. EPA is approving the aformentioned changes to Kentucky's SIP because they are consistent with Agency policy and guidance and meet all the requirements of section 110 and section 175A of the Clean Air Act. As a result of today's SIP revision approval, the revised 2004 MVEBs and the newly established MVEB for 2015 must be used for future transportation conformity determinations effective on February 15, 2005. The MVEBs, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Edmonson County area.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 15, 2005, without further notice unless the Agency receives adverse comments by January 18, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 15, 2005, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 29, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart S—Kentucky

■ 2. Section 52.920(e), is amended by adding a new entry at the end of the table for ''Edmonson Ozone 10 year

Maintenance Plan Update'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
*	*	*	*	*
Edmonson Ozone 10 year Maintenance Plan Update.	Edmonson County	August 24, 2003	December 17, 2004 [Insert Federal Register citation]	

[FR Doc. 04–27656 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2004–TX–0002; FRL–7849–5]

Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On October 29, 2004 (69 FR 63066), EPA published a direct final rule approving incorporation of a Memorandum of Agreement between the Texas Commission on Environmental Quality and the North Central Texas Council of Governments into the Texas SIP. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by November 29, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received a timely adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comment in a subsequent final action based on the parallel proposal also published on October 29, 2004 (69 FR 63112). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on October 29, 2004 (69 FR 63066), is withdrawn as of December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Peggy Wade, telephone (214) 665–7247; e-mail address *wade.peggy@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 9, 2004.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ Accordingly, the revision to 40 CFR 52.2270 published in the **Federal Register** on October 29, 2004 (69 FR 63066), which was to become effective on December 28, 2004, is withdrawn.

[FR Doc. 04–27655 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[R07–OAR–2004–MO–0004; FRL–7850–3]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to Missouri rule ''Submission of Emission Data, Emission Fees, and Process Information.'' This revision will ensure consistency between the state and the Federally-approved rules and ensure Federal enforceability of the state's air program rule revision.

DATES: This direct final rule will be effective February 15, 2005, without further notice, unless EPA receives adverse comment by January 18, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0004, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search''; then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *daniels.leland@epa.gov.*
4. Mail: Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
5. Hand Delivery or Courier: Deliver your comments to Leland Daniels at the above-listed address.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–MO–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, 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 RME, regulations.gov, or e-mail.

The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, 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 RME or regulations.gov, your e-mail address will be automatically captured and

included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651, or by e-mail at *daniels.leland@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean to Me?
What Is the Part 70 Operating Permits Program?
What Is the Federal Approval Process for an Operating Permits Program?
What Is Being Addressed in This Document?
Have the Requirements for Approval of a SIP Revision and Part 70 Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Aproval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revision to the state and local agencies operating permits program are also subject to public notice, comment, and our approval.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state

submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Is Being Addressed in This Document?

Missouri, in its letter of December 5, 2003, requested that EPA approve a revision to the SIP and Operating Permits Program as revisions to rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' had been made. This rule deals with submittal of emissions information, emission fees, and public availability of emissions data. It provides procedures for collection, recording, and submittal of emissions data and process information on state-supplied Emission Inventory Questionnaire and Emission Statement forms so that the state can calculate emissions for the purpose of state air resource planning.

Missouri updates this rule periodically. This action covers the amendments made in 2003 which include the following. The applicability of the rule was broadened to require permit fees from any installation that notifies and accepts a permit-by-rule under 10 CSR 10–6.062. Although the permit-by-rule provision is referenced in 10–6.110, EPA is not acting on 10–6.062 in this action. A new section references definitions in 10 CSR 10–6.020. The definitions in that section previously approved by EPA are contained in the current SIP. Original sections were renumbered. The emissions fee for calendar year 2003 was increased to $35.00 per ton of regulated air pollutant. A new section for record and record keeping requirements was added. A new section (5) was added as a placeholder for any test methods which might be promulgated in the future.

The use of a standard format for this rule resulted in the renumbering of the sections. The addition of a new section (2) for definitions required the renumbering of original section (2) to new section (3) for general provisions and transferred original sections (2) through (8) to section (3).

By State statute, the emission fees are set annually to fund the reasonable cost of administering the program. Missouri continually evaluates the Operating Permits Program financial situation. An emissions fee of $35.00 per ton of regulated air pollutant starting with calendar year 2003 was established. For calendar year 2003, the fee is reduced by one dollar per ton of regulated air pollutant to reflect credit for fees collected for 2002 calendar year emissions for the Missouri Emission Inventory System project. The resulting fee of $34.00 is an increase over the $31.00 established in 2002 which was the first increase since the state began collecting fees in 1994. The fee is sufficient to fund the cost of administering the Part 70 Operating Permits Program. The emission fees are found in section (3)(D) of the amended rule.

Have the Requirements for Approval of the SIP Revision and Part 70 Revision Been Met?

The submittal satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the state submittal has met the public notice requirements for SIP submission in accordance with 40 CFR 51.102, and the substantive SIP requirements of the CAA including section 110 and 40 CFR 51.211, relating to submission of emissions data.

Finally, the submittal met the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70, including the requirement in 40 CFR 70.9 relating to emission fees.

What Action Is EPA Taking?

We are approving a revision to the Missouri SIP and incorporating the revised rule 10 CSR 10–6.110, ''Submission of Emissions Data, Emission Fees, and Process Information.''

We are also approving section (3)(D) of this rule (formerly identified as section (5)) as a program revision to the state's Part 70 Operating Permits Program.

Although the permit-by-rule provision is referenced in 10–6.110, EPA is not acting on 10–6.062 in this action.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial, and make regulatory revisions required by state statute. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP and Title V permit 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 state submission, to use VCS in place of a submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 6, 2004.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under chapter 6 by revising the entry for ''10–6.110'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	12/30/03	12/17/04 [Insert FR page number where the document begins].	Section (3)(D), Emissions Fees, has not been approved as part of the SIP.
*	*	*	*	*

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

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

A—[Amended]

■ 2. Appendix A to part 70 is amended by adding paragraph (o) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(o) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 16, 2003, approval of section (3)(D) effective February 15, 2005.

* * * * *

[FR Doc. 04–27661 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7859]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

DATES: *Effective Dates:* The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Ohio:				
Bentleyville, Village of, Cuyahoga County.	390682	March 24, 1976, Emerg; August 1, 1980, Reg; December 16, 2004, Susp.	Dec. 16, 2004 ...	Dec. 16, 2004.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
McConnelsville, Village of, Morgan County.	390422	August 1, 1975, Emerg; July 1, 1987, Reg; December 16, 2004, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27618 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7565]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Gwinnett	Unincorporated areas.	Oct. 7, 2004, Oct. 14, 2004, *Gwinnett Daily Post.*	Mr. F. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, Justice and Administration Center, 75 Langley Drive, Lawrenceville, Georgia 30045.	Sept. 29, 2004	130322 C

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27620 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
PENNSYLVANIA	
Lancaster County (FEMA Docket No. D–7594)	
Conoy Creek:	
Approximately 1,850 feet upstream of State Route 241	•398
Approximately 4,350 feet upstream of State Route 241	•406
Township of West Donegal	
Chiques Creek:	
Approximately 1,350 feet upstream of Kinderhook Road ..	•295
Approximately 600 feet downstream of State Route 72	•438
Townships of Rapho, East Hempfield, West Hempfield, Penn	
Cocalico Creek:	
Approximately 400 feet downstream of Disston View Road	•300
Approximately 150 feet downstream of Pennsylvania Turnpike	•394
Townships of Warwick, East Cocalico, West Cocalico	
Little Cocalico Creek:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 800 feet downstream of Pennsylvania Turnpike	•390
Approximately 200 feet downstream of Pennsylvania Turnpike	•390
Township of East Cocalico	
Little Chiques Creek:	
Approximately 300 feet downstream of Mount Joy Road	•326
Just downstream of Milton Grove Road	•351
Township of Mount Joy	
Conestoga River:	
Approximately 10,100 feet upstream of Stehman Road	•227
Approximately 3,200 feet upstream of U.S. Route 322	•333
Borough of Millersville, Townships of Ephrata, Upper Leacock	
Mill Creek:	
Approximately 4,500 feet downstream of Park Drive	•261
Approximately 450 feet downstream of T–763	•458
City of Lancaster, Township of Earl	
Pequea Creek:	
Approximately 3,700 feet downstream of Rawlinsville Road	•279
Approximately 450 feet downstream of U.S. Route 30	•346
Townships of Providence, Leacock, Pequea, East Lampeter, West Lampeter, Paradise	
Beaver Creek:	
Approximately 325 feet downstream of North Church Street	•455
Approximately 250 feet downstream of North Church Street	•456
Township of Eden	
West Branch Octorano Creek:	
Approximately 3,900 feet downstream of Mount Pleasant Road	•497
Approximately 3,800 feet downstream of Mount Pleasant Road	•497
Township of Colerain	
Lees Creek:	
Approximately 480 feet downstream of Willow Street	•456
Approximately 420 feet downstream of Willow Street	•457
Township of Brecknock	
Tributary No. 1 to Conestoga River:	
Just upstream of Barbara Street	•281
Approximately 610 feet upstream of Barbara Street	•289
Borough of Millersville	
Little Conestoga Creek:	
Approximately 3,050 feet upstream of Millersville Road	•278
Approximately 3,350 feet upstream of Millersville Road	•278

Township of Brecknock
Maps available for inspection at the Brecknock Township Office, 1026 Dry Tavern Road, Denver, Pennsylvania.

Township of Colerain
Maps available for inspection at the Colerain Township Office, 1803 Kirkwood Pike, Kirkwood, Pennsylvania.

Township of Earl
Maps available for inspection at the Earl Township Office, 517 North Railroad Avenue, New Holland, Pennsylvania.

Township of East Cocalico
Maps available for inspection at the East Cocalico Township Office, 100 Hill Road, Denver, Pennsylvania.

Township of East Hempfield
Maps available for inspection at the East Hempfield Township Office, 1700 Nissley Road, Landisville, Pennsylvania.

Township of East Lampeter
Maps available for inspection at the East Lampeter Township Office, 2205 Old Philadelphia Pike, Lancaster, Pennsylvania.

Township of Eden
Maps available for inspection at the Eden Township Office, 489 Stony Hill Road, Quarryville, Pennsylvania.

Township of Ephrata
Maps available for inspection at the Ephrata Township Office, 265 Akron Road, Ephrata, Pennsylvania.

City of Lancaster
Maps available for inspection at the Lancaster City Office, 120 North Duke Street, Lancaster, Pennsylvania.

Township of Leacock
Maps available for inspection at the Leacock Township Office, 3545 West Newport Road, Intercourse, Pennsylvania.

Borough of Millersville
Maps available for inspection at the Millersville Borough Office, 10 Colonial Avenue, Millersville, Pennsylvania.

Township of Mount Joy
Maps available for inspection at the Mount Joy Township Office, 159 Merts Drive, Elizabethtown, Pennsylvania.

Township of Paradise
Maps available for inspection at the Paradise Township Office, 196 Blackhorse Road, Paradise, Pennsylvania.

Township of Penn
Maps available for inspection at the Penn Township Office, 97 North Penryn Road, Manheim, Pennsylvania.

Township of Pequea
Maps available for inspection at the Pequea Township Office, 1028 Millwood Road, Willow Street, Pennsylvania.

Township of Providence
Maps available for inspection at the Providence Township Office, 200 Mt. Airy Road, New Providence, Pennsylvania.

Township of Rapho
Maps available for inspection at the Rapho Township Office, 971 North Colebrook Road, Manheim, Pennsylvania.

Township of Upper Leacock
Maps available for inspection at the Upper Leacock Township Office, 36 Hillcrest Avenue, Leola, Pennsylvania.

Township of Warwick
Maps available for inspection at the Warwick Township Office, 315 Clay Road, Lititz, Pennsylvania.

Township of West Cocalico
Maps available for inspection at the West Cocalico Township Office, 156 B West Main Street, Reinholds, Pennsylvania.

Township of West Donegal
Maps available for inspection at the West Donegal Township Office, 1 Municipal Drive, Elizabethtown, Pennsylvania.

Township of West Hempfield
Maps available for inspection at the West Hempfield Township Office, 3401 Marietta Avenue, Lancaster, Pennsylvania.

Township of West Lampeter
Maps available for inspection at the West Lampeter Township Office, 852 Village Road, Lampeter, Pennsylvania.

PUERTO RICO

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Commonwealth and Municipalities (FEMA Docket No. D–7592)	
Rio Guamani:	
Approximately 100 meters above the mouth of Caribbean Sea	*3.2
Approximately 0.60 kilometers upstream of Puerto Rico Route 10	*154.4
Commonwealth of Puerto Rico	
Rio de Bayamon:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 100 meters downstream of Puerto Rico Route 2	*10.7
Approximately 9.5 kilometers upstream of Puerto Rico Route 174	*250.6
Commonwealth of Puerto Rico, Municipality of Bayamon	
Rio de La Plata (Toa Baja):	
Approximately 0.1 kilometer above the confluence with Atlantic Ocean	*3.3
At downstream side of Puerto Rico Route 2	*11.0
Commonwealth of Puerto Rico	
Rio Nigua:	
Approximately 400 meters upstream of mouth of Rio Nigua	*3.2
Approximately 5.41 kilometers upstream of Puerto Rico Route 52	*49.5
Rio Coamo:	
Approximately 2.16 kilometers downstream of Puerto Rico Route 1	*3.0
Approximately 2.15 kilometers upstream of Puerto Rico Route 1	*20.1
Rio de La Plata (Toa Alta):	
At downstream side of Puerto Rico Route 2	*11.0
Approximately 0.3 kilometer upstream of Puerto Rico Route 824	*22.0
Rio de La Plata: Overflow:	
Approximately 0.79 kilometer downstream of the road to Military Reservation	*2.3
Approximately 0.45 kilometer upstream of Puerto Rico Route 854	*6.7
Rio Grande:	
At the confluence with Espiritu Santo River	*5.0
At the Puerto Rico Route 3	*6.9
Maps available for inspection at the Puerto Rico Planning Board, Minilas Government Center, North Building, East Diego Avenue, Stop 22, San Juan, Puerto Rico.	
Municipality of Bayamon Maps available for inspection at Carretera #2, Alcaldia de Bayamon, 4to piso Oficina de Ordenacion Territorial, Bayamon, Puerto Rico.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 8, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27619 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–04–19892]

RIN 2127–AI63

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this document, NHTSA is establishing an option in the Federal motor vehicle safety standard on hydraulic and electric brake systems to permit the use of a roll bar structure during specified testing of brake systems in single unit trucks and buses. This option is already available for similar testing of air braked trucks and buses. Permitting the use of a roll bar structure will help protect drivers and technicians in the event of a rollover during testing of hydraulically-braked trucks and buses. The safety of drivers and technicians is a primary concern during vehicle testing. The use of a roll bar structure offers protection to the drivers and technicians performing brake tests conducted at lightly loaded vehicle weight.

DATES: *Effective date:* This final rule is effective January 18, 2005.

Petitions: Petitions for reconsideration must be received by January 31, 2005, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Samuel Daniel Jr., Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, at (202) 366–4921, and fax him at (202) 493–2739.

For legal issues, you may call Christopher Calamita of the NHTSA Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background and Proposed Rulemaking

NHTSA has two brake standards for medium and heavy vehicles. Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic and electric brake systems,* applies to vehicles with hydraulic brakes. FMVSS No. 121, *Air brake systems,* applies to vehicles with air brakes.

Although FMVSS No. 105 and 121 have similar brake performance requirements, the two standards have differed with respect to their specifications concerning the use of a roll bar during these tests. Roll bars are sometimes added to vehicles for brake testing if there are concerns about a possible vehicle rollover.

On March 10, 1995, NHTSA published a final rule amending FMVSS No. 121 requiring all air braked vehicles to be equipped with antilock brake systems (ABS) (60 FR 13216). The braking-in-a-curve performance test for truck tractors adopted in that final rule included a manufacturer's option for using a roll bar structure during performance of that test at lightly loaded vehicle weight (LLVW). Loading of a vehicle to test at the gross vehicle weight rating (GVWR) already afforded manufacturers the opportunity to use a roll bar structure.

On December 12, 2001, the agency extended the option for use of a roll bar structure on vehicles tested at lightly loaded vehicle weight in other FMVSS No. 121 tests, including the 60 mph straight-line stop and the parking brake grade holding tests (66 FR 64154). In extending the option for using a roll bar structure to these tests, we determined that the roll bar option is equally appropriate for tractors as well as single-unit vehicles.

NHTSA then established braking-in-a-curve test requirements for hydraulic-

braked single-unit trucks and buses that are equipped with ABS and have a GVWR greater than 10,000 pounds (68 FR 47485; August 11, 2003). Again, the concerns regarding possible rollover led NHTSA to grant manufacturers the option to use a roll bar structure on single-unit trucks and buses undergoing the braking-in-a-curve test under FMVSS No. 105.

On November 4, 2003, the agency published a notice of proposed rulemaking to permit the use of a roll bar structure on any vehicle with a GVWR greater than 10,000 pounds during FMVSS No. 105 compliance testing of the parking brake system at LLVW, the service brake system at LLVW, and the service brake system in partial failure mode at LLVW (68 FR 62421). No comments were received.

II. Final Rule

We are amending FMVSS No. 105 as proposed in the November 2003 notice. Today's final rule gives manufacturers the option of using a roll bar structure on medium and heavy vehicles during compliance testing of the parking brake system at LLVW, the service brake system at LLVW, and the service brake system in partial failure mode at LLVW.

As explained in the notice of proposed rulemaking, performance testing of brake systems at LLVW on vehicles with a GVWR greater than 10,000 pounds may result in vehicle rollover because of the configuration of these vehicles. Trucks and buses with a GVWR greater than 10,000 pounds often have a high center of gravity resulting in a low rollover threshold. Rollover threshold is the lateral acceleration at which a vehicle will roll over and for trucks and buses with a GVWR greater than 10,000 pounds it is usually 0.5 g or less. In contrast, a typical light vehicle has a rollover threshold between 0.8 g and 1.2 g. For tests performed at GVWR, manufacturers can already include roll bar structure weight in the vehicle weight to provide test drivers and technicians additional safety. This final rule permits, at manufacturer's option, the use of a roll bar structure on these vehicles undergoing testing at LLVW.

Hydraulically-braked vehicles with a GVWR greater than 10,000 pounds must meet the requirements of FMVSS No. 105, including 60 mph straight-line stopping distance requirements and, for heavy school buses, parking brake requirements. During straight line stop testing, an equipment malfunction or a problem with the ABS can create the potential for these trucks and buses to yaw. Because of the low rollover threshold, these vehicles may roll over if they experience yaw at test speeds. During the parking brake test, while the vehicle is in the forward direction on a 20 percent grade, a failure of the brake system on one side of the vehicle can also cause the vehicle to yaw and perhaps roll over.

Currently, heavy school buses are the only vehicles with a GVWR greater than 10,000 pounds required by FMVSS No. 105 to meet the parking brake requirements. However, the agency has requested comments on a proposal that would require all hydraulically braked vehicles with a GVWR greater than 10,000 pounds to have parking brakes that meet these same requirements (67 FR 66098; October 30, 2002).

The agency also notes that single-unit trucks with a GVWR greater than 10,000 pounds may undergo brake system testing either as completed trucks or as chassis-cabs without bodies or equipment that would normally be installed by a final-stage manufacturer. A completed vehicle is likely to have more structure to protect a test driver than an incomplete vehicle. If a completed truck were to roll over, the impact force would be distributed across the body and cab of the truck. In the absence of a body or additional equipment during testing of a chassis-cab, the vehicle cab would receive a greater impact force during a rollover, increasing the potential of harm to the driver. Permitting the use of a roll bar allows manufacturers to provide additional protection for the test driver in the event of a rollover.

III. Effective Date

This final rule does not impose any new requirements. Instead, it simply allows manufacturers the option of a roll bar as an added safety measure during the specified compliance tests. Since this final rule relieves a restriction and promotes safety for test drivers, it will become effective 30 days after the date of this publication.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 JR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document amends 49 CFR 571.105 by including a manufacturer's option for the use of a roll bar structure during the performance testing of hydraulic brake systems. The amendment allows, at manufacturer's option, the use of a roll bar structure when testing hydraulic braked vehicles with a GVWR greater than 10,000 pounds at lightly loaded vehicle weight. Because of the configuration of these vehicles, they are susceptible to roll over during testing. We conclude that permitting the use of a roll bar structure will help protect drivers and technicians in the event of a rollover during these tests. As noted above, today's final rule does not impose any new requirements. Instead, the final rule simply allows manufacturers the option of a roll bar as an added safety measure during the specified compliance tests. The impacts are so small that a full regulatory evaluation was not prepared.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* NHTSA has evaluated the effects of this proposed action on small entities. I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

As explained above, the final rule does not require use of a roll bar structure and therefore does not impose any increased costs or other burdens on truck manufacturers. The final rule simply permits the use of a roll bar structure at the manufacturer's option, on test vehicles undergoing brake testing. Accordingly, there is no significant impact on small businesses, small organizations, or small

governmental units by these amendments.

C. Executive Order No. 13132

NHTSA has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that this final rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

D. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

This final rule does not contain any collection of information requirements requiring review under the paperwork Reduction Act of 1995 (Pub. L. 104–13).

F. National Technology Transfer and Advancement Act

Under the National Technology transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Society of Automotive Engineers (SAE) Recommended Practice J1626 APR96, *Braking, Stability, and Control Performance Test Procedures for Air-Brake-Equipped Truck Tractors,* includes an option for using a roll bar structure for testing at LLVW. While the SAE practice applies to air braked trucks, the SAE tests performed at LLVW are similar to tests performed at LLVW under FMVSS No. 105. The final rule permits the use of a roll bar structure in a manner similar to that in the SAE recommended practice.

G. Civil Justice Reform

The final rule does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rulemaking will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.105 is amended by revising S6.1.2, S7.7.3, S7.8, and S7.9.1 to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric braking systems.

* * * * *

S6.1.2 For applicable tests specified in S7.5(a), S7.7, S7.8, and S7.9, vehicle weight is lightly loaded vehicle weight, with the added weight, except for the roll bar structure allowed for trucks and buses with a GVWR greater than 10,000 pounds, distributed in the front passenger seat area in passenger cars, multipurpose passenger vehicles, and trucks, and in the area adjacent to the driver's seat in buses.

* * * * *

S7.7.3 *Lightly loaded vehicle.* Repeat S7.7.1 or S7.7.2 as applicable except with the vehicle at lightly loaded vehicles weight or at manufacturer's option, for a vehicle with GVWR greater than 10,000 pounds, at lightly loaded vehicle weight plus not more than an additional 1,000 pounds for a roll bar structure on the vehicle.

* * * * *

S7.8 *Service brake system test—lightly loaded vehicle (third effectiveness) test.* Make six stops from 60 mph with vehicle at lightly vehicle weight, or at the manufacturer's option for a vehicle with GVWR greater than 10,000 pounds, at lightly loaded vehicle weight plus not more than an additional 1,000 pounds for a roll bar structure on the vehicle. (This test is not applicable to a vehicle which has a GVWR of not less than 7,716 pounds and not greater than 10,000 pounds and is not a school bus.)

* * * * *

S7.9.1 With the vehicle at lightly loaded vehicle weight or at the manufacturer's option for a vehicle with a GVWR greater than 10,000 pounds, at lightly loaded vehicle weight plus not more than an additional 1,000 pounds for a roll bar structure on the vehicle, alter the service brake system to produce any one rupture or leakage type of failure, other than a structural failure of a housing that is common to two or more subsystems. Determine the control force, pressure level, or fluid level (as appropriate for the indicator being tested) necessary to activate the brake system indicator lamp. Make four stops

if the vehicle is equipped with a split service brake system, or 10 stops if the vehicle is not so equipped, each from 60 mph, by a continuous application of the service brake control. Restore the service brake system to normal at completion of this test.

* * * * *

Dated: Issued on December 13, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–27595 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register

Vol. 69, No. 242

Friday, December 17, 2004

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–18915; Airspace Docket 04–ANM–11]

Proposed Revision of Class E Airspace; Burns, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would revise Class E airspace at Burns Municipal Airport, Burns, OR. This additional airspace is necessary to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Burns Municipal Airport. This change is proposed to improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Burns Municipal Airport.

DATES: Comments must be received by January 31, 2005.

ADDRESSES: Send Comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2004–18915 Airspace Docket 04–NAM–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The Docket Office (telephone number 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Western En Route and Oceanic Operations, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket FAA 2004–18915; Airspace Docket 04–ANM–11, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 2004–18915 Airspace Docket 04–ANM–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gop.gov/nara.*

Additionally, a copy of this notice may be obtained by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, at 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Burns Municipal Airport, Burns, OR. The establishment of a new RNAV GPS SIAP requires additional Class E controlled airspace. This additional Class E airspace is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAP Burns Municipal Airport. Controlled airspace is necessary where there is a requirement for IFR services, which includes arrival, departures, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1693 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Burns, OR [Revised]

Burns Municipal Airport, Burns, OR
(Lat. 43°35′32″ N., long. 118°57′18″ W.)
Wildhorse VOR/DME
(Lat. 43°35′35″ N., long. 118°57′18″ W.)

That airspace extending upward from 700 feet above the surface of the earth within 10.9 miles northeast and 10.1 miles southwest of the 141° and 321° radials of the Wildhorse VOR/DME extending from 9.6 miles southeast to 9.2 miles northwest of the VOR/DME; that airspace extending upward from 1,200 feet above the surface of the earth within 10.9 miles northeast and 16.0 miles southwest of the 141° and 321° radials of the Wildhorse VOR/DME extending from 20.1 miles southeast to 9.2 miles northwest of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on November 26, 2004.

Suzanne Alexander,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 04–27687 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2004–19458; Airspace Docket No. 04–AEA–11]

Proposed Establishment of Class E Airspace; Mifflintown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Mifflintown, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on area navigation (RNAV) to serve flights into Mifflintown Airport, Mifflintown, PA under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19458/Airspace Docket No. 04–AEA–11 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone (718) 553–4521.

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, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19458/Airspace Docket No. 04–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Mifflintown, PA. The development of a SIAP to serve flights operating IFR into Mifflintown Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate aircraft using the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule

would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Mifflintown, PA (NEW)

Mifflintown Airport, Mifflintown, PA
(Lat. 40°36′04″ N., long. 77°24′18″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Mifflintown Airport, excluding the portion that coincides with the Reedsville, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 10, 2004.

John G. McCartney,

Staff Manager of Eastern Terminal Area Operations.

[FR Doc. 04–27688 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129709–03]

RIN 1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the definition and effects of a prohibited allocation under section 409(p), identification of disqualified persons and determination of a nonallocation year, calculation of synthetic equity under section 409(p)(5), and standards for determining whether a transaction is an avoidance or evasion of section 409(p). These proposed regulations would generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 17, 2005. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for April 20, 2005, at 10 a.m. must be received by March 14, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129709–03), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–129709–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–129703–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Ricotta at (202) 622–6060; concerning submissions of comments, contact Guy Traynor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 409(p). The temporary regulations contain rules relating to the definition and effects of a prohibited allocation under section 409(p), identification of disqualified persons and determination of a nonallocation year, calculation of synthetic equity under section 409(p)(5), and standards for determining whether a transaction is an avoidance or evasion of section 409(p). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.409(p)–1 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 20, 2005, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 14, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is John Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.409(p)–1 also issued under 26 U.S.C. 409(p)(7)(A). * * *

Par. 2. Section 1.409(p)–1 is added to read as follows:

§ 1.409(p)–1 Prohibited allocation of securities in an S corporation.

[The text of proposed § 1.409(p)–1 is the same as the text of § 1.409(p)–1T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–27295 Filed 12–16–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–126]

RIN 1625–AA09

Drawbridge Operation Regulations; Cheesequake Creek, NJ.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the S35 Bridge, mile 0.0, across Cheesequake Creek at Morgan, South Amboy, New Jersey. This proposed rule would allow the bridge to open on the hour only from 7 a.m. to 8 p.m., May 1 through October 30. In addition, this proposed rule would also allow the bridge owner to require a 4-hour advance notice for openings from 11 p.m. to 7 a.m., all year, and all day from November 1 through April 30. This rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times while still providing for the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before February 15, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York 10004, or deliver them to the same address 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, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–126), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The S35 Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR 117.709(a), require the bridge to open on signal; except that, from May 15 through October 15 from 7 a.m. to 7 p.m., the draw need only open on the hour. From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

Cheesequake Creek is navigated predominately by small recreational vessels between April and November only. The bridge seldom opens during the winter months December through March.

The bridge owner, New Jersey Department of Transportation (NJDOT), requested that the drawbridge operation regulations for the S35 Bridge be changed to allow the bridge to open only on the hour 7 a.m. to 8 p.m., from May 1 through October 31. The hourly openings are currently in effect from 7 a.m. to 7 p.m. from May 15 through October 15.

In addition, this proposal would also allow the bridge owner to require a 4-hour advance notice for bridge openings from 11 p.m. to 7 a.m., all year round, and all day from November 1 through April 30.

Discussion of Proposal

This proposed rule would amend 33 CFR 117.709 by revising paragraph (a) extending the hourly bridge opening time period by 1 hour each day from May 1 through October 31. In addition, this proposed rule would allow the bridge owner to require a 4-hour advance notice for bridge openings from 11 p.m. to 7 a.m., all year round and all day from November 1 through April 30.

Regulatory Evaluation

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

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.

Small Entities

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

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed 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 (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.709 is amended by revising paragraph (a) to read as follows:

§ 117.709 Cheesequake Creek.

(a) The draw of the S35 Bridge, at mile 0.0, at Morgan, South Amboy, New Jersey, shall operate as follows:

(1) From May 1 through October 31 from 7 a.m. to 8 p.m., the draw need only open on the hour. From 8 p.m. to 11 p.m. the Draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open after at least a 4-hour advance notice is given.

(2) From November 1 through April 30 the draw shall open on signal after at least a 4-hour advance notice is given.

* * * * *

Dated: December 8, 2004.

David P. Pekoske,

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

[FR Doc. 04–27675 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–KY–0001–200425(b); FRL–7848–8]

Approval and Promulgation of Implementation Plans Kentucky: 1-Hour Ozone Maintenance Plan Update for Edmonson Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action consists of two distinct but related final rulemakings briefly characterized here and further discussed in the **SUPPLEMENTARY INFORMATION** section of the direct final rule for this action. First, EPA is proposing to approve revisions to the Edmonson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, in draft form, on February 19, 2004, and in final form on August 24, 2004. The August 24, 2004, SIP revision provides the 10-year update to the original 1-hour ozone maintenance plans for three 1-hour ozone maintenance areas, including the Edmonson County Maintenance Area, and also provides revised 2004 motor vehicle emission budgets (MVEBs) and establishes 2015 MVEBs. Through this action, EPA is providing notification of its determination that the Edmonson County portion of the Commonwealth's SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the 10-year update of the 1-hour ozone maintenance plan for Edmonson County Maintenance Area. Secondly, EPA is providing information on the status of its transportation conformity adequacy determination for the new MVEBs for the year 2015 that are contained in the 10-year update to the 1-hour ozone maintenance plan for the Edmonson County Area. In today's action, EPA is only addressing the portion of the SIP revision for Edmonson County. EPA will take separate action to address the other portions of the SIP revision.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 18, 2005.

ADDRESSES: Comments may be submitted by mail to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section, which is published in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–8965, *delatorre.rosymar@epa.gov*, or Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–9040, *benjamin.lynorae@epa.gov*.

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

Dated: November 29, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–27657 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[R07–OAR–2004–MO–0004; FRL–7850–2]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA proposes to approve a revision to Missouri rule ''Submission of Emission Data, Emission Fees, and Process Information.'' This revision will ensure consistency between the State and the federally-approved rules and ensure Federal enforceability of the State's air program rule revision.

DATES: Comments on this proposed action must be received in writing by January 18, 2005.

ADDRESSES: Comments may be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651, or by e-mail at *daniels.leland@epa.gov*.

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

Dated: December 6, 2004.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 04–27662 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 720

[OPPT–2003–0058; FRL–7692–3]

RIN 2070–AJ04

TSCA Inventory Nomenclature for Enzymes and Proteins; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR); extension of comment period.

SUMMARY: This document extends the public comment period established for the ANPR in the **Federal Register** issued on November 15, 2004 (69 FR 65565). In that ANPR, EPA alerted stakeholders that it was considering changing procedures and requirements for naming enzymes and proteins for the purpose of listing those substances on the TSCA Inventory. More specifically, the ANPR outlined four identification elements that EPA currently believes are appropriate for use in developing unique TSCA Inventory nomenclature for proteinaceous enzymes. The ANPR also solicited public comment on several specific questions relating to the initiative.

DATES: Comments, identified by docket identification (ID) number OPPT–2003–0058, must be received on or before January 30, 2005.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 15, 2004.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: James Alwood, Chemical Control Division, (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8974; e-mail address: *alwood.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the ANPR a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 720 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** issued on November 15, 2004 (69 FR 65565) (FRL–7342–2). In that document, EPA alerted stakeholders that it was considering changing procedures and requirements for naming enzymes and proteins for the purpose of listing those substances on the TSCA Inventory. EPA is hereby extending the comment period, which was set to end on December 15, 2004, to January 30, 2005.

III. What is the Agency's Authority for Taking this Action?

Section 8(b) of TSCA requires EPA to ''compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States'' (the TSCA Inventory). In order to fulfill this requirement, EPA must continuously update and keep current various types of information, including, but not limited to, the information used to identify any new chemical substance that is reported to be manufactured or processed in the United States. EPA must also make corrections, when necessary, of previously reported information on the TSCA Inventory.

IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA for an ANPR that previously published in the **Federal Register** of November 15, 2004 (69 FR 65565). For information about the applicability of the regulatory assessment requirements to the ANPR, please refer to the discussion in Unit IV. of that document (69 FR 65565).

List of Subjects in 40 CFR Part 720

Environmental protection, Chemicals, Hazardous substances, Reporting, and recordkeeping requirements.

Dated: December 13, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–27642 Filed 12–14–04; 3:04 pm]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7608]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD). • Elevation in feet (NACD).		Communities affected
		Existing	Modified	
NORTH CAROLINA Onslow County				
Atlantic Ocean	At intersection of Chadwick Access Road and Carroll Street.	•6	•8	Onslow County (Unincorporated Areas).
	Approximately 1,500 feet northeast of the intersection of Canal Street and 1st Street.	•10	•11	
Atlantic Ocean	Approximately 0.55 mile north of the intersection of 2nd Avenue and Highway 210.	•11	•8	Town of North Topsail Beach.
	At intersection of Heron Cam Court and Highway 210.	•11	•12	
Back Swamp	At Duplin/County boundary	None	•57	Onslow County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Dell Brock Road.	None	•90	
Back Swamp	At confluence with Back Swamp	None	•58	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 0.8 mile upstream of Futrell Road.	None	•85	
Back Swamp	At confluence with Back Swamp	None	•60	Onslow County (Unincorporated Areas).
Tributary 3	Approximately 2.2 miles upstream of the confluence with Back Swamp.	None	•85	
Back Swamp	At confluence with Back Swamp	None	•66	Onslow County (Unincorporated Areas).
Tributary 6	Approximately 1.4 miles upstream of the confluence with Back Swamp.	None	•81	
Back Swamp	At confluence with Back Swamp	None	•66	Onslow County (Unincorporated Areas).
Tributary 7	Approximately 1.3 miles upstream of the confluence with Back Swamp.	None	•79	
Back Swamp	At confluence with Back Swamp	None	•70	Onslow County (Unincorporated Areas).
Tributary 8	Approximately 0.8 mile upstream of the confluence with Back Swamp.	None	•79	
Back Swamp	At confluence with Back Swamp	None	•71	Onslow County (Unincorporated Areas).
Tributary 9	Approximately 250 feet upstream of Haw Branch Road.	None	•82	
Back Swamp	At confluence with Back Swamp	None	•78	Onslow County (Unincorporated Areas).
Tributary 10	Approximately 0.9 mile upstream of the confluence with Back Swamp.	None	•89	
Back Swamp	At confluence with Back Swamp	None	•81	Onslow County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD). • Elevation in feet (NACD).		Communities affected
		Existing	Modified	
Tributary 11	Approximately 0.5 mile upstream of the confluence with Back Swamp.	None	•85	
Big Shakey Swamp	At confluence with Juniper Swamp	None	•43	Onslow County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Juniper Swamp.	None	•50	
Cypress Branch	At the Onslow/Pender County boundary	•6	•8	Town of Holly Ridge, Onslow County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the Bishop Road.	None	•34	
Flat Swamp	At confluence with Juniper Swamp	None	•37	Town of Holly Ridge, Onslow County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Preston Wells Road.	None	•61	
Holly Shelter Creek	At the Onslow/Pender County boundary	None	•36	Onslow County (Unincorporated Areas).
	Approximately 0.2 mile downstream of Hardy Graham Road.	None	•62	
Juniper Swamp	At the Onslow/Pender County boundary	None	•35	Onslow County (Unincorporated Areas).
	Approximately 4.7 miles upstream of State Highway 50.	None	•55	
Juniper Swamp	At the confluence with Juniper Swamp	None	•37	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 350 Areas) feet upstream of U.S. Highway 50.	None	•43	
Juniper Swamp	At the confluence with Juniper Swamp	None	•44	Onslow County (Unincorporated Areas).
Tributary 2	Approximately 1.6 miles upstream of the confluence with Juniper Swamp.	None	•59	
Kings Creek	At the confluence with Kings Creek	•6	•8	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 2.1 miles upstream of Holly Ridge-Sneads Ferry Road.	None	•57	
Moores Creek	At the Onslow/Pender County boundary	None	•43	Onslow County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Andemora Road.	None	•66	
Moores Creek	At the Onslow/Pender County boundary	None	•51	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 1.0 mile upstream of Tomahawk Road.	None	•78	
Moores Creek	At the ONslow/Pender County boundary	None	•47	Onslow County (Unincorporated Areas).
Tributary 2	Approximately 570 feet upstream of NC Highway 53.	None	•56	
Moores Creek	At the confluence with Moores Creek	None	•44	Onslow County (Unincorporated Areas).
Tributary 3	Approximately 1.2 miles upstream of the confluence with Moores Creek.	None	•62	
Moores Creek	At the confluence with Moores Creek	None	•46	Onslow County (Unincorporated Areas).
Tributary 4	Approximately 385 Areas) feet upstream of NC Highway 53.	None	•69	
Moores Creek	At the confluence with Moores Creek Tributary 4.	None	•52	Onslow County (Unincorporated Areas).
Tributary 5	Approximately 0.7 mile upstream of Andemora Road.	None	•70	
Ninemile Creek	At the Duplin/Onslow County boundary	None	•54	Onslow County (Unincorporated Areas).
	Approximately 0.2 mile downstream of Davis Road.	None	•76	
Sandy Run Swamp	At the Onslow/Pender County boundary	None	•29	Onslow County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Haws Run Road.	None	•45	
Sandy Run Swamp	At the confluence with Sandy Run Swamp	None	•41	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 1.5 miles upstream of the confluence with Sandy Run Swamp.	None	•45	
Shelter Swamp Creek	At the Onslow/Pender County boundary	None	•34	Onslow County (Unincorporated Areas).
	Approximately 3.2 miles upstream of South Coston Road.	None	•56	
Shelter Swamp Creek	At the confluence of Shelter Swamp	None	•41	Onslow County (Unincorporated Areas).
Tributary 1	Approximately 0.8 mile upstream of the confluence with Shelter Swamp Creek.	None	•41	
Stump Sound within the Cape Fear River Basin.	Approximately 0.23 mile south of the intersection of Morris Landing Road and Hardison Road.	•6	•8	Onslow County (Unincorporated Areas).
	Along the shoreline at Thomas Landing (at the mouth of Turkey Creek).	•8	•11	
Tenmile Swamp	At the confluence with Ninemile Creek	None	•55	Onslow County (Unincorporated Areas).

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD). • Elevation in feet (NACD).		Communities affected
		Existing	Modified	
	Approximately 1.3 miles upstream of Swinson Road.	None	•74	

Town of Holly Ridge

Maps available for inspection at the Holly Ridge Town Hall, 212 Dyson Street, Holly Ridge, North Carolina.

Send comments to The Honorable Elmer Padgett, Mayor of the Town of Holly Ridge, P.O. Box 145, Holly Ridge, North Carolina 28445.

Town of North Topsail Beach

Maps available for inspection at the North Topsail Beach Town Hall, 2008 Loggerhead Court, North Topsail Beach, North Carolina.

Send comments to The Honorable Rodney Knowles, Mayor of the Town of North Topsail Beach, 2008 Loggerhead Court, North Topsail Beach, North Carolina 28460.

Onslow County (Unincorporated Areas)

Maps available for inspection at the Onslow County Floodplain Administration, 604 College Street, Jacksonville, North Carolina.

Send comments to Mr. Ronald Lewis, Onslow County Manager, 118 Old Bridge Street, Jacksonville, North Carolina 28540–4259.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

December 8, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27622 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7610]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Vermont	Hinesburg (Town), Chittenden County.	LaPlatte River	At the downstream corporate limit	None	•319
			Approximately 100 feet upstream of Silver Street.	None	•328
		Patrick Brook	At the confluence with LaPlatte River	None	•325
			Approximately 50 feet upstream of the divergence of The Canal.	None	•362
		The Canal	At the dam downstream of State Route 116	None	•346
			At the divergence from Patrick Brook	None	•361
		Unnamed Diversion Channel	At the confluence with Patrick Brook	None	•335
			At the divergence from The Canal	None	•347
Maps available for inspection at the Hinesburg Town Hall, 10632 Route 116, Hinesburg, Vermont.					
Send comments to Mr. Lynn Gardner, Chairman of the Town of Hinesburg Board of Selectmen, Hinesburg Town Hall, 10632 Route 116, Hinesburg, Vermont 05461.					
Vermont	Stowe (Town), Lamoille County.	East Branch Little River.	At confluence with Little River	•704	•700
			At the confluence of Moss Glen and Sterling Brooks.	•725	•723
		Little River	Approximately 1,240 feet downstream of Adams Dam.	•624	•620
			At the confluence of East and West Branches of Little River.	•704	•700
		Moss Glen Brook	At the confluence with East Branch Little River.	•725	•723
			Approximately 60 feet upstream of Pucker Street (State Route 100).	None	•742
		Sterling Brook	At the confluence with East Branch Little River.	•725	•723
			Approximately 115 feet upstream of Moulton Lane.	•756	•752
		West Branch Little River.	At the confluence with Little River	•704	•700
			Approximately 75 feet upstream of Mountain Road (State Route 108).	•959	•956
Maps available for inspection at the Stowe Town Hall, 67 Main Street, Stowe Vermont.					
Send comments to Mr. Richard C. Marron, Chairman of the Town of Stowe Board of Selectmen, Stowe Town Hall, 67 Main Street, Stowe, Vermont 05672.					
Vermont	West Rutland (Town), Rutland County.	Clark Hill Brook	At the confluence with Clarendon River	None	•497
			Approximately 0.54 mile upstream of Casella Lane.	None	•691
		Urban Lateral	At the confluence with Castleton River	None	•484
			Approximately 0.24 mile upstream of Millyard Culvert.	None	•492
Maps available for inspection at the West Rutland Town Hall, 35 Marble Street, West Rutland, Vermont.					
Send comments to Mr. Edward Gilman, Chairman of the Town of West Rutland Board of Selectmen, West Rutland Town Hall, 35 Marble Street, West Rutland, Vermont 05777.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: December 8, 2004.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–27621 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 69, No. 242

Friday, December 17, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Agricultural Library; Notice of Intent To Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for a new information collection relating to existing nutrition education materials (*i.e.* recipes and cookbooks) targeting low-income persons. This voluntary form gives Food Stamp nutrition education providers the opportunity to share resources that they have developed or used.

DATES: Comments on this notice must be received by February 22, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Shannon Fries, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, telephone (301) 504–5368 or fax (301) 504–6409. Submit electronic comments to *sfries@nal.usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Connection Recipe Submission Form.

OMB Number: PRA#.

Expiration Date: Three years from date of approval.

Type of Request: New data collection from Food Stamp nutrition education providers.

Abstract: The National Agricultural Library's Food Stamp Nutrition Connection (FSNC) *http://www.nal.usda.gov/foodstamp/* resource system has developed an on-line recipe database, the Recipe Finder, as an added feature to the FSNC Web site to be launched early in Fiscal Year 2005. The purpose of the recipe database is to provide Food Stamp Program nutrition educators with low-cost, easy to prepare, healthy recipes for classes and demonstrations with Food Stamp Program participants. We rely on these same educators to submit their best recipes to us for review, analysis and posting in the database. Data collected using this form will help identify a person's eligibility to submit materials for this database. The proposed voluntary ''FSNC Recipe Submission Form'' would allow nutrition education providers to submit recipes on-line and save time and money photocopying and mailing recipes. This will provide a fast and accurate vehicle for us to communicate and inform others of the recipes that target low-income Americans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.5 minutes per response.

Respondents: Food Stamp nutrition education providers.

Estimated Number of Respondents: 100 per year.

Estimated Total Annual Burden on Respondents: 12.5 hrs.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance for the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 1, 2004.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 04–27599 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

National Agricultural Library; Notice of Intent To Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for new information collection relating to a nutrition education material targeting low-income persons. This voluntary form gives Food Stamp nutrition education providers the opportunity to provide valuable feedback on this resource.

DATES: Comments on this notice must be received by February 22, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Shannon Fries, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, telephone (301) 504–5368 or fax (301) 504–6409. Submit electronic comments to *sfries@nal.usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Nutrition Connection Recipe Finder Pilot Test Form.

OMB Number: PRA#.

Expiration Date: Three years from date of approval.

Type of Request: New data collection from Food Stamp nutrition education providers.

Abstract: The National Agricultural Library's Food Stamp Nutrition Connection (FSNC) *http://www.nal.usda.gov/foodstamp/* resource system has developed an on-line recipe database, the Recipe Finder, as an added feature to the FSNC Web site to be

launched in the Fiscal Year 2005. The target audience this project is intended for, Food Stamp Program nutrition educators, are located all across the Nation, making it very difficult and costly to evaluate the tool in a face to face setting. In order to use an evaluation tool that is cost-effective while reaching numerous volunteers in our target audience, we propose to test the usability of this on-line feature with an easy to use, on-line testing form. Data collected using this form will help determine a person's eligibility to test the usability of this tool.

The proposed voluntary ''Recipe Finder Pilot Test Form'' would allow Food Stamp Program nutrition education providers and USDA Food and Nutrition Service staff the opportunity to practice using this new on-line tool and provide valuable feedback on the usability of this new feature to the Web site. Data collected using this form will help FSNC make revisions and improvements to develop a dynamic product that meets the needs of the target audience. The form will collect data that will verify the person is in our target audience. The testing will be conducted over a period of time (approximately six months) and will not require long-term data collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

Respondents: Food Stamp nutrition education providers.

Estimated Number of Respondents: 75 per year.

Estimated Total Annual Burden on Respondents: 37.50 hrs.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance for the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 1, 2004.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 04–27600 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Agricultural Library

Notice of Intent To Seek Approval To Collect Information

AGENCY: USDA, Agricultural Research Service, National Agricultural Library.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request approval for new information collection relating to nutrition education materials (cookbooks and recipes) targeting low-income persons. This voluntary form gives Food Stamp nutrition education providers the opportunity to provide valuable feedback on resources that they have used.

DATES: Comments on this notice must be received by February 22, 2005 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Shannon Fries, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD, 20705–2351, telephone (301) 504–5368 or fax (301) 504–6409. Submit electronic comments to *sfries@nal.usda.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Food Stamp Nutrition Connection Recipe Review Form.

OMB Number: PRA#.

Expiration Date: Three years from date of approval.

Type of Request: New data collection from Food Stamp nutrition education providers.

Abstract: The National Agricultural Library's Food Stamp Nutrition Connection (FSNC) *http://www.nal.usda.gov/foodstamp/* resource system has developed an on-line recipe database, the Recipe Finder, as an added feature to the FSNC Web site to be launched in the Fiscal Year 2005. The purpose of the recipe database is to provide our target audience, Food Stamp Program nutrition educators, with low-cost, easy to prepare, healthy recipes for classes and demonstrations with Food Stamp Program participants.

We rely on these same educators to submit their best recipes to us for review, analysis and posting in the database. Data collected using this form will help identify the success or value of the nutrition education and budgeting tool with Food Stamp Program participants.

The proposed voluntary ''FSNC Recipe Review Form'' would allow Food Stamp Program nutrition education providers the opportunity to review recipes on-line for the purposes of ensuring that only high quality information remain in the database. Based on responses generated from this form, FSNC staff will then be able to display recipes in priority order form highest rating to lowest. This will also provide an interactive component for educators to use on the FSNC Web site.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7 minutes per response.

Respondents: Food Stamp nutrition education providers

Estimated Number of Respondents: 150 per year.

Estimated Total Annual Burden on Respondents: 17.5 hrs.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance for the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: December 1, 2004.

Edward B. Knipling,

Administrator, Agricultural Research Service.

[FR Doc. 04–27601 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Revision and Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request renewal of the information collection currently approved and used in support of the FSA Farm Loan Programs (FLP). This information collection has been revised for clarification in conjunction with the request for extension of the burden package.

DATES: Comments on this notice must be received on or before February 15, 2005 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Sam Snyder, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; Telephone (202) 720–0599; Electronic mail: *Sam.Snyder@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION *Title:* Form FSA 440–32, Verification of Debts and Assets.

OMB Control Number: 0560–0166.

Expiration Date: June 30, 2005.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Form FSA 440–32 is necessary to ensure the accuracy of information obtained in connection with applications for FSA direct loan assistance. It is used to verify debt information provided by applicants in order to determine their suitability for an Operating, Farm Ownership or Emergency loan. Additionally, it is used by FSA to verify debts and assets of borrowers requesting primary and preservation loan servicing or debt settlement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Individual farmers, farm or other business entities and financial institutions.

Estimated Number of Respondents: 24,031.

Estimated Number of Responses Per Respondent: 3.

Estimated Total Annual Burden on Respondents: 18,024.

Comments are invited on the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Sam Snyder, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on December 9, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–27602 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hoosier National Forest, IN; Tell City Windthrow 2004 Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Tell City Ranger District of the Hoosier National Forest will prepare a Draft Environmental Impact Statement (EIS) to disclose the environmental consequences of the proposed Tell City Windthrow 2004 Project. On July 13, 2004, a severe storm producing winds at 70 to 80 miles per hour moved across southern Indiana. Heavy rain and high winds altered the stand structure of the forest with down and damaged trees. In the EIS, the USDA Forest Service will address the potential environmental impacts of salvage harvesting and prescribed burning. See the **SUPPLEMENTARY INFORMATION** section for the purpose and need of the action.

DATES: The public comment period will be for 30 days from the date this notice is published in the **Federal Register**. Comments and suggestions concerning the scope of the analysis should be submitted (postmarked) 30 days following this publication to ensure timely consideration. The draft environmental impact statement is expected in the fall of 2005, and the final environmental impact statement is expected in the winter of 2006.

ADDRESSES: Submit written or e-mail comments by: Mail-Tell City Windthrow 2004 Project, Attn: Mary Schoeppel, Tell City Ranger District, Tell City, IN 47586 or e-mail *r9_hoosier_website@fs.fed.us.* Please note: when commenting by e-mail, be sure to list Tell City Windthrow 2004 Project in the subject line and include a U.S. Postal Service address so we may add you to our mailing list.

FOR FURTHER INFORMATION CONTACT: Mary J. Schoeppel, project team leader at 812–547–7051. See the address above under **ADDRESSES.** Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http://www.fs.fed.us/r9/hoosier.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of this project is to implement management direction outlined in the Hoosier National Forest Land and Resource Management Plan while addressing site-specific needs and opportunities to move the project from the existing condition towards the desired condition. The following list describes the ''needs for action'' for the project to meet the purpose of implementing Forest Plan direction.

—Action is needed to address safety concerns along roads, trails, high use areas, and property boundaries.

—The risk of a wildland fire has increased as a result of the wind thrown timber. Many areas have down timber on greater than 50% of the identified area. Therefore, there is a need to improve public safety by reducing the potential for high-intensity fires to develop and spread. This can be accomplished by changing the horizontal continuity of fuels and reducing the amount of available fuel such as through prescribed burning.

—There is a need to salvage portions of the damaged area in a timely manner to capture timber product values that would be lost due to insect damage and decay with time.

—Salvage operations and prescribed burning would expedite the transition toward a more natural appearing landscape and help promote oak-hickory regeneration on the Forest, thus encouraging diversity of species.
—There is a need to provide timber to meet people's demand for wood products such as furniture, paper, fiber, and construction materials. The Forest Plan identifies areas suitable for timber production.

Proposed Action

The Forest proposes to salvage harvest trees that are recently down or leaning, severely damaged, or identified as hazard trees throughout the project area. Trees deemed hazardous are those that adversely affect public safety, including logging operations and management activities, facilities, and public visitors using the forest. Trees would be retained to provide wildlife habitat and long-term snag recruitment. Salvage activities would occur on approximately 3,100 acres.

This project proposes prescribed burning. General activities to be undertaken in preparing or executing prescribed fires could include fire line construction, hazard tree mitigation, and mop-up. Where possible, roads, trails, and streams would be used as natural breaks to minimize fire line construction. Any rehabilitation measures for fire lines would be determined by Forest Service specialists. All proposed prescribed fires would have a prescribed fire plan prior to the burn. This activity would occur on approximately 5,590 acres.

Road construction activities are anticipated on approximately 27 miles to facilitate the removal of salvage material and minimize resource damage. This could include road reconstruction and road maintenance on existing road corridors. Temporary roads may be built to minimize resource damage and later decommissioned.

Responsible Official

Kenneth G. Day, Forest Supervisor; Hoosier National Forest; 811 Constitution Avenue; Bedford, Indiana 47421.

Nature of Decision To Be Made

The decision to be made is whether the activities should proceed as proposed, proceed as modified by an alternative or be deferred at this time.

Scoping Process

The Hoosier National Forest proposes to scope for information by contacting persons and organizations on the Hoosier's mailing list and publishing a notice in the local newspaper. The present solicitation is for comments on this Notice of Intent and scoping material available elsewhere, such as on the Forest Web page.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 10, 2004.

Kenneth G. Day,

Forest Supervisor.

[FR Doc. 04–27591 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Beans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice with opportunity to comment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to remove the special grade designation ''off-color'' from the United States Standards for Beans. GIPSA will continue to offer assessments for color uniformity on a request only basis. This action will facilitate the marketing of beans from many different regions.

DATES: Comments must be received by January 18, 2005.

ADDRESSES: We invite you to submit comments on the proposed rule. You may submit comments by any of the following methods:

- E-mail: Send comments via electronic mail to *comments.gipsa@usda.gov.*
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC, 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC, 20250–3604.

All comments should make reference to the date and page number of this issue of the **Federal Register**.

To read comments: All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

The current United States Standards for Beans are available by accessing GIPSA's Home Page on the Internet at:

http://www.usda.gov/gipsa/reference-library/standards/stds.htm.

FOR FURTHER INFORMATION CONTACT: John Giler, Deputy Director, Field Management Division, USDA, GIPSA, Room 2429–S, Stop 3632, 1400 Independence Avenue, SW., Washington, DC, 20250–3632, telephone (202) 720–0252; or e-mail to: *John.C.Giler@usda.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 * * *''. GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. The United States Standards for Beans do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture.

GIPSA is proposing to change the United States Standards for Beans using the procedures that appear at 7 CFR Section 868.102. GIPSA representatives work closely with the National Dry Bean Council (NDBC) and others in the bean industry to examine the effectiveness of the U.S. Standards for Beans in today's marketing environment. Through discussions, it appears that the current standards continue to meet consumer/processor needs. However, the bean industry has indicated the special grade ''off-color'' in dry beans is not needed to market dry beans.

The special grade designation ''off-color'' has been in the U.S. Standards for Beans for many years. Because it is a special grade designation, it does not affect the numerical grade designation. The current written description for ''off-color'' is: ''Beans that, after removal of total defects, are distinctly off-color due to age or other natural causes but are not materially weathered.''

Off-color is determined on a representative sample of approximately 500 grams after the removal of total defects (*i.e.,* splits, damaged beans, contrasting classes, and foreign material). Beans are considered as ''off-color'' if they are not of a good natural color or are stained to an extent that they seriously affect the appearance of the lot. Beans that are discolored by dust or a slight amount of dirt, which can be removed by processing methods, are not considered as ''off-color.''

Bean color is dependent upon environmental conditions, varietal differences, moisture, storage, and age. Beans grown in various regions may vary greatly in general appearance. As beans mature and are ready for harvest, outside forces such as dew, rain, and sunlight, can greatly affect the color of the beans. These same forces cause beans in the same regions to vary in color from season to season.

Further, beans of one class and variety grown in the Pacific Northwest may have an entirely different color than the same beans grown in the Midwest regions, yet both would be of good natural color for their regions. For example, the Colorado/Idaho grown pinto bean generally has a lighter seed coat color than the pinto beans grown in North Dakota. Both color types appeal to consumers and are considered a ''good natural color.''

Further, there is no visual reference for off-color, and, due to the many variances, attempts to develop a visual reference have been difficult. This can make assessment for off-color sometimes difficult.

The majority of suppliers know their customer and their specific quality preferences. When asked to furnish a light, uniformly colored bean, suppliers generally know the implied color parameters, for their respective areas, that the customer is setting due to the supplier/buyer relationship. However, when the supplier is not clear as to the needs of the customers, they use ''type samples.'' That is, the supplier forwards a sample representing the color and quality they have available to prospective customers for examination and approval. If the color and quality are acceptable, comparable quality is shipped to the customer without incident.

GIPSA recognizes that color is, at times, a concern to buyers. Consequently, GIPSA will provide, upon request, an analysis for color to determine if color is uniform or is representative of a ''type'' sample. When a request for color analysis is made, a statement will be added to the certificate in the ''Remarks'' section stating whether the color is uniform, not uniform, or meets the requirements of the type sample.

GIPSA is proposing to remove the special grade designation ''off-color'' from the United States Standards for Beans. GIPSA will continue to offer assessments for color uniformity on a request only basis. This action will facilitate the marketing of beans from many different regions.

GIPSA will solicit comments for 30 days. This comment period is considered appropriate given the upcoming production season for beans. All comments received within the comment period will be made part of the public record maintained by GIPSA, will be available to the public for review, and will be considered by GIPSA before final action is taken on the proposal.

Authority: 7 U.S.C. 1621 *et seq.*

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–27626 Filed 12–16–04; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product and services previously furnished by such agencies.

DATES: *Effective Date:* January 16, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On October 15, and October 22, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 61202 and 62020) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Cup, Drinking, Styrofoam, M.R. 537.
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Product/NSN: Lightsticks (Chemlights)
6260–00–106–7478 (4″—Green)
6260–01–230–8601 (6″—Red-HI)
6260–01–074–4229 (6″—Green)
6260–01–074–4230 (6″—Yellow-HI)
6260–01–178–5559 (6″—Red)
6260–01–178–5560 (6″—Blue)
6260–01–195–9753 (6″—Orange)
6260–01–196–0136 (6″—Yellow)
6260–01–218–5146 (6″—White)
6260–01–247–0362 (15″—Green)
6260–01–247–0363 (6″—Orange/Ultra HI)
6260–01–247–0367 (15″—White)
6260–01–247–0368 (6″—White-HI)
6260–01–265–0612 (15″—Red)
6260–01–265–0613 (15″—Yellow)
6260–01–265–0614 (15″—Blue)
6260–01–282–7630 (4″—Orange)
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Service

Service Type/Location: Custodial Services, USDA, Laboratory Research Building, 6301 W. 750 North, West Lafayette, Indiana.
NPA: Wabash Center, Inc., Lafayette, Indiana.
Contracting Activity: USDA, Agriculture Research Service, Peoria, Illinois.

Deletions

On October 22, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 62020/21) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the product and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services deleted from the Procurement List.

End of Certification

Accordingly, the following product and services are deleted from the Procurement List:

Product

Product/NSN: Paper, Looseleaf, Blank, 7530–00–286–5782.

NPA: Alabama Industries for the Blind, Talladega, Alabama.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Janitorial/Custodial, U.S. Federal Building and Post Office, 104 West Magnolia, Bellingham, Washington.

NPA: Cascade Christian Services, Bellingham, Washington.

Contracting Activity: General Services Administration.

Service Type/Location: Janitorial/Custodial, U.S. Post Office and Courthouse, Vicksburg, Mississippi.

NPA: Warren County Association for Retarded Citizens, Inc., Vicksburg, Mississippi.

Contracting Activity: General Services Administration.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–27658 Filed 12–16–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: January 16, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product and service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which

they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Mass Casualty First Aid Kit, USAF; 6545–01–525–9821—Mass Casualty Bag; 6545–01–525–9847—Trauma Module; 6545–01–525–9849—Minor Module; 6545–01–526–0062—Splint Module; 6545–01–526–0065—CPR Module; 6545–01–526–0423—Mass Casualty First Aid Kit.
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York.
Contracting Activity: U.S. Air Force—AFMLO/USAF, Frederick, Maryland.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Custodial Services; Charles E. Bennett Federal Building; 400 W. Bay Street, Jacksonville, Florida.
NPA: CCAR Services, Inc., Green Cove Springs, Florida.
Contracting Activity: GSA, Property Management Center (4PMB), Atlanta, Georgia.
Service Type/Location: Facilities Maintenance; Buckley Annex and Building 667, Buckley AFB, Colorado.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contracting Activity: 460th Air Base Wing, Buckley AFB, Colorado.
Service Type/Location: Water Blasting; Various U.S. Military Locations on Guam.
NPA: Able Industries of the Pacific, Tamuning, Guam.
Contracting Activity: Officer in Charge of Construction—FSSC, FPO AP, Guam.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–27659 Filed 12–16–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Information and Communication Technology Survey.

Form Number(s): ICT–1(S), ICT–1(M), ICT–1(Long).

Agency Approval Number: 0607–0909.

Type of Request: Revision of a currently approved collection.

Burden: 79,903 hours.

Number of Respondents: 46,000.

Average Hours Per Response: ICT–1(S)—1 hour and 4 minutes, ICT–1(M)—2 hours and 8 minutes, ICT–1(Long)—21 hours.

Needs and Uses: A concern for economic policymakers is the lack of available data related to e-business infrastructure investment. Such data is critical for evaluating productivity growth, changes in industrial capacity, measures of economic performance, and current economic developments. Rapid changes and advances in Information and Communication Technology (ICT) equipment have resulted in these assets having short useful lives and a tendency to be replaced much quicker than other types of equipment. Companies are expensing the full cost of such assets during the current annual period rather than capitalizing the value of such assets and expensing the cost over two or more years. In some cases this is due to the short useful life of the asset, and in other cases this is because companies have varying dollar levels for capitalization.

The Annual Capital Expenditures Survey (ACES) (OMB Project 0607–0782) currently collects annual data on business capital expenditures and detailed types of structures and equipment data every five years. This infrequent collection of types of structures and equipment detail and the fact that the ACES does not include non-capitalized expenditures for e-business infrastructure investment creates serious data gaps.

As a result, the Information and Communication Technology Survey (ICTS) was developed as a supplement to the ACES. For the ICTS, we use the ACES sampling, follow-up and estimation methodologies including mailing to the same employer companies as the ACES. This data collection supplements the current source of comprehensive statistics on business investment in equipment and software for private nonfarm businesses in the United States. The ICTS is an important part of the Federal Government statistical program to improve and supplement ongoing statistical programs.

This request is for a revision of a currently approved collection and covers the 2004 through 2006 Information and Communication Technology Survey. Major revisions from the previous ICTS are the collection of capital expenditures data for the four types of ICT equipment and software cited below, and the incorporation of the 2002 North American Industry Classification System (NAICS) into the ICTS. Capital expenditures data will only be collected for computers and peripheral equipment; ICT equipment, excluding computers and peripherals; electromedical and electrotherapeutic apparatus; and, computer software, including payroll associated with software development. These capitalized data will be collected annually on the ICTS, except when collected in the ACES once every five years. Beginning with the 2004 ICTS, we will publish data based on the 2002 NAICS. We will collect and publish data for approximately 136 industries. This is an increase of four industries from the 1997 NAICS.

The plan for the continued survey is to collect industry-level capital expenditures and non-capitalized expenses (purchases, and operating leases and rental payments) for the four types of ICT equipment and software mentioned above. This collection is intended to represent total business spending for ICT equipment by all employer firms and provide comprehensive control estimates for each type of equipment and software by industry. Companies that operate in only one industry receive an ICT–1(S) form. These companies are not asked to report ICT expenditures by industry which eliminates the need for respondent industry coding. Companies that operate in more than one but less than nine industries receive an ICT–1(M) form. And, companies that operate in nine or more industries receive an ICT–1(L) form.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov).*

Dated: December 13, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27585 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1 (S), ACE–1 (M), ACE–1(Long), ACE–1 (I), ACE–2, ACE–2 (I).

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 132,900 hours.

Number of Respondents: 61,000.

Avg Hours per Response: ACE–1 (S)—2 hours, ACE–1 (M)—3 hours, ACE–1 (Long)—16 hours, ACE–2—1 hour.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluate productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and measures of overall economic performance. The ACES is the current source of comprehensive statistics on business investment in buildings and other structures, machinery, and equipment for private nonfarm businesses in the United States. The ACES is an integral part of the Federal Government statistical program to improve and supplement ongoing statistical programs. Federal Government agencies, including the Census Bureau, use the data to improve and supplement ongoing statistical programs.

This request is for a revision of a currently approved collection and covers the 2004 through 2006 ACES. Major revisions from the previously approved collection are the elimination of the collection of detailed capital expenditures by type of structure and type of equipment, and the incorporation of the 2002 North American Industry Classification System (NAICS) into the ACES. Detailed capital expenditures by type of structure and type of equipment data were collected in the 2003 ACES. These data, collected together once every five years, will not be requested again until the 2008 ACES. Beginning with the 2004 ACES we will publish data by the 2002 NAICS. We will collect and publish data for approximately 136 industries. This is an increase of four industries from the 1997 NAICS.

The plan for the continued survey is a basic annual survey that collects fixed assets and depreciation, sales and receipts, total capital expenditures for new and used structures and equipment separately, and capitalized computer software developed or obtained for internal use, from employer enterprises. This collection is intended to represent the capital expenditure activity of all employer firms and provide comprehensive control estimates of total capital expenditures for structures and equipment by industry. Companies that operate in only one industry will receive an ACE–1 (S) form. These companies are not asked to report capital expenditures by industry which eliminates the need for respondent industry coding. Companies that operate in more than one but less than nine industries will receive an ACE–1 (M) form. And, companies that operate in nine or more industries will receive an ACE–1 (L) form.

All ACE–1 forms request sales and receipts information to calculate industry investment to sales ratios and to assist in verifying that consolidated company data are being reported. Assets and depreciation information collected assists in measuring changes in the Nation's capital stock estimates. As part of the basic survey, we also collect data annually from a small sample of nonemployer enterprises. Using Form ACE–2, the survey will request that nonemployer companies report current year capital expenditures data. This collection is intended to better represent total capital expenditures activity of all firms.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245 or e-mail (*susan_schechter@omb.eop.gov*).

Dated: December 13, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–27586 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Notice of Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances review of the antidumping order on brake rotors from the People's Republic of China (''PRC''). The review will be conducted to determine whether Shandong Huanri Group Co., Ltd. (''Huanri Group'') is the successor–in-interest to Shandong Huanri Group General Company (''Huanri Group General'').

EFFECTIVE DATE: December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Amber Musser, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777.

SUPPLEMENTARY INFORMATION:

Background

On April 17, 1997, the Department published in the **Federal Register** the antidumping duty order on brake rotors from the PRC (62 FR 18740). On October 28, 2004, Huanri Group submitted information and documentation in support of its claim that it is the successor–in-interest to Huanri Group

General and requested that the Department conduct a changed–circumstances review to determine whether Huanri Group is the successor–in-interest to Huanri Group General and whether it should receive the same antidumping duty treatment as is accorded to Huanri Group General with respect to the subject merchandise. Huanri Group provided its response to the Department's separate rates questionnaire in this submission.

On November 5, 2004, the petitioner requested that the Department publish a separate notice of initiation and refrain from simultaneously issuing a preliminary finding because it claimed that Huanri Group did not give the Department sufficient information to conduct an expedited review; for example, the petitioner stated that it raised concerns regarding the ownership of Huanri Group on the public record of the seventh administrative review, and that these concerns were not addressed in Huanri Group's request for a changed circumstances review.

On November 18, 2004, the Department issued a letter to Huanri Group requesting that they provide additional information and documentation addressing the company's management structure, production facilities, supplier relations, and customer base. On November 26, 2004, Huanri Group provided a response to the Department's November 18, 2004, request for information.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all–terrain vehicles, vans, recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi–finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

In proceedings involving non–market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. To establish whether a firm is sufficiently independent from government control, and therefore entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''Silicon Carbide''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. De Jure Control

Huanri Group has placed on the administrative record documentation to demonstrate absence of *de jure* government control, including the 1994 ''Foreign Trade Law of the People's Republic of China,'' and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations,'' promulgated on June 3, 1988.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of stock companies including limited liability companies. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial–Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to Huanri Group.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide and Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide and Furfuryl Alcohol*.

Huanri Group asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, statements contained in Huanri Group's October 28, 2004, submission indicate that the company does not coordinate its prices with other exporters. This information supports a initial finding that there is *de facto* absence of government control of the export

functions of Huanri Group. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, for purposes of initiating its request for a changed circumstances review, we find that there is a sufficient basis to determine that Huanri Group has met the criteria for the application of a separate rate.

Initiation of Antidumping Duty Changed Circumstances Review.

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In its October 28, 2004, submission and its November 26, 2004, supplemental submission, Huanri Group notified the Department that it had changed its name on June 9, 2004, following a change in ownership. In its submissions, Huanri Group also stated that it has (1) retained the same management, (2) used the same production facilities, (3) retained the same suppliers, and (4) maintained the same customers. The information submitted by Huanri Group that addresses the four aforementioned criteria, is sufficient to warrant a changed circumstance review. *See* 19 CFR 351.216(c).

In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (''*Brass Sheet*''). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphorus Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Brass Sheet*. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on data contained in its October 28, 2004, submission and its November 26, 2004, supplemental submission, Huanri Group has provided sufficient evidence to warrant a review to determine if it is the successor–in-interest to Huanri Group General based on the successor–in-interest criteria enunciated in *Brass Sheet* and the Department's separate rates criteria articulated in *Sparklers* and amplified in *Silicon Carbide*. However, we consider it inappropriate to expedite this review by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii), because Huanri Group's request for this changed circumstances review did not address Huanri Group General's ownership, the reasons for the change in ownership, or the change in legal classification. In addition, we have not had sufficient time to analyze the data contained in Huanri Group's November 26, 2004, supplemental submission. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(I). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will only be altered, if warranted, pursuant to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: December 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3710 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–846

Brake Rotors from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in the Seventh Antidumping Duty Administrative Review and the Eleventh New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Amber Musser at (202) 482–1777, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Extension of Time Limit

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''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. The Act further provides, however, that the Department may extend that 245–day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

Pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a preliminary determination in a new shipper review within 180 days after the date on which the review is initiated. However, if the case is extraordinarily complicated, it may extend the 180–day period for the preliminary results to 300 days.

The Department initiated the seventh administrative review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') (69 FR 30282) on May 27, 2004 and the eleventh new shipper review of the antidumping duty order on brake rotors from the PRC (69 FR 29920) on May 26, 2004. Pursuant to section 351.214(j)(3) of its regulations, the Department is conducting these reviews concurrently.

The Department finds that it is not practicable to complete the preliminary results in the administrative review and new shipper review of brake rotors from the PRC within this time limit. Specifically, due to resource constraints and the number of respondents and issues in this review, we find that additional time is needed in order to complete these preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until April 30, 2005.

Dated: December 10, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3714 Filed 12–16–04; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–897)

Notice of Termination of Antidumping Duty Investigation: Certain Circular Welded Carbon Quality Line Pipe from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 17, 2004.

SUMMARY: On December 8, 2004, American Steel Pipe Division of American Cast Iron Pipe Company, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation (collectively ''the Petitioners'') withdrew their antidumping petition, filed on March 3, 2004, regarding certain circular welded carbon quality line pipe from the People's Republic of China (''PRC''). Based on this withdrawal, the Department of Commerce (''the Department'') is now terminating this investigation.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith at 202–482–1766, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

On March 3, 2004, the Department received an antidumping duty petition filed in proper form by the Petitioners for the imposition of antidumping duties on certain circular welded carbon quality line pipe from Mexico, the Republic of Korea, and the PRC. The Petitioners are domestic producers of certain circular welded carbon quality line pipe. The Department requested additional information for purposes of determining industry support. *See Notice of Initiation of Antidumping Duty Investigation: Certain Circular Welded Carbon Quality Line Pipe from Mexico, the Republic of Korea, and the People's Republic of China*, 69 FR 16521, 16522 (March 30, 2004) (''*Initiation Notice*''). The Department initiated this investigation, and notice was published in the **Federal Register**. *See Initiation Notice*, 69 FR at 16521.

On April 27, 2004, the International Trade Commission (''ITC'') issued its determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of circular welded carbon quality line pipe from the PRC. *See Certain Welded Carbon Quality Line Pipe from China, Korea, and Mexico: Investigations Nos. 731–TA–1073–1075 (Preliminary).*

On October 8, 2004, the Department published in the **Federal Register** the notice of preliminary determination for this antidumping duty investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon Quality Line Pipe from the People's Republic of China*, 69 FR 60353 (October 8, 2004).

Scope of the Investigation

This investigation covers circular welded carbon quality steel pipe of a kind used for oil and gas pipelines, not more that 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling. Excluded from this proceeding are line pipe in nominal pipe size outer diameter of 1¼ inch and less.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at heading 7306 and subheadings 7306.10.10.10, 7306.10.1013, 7306.10.1014, 7306.10.1015, 7306.10.1019, 7306.10.1050, 7306.10.1053, 7306.10.1054, 7306.10.1055, 7306.10.1059, 7306.10.5010, 7306.10.5013, 7306.10.5014, 7306.10.5015, 7306.10.5019, 7306.10.5050, 7306.10.5053, 7306.10.5054, 7306.10.5055, and 7306.10.5059. The HTSUS classifications are provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

Termination of Investigation

On December 8, 2004, the Department received a letter from the Petitioners notifying the Department that they are no longer interested in seeking relief and are withdrawing their petition for certain circular welded carbon quality line pipe from the PRC. Under section 734(a)(1)(A) of the Tariff Act of 1930 (''the Act''), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to this investigation and the ITC of the Petitioners' withdrawal and our intention to terminate this proceeding.

Section 351.207(b)(1) of the Department's regulations states that the Department may terminate an investigation upon withdrawal of a petition provided it concludes that termination is in the public interest. Because the Petitioners are no longer interested in obtaining relief, we have determined that termination would be in the public interest. Based on information currently on the record of the above–mentioned proceeding, the Department is terminating the antidumping duty investigation on certain circular welded carbon quality line pipe from the PRC.

This action is taken pursuant to section 351.207(b)(1) of the Department's regulations.

Dated: December 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3713 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–337–806

Individually Quick Frozen Red Raspberries from Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on individually

quick frozen red raspberries from Chile. This review covers sales of individually quick frozen red raspberries to the United States during the period July 1, 2003 through June 30, 2004. Based on the withdrawal of requests for review with respect to certain companies, we are rescinding, in part, the second administrative review.

EFFECTIVE DATE: December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department of Commerce (''the Department'') published in the **Federal Register** the *Notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004), for the above–cited segment of this antidumping duty proceeding. We received a timely filed request for review for 52 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc. (collectively, ''the petitioners''). We also received timely filed requests for review from Fruticola Olmue, S.A. (''Olmue''); Santiago Comercio Exterior Exportaciones, Ltda. (''SANCO''); Valles Andinos, S.A. (''Valles Andinos''); Vital Berry Marketing, S.A. (''Vital Berry''); and Alimentos y Frutos and its affiliate, Vita Food, S.A. (collectively, ''Alifrut'').[1]

On August 30, 2004, the Department published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004), initiating this review for all 52 companies. On November 17, 2004, Alifrut timely withdrew its request for review. *See* 19 CFR 351.213(d)(1). On November 29, 2004, we received a submission from the petitioners withdrawing their request for review for all of the companies for which they had requested an administrative review. On December 1, 2004, the petitioners submitted a revised request to correct a typographical error made in the November 29, 2004, request. On December 7, 2004, Valles Andinos withdrew its request for review.

Partial Rescission of Antidumping Administrative Review

Alifrut filed its withdrawal request within the deadline established by the Department. The withdrawal requests made by the petitioners and Valles Andinos were submitted to the Department after the withdrawal deadline of November 28, 2004. However, 19 CFR 351.213(d)(1) permits the Department to extend the deadline for withdrawal requests if ''it is reasonable to do so.'' Because we have not received objections to any of the withdrawal requests, the Department has accepted these requests. Therefore, we are rescinding the above–cited administrative review with respect to the following companies in accordance with 19 CFR 351.213(d)(1):

Agricola Nova, Ltda.
Agrocomercial Las Tinajas, Ltda.
Agrofruta Chilena, Ltda.
Agroindustria Framberry, Ltda.
Agroindustria Niquen, Ltda.
Agroindustria Sagrada Familia, Ltda.
Agroindustria y Frigorifico M y M, Ltda.
Agroindustrial Frisac, Ltda.
Agroindustrial Frutos del Maipo, Ltda.
Agroindustrial Merco Trading, Ltda.
Agroindustrias San Francisco, Ltda.
Agross, S.A.
Alimentos Prometeo, Ltda.
Alimentos y Frutos, S.A.
Andesur, S.A.
Angloeuro Comercio Exterior, S.A.
Armijo Carrasco, Claudio del Carmen
Arvalan, S.A.
Bajo Cero, S.A.
Certified Pure Ingredients (Chile) Inc. y Cia., Ltda.
Chile Andes Foods, S.A.
Comercializadora Agricola Berries & Fruit, Ltda.
Comercializadora de Alimentos del Sur, Ltda.
Comercio y Servicios, S.A.
Copefrut, S.A.
C y C Group, S.A.
Exportaciones Meyer, S.A.
Exportadora Pentagro, S.A.
Francisco Nancuvilu Punsin
Frigorifico Ditzler, Ltda.
Frutas de Guaico, S.A.
Fruticola Viconto, S.A.
Hassler Monckeberg, S.A.
Hortifrut, S.A.
Interagro Comercio y Ganado, S.A.
Kugar Export, Ltda.
Maria Teresa Ubilla Alarcon
Multifrigo Valparaiso, S.A.
Nevada Export, S.A.
Prima Agrotrading, Ltda.
Procesadora y Exportadora de Frutas y Vegetales
Rio Teno, S.A.
Sociedad Agricola Valle del Laja, Ltda.
Sociedad Exportaciones Antiquina, Ltda.
Sociedad San Ernesto, Ltda.
Terra Natur, S.A.
Terrazas Export, S.A.
Uren Chile, S.A.
Valles Andinos, S.A.

The following companies remain respondents in this administrative review based on their original individual requests for review: Olmue, SANCO, and Vital Berry. We intend to issue our preliminary results in this administrative review for Olmue, SANCO, and Vital Berry by April 2, 2005.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Cash Deposit Rates

For the companies for which this review is rescinded, the cash deposit rate will continue to be 6.33 percent, the ''all others'' rate established in the less–than-fair–value investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270 (June 12, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[1] These five companies were included in the petitioners' request for review for 52 companies.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: December 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3715 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty (''CVD'') order on stainless steel sheet and strip in coils from the Republic of Korea (''Korea''). *See Initiation of Five–Year (''Sunset'') Reviews*, 69 FR 30874 (June 1, 2004). On the basis of a notice of intent to participate, an adequate substantive response filed on behalf of domestic interested parties, and inadequate substantive responses filed by respondent interested parties, the Department conducted an expedited sunset review. In conducting this sunset review, the Department finds that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy is identified in the ''Final Results of Review'' section of this notice

EFFECTIVE DATE: December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order is certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*i.e.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The subject merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades.[1]

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulfide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to

[1] *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*i.e.*, carpet knives).[5] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[6]

Background

On June 1, 2004, the Department initiated a sunset review of the CVD order on SSSS from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five–Year (''Sunset'') Reviews*, 69 FR 30874 (June 1, 2004). The Department received a ''Notice of Intent to Participate'' from the domestic interested parties Allegheny Ludlum Corporation, Nucor Corporation, United Steelworkers of America (AFL–CIO/CLC), Local 3303 United Auto Workers (formerly the Butler Armco Independent Union, and the Zanesville Armco Independent Organization, Inc., (collectively ''the domestic interested parties'') within the deadline specified in section 351.218(d)(1)(I) of the Department's regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act. We received a complete substantive responses from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). In addition, we received a complete substantive response from INI Steel Company (''INI''), formerly Inchon Iron and Steel Company, Ltd., and BNG Steel Company (''BNG''), formerly Sammi Steel Co., Ltd. (''Sammi'') (collectively, ''respondent interested parties''), within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i).

On July 21, 2004, the Department determined that respondent interested parties response constituted an inadequate response to the notice of initiation.[7] *See Memorandum for Ronald K. Lorentzen, Re: Stainless Steel Sheet and Strip from South Korea*, Adequacy of Respondent Interested Parties' Response to the Notice of Initiation (July 21, 2004). The Department notified the ITC of inadequate respondent responses to the notice of initiation, and conducted an expedited sunset review of this antidumping duty order. *See* Letter to ITC, Inadequate Respondent Response, July 21, 2004, pursuant to sections 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(c)(2).

The final results of this sunset review was originally scheduled for September 29, 2004; however, the Department extended the final results until November 15, 2004. *See Notice of Extension of Time Limit for the Final Results of Sunset Reviews of Antidumping and Countervailing Duty Orders: Stainless Steel Sheet and Strip*

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'', ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[7] A complete substantive response was submitted to the Department on behalf of respondents INI Steel Company and BNG Steel Company, however, in accordance with section 351.218(d)(3)(v) of the Department's regulations, information is required to be filed by the foreign government in a CVD sunset review. In this CVD proceeding the Government of Korea did not respond to the Department's notice of initiation. Pursuant to section 351.218(e)(1)(ii)(C) of the Department's regulations, the Department conducted an expedited sunset review under section 751(c)(3)(B) of the Act.

in Coils from Germany, Italy, Japan, Korea, Taiwan and the United Kingdom.

Analysis of Comments Received

All issues raised in this case are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated December 10, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''December 2004.'' The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order on SSSS from Korea is likely to lead to continuation or recurrence of countervailable subsidies at the following net subsidy rates:

Manufacturers/Producers/Exporters	Net Subsidy Rate (percent)
INI/BNG	0.54
Dai Yang Metal Company	0.67
Taihan	4.64
All Others	0.63

Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Because some programs not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent (as measured in accordance with Annex IV of the Subsidies Agreement), we are providing the ITC with program descriptions in our Decision Memo. We note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement).

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return of destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to jusicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five–year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 10, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3711 Filed 12–16–04; 8:45 am]

Billing Code 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 041119324–4324–01]

Request for Technical Input—U.S.-China Workshop on Standards and Conformity Assessment

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for workshop recommendations.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to submit recommendations for focus areas in a US-China Workshop on Standards and Conformity Assessment. Recommendations should include general policy issues and specific sectors and topics where information exchange about the U.S. and Chinese systems of standards development, conformity assessment, and metrology may facilitate trade. The prospective workshop is tentatively scheduled as a two or three day program to be held in late August or early September 2005. This notice is not an invitation for proposals to fund grants, contracts or cooperative agreements of any kind. NIST will consider recommendations based upon which workshop focus areas would be most useful to intended audiences.

DATES: Recommendations must be submitted to NIST no later than 5 p.m., EST, January 15, 2005.

ADDRESSES: All recommendations must be submitted to Dr. Ajit Jillavenkatesa via e-mail (*ajit.jilla@nist.gov*) or by mail to 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ajit Jillavenkatesa (301) 975–5089, *ajit.jilla@nist.gov.*

SUPPLEMENTARY INFORMATION: The proposed fourth US-China Workshop on Standards and Conformity Assessment expands the continuing dialog between the U.S. and China to address issues related to development of standards, their adoption and/or implementation, and conformity assessment procedures impacting trade between the two countries. The workshop is designed to provide timely information and facilitate dialog between U.S. and Chinese industry and government experts on developments both in general policy matters and issues in specific sectors, and to explore means for future collaboration.

The proposed workshop is a two or three day program offering an overview of the roles of the Government and private sector in both the United States and China, and regional and international organizations engaged in standards development and conformity assessment practices. Specific workshop objectives are to: (1) Familiarize participants with practices in the U.S. and China in the areas of metrology, standardization, and conformity assessment; (2) describe and understand the roles of the U.S. and Chinese governments and the private sector in developing and implementing standards; (3) develop professional contacts as a basis for strengthening technical ties and enhancing trade; and (4) discuss specific standards and conformity assessment-related technical barriers.

Workshop recommendations (maximum 3 pages) must address at minimum the following points, in the order noted and labeled accordingly:

1. Name and description of the recommending organization. Provide the primary mailing address and a brief description of the organization, including the name, telephone number and e-mail address of the primary point of contact.

2. Industry sector for workshop focus. Provide a description of the suggested industrial sector and focus area for break-out sessions during the workshop. Consider the goals and potential benefits. Also, identify standards and conformity assessment related issues

that currently or could pose market barriers.

3. Principal topics. Describe the suggested topics for the workshop, for inclusion in a plenary session and break-out sessions.

4. Please state which venue for holding the workshop, the U.S. (Washington, DC area) or China (Beijing), would be most convenient and include a brief explanation as to why.

5. Proposed foreign participants. Provide a representative list of the organizations that you would like to see invited to participate in the workshop, including a description of their function or business and their country of incorporation or origin. Also, please identify potential Chinese participants and speakers.

6. U.S. stakeholder participants (*e.g.*, associations, agencies, companies, users, others). Provide a list of the U.S.-based organizations that are likely to partner with you for participation in the workshop.

7. Proposed focus area objectives. Describe the intended goals to be attained and why they are important.

Additional information about the first three workshops in this series is available at *http://ts.nist.gov/ts/htdocs/210/gsig/apec1.htm#workshop, http://www.technology.gov/Prel/pr040819.htm, http://www.mac.doc.gov/china/workshop%20summary.htm.*

Dated: December 8, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–27646 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Visa, ELVIS, Guaranteed Access Level (GAL) Certification, and Exempt Certification Requirements for Member Countries of the World Trade Organization (WTO)

December 14, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection canceling visa requirements for WTO member countries.

DATES: *Effective Date:* January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Philip J. Martello, Director, Trade and Data Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The WTO Agreement on Textiles and Clothing (ATC), approved by Congress as part of the Uruguay Round Agreements Act, provides for the integration of the textiles and clothing sectors into the General Agreement on Tariffs and Trade 1994. In accordance with its obligations under the ATC, and consistent with Section 331 of the Uruguay Round Agreements Act and the schedule announced by CITA on May 1, 1995 (60 FR 21075), the United States will no longer impose textile and apparel quotas under the ATC for goods exported on or after January 1, 2005. Consistent with these obligations, the United States has informed its trading partners with whom it has entered into visa arrangements in order to carry out such quotas and which are members of the WTO that such visa arrangements will be terminated and will not apply to goods exported from the country of origin on and after January 1, 2005.

In the letter below, CITA instructs the Bureau of Customs and Border Protection to cancel all requirements for visas, ELVIS transmissions, GAL certifications, and exempt certifications, for goods exported from the country of origin on or after January 1, 2005. For goods that are the product of countries that are not members of the WTO, applicable requirements for visas, ELVIS transmissions, GAL certifications, and exempt certifications will remain in effect.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner, *Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive cancels all previous directives concerning requirements for visa, ELVIS transmissions, Guaranteed Access Level (GAL) Certifications, and Exempt Certifications, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, for the following countries, covering cotton, wool, man-made fiber, silk blend and non-cotton vegetable fiber textile and textile products subject to the Agreement on Textiles and Clothing, effective for goods exported from those countries on and after January 1, 2005: Bahrain, Bangladesh, Brazil, Cambodia, China, Colombia, Costa Rica, Dominican Republic, Egypt, El Salvador, Fiji, Guatemala, Haiti, Hong Kong, Hungary, India, Indonesia, Jamaica, Japan, Korea, Lebanon, Macau, Malaysia, Maldives, Mauritius, Macedonia, Nepal, Oman, Pakistan, Panama, Peru, Poland, Philippines, Qatar, Romania, Singapore, Slovak Republic, Sri Lanka, Taiwan, Thailand, Trinidad, Turkey, UAE, and Uruguay.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–27789 Filed 12–15–04; 4:05 pm]

BILLING CODE 3510–DS–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports From China

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of knit fabric (Category 222).

SUMMARY: The Committee has received a request from the National Council of Textile Organizations, the National Textile Association, the American Manufacturing Trade Action Coalition, and UNITE HERE! (Requestors) asking the Committee to reapply the limit on imports from China of knit fabric in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). On December 24, 2003 the Committee established an Accession Agreement limit on imports from China of knit fabric, which will expire on December 23, 2004. The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION: Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

Background

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of

Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On November 19, 2004, the Requestors asked the Committee to reapply an Accession Agreement textile and apparel safeguard action on imports from China of knit fabric (Category 222) on the grounds that an anticipated increase in imports of knit fabric after December 23, 2004, threatens to disrupt the U.S. market for knit fabric. The request is available at *http://otexa.ita.doc.gov/Safeguard_intro.htm.* In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for knit fabric and, if so, the role of Chinese-origin knit fabric in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will expire on December 23, 2004: (1) Whether imports of knit fabric from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) whether exports of Chinese-origin knit fabric to the United States are likely to increase substantially and imminently (due to existing unused production capacity, to capacity that can easily be shifted from the production of other products to the production of knit fabric, or to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) whether Chinese-origin knit fabrics that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) the level and the extent of any recent change in inventories of knit fabric in China or in U.S. bonded warehouses; (5) whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of knit fabric, and whether actual or anticipated imports of Chinese-origin knit fabric are likely to affect the development and production efforts of the U.S. knit fabric industry; and (6) whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of knit fabric as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than January 18, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

The Committee will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday-Friday, 8:30 a.m. and 5:30 p.m. in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC, (202) 482–3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese-origin knit fabric threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3712 Filed 12–16–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Modification to Announcement of Intent To Initiate the Process To Remove Aeronautical Information From Public Sale and Distribution

AGENCY: National Geospatial-Intelligence Agency (NGA), Department of Defense.

ACTION: Notice modification.

SUMMARY: After initial feedback from the public on NGA's notice in Federal Register Volume 69, Number 222, pages 67546–67547, NGA has determined that a period of public comment will benefit the final decision on this policy issue. Therefore, NGA is inviting public comment on the proposed action to withdraw aeronautical data and products from public distribution. The period of comment will be open from the date of this Register until 30 June 2005. NGA will consider all comments when making the final decision to go forward with this proposed action, in part, in whole, or not at all.

DATES: Period of Public Comment: December 17, 2004 to 30 June 2005. Proposed Implementation Date of final Decision: 1 October 2005.

ADDRESSES: To make sure your comments and related material are entered only once in the docket please submit them by only one of the following means:

(1) By e-mail to *aero.ocr@nga.mil;* or

(2) By mail to: National Geospatial-Intelligence Agency, Mail Stop D–111, Attn: Public Release of Aeronautical Products, 4600 Sangamore Road, Bethesda, MD 20816–5003.

Dated: December 13, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–27645 Filed 12–16–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Decision and Order Denying the American Water Heater Company Petition for Waiver of the DOE Test Procedure for Measuring the Energy Consumption of Water Heaters (Case No. WH–010)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order; Denial of Petition for Waiver.

SUMMARY: Today's notice denies the American Water Heater Company's (American) Petition for Waiver from the U.S. Department of Energy (DOE or the Department) Uniform Test Method for Measuring the Energy Consumption of Water Heaters. American claims the DOE test method does not allow for an accurate representation of the true energy consumption of its residential water heaters fitted with an automatic, adaptive, control, a microprocessor-based control system. The Department does not believe the current test procedure misrepresents the true energy consumption of the American water heater equipped with an automatic, adaptive, electronic control.

ADDRESSES: To read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mohammed Khan, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892; e-mail: *Mohammed.Khan@ee.doe.gov;* or Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR part 430.27(l), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, American is denied a Waiver from the Department's Uniform Test Method for Measuring the Energy Consumption of Water Heaters for its water heaters that have automatic, adaptive, electronic controls.

Issued in Washington, DC, on December 14, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: American Water Heater Company (American). (Case No. WH–010)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles'' which requires, among other things, that DOE prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The relevant DOE test procedure for purposes of today's decision and order is ''Uniform Test Method for Measuring the Energy Consumption of Water Heaters'' (current test procedure). The current test procedure is set forth in 10 CFR part 430, subpart B, Appendix E. It prescribes a method for characterizing the energy requirements of all types of water heaters and yields model-specific energy efficiency information that can aid consumers in their purchasing decisions.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products and electric motors. These provisions are set forth in 10 CFR 430.27 and 10 CFR 431.29. The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to waive temporarily the test procedure for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27(l)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

On January 24, 2002, the Department published a notice in the **Federal Register**, 67 FR 3449, (hereafter referred to as the January 2002 notice) regarding a Petition for Waiver and Application for Interim Waiver received on April 26, 2001, from American. In its Petition for Waiver, American sought modifications to the DOE test procedure to accommodate its electric water heaters which are fitted with an automatic, adaptive, electronic control device said to automatically raise or lower the thermostat set point based on patterns of use. American has developed the automatic, adaptive, electronic control in an effort to reduce standby energy losses. American stated that by lowering the temperature of the water within the water heater tank, standby losses can be reduced. American requested four modifications to the current test procedure:

(1) The inclusion of a qualification test on the automatic, adaptive, electronic control to ensure that it automatically changes the set point;

(2) Change the specified nominal average tank temperature to the lowest stable temperature achieved by the automatic, adaptive, electronic control from the existing constant set point of 135° F;

(3) Change the volume of water of each draw to provide an equal amount of thermal energy as would be provided in each draw of the current procedure; and

(4) Change the equations to compute the energy factor by replacing the 135° F nominal temperature with T_{su}, the maximum average tank temperature

observed after the recovery following the sixth draw.

In the January 2002 notice, the Department denied an Interim Waiver to American from the current test procedure and solicited comments, data and information as to whether to grant the Petition for Waiver as well as comments on testing water heaters with electronic controls.

Assertions and Determinations

The Department believes American's proposed test procedure is not appropriate because of certain issues which would arise from modifying the current test procedure as American requests. DOE received comments from the American Gas Association (AGA), American, Applied Energy Technology (AET), Rheem Manufacturing Company (Rheem), and Southern California Gas Company (SCG) in response to the Petition for Waiver and the January, 2002, notice. This section provides a discussion of the comments and places the issues into context.

The current test procedure stipulates a first-hour rating test that provides for an estimate of the amount of ''hot'' water (water having a temperature above 110° F) a storage water heater can supply within one hour. In its comments, AET and Rheem expressed concern that American did not propose a modified first-hour rating. In response to a similar DOE statement in the January 2002 notice, American provided results from first-hour rating tests for three of its basic models. These models were tested in accordance with the current test procedure except with the starting water heater tank temperature set at the lowest stable temperature, approximately 115° F instead of 135° F set point requirement. American asserted that this change to the first-hour rating test is appropriate because American advises consumers to use a thermostat set point of 120° F. American further argued that its modified first-hour rating test accurately reflects the typical hourly consumption of actual consumer use since 115° F is the typical temperature of tanks used by consumers.

DOE believes the first-hour rating test, as proposed by American in its response to the January 2002 notice, is unacceptable because drawing hot water until a 25° F drop is observed at the tank outlet from an initial temperature of 115° F would result in water that could be too cold for residential use. For example, Chapter 49 of the 2003 American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Applications Handbook lists the following representative hot water temperatures for various uses:

Hand washing: 105° F
Shaving: 115° F
Showers and tubs: 110° F
Residential dish washing and laundry: 140° F.

None of the temperatures listed above for residential applications are less than 105° F. Allowing American to draw water until the water temperature becomes 25° F cooler than the 115° F start temperature, as prescribed in its modified test proposal, would result in 90° F water from the water heater. Water at 90° F is below the recommended hot water temperatures such as those indicated in the ASHRAE Applications Handbook.

With respect to American's proposal for a modified start-temperature of 115° F, AET recommended setting a lower limit on the temperature of the outlet water as a criterion for stopping a draw during the first-hour rating test as opposed to using a fixed temperature drop. Again, considering the ASHRAE recommended temperatures, DOE believes that a lower limit should not be less than 105° F. Allowing American to perform a first-hour rating test at a lower limit of 105° F with a start temperature of 115° F (or even 120° F) could result in unequal delivery capacity ratings compared to water heaters that are unequipped with an automatic, adaptive, electronic control since start temperatures would be different and the lower limit could be different.

The Department also believes that the effectiveness of the automatic, adaptive, electronic control in establishing and maintaining a lowest stable temperature under typical use patterns is unpredictable. In the January 2002 notice, DOE stated that ''American did not provide any test data that DOE could use to determine that a lower thermostat set point would result from typical household use * * *.'' American responded by reiterating that the laboratory test data of three of its water heater models showed that the automatic, adaptive, electronic control would reach a lowest stable temperature. While American's data demonstrates that three of its water heaters equipped with automatic, adaptive, electronic controls can create a lowest stable temperature in a laboratory setting, American did not provide data that shows that the lowest stable temperature achievable in a laboratory represents, or correlates to, what may be typical of household use in the field. AET, Rheem, and SCG argued that American's request to test the water heater at the lowest stable temperature is inappropriate because there is no guarantee that in actual practice, the water heater would operate at such a level. Rheem and AET both stated that the proposed test procedure uses a best-case scenario and not necessarily thermostat set-points representative of actual field use.

American did not respond to DOE's request for data that characterizes water usage in family dwellings. American also did not provide evidence that, in actual field use, its water heaters would store water at the lowest stable temperature said to be achievable by the automatic, adaptive, electronic control. The data American provided to DOE on February 14, 2002, in response to the notice of January 2002, however, shows the performance of one water heater from each of four classes under a regulated draw pattern that artificially moves the thermostat set point up or down. The regulated draws are not necessarily representative of typical household water demand patterns and thus not necessarily representative of typical set-point temperatures and hot water temperatures. In its comments, American provides additional laboratory-derived data for four of the six basic models for which it seeks a waiver. American states that this data shows that the lowest, stable attainable temperatures range from 112° F to 118° F, and the temperature difference results from the control algorithm and hardware. Again however, American did not provide data that shows how the lowest stable temperature achievable in a laboratory represents or correlates to what may be typical of household use in the field.

Rheem also points out that the automatic, adaptive, electronic control has (four) different modes which can be manually selected. In addition to the ''Energy Saver Cycle'' mode, which American terms the control mode responsible for adjusting the stored water temperature based on the actual hot water usage pattern, the automatic, adaptive, electronic control includes a manually selectable constant temperature mode, a manually selectable vacation mode, and a manually selectable low-temperature mode. Because these modes can be manually selected, the Department recognizes that consumers may select a mode other than the Energy Saver Cycle mode. The potential energy savings, which American claims are achievable in the Energy Saver Cycle mode, would not be attained if the user selects an operating mode other than the Energy Saver Cycle (*e.g.*, a fixed set point of 135° F). The Department believes American has not demonstrated how the

consumer would set, and keep, the automatic, adaptive, electronic control in the Energy Saver Cycle mode.

The automatic, adaptive, electronic control's ability to automatically raise the set-point temperature when hot water demand is high poses a concern. It is conceivable that in actual field use, the new automatic, adaptive, electronic control could result in higher energy consumption since it is capable of upwardly adjusting the set point, making the water temperature inside the tank higher than that ordinarily observed or higher than the set-point temperature prescribed in the current test procedure. Operating at set-point temperatures higher than those prescribed in the current test procedure would result in energy consumption higher than that observed using the current test procedure.

Another reason the DOE believes American's proposed modifications are not suitable is that the modifications could allow for inequitable testing. AGA, AET, Rheem, and SCG believe American's proposed test procedure is biased towards the specific control device American has introduced. AGA, AET, and SCG commented that providing an exemption for such a control offers an unfair advantage to electric water heaters, as most gas water heaters do not incorporate an electricity source whereby an automatic controller such as American's can be powered and operated. Rheem and AET indicated that the proposed waiver would discount other types of controls. For example, conventional thermostats are also a type of control, but these simple and low-cost devices would not be covered under American's proposed rating procedure. American proposes a particular test that would qualify its control, but other controllers that work in a slightly different manner would not qualify under American's test, despite being capable of forcing the tank temperature to a lower level. SCG stated that, because of the large variability in hot water use, the purpose of the current test procedure is to provide a level playing field while not necessarily duplicating actual household energy consumption. Besides its assertion of posing an unfair advantage, AET also stated that, since American indicates no lowest stable temperature, the proposed modification would result in a test procedure potentially subject to abuse by allowing water heaters to be tested at temperatures that would not be considered useful. The proposed test procedure is potentially subject to further abuse since American has not specified thermostat cut-out and cut-in temperatures.

DOE believes the current test procedure provides for an equitable test metric for all applicable water heaters and an evaluation method that is representative of the true energy consumption of the water heater in question under the demand conditions specified. The current 24-hour-simulated-use test procedure simulates the consumption of hot water; the test begins with six draws at one-hour intervals. The total amount of water removed from the tank in these equally sized draws is 64.3 gallons at a flow rate of three gallons per minute. After the draw portion of the test, the water heater sits idly until a period of time totaling 24 hours has elapsed. The temperature of the water in the tank is set at 135° F, and the temperature of the inlet water is set at 58° F. The current test procedure says 135° F is the needed water temperature; American's proposed test would not allow the water heater to yield a water temperature of 135° F. American suggests a modified procedure, which is to deliver the identical amount of thermal energy by increasing the amount of water drawn from the tank at a lower temperature. This modification however, would not emulate a demand condition requiring 135° F water. Granting American's waiver request would result in an inequitable metric as some water heaters would need to satisfy demands at 135° F while others would only need to satisfy demands at much lower temperatures.

A control device such as American's can provide an automated means for changing the temperature of the water stored in a water heater. However, DOE does not believe that a waiver for a lower set-point-temperature is warranted on the basis of automation. American argues that its automatic, adaptive, electronic control will automatically cause the water heater to operate at a lower temperature than is required in the current test procedure and thus, should be tested at a lower temperature. While water heaters with conventional controllers can be manually set to operate at a lower temperature than is specified in the DOE test procedure and thus achieve the same effect as American's automatic, adaptive, electronic control, the current test procedure does not allow for a manual change. American's control feature does not change the fundamental operation of its water heater or create a unique operating regime that is unattainable by water heaters equipped with conventional controls. For these reasons also, DOE believes that allowing American to test its water heater equipped with its automatic, adaptive, electronic control at a set-point temperature lower than that specified in the current test procedure would create an inequitable test standard.

DOE believes American has not provided sufficient evidence to establish that the current test procedure misrepresents the true energy consumption of its water heater equipped with its new automatic, adaptive, electronic control. American has also not substantiated its claim that a water heater with its automatic, adaptive, electronic control will save energy compared to a water heater with a conventional control when responding to the same demand conditions. American has responded to DOE's request for more data by providing results on three tanks in a laboratory setting in which a series of short draws demonstrated an automatic decrease in tank temperature, and longer draws show an automatic increase in temperature. While the test results show that the automatic, adaptive, electronic control can decrease the temperature of the water inside the tank to a minimally acceptable temperature, as defined by the automatic, adaptive, electronic control, the results fail to demonstrate energy savings at temperatures matching those prescribed in the current DOE test procedure. Moreover, American has not provided data that justify a deviation from the prescribed temperatures. A demonstration of performance under an artificial draw pattern that is designed to force the water heater to its optimum control settings, which do not correspond to set-point temperatures prescribed in the current DOE test procedure and which are too low to yield water that is sufficiently warm for recommended household uses, is insufficient to establish that testing in accordance with the current test procedure would result in materially inaccurate comparative energy consumption data. The energy consumption measured under the current test procedure would not be misrepresentative of American's water heaters' true energy consumption under the demand conditions assumed in the test procedure. Accordingly, the petitioner has not met the criterion in 10 CFR 430.27 (l) that a waiver be granted if the prescribed test procedure evaluates the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data.

Furthermore, the Department believes American's automatic, adaptive, electronic control does not preclude testing in accordance with the current test procedure, and no other aspect of

the water heater's design precludes testing it in accordance with the provisions in the current test procedure. The Department has determined that the relevant basic models of water heaters that are the subject of the application for waiver can be tested under the current test procedure. AGA agrees with this conclusion; it stated that there is nothing that prevents American's water heater from being tested under the current test procedure, and that test results would accurately predict energy consumption under the behavioral assumptions inherent in the test procedure (namely, the amount of water required and the temperature at which that water is needed). Accordingly, the petitioner has not met the criterion in 10 CFR 430.27 (l) that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures.

Conclusion

Following a careful consideration of all the material that was submitted by American, the comments received, and based on the criteria for granting a waiver as provided in 10 CFR 430.27 (l), it is ordered that no waiver will be granted.

Issued in Washington, DC, on December 14, 2004.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 04–27643 Filed 12–16–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1003–002 and ER04–1007–002]

American Electric Power Service Corporation; Notice of Compliance Filing

December 9, 2004.

Take notice that on December 2, 2004, American Electric Power Service Corporation (AEPSC) on behalf of the AEP operating companies in its East Zone, (namely Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company) submitted a compliance filing pursuant to the Commission letter order issued November 1, 2004 in Docket Nos. ER04–1003–000, ER04–1003–001, ER04–1007–000 and ER04–1007–001.

AEPSC states that copies of the filing were served on parties on the official service list in the above-captioned proceedings as well as on AEP transmission customers and the state utility regulatory commissions in the states in which the AEP operating companies do business.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email 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 23, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3685 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–124]

ANR Pipeline Company; Notice of Compliance Filing

December 10, 2004.

Take notice that on December 6, 2004, ANR Pipeline Company (ANR) tendered for filing an updated Primary Route Exhibit for Contract No. 107876 between ANR and Wisconsin Gas.

ANR states that the exhibit is being filed in compliance with the Commission's November 30, 2004 order accepting ANR's amended negotiated rate agreements for filing. ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective November 1, 2004.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3688 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–011 and CP01–77–011]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

December 10, 2004.

Take notice that on December 2, 2004, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Sub. Fourth Revised Sheet No. 8, to become effective December 1, 2004.

Cove Point states that this sheet is being filed in compliance with the Commission's letter order regarding ''Tariff Sheets Implementing Settlement Rates'' issued November 30, 2004, in the above captioned dockets. Cove Point states that the tariff sheet sets forth the LTD–2 rate as established in the October 2002 Settlement and an LTD–1 Authorized Overrun rate unchanged from the previously approved level.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3698 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–25–000]

El Paso Merchant Energy—Petroleum Company, Rensselaer Plant Holdco, L.L.C., Bison Power LLC, Notice of Filing

December 9, 2004.

Take notice that on December 8, 2004, El Paso Merchant Energy—Petroleum Company (EPMEPC), Rensselaer Plant Holdco, L.L.C. (RPH) and Bison Power LLC (Bison Power) (jointly, Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act requesting that the Commission authorize the sale and transfer of the membership interests in RPH from EPMEPC to Bison Power. EPMEPC states that the Applicants requested privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112. EPMEPC also states that the Applicants also requested expedited consideration of this Application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3686 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–4–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

December 10, 2004.

Take notice that on November 8, 2004, Maritimes & Northeast Pipeline, L.L.C., (Maritimes) tendered for filing its compliance filing in response to the Commission's order issued on October 29, 2004, concerning the issues raised by Mobil Natural Gas Inc. in its protest dated October 1, 2004.

Maritimes states that copies of the filing have been served upon each person designated on the official service listed.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3696 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–055]

Northern Natural Gas Company; Notice of Negotiated Rate

December 10, 2004.

Take notice that on December 7, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 36 Revised Sheet No. 66, to be effective on December 7, 2004.

Northern states that the above sheet is being filed to implement specific negotiated rate transactions with Merrick's Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3697 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 803–068—California]

Pacific Gas and Electric Company; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Solicitation of Comments on the Pad and Scoping Document, Solicitation of Study Requests, and Commencement of Proceeding

December 3, 2004.

a. *Type of Filing:* Notice of intent to file a license application and pre-filing document (PAD) under the Commission's integrated licensing process and commencing licensing proceeding.

b. *Project No.:* 803–068.

c. *Date Filed:* October 4, 2004.

d. *Filed By:* Pacific Gas and Electric Company.

e. *Project Name:* DeSabla-Centerville Hydroelectric Project.

f. *Location:* On the Butte Creek and West Branch Feather River, in Butte County, California. The project occupies approximately 178 acres of United States Lands, managed by Forest Service and Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations.

h. *Pacific Gas and Electric Company Contact:* Randal Livingston, Senior Director, Power Generation, Pacific Gas and Electric Company, 245 Market, Room 1103 (N11E), P.O. Box 770000, San Francisco, CA 94177; (415) 973–6950, facsimile (415) 973–5323.

i. *FERC Contact:* Susan O'Brien at (202) 502–8449 or e-mail at *susan.obrien@ferc.gov.*

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of an environmental document for this project. Agencies wanting cooperating agency status should follow the filing instructions described in paragraph p below.

k. With this notice, we are initiating informal consultation with: (1) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR 402, and (2) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. We are designating Pacific Gas and Electric Company as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Pacific Gas and Electric Company filed a Pre-Application Document (PAD) including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations on October 4, 2004.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other

Commission projects. For assistance, contact FERC Online Support.

o. We issued the Scoping Document 1 (SD1) for this project on October 20, 2004, which describes the alternatives and issues to be addressed in our environmental document. Scoping meetings for this project were conducted on November 17–18, 2004, in Chico, CA. Copies of the SD1 and transcripts [1] of the scoping meetings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link as described in item n above. SD1 was also mailed to all entities on the Commission's mailing list for this project and was available at the Commission's scoping meetings. Commission staff will prepare a Scoping Document 2 (SD2) by March 18, 2005. The SD2 will include a complete list of issues identified through the scoping process and a revised process plan and schedule.

p. With this notice, we are soliciting comments on the PAD and SD1, as well as study requests. All comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission (original and eight copies) at the following address: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (DeSabla-Centerville Hydroelectric Project) and number (P–803–068), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by February 1, 2005.

All study requests must address the seven criteria, pursuant to 18 CFR 5.9(b) of the Commission's regulations.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-filing'' link.

q. At this time, the Commission intends to prepare a draft and final Environmental Assessment for the project in accordance with the National Environmental Policy Act.

r. Pacific Gas and Electric Company intends to hold a multi-day study plan workshop for all interested individuals and entities in Chico, CA on January 6–7 and 10–11, 2005 (location and times to be determined). Please contact Susan O'Brien, in paragraph i above, if you need further information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3684 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Transcripts of the scoping meetings will be made available to the public through the Commission's Web site after December 7, 2004.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–579–003]

Southern LNG Inc.; Notice of Revenue Report

December 10, 2004.

Take notice that on December 1, 2004, Southern LNG Inc., (SLNG) tendered for filing its cost and revenue information associated with the base reservation and commodity rates for terminal service at Elba Island.

Southern states that the information follows the Commission's regulations at 18 CFR 154.313 and is based on the twelve months ending on July 31, 2004, as adjusted. Southern states that it is not changing SLNG's current base rates, which were approved as recently as October 2002 in Docket No. RP02–129.

Southern states that the filing is being made in compliance with the Commission order issued on March 16, 2000 in this docket.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on December 16, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3691 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–108–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

December 10, 2004.

Take notice that on December 1, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective January 1, 2005:

Second Revised Sheet No. 247B; Original Sheet No. 247B.01; Second Revised Sheet No. 247C.

TransColorado proposes to revise section 12.9(d) of its FERC Gas Tariff in order to add two receipt and delivery combinations to the currently effective list of receipt and delivery point combinations which do not consume fuel and which are only to be assessed the lost or gained and unaccounted-for component of TransColorado's fuel gas reimbursement percentage (FGRP). TransColorado further states that it also seeks to define more specifically the transactions which are to be assessed only the lost or gained and unaccounted-for component of TransColorado's FGRP.

TransColorado states that a copy of this filing, with the Critical Energy Infrastructure Information removed, has been served upon TransColorado's

customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3694 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–33–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

December 10, 2004.

Take notice that on November 30, 2004, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing an application under section 7 of the Natural Gas Act to abandon a portion of the firm transportation service provided to Eastern Shore Natural Gas Company (Eastern Shore) under Transco's Rate Schedule FT.

In its application, Transco states that it currently renders for Eastern Shore, under that certain service agreement dated February 1, 1992, firm transportation service under Transco's Rate Schedule FT. Transco states that the service agreement sets forth the terms and conditions under which Transco provides firm transportation of 2,989 Dt of gas per day for Eastern Shore. Transco also states that although the firm transportation service is being rendered by Transco pursuant to Transco's blanket certificate authorization under Part 284(G) of the Commission's regulations, Transco requires specific Section 7(b) abandonment authorization (instead of simply abandoning the service automatically under section 284.221(d) of the regulations) because the subject FT service for Eastern Shore was previously converted from firm sales service to firm transportation service under Transco's Rate Schedule FT pursuant to Transco's revised Stipulation and Agreement in Docket Nos. RP88–68, et al., and that settlement provides that pre-granted abandonment shall not apply to such conversions (as further described in Article IV of the Service Agreement). Transco indicates that it is more fully explained in the application, Transco proposes to abandon 174 Dt/day of firm transportation service to Eastern Shore.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. Eastern Time on January 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3690 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–118–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 10, 2004.

Take notice that on December 7, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 311 and Fifth Revised Sheet No. 326 to become effective January 6, 2005.

Transco states that the purpose of the instant filing is to update the Delivery Point Entitlement (DPE) tariff sheets for Delmarva Power & Light Company and UGI Utilities Inc. in accordance with the provisions of Section 19.1(f) and 19.2(f) of the General Terms and Conditions of

Transco's Third Revised Volume No. 1 Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3695 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–39–000]

ANP Funding I, LLC, Complainant v. ISO New England Inc. and New England Power Pool, Respondents; Notice of Complaint

December 10, 2004.

Take notice that on December 6, 2004, ANP Funding I, LLC (ANP) filed a Complaint against ISO New England, Inc., (ISO–NE) and the New England Power Pool (NEPOOL). ANP requests that the Commission: (1) Order Respondents to continue to abide by Market Rule 1 in its entirety unless and until the Commission issues an order authorizing an amendment of the NEPOOL tariff; and (2) direct Respondents to withdraw OP20 and the revisions to OP5 that were approved by NEPOOL on November 5, 2004 on the basis that they are inconsistent with Market Rule 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. 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: December 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3692 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–14–004, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Filings

December 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Detroit Edison Company

[Docket Nos. ER04–14–004 and EL04–29–004]

Take notice that on December 2, 2004, The Detroit Edison Company tendered for filing with the Commission a revised ancillary services tariff in accordance with the terms of an uncontested settlement agreement approved by the Commission's order issued November 23, 2004, in Docket Nos. ER04–14–000 and EL04–29–000.

Comment Date: 5 p.m. eastern time on December 23, 2004.

2. The Dayton Power and Light Company

[Docket No. ER04–1256–002]

Take notice that on December 1, 2004, The Dayton Power and Light Company (Dayton) submitted an amended filing of a local delivery service agreement between Dayton and Buckeye Power, Inc.

Dayton states that a copy of this agreement has been served on Buckeye and the Public Utilities Commission of Ohio.

Comment Date: 5 p.m. eastern time on December 22, 2004.

3. Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Ameren Services Co., et al.

[Docket Nos. ER05–6–005, EL04–135–007 EL02–111–024, EL03–212–021]

Take notice that on December 1, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively Applicants) jointly

submitted for filing revisions to proposed Schedules 21 and 22 of the Midwest ISO open access transmission tariff submitted on November 24, 2004, in compliance with the Commission's November 18, 2004, order in Docket Nos. ER05–6, EL04–135, EL02–111, and EL03–212, *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004).

Applicants state that copies of the filing were served on parties on the official service list.

Comment Date: 5 p.m. eastern time on December 22, 2004.

4. JPMorgan Chase Bank, N.A.

[Docket No. ER05–283–000]

Take notice that on December 2, 2004, JPMorgan Chase Bank, N.A. (JPMCB) petitioned the Commission for acceptance of JPMCB Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. JPMCB states that it intends to engage in wholesale electric energy and capacity transactions as a marketer and a broker. JPMCB also states that it is not in the business of generating or transmitting electric power. JPMCB further states that JPMorgan is a leading international banking and financial institution formed under the laws of the State of Delaware with its principal executive offices in New York, New York. JPMCB indicates that in transactions where JPMCB sells electric power, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment Date: 5 p.m. eastern time on December 23, 2004.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–285–000]

Take notice that on December 2, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated (ATSI) (collectively, Applicants), filed with the Commission proposed revisions to the Midwest ISO open access transmission tariff (OATT), which revisions are intended to provide for ATSI's transmission rates to be derived pursuant to the rate formulae in Attachment O to the Midwest ISO OATT. The Midwest ISO requests an effective date of February 1, 2005.

The Midwest ISO states that it has served a copy of this filing, including all attachments, electronically upon all Midwest ISO members, member representatives of transmission customers, and the Midwest ISO advisory committee participants, as well as all state commissions within the affected regions. In addition, the Midwest ISO states that this filing will be posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC.''

Comment Date: 5 p.m. eastern time on December 23, 2004.

6. American Electric Power Service Corporation

[Docket No. ER05–286–000]

Take notice that on December 2, 2004, American Electric Power Service Corporation (AEPSC), submitted for filing Notices of Cancellation for a Network Service Agreement and a Network Operating Agreement between Oklahoma Municipal Power Authority (OMPA) and Central and South West Services, Inc., designated agent for Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company. AEPSC requests an effective date of January 1, 2005.

AEPSC states that it has served copies of the filing on OMPA and the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment Date: 5 p.m. eastern time on December 23, 2004.

7. Granite Ridge Energy, LLC

[Docket No. ER05–287–000]

Take notice that on December 2, 2004, Granite Ridge Energy, LLC (Granite Ridge Energy) filed (1) a Notice of Succession to notify the Commission that, as a result of a name change, Granite Ridge Energy has succeeded to the FERC rate schedule of AES Londonderry, L.L.C., and (2) amendments to the rate schedule to reflect the fact that Granite Ridge Energy is no longer affiliated with Indianapolis Power and Light Company, or any other electric utility with a franchised service territory. Granite Ridge Energy requests an effective date of November 2, 2004.

Comment Date: 5 p.m. eastern time on December 23, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–290–000]

Take notice that on December 2, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, PSEG Nuclear LLC, and Exelon Generation Company, LLC, and Public Service Electric and Gas Company, Atlantic City Electric Company, Delmarva Power & Light Company, and PECO Energy Company. PJM requests an effective date of November 2, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on December 23, 2004.

9. AVEC Holdings, LLC

[Docket No. ER05–291–000]

Take notice that on December 2, 2004, AVEC Holdings, LLC (AVEC) tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER98–3565–000.

Comment Date: 5 p.m. eastern time on December 23, 2004.

10. California Independent System Operator Corporation

[Docket No. ER05–292–000]

Take notice that on December 2, 2004, the California Independent System Operator Corporation (ISO), tendered for filing an unexecuted meter service agreement for ISO metered entities (MSA), an unexecuted participating generator agreement (PGA), and an unexecuted Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Corona, California (Corona) for acceptance by the Commission. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the UDC Operating Agreement. The ISO states that the non-privileged elements of this filing have been served on Corona and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the MSA and PGA to be made effective on December 15, 2004, and the UDC Operating Agreement to be made effective on January 1, 2005.

Comment Date: 5 pm eastern time on December 23, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3680 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–14–004, et al.]

The Detroit Edison Company, et al.; Electric Rate and Corporate Filings

December 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. The Detroit Edison Company

[Docket Nos. ER04–14–004 and EL04–29–004]

Take notice that on December 2, 2004, The Detroit Edison Company tendered for filing with the Commission a revised ancillary services tariff in accordance with the terms of an uncontested settlement agreement approved by the Commission's order issued November 23, 2004, in Docket Nos. ER04–14–000 and EL04–29–000.

Comment Date: 5 p.m. eastern time on December 23, 2004.

2. The Dayton Power and Light Company

[Docket No. ER04–1256–002]

Take notice that on December 1, 2004, the Dayton Power and Light Company (Dayton) submitted an amended filing of a local delivery service agreement between Dayton and Buckeye Power, Inc.

Dayton states that a copy of this agreement has been served on Buckeye and the Public Utilities Commission of Ohio.

Comment Date: 5 p.m. eastern time on December 22, 2004.

3. Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Midwest Independent Transmission System Operator, Inc., Ameren Services Co., et al.

[Docket Nos. ER05–6–005, EL04–135–007, EL02–111–024, and EL03–212–021]

Take notice that on December 1, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively Applicants) jointly submitted for filing revisions to proposed Schedules 21 and 22 of the Midwest ISO open access transmission tariff submitted on November 24, 2004, in compliance with the Commission's November 18, 2004, order in Docket Nos. ER05–6, EL04–135, EL02–111, and EL03–212, *Midwest Indep. Transmission Sys. Operator, Inc.,* 109 FERC ¶ 61,168 (2004).

Applicants state that copies of the filing were served on parties on the official service list.

Comment Date: 5 p.m. eastern time on December 22, 2004.

4. JPMorgan Chase Bank, N.A.

[Docket No. ER05–283–000]

Take notice that on December 2, 2004, JPMorgan Chase Bank, N.A. (JPMCB) petitioned the Commission for acceptance of JPMCB Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. JPMCB states that it intends to engage in wholesale electric energy and capacity transactions as a marketer and a broker. JPMCB also states that it is not in the business of generating or transmitting electric power. JPMCB further states that JPMorgan is a leading international banking and financial institution formed under the laws of the State of Delaware with its principal executive offices in New York, New York. JPMCB indicates that in transactions where JPMCB sells electric power, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment Date: 5 p.m. eastern time on December 23, 2004.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–285–000]

Take notice that on December 2, 2004, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated (ATSI) (collectively, Applicants), filed with the Commission proposed revisions to the Midwest ISO open access transmission tariff (OATT), which revisions are intended to provide for ATSI's transmission rates to be derived pursuant to the rate formulae in Attachment O to the Midwest ISO OATT. The Midwest ISO requests an effective date of February 1, 2005.

The Midwest ISO states that it has served a copy of this filing, including all attachments, electronically upon all Midwest ISO members, member representatives of transmission customers, and the Midwest ISO advisory committee participants, as well as all state commissions within the affected regions. In addition, the Midwest ISO states that this filing will be posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC.''

Comment Date: 5 p.m. eastern time on December 23, 2004.

6. American Electric Power Service Corporation

[Docket No. ER05–286–000]

Take notice that on December 2, 2004, American Electric Power Service Corporation (AEPSC), submitted for filing Notices of Cancellation for a Network Service Agreement and a Network Operating Agreement between Oklahoma Municipal Power Authority (OMPA) and Central and South West Services, Inc., designated agent for Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company. AEPSC requests an effective date of January 1, 2005.

AEPSC states that it has served copies of the filing on OMPA and the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission

and the Arkansas Public Service Commission.

Comment Date: 5 p.m. eastern time on December 23, 2004.

7. Granite Ridge Energy, LLC

[Docket No. ER05–287–000]

Take notice that on December 2, 2004, Granite Ridge Energy, LLC (Granite Ridge Energy) filed (1) a Notice of Succession to notify the Commission that, as a result of a name change, Granite Ridge Energy has succeeded to the FERC rate schedule of AES Londonderry, L.L.C., and (2) amendments to the rate schedule to reflect the fact that Granite Ridge Energy is no longer affiliated with Indianapolis Power and Light Company, or any other electric utility with a franchised service territory. Granite Ridge Energy requests an effective date of November 2, 2004.

Comment Date: 5 p.m. eastern time on December 23, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–290–000]

Take notice that on December 2, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, PSEG Nuclear LLC, and Exelon Generation Company, LLC, and Public Service Electric and Gas Company, Atlantic City Electric Company, Delmarva Power & Light Company, and PECO Energy Company. PJM requests an effective date of November 2, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on December 23, 2004.

9. AVEC Holdings, LLC

[Docket No. ER05–291–000]

Take notice that on December 2, 2004, AVEC Holdings, LLC (AVEC) tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER98–3565–000.

Comment Date: 5 p.m. eastern time on December 23, 2004.

10. California Independent System Operator Corporation

[Docket No. ER05–292–000]

Take notice that on December 2, 2004, the California Independent System Operator Corporation (ISO), tendered for filing an unexecuted meter service agreement for ISO metered entities (MSA), an unexecuted participating generator agreement (PGA), and an unexecuted Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Corona, California (Corona) for acceptance by the Commission. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the UDC Operating Agreement. The ISO states that the non-privileged elements of this filing have been served on Corona and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the MSA and PGA to be made effective on December 15, 2004, and the UDC Operating Agreement to be made effective on January 1, 2005.

Comment Date: 5 p.m. eastern time on December 23, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3687 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–24–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

December 8, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric and Power Company

[Docket No. EC05–24–000]

Take notice that, on December 3, 2004, Virginia Electric and Power Company (Dominion Virginia Power) filed, pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33 (2004), an application requesting Commission authorization for: (1) The proposed transfer to Dominion Virginia Power, a subsidiary of Dominion Resources, Inc. (DRI), of all of the assets of Panda-Rosemary, L.P. (Panda-Rosemary); and (2) Dominion Virginia Power's ownership of an approximately 181.5 MW generating facility and its appurtenant transmission facilities located in Roanoke Rapids, North Carolina resulting from the proposed acquisition. The Applicant requests that the Commission act on this application within approximately sixty days or by February 2, 2005.

Dominion Virginia Power states that copies of the filing were served upon the parties to the transaction, Dominion Virginia Power's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

2. Rensselaer Plant Holdco, L.L.C.

[Docket No. EG05–22–000]

On December 6, 2004, Rensselaer Plant Holdco, L.L.C. (RPH), a Delaware limited liability company with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale

generator status pursuant to part 365 of the Commission's regulations.

RPH states that it owns and operates an electric generating facility with a total generating capacity of 79.4 MW natural gas-fired, combined cycle power plant located in Rensselaer, New York. RPH further states that the facility is interconnected to the Niagara Mohawk Power Corporation transmission grid.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

3. Oklahoma Municipal Power Authority v. American Electric Power Service Co. as agent for the AEP Operating Companies

[Docket No. EL05–38–000]

Take notice that on December 6, 2004, the Oklahoma Municipal Power Authority (OMPA) filed a complaint against the American Electric Power Service Company as agent for the AEP Operating Companies (collectively, AEP) seeking fast track processing and an order directing AEP to file an unexecuted service agreement for the network transmission service OMPA has requested as necessary to facilitate OMPA's contracted for acquisition of an increased ownership interest in Oklaunion Unit No. 1. In particular, OMPA states that it seeks Commission determination as to what additional transmission facilities are necessary to provide the requested service and resolve the issues between OMPA and AEP pertaining to the allocation of costs for and the proper size of the interconnection between ERCOT and SPP.

OMPA states that a copy of the Complaint has been served on Respondent, AEP by electronic and first class mail.

Comment Date: December 28, 2004.

4. AES Londonderry, L.L.C.

[Docket No. ER00–1147–003]

Take notice that on December 2, 2004, Granite Ridge Energy, LLC (Granite Ridge Energy) filed with the Commission a notice of change in status in connection with the transfer of the ownership interests that were held by AES Londonderry Holdings, L.L.C. in the Project Company, which owns and operates a 720-megawatt gas-fired merchant power plant located in Londonderry, New Hampshire, to the creditors of the Project Company.

Comment Date: 5 p.m. Eastern Time on December 23, 2004.

5. South Point Energy Center, LLC; Gilroy Energy Center, LLC; MEP Pleasant Hill, LLC; Acadia Power Partners, LLC

[Docket Nos. ER01–2887–003, ER01–2688–005, ER99–2858–005, ER02–1406–004]

Take notice that on December 3, 2004, South Point Energy Center, LLC, Gilroy Energy Center, LLC, Acadia Power Partners, LLC, and MEP Pleasant Hill, LLC submitted a joint triennial updated market power analysis.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER04–828–001]

Take notice that on December 3, 2004, Pacific Gas and Electric Company (PG&E) submitted a compliance filing pursuant to the Commission's July 7, 2004 Order in the above-referenced proceeding. PG&E states that the subject filing included an amended agreement entitled *Special Facilities Agreement for the Newark Substation Circuit Breaker 460 and 470 Replacement* (SFA) between PG&E and the City of Santa Clara, California, doing business as Silicon Valley Power (SVP) (collectively, Parties). PG&E also states that the amendments to the SFA are in compliance with the Commission's July 7, 2004 Order in this proceeding and reflect the outcome of negotiations between the Parties to resolve issues regarding the apportionment of the monthly cost of ownership charge and the costs associated with the design and installation of the special facilities. PG&E further states that the Commission originally accepted and suspended the SFA for filing on July 7, 2004 in FERC Docket No. ER04–828–000 and designated the SFA as Service Agreement No. 60 under FERC PG&E Electric Tariff, Sixth Revised Volume No. 5.

PG&E states that copies of this filing were served upon SVP, the California Independent System Operator, and the California Public Utilities Commission (CPUC).

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

7. MidAmerican Energy Company

[Docket No. ER05–8–001]

Take notice that on December 3, 2004, MidAmerican Energy Company (MidAmerican) tendered for filing Amended Notices of Cancellation of: (1) Electric Service Agreement under FERC Electric Tariff Original Volume No. 6, Service Agreement No. 1, filed by MidAmerican, dated November 16, 1976 (Buffalo Agreement) between MidAmerican and the City of Buffalo, Iowa; and (2) Electric Service Agreement under FERC Electric Tariff Original Volume No. 6, Service Agreement No. 2, dated November 1, 1976 (Callender Agreement) between MidAmerican and the City of Callender, Iowa. MidAmerican requests an effective date of December 31, 2004.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

8. American Transmission Company LLC

[Docket No. ER05–262–000]

Take notice that on November 24, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Prairie du Sac Utilities. ATCLLC requests an effective date of November 1, 2004.

Comment Date: 5 p.m. Eastern Time on December 15, 2004.

9. Xcel Energy Services Inc.

[Docket No. ER05–293–000]

Take notice that on December 3, 2004, Xcel Energy Services Inc. (Xcel Energy Services), on behalf of itself and the Xcel Energy Operating Companies, namely Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company, submitted the first amended joint operating agreement among Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, Southwestern Public Service Company, and Xcel Energy Services Inc. as agent. Xcel Energy Services requests an effective date of February 1, 2005.

Xcel Energy Services states that copies of the filing were served upon the Xcel Energy Services' jurisdictional customers, and the applicable state public utility commissions.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

10. PacifiCorp

[Docket No. ER05–296–000]

Take notice that on, December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of the May 26, 1960 agreement between PacifiCorp and the Milton-Freewater Electric Department providing an emergency interconnection and standby electric service (PacifiCorp's Rate Schedule FERC No. 52).

PacifiCorp states that copies of this filing were supplied to the Public Utility

Commission of Oregon, the Washington Utilities and Transportation Commission, and Milton-Freewater Electric Department.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

11. PacifiCorp

[Docket No. ER05–297–000]

Take notice that on December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations a Notice of Cancellation of the May 10, 1961 agreement between PacifiCorp and the Tillamook People's Utility District providing for the separation of the parties' systems (PacifiCorp's Rate Schedule FERC No. 53).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Tillamook People's Utility District.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

12. PacifiCorp

[Docket No. ER05–298–000]

Take notice that on December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of the February 20, 1958 agreement between PacifiCorp and the Sheridan-Johnson Rural Electrification Association providing for transmission service to Buffalo Substation (PacifiCorp's Rate Schedule FERC No. 59).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Powder River Energy Corporation on behalf of Sheridan-Johnson Rural Electrification Association.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

13. PacifiCorp

[Docket No. ER05–299–000]

Take notice that on December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations a Notice of Cancellation of the November 10, 1970 agreement between PacifiCorp and the Central Lincoln People's Utility District providing an emergency interconnection and standby electric service (PacifiCorp's Rate Schedule FERC No. 93).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Central Lincoln People's Utility District.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

14. PacifiCorp

[Docket No. ER05–300–000]

Take notice that on December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations a Notice of Cancellation of the October 1, 1965 agreement between PacifiCorp and the Ogden Defense Depot providing for electric and transmission service (PacifiCorp's Rate Schedule FERC No. 285).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Hill Air Force Base (on behalf of Ogden Defense Depot).

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

15. PacifiCorp

[Docket No. ER05–301–000]

Take notice that on December 6, 2004, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's rules and regulations a Notice of Cancellation of the October 30, 1991 agreement between PacifiCorp and the Utah Associated Municipal Power Systems (UAMPS) providing for operation and maintenance of UAMPS' Central Substation by PacifiCorp (PacifiCorp's Rate Schedule FERC No. 317).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and UAMPS.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

16. Pinelawn Power LLC

[Docket No. ER05–305–000]

Take notice that on December 6, 2004, Pinelawn Power LLC (Pinelawn Power) filed with Commission, pursuant to section 205 of the Federal Power Act, an application to engage in the sale of electric energy, capacity and ancillary services at market-based rates. Pinelawn Power LLC states that it is engaged in the business of owning and operating a 79.9 MW generation facility located in The Town of Babylon, New York. Pinelawn Power also states that it seeks certain waivers and blanket approvals under the Commission's Regulations and the issuance of a Commission order before February 4, 2005. Pinelawn Power requests an effective date of February 4, 2005.

Pinelawn Power states that a copy of the filing has been served on the Long Island Power Authority, the entity with which Pinelawn Power LLC has contracted for the sale of the entire output of its facility.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

17. Reliant Energy Wholesale Generation, LLC

[Docket No. ER05–306–000]

Take notice that on December 6, 2004, Reliant Energy Wholesale Generation, LLC (REWG) filed with the Commission a Notice of Succession pursuant to sections 35.16 and 131.51 of the Commission's Regulations, 18 CFR 35.16 and 131.51 (2004), notifying the Commission that REWG is succeeding to the Rate Schedule FERC No. 2 of Reliant Energy Hunterstown, LLC, for reactive supply and voltage control from generation sources service.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3699 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000, CP04–293–000 and CP04–358–000]

KeySpan LNG, L.P., Algonquin Gas Transmission, L.L.C., Notice of Public Comment Meetings for the Proposed KeySpan LNG Facility Upgrade Project

December 10, 2004.

As referenced in the November 30, 2004 ''Notice of Availability of the Draft Environmental Impact Statement for the Proposed KeySpan LNG Facility Upgrade Project,'' the staff of the Federal Energy Regulatory Commission has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas facility upgrade and natural gas pipeline facilities proposed by KeySpan LNG, L.P. and Algonquin Gas Transmission, L.L.C., respectively, in the above-referenced dockets (collectively referred to as the KeySpan LNG Facility Upgrade Project).

The November 30, 2004 notice provided instructions for filing written comments on the draft EIS. In addition to or in lieu of sending written comments, we invite you to attend the public comment meetings we will conduct in the project area. Representatives of the U.S. Army Corps of Engineers and the U.S. Coast Guard will participate in the meetings, and the U.S. Department of Transportation has also been invited to participate. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared. The locations and times of the public comment meetings are as follows:

Tuesday, January 11, 2005

Roger Williams Middle School, 278 Thurbers Avenue, Providence, Rhode Island (Auditorium), 6:45 p.m. (EST)

Wednesday, January 12, 2005

Gaudet Middle School, 1113 Aquidneck Avenue, Middletown, Rhode Island (Cafetorium; entrance off Turner Road), 6:45 p.m. (EST)

Magalie R. Salas,

Secretary.

[FR Doc. E4–3689 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2082–027]

Klamath Hydroelectric Project; Notice of Meetings

December 10, 2004.

Commission staff is scheduled to meet with representatives of the Klamath, Hoopa Valley, and Yurok Tribes regarding the Klamath Hydroelectric Project relicensing. Meetings will be held with those tribes at the locations and times listed below:

Klamath Tribes,
Klamath Tribes Administration Building,
501 Chiloquin Boulevard,
Chiloquin, OR,
January 11, 2005, 10 a.m. (PST).

Hoopa Valley Tribe,
Tribal Council Chambers,
Hoopa Valley Tribe Neighborhood Facilities,
Highway 96,
Hoopa, California,
January 13, 2005, 9 a.m. (PST).

Yurok Tribe,
190 Klamath Boulevard,
Klamath, California,
January 14, 2005, 10 a.m. (PST).

Members of the public and intervenors in the referenced proceedings may attend these meetings; however, participation will be limited to tribal representatives and the Commission representatives. If the Tribes decide to disclose information about a specific location which could create a risk or harm to an archeological site or Native American cultural resource, the public will be excused for that portion of the meeting when such information is disclosed.[1] If you plan to attend any of these meetings, please contact John Mudre at the Federal Energy Regulatory Commission at 202–502–8902 or *john.mudre@ferc.gov.* The meetings will be transcribed by a court reporter, and public transcripts will be made available by the Commission following the meetings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3693 Filed 12–16–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Protection from public disclosure involving this kind of specific information is based upon 18 CFR 4.32(b)(3)(ii) of the Commission's regulations implementing the Federal Power Act.

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0020; FRL–7849–7]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (Renewal), ICR Number 1805.04, OMB Number 2060–0377

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, 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. This ICR is scheduled to expire on December 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 18, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0020, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: 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: Leonard Lazarus, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue,

NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; email address: *lazarus.leonard@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 May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0020, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET 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. 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM) (Renewal).

Abstract: This National Emission Standards for Hazardous Air Pollutants (NESHAP) covering emissions from chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills relies on the capture and/or reduction of HAP emissions by recovery furnaces, smelt dissolving tanks (SDTs), lime kilns, or soda or sulfite combustion units. The recordkeeping, notification and reporting requirements of the standard are critically important as they allow the Agency to determine to which facilities the standards apply and they enable the Agency to monitor initial and ongoing compliance with the standards. As much as possible, in order to reduce the burden, the compliance monitoring and recordkeeping requirements are designed to cover parameters that are already being monitored as part of the manufacturing process.

Pulp mill owners or operators (respondents) are required to submit initial notifications, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Respondents are required to monitor and keep records of specific operating parameters for each control device and to perform and document periodic inspections of the closed vent and wastewater conveyance systems. All respondents must submit semiannual summary reports of monitored parameters, and they must submit an additional monitoring report during each quarter in which monitored parameters were outside the ranges established in the standard or during initial performance tests. A source identified to be out of compliance with the NESHAP will be required to submit quarterly reports until the Administrator is satisfied that the source has corrected its compliance problem. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to Maximum Achievable Control Technology (MACT) standards. Since none of the required reports to the Agency have been deemed confidential business information, they will not be treated as such. Responses are mandatory (40 CFR part 63, subpart MM).

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 475 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; 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: Owners or operators of pulp mills with chemical recovery combustion sources.

Estimated Number of Respondents: 130.

Frequency of Response: Initial, on occasion, quarterly, semiannually.

Estimated Total Annual Hour Burden: 150,043 hours.

Estimated Total Annual Costs: $8,667,298, which includes $123,000 annualized capital/startup costs, $864,000 annual O&M costs, and $7,680,298 annual labor costs.

Changes in the Estimates: There is an increase of 128,515 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an improved estimate of the number of facilities and the burden for each facility.

Dated: December 4, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–27669 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0090, FRL–7849–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulation of Fuel and Fuel Additives: Gasoline Volatility (Renewal), EPA ICR Number 1367.07, OMB Control Number 2060–0178

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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). This is a request to renew an existing collection. This ICR is scheduled to expire on December 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before January 18, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0090, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: 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: James W. Caldwell, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; e-mail address: *caldwell.jim@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 25, 2004 (69 FR 52253), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OAR–2004–0090, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET 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. 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Regulation of Fuels and Fuel Additives: Gasoline Volatility (40 CFR 80.27) (Renewal).

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled in the spring and summer in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to a Federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains at least 9 volume percent ethanol is subject to a standard that is 1.0 psi greater. As an aid to industry compliance and EPA enforcement, the product transfer document, which is prepared by the producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the distribution system, particularly in retail storage tanks, of gasoline which contains ethanol with gasoline which does not contain ethanol. Such mixing would likely result in a gasoline with an ethanol concentration of less than 9 volume percent but with an RVP above the standard. Also, a party wishing a testing exemption for research on gasoline that is not in compliance with the applicable volatility standard, must submit certain information to EPA. 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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual reporting and recordkeeping burden for this collection of information is estimated to average five seconds 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; 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: Refiners, blenders, and importers of gasoline blended with ethanol, and parties seeking a testing exemption.

Estimated Number of Respondents: 1,500.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 6,447.

Estimated Total Annual Cost: $419,075, which includes $0 annualized capital/startup costs, $20 annual O&M costs, and $419,055.

Changes in Estimates: There is an increase of 2,269 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the increased use of ethanol in gasoline since the previous ICR.

Dated: December 4, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–27670 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6658–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed December 6, 2004 through December 10, 2004 Pursuant to 40 CFR 1506.9.

EIS No. 040567, Final EIS, FHW, NY, Slingerlands Bypass Extension (NYS Route 85) (P.I.N. 1125.19) Route 140 (Cherry Avenue Extension) to the Albany City Line, Reconstruction Town of Bethlehem, Albany County, NY, Wait Period Ends: January 18, 2005, Contact: Robert Arnold (581) 431–4127.

EIS No. 040568, Final EIS, FHW, IL, U.S. Route 20 (FAP 301) Project, Construction from IL Route 84 north of Galena to Bolton Road northwest of Freeport, Funding, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, Jo Davies and Stephenson Counties, IL, Wait Period Ends: January 18, 2005, Contact: Norman R. Stoner (217) 492–4640.

EIS No. 040569, Draft EIS, NRC, VA, Early Site Permit (ESP) at the North Anna Power Station ESP Site (TAC No. MC1128), Construction and Operation, NUREG–1811, Louisa County, VA, Comment Period Ends: March 1, 2005, Contact: Jack Cushing (301) 415–1424.

EIS No. 040570, Final EIS, AFS, OR, Diamond Lake Restoration Project, Improve Water Quality and the Recreational Fishery, Umpqua National Forest, Diamond Lake Ranger District, Umpqua River Basin, Douglas County, OR, Wait Period Ends: January 18, 2005, Contact: Sherri Chambers (541) 496–3532.

EIS No. 040571, Draft EIS, COE, OH, Mill Creek, Ohio Flood Damage Reduction Project, To Reduce Damages to Communities, Hamilton County, OH , Comment Period Ends: January 31, 2005, Contact: Barry Schueler (502) 315–6780.

EIS No. 040572, Final EIS, FHW, WI, US 10 Highway Improvements between Marshfield and Appleton, Trestik Road—CTH ''K'' (Stevens Point Bypass), Funding and COE Section 404 Permit, Portage County, WI, Wait Period Ends: January 18, 2005, Contact: Wesley Shemwell (608) 829–7521.

EIS No. 040573, Final EIS, FHW, TX, Kelly Parkway Project, Construction from U.S. 90 to TX–16, to Improvement Transportation Mobility, Facilitate Economic Development, and Enhance Safety, Funding and U.S. Army COE Section 404 Permit, San Antonio, Bexar County, TX, Wait Period Ends: January 18, 2005, Contact: Salvador Deocampo (512) 536–5950.

EIS No. 040574, Draft EIS, AFS, NM, Buckman Water Diversion Project, Proposal to Divert Water from Rio Grande and San Juan-Chama Project, To Meet Water Supply Needs, Sante Fe National Forest and Taos Field Office, Sante Fe County, NM, The U.S. Department of Agriculture's, Forest Service and The U.S. Department of Interior's, Bureau of Land Management are Joint Lead Agencies on the above project. The Contact Person for AFS is Sanford Hurlocker at phone number (505) 753–7331; Contact person for BLM is Sharon Churchill at (505) 751–4725.

EIS No. 040575, Final EIS, IBR, CA, San Joaquin River Exchange Contractors Water Authority—2005 to 2014, Water Transfer Program, Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Kern, and Kings Counties, CA, Wait Period Ends: January 18, 2005, Contact: Bob Eckart (916) 978–5051.

EIS No. 040576, Final EIS, BIA, OR, Wanapa Energy Center, Construction and Operation a New 1,200 Megawatt (MW) Natural Gas-Fired Electric Power Generating Facility, Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the City of Hermiston and the Port of Umatilla, OR, Wait Period Ends: January 18, 2005, Contact: Jerry Lauer (541) 278–3786.

EIS No. 040577, Final EIS, BIA, WY, Wind River Natural Gas Field Development Project, Construction, Drilling and Production Operation of Natural Gas Wells, Fremont County, WY, Wait Period Ends: January 18, 2005, Contact: Ray A. Nation (307) 332–3718.

EIS No. 040578, Final, FTA, OR, WA, South Corridor Project, I–205/Portland Mall Light Rail (Phase I), Selected the Locally Preferred Alternative (LPA), Clackamas and Multnomah Counties, OR, Wait Period Ends: January 31, 2005, Contact: Rebecca Reyes-Alicea (206) 220–4464.

EIS No. 040579, Final EIS, DOI, AZ, CA, NV, NM, Programmatic EIS—Lower Colorado River Multi-Species Conservation Program, Issuing a Incidental Take Permit based on the Plan, Extending from Lake Mead to the Southerly International Boundary with Mexico, AZ, NV and CA, Wait Period Ends: January 18, 2005, Contact: Glen Gould (702) 293–8702.

EIS No. 040580, Final EIS, NPS, WI, Arrowhead-Weston Transmission Line Right-of-Way Crossing of the St. Croix National Scenic Riverway, U.S. Army COE Section 10 and 404 Permits, Washburn County, WI, Wait Period Ends: January 18, 2005, Contact: Jill Medland (715) 483–3284.

EIS No. 040581, Final EIS, DOE, CA, Imperial-Mexicali 230-kV Transmission Lines, Construct a Double-Circuit 230-kV Transmission Line, Presidential Permit and Right-of-Way Grants, Imperial Valley Substation to Calexico at the U.S.-Mexico Border, Imperial County, CA and U.S.-Mexico Border, Wait Period Ends: January 18, 2005, Contact: Ellen Russell (202) 586–9624.

EIS No. 040582, Final EIS, IBR, CA, Sacramento River Settlement Contractors (SRSC), To Renew the Settlement Contractors Long-Term Contract Renewal for 145 Contractors, Central Valley Project (CVP), Sacramento River, Shasta, Tehama, Butte, Glenn, Colusa, Sutter, Yolo, Sacrament, Portion of Placer and Solano Counties, CA, Wait Period Ends: January 18, 2005, Contact: Buford Holt (916) 989–7179.

EIS No. 040583, Draft EIS, BLM, WY, Rawlin Field Office Planning Area Resource Management Plan, Addresses the Comprehensive Analysis of Alternatives for the Planning and Management of Public Land and Resource Administered by (BLM), Albany, Carbon, Laramie and Sweetwater Counties, WY , Comment Period Ends: March 17, 2005, Contact: John Spehar (307) 328–4264.

Amended Notices

EIS No. 040472, Draft EIS, AFS, CO, Village at Wolf Creek Project, Application for Transportation and Utility Systems and Facilities, Proposed Development and Use of Roads and Utility Corridors Crossing, National Forest System Lands to Access 287.5 Acres of Private Property Land, Mineral County, CO, Comment Period Ends: January 5, 2005, Contact: Robert Dalrymple (719) 852–5941. Revision of FR Notice Published on 11/26/2004: CEQ Comment Period Ending on 12/06/2004 has been Extended to 1/05/2005.

EIS No. 040538, Draft EIS, FAA, FL, Panama City-Bay County International Airport (PFN), Proposed Relocation to a New Site, NPDES Permit and U.S. Army COE Section 404 Permit, Bay County, FL, Comment Period Ends: January 28, 2005, Contact: Virginia Lane (407) 812–6331, Ext 129. Revision of FR Notice Published on 11/26/04: CEQ Comment Period Ending 1/21/2005 has been Extended to 1/28/2005.

EIS No. 040564, Final EIS, AFS, SD, Southeast Geographic Area Rangeland Management on National Forest System Lands of the Buffalo Gap National Grassland, To Implement Best Management Grazing Practices, Buffalo Gap National Grassland, Falls River Ranger District, Fall River County, SD, Wait Period Ends: January 10, 2005, Contact: Michael L. Erik (605) 745–4107. Revision of FR Notice Published on 12/10/04: Correction to Title.

Dated: December 14, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–27673 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6658–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 02, 2004 (69 FR 17403).

Draft EISs

ERP No. D–FHW–F40425–OH Rating EC1, US–24 Transportation Project, Improvements between Napoleon to Toledo, Funding, Lucas and Henry Counties, OH.

Summary: EPA expressed an environmental concern about impacts to approximately 7 acres of wetlands and recommends that the secondary impacts at planned intersections be addressed.

ERP No. D–FRA–K59004–CA Rating EC2, Los Angeles-To-San Diego (LOSSAN) Rail Corridor, Proposed Rail Corridor Improvement Studies to Increase Intercity Travel for Faster, Safer and Reliable Passenger Rail System, Los Angeles, Orange, and San Diego Counties, CA.

Summary: EPA expressed concerns with the analysis of direct, indirect, and cumulative impacts to endangered species, coastal resources, water quality and air quality, and the integration of the proposed improvements with adjacent land-use and conservation planning efforts.

ERP No. D–IBR–J39032–00 Rating EC2, Operation of Flaming Gorge Dam Colorado River Storage Project, To Protect and Assist in Recovery of Populations and Designated Critical Habitat of Four Endangered Fishes: Bonytail, Colorado Pikeminnow, Humpback Chub and Razorback Sucker, Green River, UT and WY.

Summary: EPA expressed concerns that the Preferred Alternative may adversely affect other wildlife and their habitats. EPA also expressed concerns over the uncertainties surrounding both the impacts of the proposed management actions and the adaptive management changes that may be necessitated in the future. In addition, EPA expressed concerns that only one alternative was evaluated besides the No Action alternative, and suggested that other alternatives be evaluated.

ERP No. DS–AFS–L65344–AK Rating EC2, Emerald Bay Timber Sale, Implementation, Additional Information on the Potential Effects of the Project Alternatives, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK.

Summary: EPA expressed environmental concerns related to the range of alternatives, as well as a need for information related to government-to-government consultation with Alaskan Native Tribal Governments.

Final EISs

ERP No. F–AFS–L65463–OR, 18 Fire Recovery Project, Salvaging Dead Trees, Reforesting 1,936 Acres with Ponderosa Pine Seedling and Closing/Decommissioning Roads, Deschutes National Forest, Bend/Fort Rock Ranger District, Deschutes County, OR.

Summary: EPA expressed lack of objections and supports the measures to reduce the road density in the project area.

ERP No. F–COE–E36183–FL, Picayune Strand Restoration (formerly Southern Golden Gate Estates Ecosystem Restoration), Comprehensive Everglades Restoration Plan, Implementation, Collier County, FL.

Summary: EPA continues to support the specific objectives of this proposal as well as the related environmental goals of the Comprehensive Everglades Restoration Project. EPA noted that long-term monitoring will be an on-going responsibility of the Interagency Operational Team and EPA will continue to participate actively with its state/federal stakeholders.

Dated: December 14, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–27674 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7849–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Sulphur Bank Mercury Mine Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with NEC Acquisition Co. for recovery of past response costs concerning closure and abandonment of geothermal wells at the Sulphur Bank Mercury Mine Site in Lake County, California. The settlement requires the settling party to pay $1,700,000 to the EPA Hazardous Substance Superfund for past response costs incurred by EPA at the Site. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments

relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 18, 2005.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Larry Bradfish, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number (415) 972–3934. Comments should reference the Sulphur Bank Mercury Mine Superfund Site, Lake County, California and EPA Docket No. 2005–01 and should be addressed to Larry Bradfish at the address below.

FOR FURTHER INFORMATION CONTACT: Larry Bradfish, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3934; fax: (415) 947–3570; e-mail: *bradfish.larry@epa.gov*.

Dated: December 8, 2004.

Elizabeth Adams,

Acting Director, Superfund Division, Region IX.

[FR Doc. 04–27668 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0131; FRL–7691–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 10, 2004 to November 30, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0131 and the specific PMN number or TME number, must be received on or before January 18, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0131. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and

without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0131. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0131 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040131 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions

pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 10, 2004 to November 30, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 11/10/04 TO 11/30/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0122	11/12/04	02/09/05	Huntsman	(G) Surfactant	(G) Alkylpolyoxyalkylenesulfosuccinimate
P–05–0123	11/12/04	02/09/05	Huntsman	(G) Chemical intermediate	(G) Alkylpolyoxyalkyleneamide
P–05–0124	11/12/04	02/09/05	CBI	(G) Open non dispersive use	(G) Non aromatic polyester resin, based on cycloaliphatic acids
P–05–0125	11/12/04	02/09/05	Shin-etsu Silicones of America, Inc.	(S) Additives of adhesive for building materials	(S) 9-octadecenamide, n-(trimethylsilyl)-, (9z)-(9ci)-
P–05–0126	11/12/04	02/09/05	CBI	(G) Additive in inks and coatings	(G) Polyester acrylate
P–05–0127	11/12/04	02/09/05	CBI	(G) Adhesive component	(G) Polymer of alkanepolyol, fatty acid derivative, and disubstituted benzenes
P–05–0128	11/12/04	02/09/05	Shin-etsu silicones of America, Inc.	(S) Additive of adhesives for building materials	(S) Siloxanes and silicones, hydroxy me, 3-hydroxypropyl me, esters with hydrogenated tallow fatty acids, ethers with polyethylene-polypropylene glycol mono-bu ether
P–05–0129	11/15/04	02/12/05	Invista SA' R.I.	(S) Complexing agents for thickening grease	(S) Nitric acid, reaction products with cyclododecanol and cyclododecanone, by-products from, high-boiling fraction, dilithium salts
P–05–0130	11/15/04	02/12/05	Invista SA' R.I.	(S) Complexing agents for thickening grease	(S) Dodecanedioic acid, dilithium salt
P–05–0131	11/15/04	02/12/05	CBI	(S) Organic synthesis intermediate	(G) Heteropolycycle, 9-(2-carboxyphenyl)-3,6-bis[(2-methylphenyl)amino]-, chloride
P–05–0132	11/15/04	02/12/05	CBI	(S) Coating for leather industries	(G) Waterborne polyurethane
P–05–0133	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0134	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0135	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0136	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0137	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0138	11/15/04	02/12/05	Ashland Inc., Environmental Health and Safety	(G) Adhesive, coating, ink	(G) Multifunctional acrylate oligomer resin
P–05–0139	11/18/04	02/15/05	CBI	(G) Contained used in energy production.	(G) Ether amine salt
P–05–0140	11/18/04	02/15/05	CBI	(G) Contained used in energy production.	(G) Ether amine salt
P–05–0141	11/18/04	02/15/05	CBI	(G) Emulsifier	(G) Alkyl amido diamines
P–05–0142	11/18/04	02/15/05	CBI	(G) Auxiliary for coatings	(G) Alkyl acrylate, polymer with alkyl acrylate, alkylacrylamide, and alkyl acid

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 11/10/04 TO 11/30/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0143	11/22/04	02/19/05	CBI	(G) Component of electronic device; contained use	(G) Polymer of halogenated alkenes
P–05–0144	11/22/04	02/19/05	CBI	(G) Plasticizer	(G) Phthalate type polyester
P–05–0145	11/24/04	02/21/05	Huntsman Petrochemical Corporation	(G) Intermediate	(G) Polyether polyol
P–05–0146	11/24/04	02/21/05	Huntsman Petrochemical Corporation	(G) Epoxy resin curing agent	(G) Aliphatic polyetheramine
P–05–0147	11/24/04	02/21/05	CIBA Specialty Chemicals Corporation	(S) Fluorescent paper whitener	(G) Pmn substance a: Monopotassium/monoamp substituted triazinyl stilbene; pmn substance b: Diamp substituted triazinyl stilbene
P–05–0148	11/29/04	02/26/05	CIBA Specialty Chemicals Corporation	(S) Antioxidant for lubricating oils	(G) Substituted benzene proprionic acid esters
P–05–0149	11/29/04	02/26/05	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) 3-cyclohexene-1-carboxylic acid, 2,6,6-trimethyl-, methyl ester, (1r,2s)-
P–05–0150	11/30/04	02/27/05	Wacker Silicones a division of Wacker Chemical Corporation	(S) Skincare, suncare, decorative cosmetics	(S) Siloxanes and silicones, di-me, lauryl me
P–05–0151	11/30/04	02/27/05	CBI	(G) Additive for manufacture of articles	(G) Styrene-alkyl acrylate copolymer
P–05–0152	11/30/04	02/27/05	Wacker Silicones a division of Wacker Chemical Corporation	(S) Skincare, suncare, decorative cosmetics	(G) Polydimethyl alkyl methyl siloxane
P–05–0153	11/30/04	02/27/05	CBI	(G) Contained use in energy production.	(G) Polybasic acid sulfonate polymer salt
P–05–0154	11/30/04	02/27/05	CBI	(G) Contained use in energy production.	(G) Polybasic acid sulfonate polymer salt
P–05–0155	11/30/04	02/27/05	CBI	(G) Contained use in energy production.	(G) Polybasic acid sulfonate polymer salt
P–05–0156	11/30/04	02/27/05	CBI	(G) Contained use in energy production.	(G) Polybasic acid sulfonate polymer salt
P–05–0157	11/30/04	02/27/05	CBI	(G) Contained use in energy production.	(G) Polybasic acid sulfonate polymer salt
P–05–0158	11/30/04	02/27/05	CBI	(G) Additive for manufacture of articles	(G) Ammonium-functional methacrylate-styrene copolymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 26 NOTICES OF COMMENCEMENT FROM: 11/10/04 TO 11/30/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0595	11/17/04	11/10/04	(G) Quaternary salt of glycol succinate
P–02–0115	11/18/04	11/10/04	(G) *N,n*'-alkylenebis(alkenamide)
P–02–0116	11/18/04	11/10/04	(G) *N,n*'-alkylenebis(alkenamide)
P–02–0747	11/16/04	11/05/04	(G) Amine polymer salt
P–02–0761	11/16/04	11/07/04	(S) Octadecanoic acid, 2-[[2,2-bis[[(1-oxooctadecyl)oxy]methyl]butoxy]methyl]-2-ethyl-1,3-prop anediyl ester
P–03–0624	11/10/04	10/08/04	(S) Dodecanedioic acid, dimethyl ester
P–03–0782	11/19/04	11/17/04	(G) Combed silicone acrylate
P–04–0162	11/23/04	10/19/04	(G) Salt of a copolymer of acrylic acid and acrylic acid derivatives
P–04–0274	11/18/04	11/15/04	(G) Substituted p-xylene
P–04–0297	11/09/04	06/15/04	(G) Fatty amide derivative
P–04–0438	11/24/04	11/11/04	(G) Acrylate ester
P–04–0448	11/10/04	10/28/04	(G) Acid amine salt
P–04–0562	11/23/04	10/19/04	(G) Ester derivative of amino acid
P–04–0632	11/18/04	11/05/04	(G) Bis substituted benzenesulfonic acid amino substituted triazin amino substituted phenyl azo compound
P–04–0644	11/12/04	11/01/04	(G) Polyurethane acrylic ester

II. 26 NOTICES OF COMMENCEMENT FROM: 11/10/04 TO 11/30/04—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0648	11/10/04	10/22/04	(G) Amine functional epoxy resin salted with organic acid
P–04–0672	11/15/04	11/05/04	(G) Isocyanate functional polyester urethane polymer
P–04–0691	11/15/04	11/05/04	(G) Urethane acrylic hybrid polymer
P–04–0712	11/23/04	11/04/04	(G) Azole polymer
P–04–0722	11/18/04	10/19/04	(G) Acrylic polymer
P–04–0723	11/18/04	10/19/04	(G) Acrylic polymer
P–04–0743	11/17/04	11/08/04	(G) Substituted phosphonic acid compounded with substituted urea
P–04–0759	11/24/04	10/25/04	(G) Aliphatic polyamine
P–04–0766	11/23/04	11/01/04	(G) Mineral/vegetable oil based alkyd
P–04–0769	11/18/04	11/08/04	(G) Substituted methyl ester of octadecanoic acid
P–04–0801	11/23/04	11/16/04	(G) Aluminum alkoxide complex

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: December 7, 2004.

Vicki Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–27672 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7850–1]

Notice of Availability of Draft National Pollution Discharge Elimination System (NPDES) General Permits MAG910000 and NHG910000 for Discharges From Groundwater Remediation and Miscellaneous Surface Water Discharge Activities in the States of Massachusetts and New Hampshire and Indian Country Lands in the State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft NPDES General Permits MAG910000 and NHG910000: Extension of Comment Period.

SUMMARY: On Friday, November 2, 2004, the Environmental Protection Agency's New England Regional Office (EPA–NE) published a Notice of Availability for the Draft National Pollutant Discharge Elimination System (NPDES) General Permits MAG910000 and NHG910000 for Discharges from Groundwater Remediation and Miscellaneous Surface Water Discharge Activities in the States of Massachusetts and New Hampshire and Indian Country Lands in the State of Massachusetts in the **Federal Register** (69 FR 63531). In response to requests from sources that may be eligible for coverage under these general permits, EPA–NE is extending the comment period for these permits.

DATES: The comment period is being extended from December 17, 2004, to January 18, 2005. Comments must be received or postmarked by midnight on January 18, 2004. Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA–NE at the address given below. Within the comment period, interested persons may also request in writing a public hearing pursuant to 40 CFR 124.12 concerning the draft general permit. Such requests shall state the nature of the issues proposed to be raised at the hearing. A public hearing may be held at least thirty days after public notice whenever the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the draft permits, the Regional Administrator will respond to all significant comments and make responses available to the public at EPA–NE's Boston office. All public comments or requests for a public hearing must be submitted to the address below.

ADDRESSES: Written comments may be hand delivered or mailed to: Roger A. Janson, Director, Municipal Permits Branch (CMP), EPA–NE, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023.

EPA also requests that comments be sent via e-mail to *Rapp.Steve@EPA.GOV*. However, no facsimiles (faxes) will be accepted. A copy of all comments and supporting materials should also be submitted to:

In MA: Mr. Paul Hogan, NPDES Permit Unit, MA Dept. of Env. Protection, 627 Main Street, Worcester, MA 01608.

In NH: Mr. George Berlandi, NH Dept. of Env. Services, Wastewater Engineering Bureau, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

The draft permit is based on an administrative record available for public review at the EPA address listed above. Copies of information in the record are available upon request. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 8 a.m. and 4 p.m., Monday through Friday excluding holidays from: Steven Rapp, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CPE), Boston, MA 02114–2023, telephone: (617) 918–1551, e-mail: *Rapp.Steve@EPA.GOV*.

SUPPLEMENTARY INFORMATION: The draft general permits may be viewed over the Internet via the EPA–Region 1 Web site. For dischargers in Massachusetts, *see http://www.epa.gov/ne/npdes/mass.html#dgp*. For dischargers in New Hampshire, *see http://www.epa.gov/ne/npdes/newhampshire.html#dgp*.

Dated: December 8, 2004.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. 04–27666 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7849–4]

Notice of Draft Aquatic Life Criteria for Selenium and Request for Scientific Information, Data, and Views

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft Aquatic Life Criteria Document for Selenium, and Request for Scientific Information, Data, and Views Pertaining to the Criteria.

SUMMARY: The Environmental Protection Agency announces the availability of a

draft aquatic life criteria document for selenium and requests scientific information, data, and views. The document contains draft water quality criteria recommendations for the protection of freshwater and saltwater aquatic life. EPA is soliciting information, data, and views on issues of science pertaining to the information the Agency used to derive the draft criteria. When completed and published in final form, the revised criteria will replace EPA's current recommended aquatic life criteria for selenium. EPA's recommended water quality criteria provide technical information for states and authorized tribes in adopting water quality standards, but themselves have no binding legal effect.

DATES: Scientific views, data, and information should be submitted by April 18, 2005.

ADDRESSES: Scientific information, data, and views may be submitted electronically, by mail, or through hand-delivery/courier. Follow detailed instructions provided in section C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Charles Delos, e-mail *delos.charles@epa.gov* or postal address, Mail Code 4304T, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460 at (202) 566–1097.

SUPPLEMENTARY INFORMATION:

A. Which Entities Might Be Interested?

Entities potentially interested in today's notice are those that discharge or release selenium to surface waters, and federal, state, tribal, and local authorities that regulate selenium levels in surface water. Categories and entities interested in today's notice include but are not limited to:

Category	Examples of interested entities
State/Local/Tribal Government.	States, municipalities, tribes.
Industry	Mining, coal-fired power generation.
Agriculture	Irrigated agriculture.

This table is not intended to be exhaustive. Other types of entities not listed in the table may also be interested.

B. How Can I Get Copies of the Draft Document and Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2004–0019. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 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 Water Docket is (202) 566–2426. Alternatively, copies of the draft may be obtained from EPA's Water Resource Center by phone at (202) 566–2426, or by e-mail to *center.water.resource@epa.gov* or by conventional mail to: EPA Water Resource Center, 4101T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

2. *Electronic Access.* Use *http://www.epa.gov/waterscience/criteria/aqlife.html* to obtain the draft document. Use *http://www.epa.gov/fedrgstr/* to obtain this **Federal Register** document electronically.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1.

It is important to note that EPA's policy is that data, information, and views, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the data or information contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies copyrighted material, EPA will provide a reference to that material in the version of the document that is placed in EPA's electronic public docket. The entire printed document, including the copyrighted material, will be available in the public docket.

Data, information, and views submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Data, information, and views that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How Do I Submit Scientific Information, Data, or Views?

You may submit scientific information, data, or views electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page.

1. *Electronically.* EPA recommends that you include your name and mailing address, or e-mail address or other contact information, particularly if you submit data in tables or figures. 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 and allows EPA to contact you in case EPA has technical difficulties reading your submission or needs further information on the substance of your submission. EPA's policy is that EPA will not edit your submission, and any identifying or contact information provided in the body of the submission will be included in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your submission due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider it.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit data, information, and views to EPA electronically is EPA's preferred method for receiving submissions. Go directly to

EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions. Once in the system, select ''search,'' and then key in Docket ID No. OW–2004–0019. 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.

ii. *E-mail.* Submissions may be sent by electronic mail (e-mail) to *ow-docket@epa.gov* attention Docket ID No. OW–2004–0019. 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 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 submission that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may send your submission on a disk or CD ROM to the mailing address identified in section B.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your submission to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0019.

3. *By Hand Delivery or Courier.* Deliver your submission to: EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0019. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section B.1.

D. What Are EPA Recommended Water Quality Criteria?

An EPA recommended water quality criterion is a level of a pollutant or other measurable substance in water that, when met, will protect aquatic life and/or human health. Section 304(a) of the Clean Water Act (CWA) requires EPA to develop and publish and, from time to time, revise, recommended water quality criteria to accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) provide guidance to states and tribes in adopting water quality criteria into their water quality standards under section 303(c). Once adopted by a state or tribe, the water quality standards then are a basis for developing regulatory controls on the discharge or release of pollutants and other alterations of water quality. EPA's section 304(a) criteria also provide a scientific basis for EPA to develop any necessary federal water quality regulations under section 303(c) of the CWA.

The draft criteria in today's notice are based on the factors specified in section 304(a) of the Clean Water Act, including the kind and extent of effects of the pollutant on human health and aquatic organisms. Under the Clean Water Act, the EPA can not consider the economic and technical feasibility of meeting the draft criteria in their development. Economic and technical feasibility factors are considered by states and tribes when they adopt water quality criteria into their water quality standards under section 303(c) of the Act and when states, tribes, and EPA consider variance requests for regulatory controls. Moreover, states and tribes may also consider alternative scientifically-defensible approaches to adopting criteria into their water quality standards that may be different from approaches presented by EPA in final water quality criteria published under section 304(a).

E. What Is Selenium and Why Are We Concerned About It?

Selenium is a naturally-occurring element that is nutritionally essential. However, it has been toxic to aquatic life and terrestrial wildlife where concentrations were excessive. Under real-world field conditions, aquatic life is exposed to selenium primarily through the diet. When the input of a toxic substance to an organism is greater than the rate at which the substance is lost, the organism is said to bioaccumulate that substance. Although selenium bioaccumulates in aquatic organisms, it is not significantly biomagnified. That is, concentrations do not increase significantly in aquatic organisms at each successive level of the food chain. For aquatic life, the lowest toxic thresholds (the smallest levels at which toxic effects are noticeable) are generally associated with effects on larval offspring of the adult fish that were exposed to excessive selenium or with effects on juvenile fish.

Being a natural element, selenium is everywhere in the environment. Concerns about too much selenium in water have most often been associated with irrigation return flows from soils that are naturally high in selenium, ash pond discharges from coal-fired power plants (due to the selenium content of coal), and certain mining activities (due to exposure of selenium-bearing soil or rock to weathering).

F. What Has EPA Done in the Past on the Aquatic Life Criteria for Selenium?

EPA's currently-recommended aquatic life water quality criteria for selenium were published in 1987. EPA made minor adjustments in the criteria concentrations when it converted the selenium criteria from a total recoverable (dissolved plus particulate) measurement basis to a dissolved measurement basis in 1995 and 1999 as follows: (a) In 60 FR 15366, March 23, 1995, only for the Great Lakes Initiative; (b) in 60 FR 22228, May 4, 1995, only for the saltwater criteria; and (c) in 64 FR 19781, April 22, 1999, optionally for freshwater nationwide.

In 1996, EPA proposed but did not complete an additional change in the freshwater acute criterion for the Great Lakes system (61 FR 58444, November 14, 1996). In 2000, EPA revoked the existing acute criterion for the Great Lakes system (65 FR 35283, June 2, 2000) in response to a lawsuit challenging the use of a single acute criterion applicable to selenite and selenate, the two common chemical forms of selenium (see *AISI* v. *EPA*, 115 F. 3d 979 (D.C. Cir. 1997)).

EPA's most recent compilation of criteria presents (a) the above-mentioned 1996 GLI proposed freshwater acute criteria, (b) the 1987 freshwater chronic criterion, and (c) the 1987 saltwater acute and chronic criteria as converted to dissolved in 1995. You can find the compilation at *www.epa.gov/waterscience/standards/wqcriteria.html*.

In 1998 EPA held a peer consultation workshop to evaluate possible courses of action regarding the selenium aquatic life criterion and notified the public of our intent to review the selenium criteria. In 1999, EPA announced its intention to revise its national aquatic life criterion for selenium and requested data (64 FR 58409, October 29, 1999).

In 2002, EPA prepared an early draft revision of its aquatic life criteria document and submitted it to peer review (Versar 2002, Lemly 2004). EPA considered the comments and suggestions submitted by the peer reviewers (U.S. EPA 2004b) and made many technical and scientific changes in response (U.S. EPA 2004a). In the future, EPA will review any scientific information, data, and views submitted in response to today's notice. The Agency will also continue to work closely with the U.S. Fish and Wildlife Service and other key federal agencies to arrive at final water quality criteria

for selenium which are protective of aquatic life.

Today's announcement of the draft aquatic life criteria document for selenium has no effect on EPA's human health criteria recommendation for selenium published in 2002 (see *http://epa.gov/waterscience/standards/wqcriteria.html*).

G. What Are the Draft Aquatic Life Criteria Values?

The draft selenium criteria recommendations state that freshwater aquatic life should be protected under the following conditions:

A. The concentration of selenium in whole-body fish tissue is not more than 7.91 µg/g (micrograms per gram) dw (dry weight). This is the chronic exposure criterion. In addition, if whole-body fish tissue concentrations exceed 5.85 µg/g dw during summer or fall, fish tissue should be monitored during the winter to determine whether the selenium concentration exceeds 7.91 µg/g dw.

B. The 24-hour average concentration of total recoverable (dissolved and particulate) selenium in water seldom (*e.g.*, not more than once in three years) exceeds 258 µg/L for selenite, and likewise seldom exceeds the numerical value given by exp(0.5812[ln(sulfate)]+3.357) for selenate. These are the acute exposure criteria. At an example sulfate concentration of 100 mg/L, the 24-hour average selenate concentration should not exceed 417 µg/L. Sulfate is a commonly measured water quality parameter that has been found to have a mitigating influence on the acute toxicity of the selenate form of selenium.

Likewise, the draft selenium criteria recommendations state that saltwater aquatic life should be protected from acute effects of selenium if the 24-hour average concentration of selenite seldom exceeds 127 µg/L. Because selenium might be as chronically toxic to saltwater fishes as it is to freshwater fishes, the fish community should be monitored if selenium exceeds 5.85 µg/g dw in summer or fall or 7.91 µg/g dw during any season in the whole-body tissue of saltwater fishes.

H. What Would the Draft Aquatic Life Criteria Recommendations Protect?

The draft selenium criteria recommendations were derived from data on aquatic life and are intended to protect aquatic life. Specifically, the draft chronic exposure recommendation is designed to protect against mortality, reproductive interferences, and growth abnormalities in fish and other aquatic organisms due to long-term excessive exposure to selenium in the aquatic food chain. The draft acute exposure recommendations are designed to protect against lethality or immobilization of aquatic organisms due to brief elevated exposure to selenium in water.

Although the draft recommendation took into account dietary exposure for aquatic life, no nationally-applicable scientific methodology yet exists to derive national water quality criteria to protect birds or terrestrial wildlife that consume fish, water, or aquatic plants and organisms that contain selenium. Therefore, this draft selenium recommendation is not designed to protect birds or terrestrial wildlife. (Similarly, EPA's existing 1987 water quality criteria for selenium were not designed to protect birds or wildlife.) However, EPA is working with the U.S. Fish and Wildlife Service and other interested federal agencies to develop selenium criteria protective of wildlife within the State of California. The California-specific wildlife criteria effort is separate from the national-scale draft aquatic life criteria announced in today's notice. Its development is on a different time track; it involves analysis of toxicity data for aquatic-dependent wildlife (not aquatic life); and it is intended to apply only to California.

I. How Do the Draft Aquatic Life Criteria Recommendations Differ From Previous Criteria Recommendations?

In contrast to the existing 1987 freshwater chronic criterion, which was expressed as a conventional water concentration, the draft freshwater chronic criterion sent to peer review in 2002 and the draft criterion announced in today's notice are each expressed as a whole-body fish tissue concentration (µg selenium per gram of fish tissue on a dry weight basis). At a given location or for a given water body, a fish tissue level of selenium can be used with a site-specific bioaccumulation factor to estimate the concentration of selenium in the water. A bioaccumulation factor is a measured or predicted ratio between the tissue concentration and the water concentration of a chemical, in this case, selenium.

Early in the process of developing these draft criteria, EPA concluded, and the peer reviewers agreed that a fish-tissue approach is better than a conventional water concentration approach to protect aquatic life from the chronic adverse effects of selenium. Because fish and aquatic invertebrates are exposed to selenium primarily through their diet rather than directly through water, the fish-tissue concentration better reflects site-specific exposure and risk than does the water concentration. Therefore, using the fish-tissue approach allows users to consider site-specific factors in translating to a water concentration.

However, consistent with the type of toxicity tests used for their derivation, the draft aquatic life criteria to protect against the acute effects of selenium in fresh water and salt water are expressed as traditional water concentrations (total recoverable selenium). Expanding the toxicity database with a substantial number of more recent acute toxicity tests yielded relatively little change in the freshwater selenite criterion, but yielded a substantial increase in the selenate criterion due to repeated retesting of an amphipod that formerly appeared to have an anomalously low LC50, and due to normalization of the acute data for sulfate concentration. Normalization of all acute test results for sulfate concentration reveals that some species formerly thought to be highly sensitive were actually tested at low sulfate. Including sulfate in the draft criteria formula assures their protection at low sulfate concentrations. Expansion of the database caused the saltwater selenite criterion to decrease because a scallop, formerly untested, was found to be highly sensitive. A saltwater chronic criterion is not presented in the draft announced today, because EPA lacks sufficient and appropriate data to derive one.

J. Are There Particular Issues on Which EPA is Requesting Scientific Information, Data, and Views?

EPA is requesting information, data, and views on all facets of the science supporting the draft criteria recommendations for selenium, but it is particularly interested in the following topics:

1. The Appropriateness of Basing the Freshwater Chronic Criterion on a Tissue Concentration

Because the same water concentration may yield different amounts of bioaccumulation and therefore different levels of risk at different sites, EPA developed this draft criterion as a fish tissue concentration to reduce the need for resetting the criterion on a site-by-site basis. Where translation from the tissue benchmark to a water concentration is needed, a bioaccumulation factor (BAF), which may vary substantially from site to site, would need to be established.

Participants in the 1998 Peer Consultation Workshop suggested that a tissue-based approach for a selenium aquatic life criterion would be feasible

(U.S. EPA 1998). The underlying concept is different from that used historically for developing aquatic life criteria that are applied to the water column, the surrounding environment shared by a range of aquatic species. Nevertheless, this tissue-based approach appears to be appropriate because, at concentrations not far above the draft criterion, selenium is toxic to the offspring (embryos, larvae, or juveniles) of sensitive species, but not to the adult fish that might be present and from which an environmental sample could be taken.

EPA is requesting scientific information, data, and views on (a) the concept of protecting aquatic life by applying a criterion to whole-body fish tissue concentrations of selenium, (b) the appropriateness of applying a fish tissue-based water quality criterion uniformly across waterbodies to protect sensitive species, and (c) the possibility of applying the same criterion to invertebrate tissue where invertebrate samples are obtained with or in place of fish tissue samples.

Because EPA has not yet made decisions on the form or values of its final water quality criteria for selenium, EPA has not yet developed implementation procedures. Therefore, EPA is also interested in scientific information, data, and views on (d) approaches for sampling tissues, and (e) available data for deriving localized BAF values for translating the tissue concentrations to water concentrations, where needed for pollution control decisions.

2. Studies of Freshwater Aquatic Life Effects and Chronic Effect Concentrations

Based on studies involving exposure through a contaminated diet, the genus mean chronic EC20 (concentration effecting 20% of test organisms) for effects on larval or juvenile common sunfish (Lepomis) was found to be 9.5 µg/g dry weight whole body concentration of selenium in the adult parental fish or in the juveniles (depending on the study). This genus mean value is based on four studies. No data indicated that other genera were more sensitive than Lepomis. Useful chronic toxicity data were available for a rotifer (a small invertebrate), chinook salmon, rainbow trout, cutthroat trout, fathead minnow, flannelmouth sucker, razorback sucker, stripped bass, and a mixture of sunfish.

One of the above studies was by Lemly (1993), who investigated overwinter survival of juvenile bluegill in the laboratory. This study consisted of a control (only background selenium exposure) and one elevated selenium exposure level, both subjected either to (a) a temperature regime of 20 °C for 180 days, or (b) a temperature regime changing from 20 °C to 4 °C over the course of 60 days, and remaining at 4 °C for the remaining 120 days of the study. He observed substantially less survival when elevated selenium was combined with low temperature. The whole body concentration associated with mortality was 5.85 µg/g at Day 60 just prior to a significant increase in mortality, and 7.91 µg/g later in the study during and subsequent to the death of 40% of the organisms. For the same selenium exposure at 20 °C, mortality was 6% and whole body concentrations were 5.74 µg/g. Little mortality was observed at either temperature regime for unexposed organisms, but since there was only one selenium treatment, no concentration-response curve can be constructed.

One possible implication of the Lemly (1993) study might be that effects on overwinter survival of juveniles occur at lower concentrations than do effects on reproduction or early life stages. In the Monticello macrocosm study, at 4 to 5°C overwinter conditions, reproductive success and adult bluegill overwinter survival were unaffected at concentrations higher than those of the Lemly (1993) study (Hermanutz *et al.* 1996, corrected by Tao *et al.* 1999, and peer reviewed in Versar 2000).

Based on the Lemly (1993) results, to protect sensitive fish species under winter conditions, EPA has set the draft criterion at 7.91 µg/g, the concentration measured during the period of reduced survival, with the provision that winter monitoring should be performed if summer or fall tissue levels exceed 5.85 µg/g, the concentration occurring prior to the period of reduced survival. Three of five peer reviewers of the 2002 draft questioned whether the results from only one study should be used as the basis for lowering the nationally recommended criteria from 9.5 µg/g to 7.91 µg/g as EPA has done in this document. On the other hand, U.S. Fish and Wildlife Service (White 2002) has questioned whether 7.91 µg/g is sufficiently protective, citing the high mortality observed at that tissue concentration during the study.

EPA is requesting scientific information, data, and views on (a) the most appropriate interpretation and use of the Lemly (1993) results, and its applicability to a range of climatic regimes and fisheries types and (b) other data that may be relevant to the winter exposure issue. Because EPA expects it has seen all the available laboratory studies relevant to the issue, it is particularly interested in field observations (such as age structure or species occurrence) that may be relevant to the selenium winter exposure issue under various climatic conditions. EPA is also requesting scientific information, data, and views on (c) approaches for accounting for different climatic conditions.

3. Alternative Values for the Freshwater Chronic Criterion

The current draft criteria document has set the aquatic life criterion for selenium at a whole body fish tissue concentration of 7.91 µg/g, with the provision that winter monitoring should be performed if summer or fall tissue levels exceed 5.85 µg/g. EPA is requesting information and analyses relevant to alternative fish tissue benchmarks. EPA will only consider analyses that have a formal, fully transparent, and reproducible derivation from laboratory or field data, where all the supporting information quantifies a toxic effect metric and an exposure metric.

EPA is also receptive to formally-derived benchmarks applicable to other aquatic media, such as water, sediment, or prey tissue. Again, the derivations should be transparent and fully reproducible from laboratory or field data.

4. Site-Specific Factors Affecting the Freshwater Chronic Criterion

Expressing the chronic criterion as a tissue concentration rests on the assumption that there is reasonable geographic uniformity in the tissue threshold, while the BAF, and therefore the water concentration threshold, may vary considerably across sites. EPA believes that the route of exposure affects the tissue threshold. The same tissue concentration, if accumulated through water-only exposure, appears to be more toxic than if accumulated via diet. Fish provided with an uncontaminated diet and exposed to very high water concentrations of selenium (for example, 300 µg/L in the Cleveland *et al.* (1993) study) may show effects when whole body concentrations exceed only 4 µg/g. When exposed through a contaminated diet but essentially uncontaminated water in the same study, effects were not observed until tissue concentrations exceeded around 13 µg/g.

Because EPA did not use studies involving uncontaminated diets coupled with high water exposures, the criterion assumes that the dominant environmental exposure route for the target species is dietary. Consistent with the views of the EPA peer consultation

workshop in 1998, EPA believes that this assumption corresponds to the real-world problems of selenium contamination.

While recognizing that the BAF can vary from site to site, EPA is requesting scientific information, data, and views on the general approach of using a uniform tissue benchmark (expressed as total selenium concentration in whole body) without regard to site differences that might include:

- The species to be protected,
- The type of water body,
- The character of the food web, for example, autochthonous versus nonseleniferous allochthonous,
- The form and concentration of selenium in the water or diet,
- The form of selenium in the sampled tissue,
- The nature of the selenium release,
- Interactions with other trace elements,
- Acclimation or adaptation,
- Hormesis,
- Climatic conditions, and
- Any other relevant site factors.

EPA is also requesting scientific information, data, and views relevant to the need for and appropriate basis for adjusting the tissue benchmark to account for site-specific factors.

5. Saltwater Chronic Criterion

For chronic exposure, we found no data that were useful for deriving a saltwater aquatic life criterion. However, selenium might be as toxic in the tissues of saltwater organisms as it is in the tissues of freshwater organisms. Therefore, the draft contains the cautionary recommendation that the status of the saltwater fish community be monitored if selenium exceeds 5.85 μg/g dw in summer or fall or 7.91 dw during any season (same as the freshwater benchmarks) in the whole-body tissue of saltwater fishes.

EPA is requesting scientific information, data, or views on (a) toxicity thresholds applicable to protecting saltwater organisms exposed to selenium through the food chain, or (b) the appropriateness of extending to saltwater what is known about freshwater toxicity thresholds.

6. Acute Criteria Concentrations

As discussed above, selenium toxicity problems have generally involved contamination of the food web. If the diet of the target species is not contaminated, very high water-column concentrations are needed to bring out effects, particularly when exposure is brief. As with bioaccumulative pollutants in general, acute toxicity (that is, toxicity from a brief sharp increase in the water concentration) is of less concern than chronic exposure through the food chain.

Nevertheless, a large body of toxicity test data are available for brief water-only exposure. Therefore, EPA was able to derive acute criteria to protect aquatic life against the toxic effects of that type of exposure to selenium. For ambient freshwater, the draft selenite or Se (IV) acute criterion is 258 μg/L, and the draft sulfate-dependent selenate or Se (VI) criterion ranges from 109 to 1590 μg/L at sulfate concentrations from 10 to 1000 mg/L. For ambient saltwater the draft selenite acute criterion is 127 μg/L.

EPA is requesting scientific information, data, and views on the appropriateness of the draft values for the acute exposure criteria.

References

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Lemly, A.D. 1993. Metabolic stress during winter increases the toxicity of selenium to fish. Aquat. Toxicol. (Amsterdam) 27(1–2):133–158.

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Tao, J., P. Kellar, and W. Warren-Hicks. 1999. Statistical analysis of selenium toxicity data. Report submitted for U.S. EPA, Health and Ecological Criteria Division. The Cadmus Group, Inc., Durnham, NC.

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U.S. EPA. 2004a. Draft aquatic life water quality criterion for selenium—2004. Office of Water. EPA–822–D–04–001.

U.S. EPA. 2004b. Draft response to peer review of 2002 update aquatic life water quality criteria for selenium. Office of Water.

Versar. 2000. Peer review of statistical analysis of selenium toxicity data. Report submitted to U.S. EPA, Office of Water, Washington, DC.

Versar. 2002. Peer review of 2002 update aquatic life water quality criteria for selenium. Report submitted to U.S. EPA, Office of Water, Washington, DC.

White, W. 2002. Letter to Geoffrey H. Grubbs. U.S. Department of Interior, Fish and Wildlife Service, California/Nevada Operations Office, Sacramento, CA. May 15, 2002.

Dated: December 9, 2004.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 04–27665 Filed 12–16–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 15, 2005.

ADDRESSES: You may submit comments, identified by FR 1374, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Intermittent Survey of Businesses

Agency form number: FR 1374

OMB control number: 7100–0302

Frequency: Biweekly and semiannually

Reporters: Purchasing managers, economists, or other knowledgeable individuals at business firms

Annual reporting hours: 125 hours

Estimated average hours per response: 15 minutes

Number of respondents: biweekly, 10; semiannually, 120

General description of report: This information collection is voluntary (12 U.S.C. §§ 225a and 263) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The survey data are used by the Federal Reserve to gather information specifically tailored to the Federal Reserve's policy and operational responsibilities. It is necessary to conduct the survey biweekly to keep up with the rapidly changing developments in the economy and to provide timely information to staff and Board members. Usually, the surveys are conducted by staff economists telephoning purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The frequency and content of the questions, and the businesses contacted would vary depending on changing developments in the economy.

Board of Governors of the Federal Reserve System, December 14, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–27654 Filed 12–16–04; 8:45 am]

BILLING CODE: 6210–01–S

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR)

Maximum Per Diem Rates for Colorado, Florida and Texas

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 05–3, revised continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration (GSA) has reviewed the lodging rates of certain locations in the States of Colorado, Florida and Texas and determined that they are inadequate. The per diems prescribed in Bulletin 05–3 may be found at *http://www.gsa.gov/perdiem*.

DATES: This notice is effective December 17, 2004 and applies to travel performed on or after December 27, 2004.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lois Mandell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–2824. Please cite FTR Per Diem Bulletin 05–3.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of the per diem rates established for FY 2005 (see the **Federal Register** notices at 69 FR 53071, August 31, 2004, and 69 FR 60152, October 7, 2004), the per diem rate is being changed in the following locations:

State of Colorado

- City of Aurora

State of Florida

- Brevard County

State of Texas

- Dallas County

B. Procedures

Per diem rates are published on the Internet at *www.gsa.gov/perdiem* as an FTR Per Diem Bulletin and published in the **Federal Register** on a periodic basis. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: Decenber 13, 2004.

Thomas J. Horan,

Deputy to the Deputy Associate Administrator, Office of Transportation and Personal Property.

[FR Doc. 04–27605 Filed 12–16–04; 8:45 am]

BILLING CODE 6820–14–S

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Unmodified Public Financial Disclosure Access Customer Service Survey

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit the Public Financial Disclosure Access Customer Service Survey form to the Office of Management and Budget (OMB) for three-year extension of approval under the Paperwork Reduction Act. OGE is proposing no changes to the survey form.

DATES: Comments by the public and agencies on this proposed information collection extension are invited and should be received by March 2, 2005.

ADDRESSES: Comments should be sent to: Mary T. Donovan, Office of Administration and Information

Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's e-mail address at *usoge@oge.gov* (for e-mail messages, the subject line should include the following reference—''Public Financial Disclosure Access Customer Service Survey'').

FOR FURTHER INFORMATION CONTACT: Ms. Donovan at the U.S. Office of Government Ethics; telephone: 202–482–9232; TDD: 202–482–9293; FAX: 202–482–9237. A copy of the Public Financial Disclosure Access Customer Service Survey form may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics uses the Public Financial Disclosure Access Customer Service Survey form (OMB control number 3209–0009) to assess requester satisfaction with the service provided by OGE in responding to requests by members of the public for access to copies of Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Reports on file with OGE. Most of the SF 278 reports available at OGE are those filed by executive branch Presidential appointees subject to Senate confirmation. Requests for access to SF 278 reports are made pursuant to the special public access provision of section 105 of the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. appendix section 105, and procedures in 5 CFR 2634.603 of OGE's executive branchwide regulations. Requesters ask for copies of SF 278 reports by completing an OGE Form 201, ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records.''

OGE distributes the survey forms to requesters along with copies of requested SF 278 reports. OGE notes that the survey form is only authorized for its own use, not by other agencies throughout the executive branch. The instructions on the survey form ask the requester to complete and return the survey form to OGE via the self-contained postage-paid postcards (the reverse side of the survey form, when folded, becomes a pre-addressed postcard). The purpose of the survey form is to determine through customer responses how well OGE is responding to such requests and how OGE can maintain its current high-level of customer satisfaction in this area.

OGE is issuing this first round **Federal Register** notice to announce its forthcoming request to OMB for paperwork renewal of the survey form with no modifications. If OGE's current stock of survey forms is depleted within the next three years, OGE plans to reprint the form with two minor modifications (with notice to OMB at that time) without further paperwork clearance. These modifications are: updating the OGE address from ''Attn: FDD'' to ''Attn: PSD'' and, in the public burden statement, change ''Associate Director for Administration'' to ''Deputy Director for Administration and Information Management.''

The current paperwork approval is scheduled to expire at the end of March 2005. Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35), OGE is not including in its public burden estimate for the survey form the limited number of access requests filed by other Federal agencies or Federal employees. Nor is OGE including in that estimate, the limited number of requests for copies of other records covered under the special Ethics Act public access provision (such as certificates of divestiture) since the survey form is only sent to persons who request copies of SF 278 reports.

As so defined, OGE's estimate for the total number of survey forms to be filed annually at OGE over the next three years by members of the public (primarily by news media representatives, public interest group members and private citizens) is 30. This estimate is based on a calculation of the number of survey forms received at OGE between January 2001 and October 2004 (112 survey forms). This estimate is 20 less than that for the prior three-year period. The estimated average amount of time to read the instructions and complete the survey form, remains the same at three minutes. Thus, the new overall estimated annual public burden for the OGE Public Financial Disclosure Access Customer Service Survey form will be two hours (rounded up from one and a half hours (30 forms × 3 minutes per form)).

Public comment is invited on all aspects of the survey form as proposed for renewal including specifically views on: the accuracy of OGE's public burden estimate; the potential for enhancement of quality, utility and clarity of the information to be collected; and the minimization of burden (including the possibility of use of information technology).

After this notice and comment period, OGE will submit the survey form to OMB for review and three-year extension of approval under the provisions of the Paperwork Reduction Act. At that time, OGE will also publish a second paperwork notice in the **Federal Register** to inform the public and Federal agencies. Comments received in response to this notice will be summarized for, and may be included with, the forthcoming OGE request for OMB three-year paperwork approval. They will also be explained in the second round notice. The comments will also become a matter of public record.

Approved: December 9, 2004.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

[FR Doc. 04–27644 Filed 12–16–04; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: LIHEAP Quarterly Allocation Estimates.

OMB No.: 0970–0037.

Description: The Low Income Home Energy Assistance Program (LIHEAP) Quarterly Allocation Estimates Form–535 is a one-page form that is sent to 50 State grantees and the District of Columbia. It is also sent to Tribal grantees that receive over $1 million annually and who directly administer the LIHEAP Program. Grantees are asked to complete and submit the form in the 4th quarter of each fiscal year. The data collected on the form are the grantee's estimates of obligations that they expect to make each quarter during the upcoming fiscal year. This is the only method used to request anticipated distribution of the grantee's LIHEAP funds for the program year. The information is used to disburse LIHEAP funds in accordance with grantee needs and to develop OMB apportionment requests.

Respondents: State, local or tribal govt.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–535	55	1	.25	13.75
Estimated Total Annual Burden Hours:				13.75

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 13, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–27582 Filed 12–16–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Evaluation of the Early Head Start Enhanced Home Visiting Pilot Project.

OMB No.: New Collection.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response, the Administration on Children, Youth and Families (ACYF) within the Administration for Children and Families (ACF) developed the Early Head Start program. Since its inception, Early Head Start has expanded to include more than 700 programs and 70,000 families enrolled nationwide. The program is designed to produce outcomes in four domains: (1) Child development, (2) family development, (3) staff development, and (4) community development. The Head Start Bureau has given programs a mandate to support the quality of all settings where children receive care by providing high-quality services and supporting parents and child care providers in caring for their young children.

In keeping with this mandate, the Head Start Bureau recently funded 24 Early Head Start programs to participate in the Enhanced Home Visiting Pilot Project. The goal of the pilot project is to develop program models for supporting relatives and neighbors who care for Early Head Start children in acquiring the knowledge, skills and resources they need to support children's healthy development.

The Enhanced Home Visiting Pilot Project evaluation will collect and disseminate information about the program models and service delivery strategies developed by the pilot sites, as well as the characteristics and needs of participating children, families, and caregivers. The evaluation will collect and analyze information from three main sources: (1) Interviews with staff and focus groups with parents and cargivers to be conducted during two rounds of visits to pilot programs (in spring 2005 and 2006), (2) a program recordkeeping system for tracking services to be maintained by the pilot sites, and (3) observational assessments of the quality of the caregiving environment and the interactions between children and caregivers to be conducted in spring 2006. All data collection instruments have been designed to minimize the burden on respondents by minimizing the time required to respond. Participation in the study is voluntary.

The results of the research will be used by the Head Start Bureau and ACF to identify and disseminate information about promising program models and service delivery strategies and lessons learned from the experiences of the pilot programs.

Respondents: Early Head Start directors, coordinators, specialists, and home visitors; staff from other community service providers; parents of Early Head Start children; and neighbor and relative caregivers of Early Head Start children.

Annual Burden Estimates

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS FOR THE ENHANCED HOME VISITING PILOT EVALUATION

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Annual burden (hours)
Site Visit Protocols (2005):				
Director Protocol	24	1	3.0	72.0
Coordinator/Specialist Protocol	24	1	1.5	36.0
Community Partner Protocol	24	1	1.5	36.0
Home Visitor Protocol	48	1	1.5	72.0

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS FOR THE ENHANCED HOME VISITING PILOT EVALUATION—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Annual burden (hours)
Parent Protocol	192	1	1.5	288.0
Caregiver Protocol	192	1	1.5	288.0
Case Review Protocol	48	1	3.0	144.0
Recordkeeping System (2005)	24	[a] 27	[b] 2.0	1,296.0
Total for 2005				2,232.0
Site Visit Protocol (2006):				
Director Telephone Protocol	24	1	1.0	24.0
Director Protocol	12	1	3.0	36.0
Coordinator/Specialist Protocol	12	1	1.5	18.0
Community Partner Protocol	12	1	1.5	18.0
Home Visitor Protocol	24	1	1.5	36.0
Parent Protocol	96	1	1.5	144.0
Case Review Protocol	24	1	3.0	72.0
Recordkeeping System (2006)	24	[a] 27	[b] 1.0	648.0
Caregiver Observations (2006)	96	1	2.5	240.0
Total for 2006				1,236.0
Total for 2005 and 2006				3,468.0
Estimated Average Annual Burden Hours				1,734.0

[a] Average expected number of children to be enrolled in the pilot per site. Expected enrollment ranges from 7 to 60 across the 24 sites.
[b] Based on an estimated burden of 10 minutes per child per month.

In compliance with the requirements of section 3506(C)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Offices. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 13, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–27583 Filed 12–16–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Plan for States/Territories for FY 2006–2007.

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead Agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the State's or the Territory's child care program. The ACF–118 is currently approved through May 31, 2006, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2005 Plan Period. However, in July 2005, States and Territories will be required to submit their FY 2006–2007 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State and Territorial CCDF Lead Agencies.

ANNUAL BURDEN ESTIMATES

instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	162.57	4,552

Estimated Total Annual Burden Hours: 4,552.

In compliance with the requirements of section 3506(c)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 13, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–27584 Filed 12–16–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2004

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2004, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services(other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AMERICAN MEDICAL PRODUCTS SVCS, INC ORANGE PARK, FL	12/20/2004
BAGDASARYAN, EMIN LANCASTER, CA	12/20/2004
BEAHAN, JACQUINA W APPINGER FALLS, NY	12/20/2004
BISHOP, SHARON N BEND, OR	12/20/2004
BOERNER, JANET COLUMBUS, OH	12/20/2004
CDC OF SOUTH FLORIDA MIAMI, FL	12/20/2004
CORPUS, VICKIE KINGSBURG, CA	12/20/2004
COSTALES, PHILIP LONG BEACH, CA	12/20/2004
CRAYFORD, WILLIAM WHITINGHAM, VT	12/20/2004
CUNNINGHAM, SHANNON BILLINGS, MT	12/20/2004
DOMINICK, JOANNE KENT, WA	12/20/2004
DORM, DWIGHT YORK, PA	12/20/2004
EARLY, CHRISTOPHER HARRISBURG, PA	12/20/2004
EWA, JOSEPH STATEN ISLAND, NY	12/20/2004
FEDERICO, JOSEPH MIDDLEBURG, FL	12/20/2004
FIRST MED EMS, INC ATLANTA, GA	12/20/2004
FREMIN, LUKE PLAQUEMINE, LA	12/20/2004
GUERRERO-SAUSTEGUI, JAVIER PETULUMA, CA	12/20/2004
JACKSON, MICHAEL AUBURN, AL	12/20/2004
JR MICK, INC TRENTON, NJ	12/20/2004
KAMPURYAN, GEVORK NORTH HOLLYWOOD, CA	12/20/2004
KATZ, JAY EGLIN, FL	12/20/2004
KUKASH, MAJDI GOLDSBORO, NC	12/20/2004
LEMESHKO, IVAN WOODBURN, OR	12/20/2004
LEMESHKO, TAMARA WOODBURN, OR	12/20/2004
LEMESHKO, VLADIMIR WOODBURN, OR	12/20/2004
LITINSKY, IGOR CALABASAS, CA	12/20/2004
MASON, JACQUELINE E CLEVELAND, OH	12/20/2004
MILLER, JEREMY COLUMBUS, OH	12/20/2004
MILLER, ROBERT MANSFIELD, TX	2/9/2001
MITCHELL, STEPHANIE ELIZABETH CITY, NC	12/20/2004
MORRIS, MINDY COLUMBUS, OH	12/20/2004
NOMANIM, DAVID WOODLAND HILLS, CA	12/20/2004
OANI, LEIA-LEI SANTA MARIA, CA	12/20/2004
PEARCE, MITCHELL BROOKLYN, NY	12/20/2004
PETERSDORF, MICHAEL SANTA BARBARA, CA	12/20/2004
PRAKASH, A V BIG SPRING, TX	2/10/2003
QUICK, DAVID ORANGEBURG, SC	12/20/2004
RAMIREZ, MARIA LYNWOOD, CA	12/20/2004
REQUILAM, CAROLINA CARSON, CA	12/20/2004
ROBINSON, CARLTON ATLANTA, GA	12/20/2004
RODRIGUEZ, MARILYN COLEMAN, FL	12/20/2004
SHIERY, JULIE WOODLAND HILLS, CA	12/20/2004
SILVA, IVAN SONOMA, CA	12/20/2004
SMALLS, CHRISTINA MIAMI, FL	12/20/2004
SOLIS, MELINDA FRESNO, CA	12/20/2004
SPILLER, SANDRA COLUMBIA, CA	12/20/2004
STAVCO, INC TRENTON, NJ	12/20/2004
STOCKFORD, PENNY ORLANDO, FL	12/20/2004
SUTHERLAND, DEBORAH TALLAHASSEE, FL	12/20/2004
SZILVAGYI, DAVID BRADFORD, PA	12/20/2004
SZILVAGYI, ELENA LEXINGTON, KY	12/20/2004
T & N PHARMACEUTICAL CO, INC MAPLEWOOD, NJ	12/20/2004
VENTURA, GILBERTO BOYES HOT SPRINGS, CA	12/20/2004
WIESEMANN, RICHARD HAMILTON, MT	12/20/2004
WILLIAMS, AKINTOLA ATLANTA, GA	12/20/2004
WINKY, INC WALL, NJ	12/20/2004
ZIMMERMAN, AMY MANSFIELD, OH	12/20/2004
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BARGER, MELISSA ENGLEWOOD, OH	12/20/2004
CHIA, DIANE	12/20/2004

Subject, city, state	Effective date
CINCINNATI, OH	
DANIELS, SUSAN	12/20/2004
BURLINGTON, VT	
DEGUZMAN, FITZ	12/20/2004
NAPA, CA	
DUMONT, BEVERLY	12/20/2004
SNOW, OK	
JOHNSON, BILLIE	12/20/2004
MONICKS CORNER, SC	
KELLEY, MARY	12/20/2004
HUNTSVILLE, AL	
KREISMAN, MARCIA	12/20/2004
NORTH BERGEN, NJ	
MITCHELL, AMY	12/20/2004
ROANOKE, AL	
MOSES, KEVIN	12/20/2004
CLEVELAND, OH	
POSNER, RUSSELL	12/20/2004
MONTGOMERY, AL	
RIDDELL, JASON	12/20/2004
TAMPA, FL	
SMALLEY, VICKI	12/20/2004
SALEM, OR	
WEAVER, KATHY	12/20/2004
CHILLICOTHE, OH	

FELONY CONTROL SUBSTANCE CONVICTION

ALERRE, RICARDO	12/20/2004
MURRELLS INLET, SC	
BORDEAUX, DEBORAH	12/20/2004
FLORENCE, SC	
BROWN, RICHARD	12/20/2004
STRAFFORD, PA	
CRAIG, MARTHA	12/20/2004
SPRINGFIELD, IL	
CUTRIGHT, LORI	12/20/2004
CLEARWATER, FL	
DEVLIN, THOMAS	12/20/2004
GOLDSBORO, NC	
ECK, HEATHER	12/20/2004
SALT LAKE CITY, UT	
HALL, DUDLEY	12/20/2004
NEW YORK, NY	
HASKELL, DAVID	12/20/2004
MIDLAND, TX	
MCCLAIN, JEFFREY	12/20/2004
LONOKE, AR	
SPARKS, KATHLEEN	12/20/2004
BILLINGS, MT	
WERTHEIM, HOWARD	12/20/2004
HACKETTSTOWN, NJ	
ZOOBI, MUHAMAD	12/20/2004
FOREST HILLS, NY	

PATIENT ABUSE / NEGLECT CONVICTIONS

ARROWOOD, JOYCE	12/20/2004
COLUMBIA, MO	
CORTEZ, JUAN	12/20/2004
FORT WORTH, TX	
DAVIS, DAVID	12/20/2004
SAN MATEO, CA	
DEY, SUBRATA	12/20/2004
WHITESBURG, KY	
FAINA, ROYCE	12/20/2004
LARAMIE, WY	
GEIGER, CLETUS	12/20/2004
NORTH PORT, FL	
HAWKS, PAUL	12/20/2004
DAYTON, WA	
HELMS, RALPH	12/20/2004
SACRAMENTO, CA	
HILL, TAMEKA	12/20/2004
TUSCALOOSA, AL	
JENNER, ALLEN	12/20/2004
OGDENSBURG, NY	
JUAREZ, SILVERIA	12/20/2004
FRESNO, CA	
LAMPHEAR, DENISE	12/20/2004
LARGO, FL	
LANGEVIN, CARMILLA	12/20/2004
HELENA, MT	
LUCAS, GAROLD	12/20/2004
YREKA, CA	
MARTINEZ, SARA	12/20/2004
MIAMI SPRINGS, FL	
MCGOLDRICK, VANESSA	12/20/2004
NORMAN, OK	
MCKNIGHT, KAREN	12/20/2004
SHREVEPORT, LA	
MELLOTT, BRADLY	12/20/2004
NAPOLEON, OH	
PIERCE, SUSAN	12/20/2004
WINDSOR, VT	
POULLARD, BRANDY	12/20/2004
VINTON, LA	
SABEROLA, HARREL	12/20/2004
BALDWIN PARK, CA	
TOMASO, MARY	12/20/2004
ALBANY, NY	
TURNER, ROBERT W	12/20/2004
JORDAN, UT	
WAFFER, JACQUELINE	12/20/2004
SHREVEPORT, LA	
WALDEN, RAYMOND	12/20/2004
SOUTH CHARLESTON, WV	
WALLER, MARSHA	12/20/2004
MARKSVILLE, LA	
WILLIAMS, MONA	12/20/2004
SYRACUSE, NY	

CONVICTION FOR HEALTH CARE FRAUD

CHURCH, MELISSA	12/20/2004
FRESNO, CA	
HERNANDEZ, MICHELLE	12/20/2004
SAN ANGELO, TX	
MAGANA, ANGEL	12/20/2004
PECOS, TX	
PHILLIPS, RANDALL	8/27/2004
FLORENCE, CO	
RIVERA, ROBERT	12/20/2004
THREE RIVERS, TX	

CONTROLLED SUBSTANCE CONVICTIONS

WEEDMAN, CATHY	12/20/2004
CHATTANOOGA, TN	

LICENSE REVOCATION / SUSPENSION / SURRENDERED

ALBERTSON, ANNETTE	12/20/2004
HEBRON, KY	
ALLEN, VICKI	12/20/2004
LAS VEGAS, NV	
AMOS, RENE	12/20/2004
GLENWOOD, IL	
APPEL, LAWRENCE	12/20/2004
RANDALLSTOWN, MD	
ARLEDGE, STACY	12/20/2004
GADSDEN, AL	
ASHBURN, TIMOTHY	12/20/2004
GAITHERSBURG, MD	
AVERHART, AARON	12/20/2004
FT MYERS, FL	
BACCELLI, ANGELA	12/20/2004
SUSANVILLE, CA	
BANUELOS, MARTHA	12/20/2004
BUENA PARK, CA	
BARNES, LINDA	12/20/2004
DEMOPOLIS, AL	
BARNETT, MELANEY	12/20/2004
WINSTON-SALEM, NC	
BATISTE, SHARON	12/20/2004
TACOMA, WA	
BAX, DEBORAH	12/20/2004
CLEARWATER, FL	
BAZZANO, NORA	12/20/2004
MIAMI, FL	
BELL, SHERRI	12/20/2004
CANTON, IL	
BENIS, DAVID	12/20/2004
JERSEY SHORE, PA	
BENNETT, JUDITH	12/20/2004
NASHUA, NH	
BERRY, CHRISTY	12/20/2004
HOUSTON, TX	
BESS, ROBERT	12/20/2004
JOHNSON CITY, TN	
BIRNEY, SCOTT	12/20/2004
DREXEL HILL, PA	
BOWEN, GINA	12/20/2004
GREENACRES, WA	
BOYD, GREGORY.	
MARY ESTER, FL	12/20/2004
BROKAW, RHONDA	12/20/2004
BELLVILLE, OH	
BROOKS, RUTH	12/20/2004
HELENA, AL	
BROTHERS, JEFFREY	12/20/2004
CENTRAL CITY, KY	
BROWN, GAIL	12/20/2004
WINSTON-SALEM, NC	
BROWN, JAMES	12/20/2004
MEMPHIS, TN	
BRYARS, SUSAN	12/20/2004
BAY MINETTE, AL	
BUGGS, DAVID	12/20/2004
TAMPA, FL	
BURKE, BARBARA	12/20/2004
HOUSTON, TX	
BUTLER, MARK	12/20/2004
RIVERSIDE, IL	
CANOY, VIVIAN	12/20/2004
JACKSON, LA	
CASSIDY, DANIELLA	12/20/2004
BROWNSVILLE, KY	
CHAMBERLIN, ANNE	12/20/2004
SPOKANE, WA	
CHANDLER, MATTHEW	12/20/2004
RICHARDSON, TX	
CHARLES, MARIE	12/20/2004
LAKE WORTH, FL	
CHAVEZ, CHRISTOPHER	12/20/2004
PHOENIX, AZ	
CLARK, LORI	12/20/2004
LEHIGH ACRES, FL	
CLIFFORD, STEVEN	12/20/2004
CARNELIAN BAY, CA	
COHEN, ALAN	12/20/2004
WESTON, MA	
COHEN, MARIANNE	12/20/2004
HENDERSON, NV	
COLBY, DEBRA	12/20/2004
E TAUNTON, MA	
COLE-HICKMAN, THOMAS	12/20/2004

Subject, city, state	Effective date
PHOENIX, AZ	
COLLINS, JOAN SAN DIEGO, CA	12/20/2004
COLVIN, MELISSA SPRINGFIELD, IL	12/20/2004
CONNER, JAMES CALLAHAN, FL	12/20/2004
CONNER, STACY RENTON, WA	12/20/2004
COOLEY, BRIAN CLARKSVILLE, FL	12/20/2004
COPPARINI, TINA MANSFIELD, MA	12/20/2004
CORLEY, JAMIE GADSDEN, AL	12/20/2004
COX, BARBARA WACO, TX	12/20/2004
CRANE, KAREN HOLLAND, OH	12/20/2004
CURRY, JASON AUSTIN, TX	12/20/2004
CUSICK, KIMBERLY MELBOURNE, FL	12/20/2004
DELGADO, FELIX MARGATE, FL	12/20/2004
DEYOUNG, EDWARD TUCSON, AZ	12/20/2004
DOLL, LAUREN HOUSTON, TX	12/20/2004
DRUPKA, CHRISTINE CHICAGO, IL	12/20/2004
DUBOIS, KYLE ALPINE, UT	12/20/2004
DUDLEY, SHAWANA TAMPA, FL	12/20/2004
DUNHAM, STEVEN MESA, AZ	12/20/2004
EDIE, MICHELL RENO, NV	12/20/2004
EGERT, JANET SAN JOSE, CA	12/20/2004
ENNIS, VALERIE GARNER, NC	12/20/2004
FELDER, CHASTITY MONTGOMERY, AL	12/20/2004
FISHER, BEVERLY LOUISVILLE, KY	12/20/2004
FOSMORE-BADR, NITA WESTBOROUGH, MA	12/20/2004
FRENCH, KATHRYN WADDELL, AZ	12/20/2004
GARCIA, ETHEL PHOENIX, AZ	12/20/2004
GARDNER, PETER NASHVILLE, TN	12/20/2004
GENTILE, DANIEL PENN VALLEY, CA	12/20/2004
GILLAND, SHEILA ARDEN, NC	12/20/2004
GIVENS, TERESA LINCOLN, IL	12/20/2004
GLOVER, VICKIE BOWLING GREEN, KY	12/20/2004
GRAFFUIS, MARIA APOPKA, FL	12/20/2004
GRAUER, LOUIS MIAMI BEACH, FL	12/20/2004
GRAVELLE, RANDY LOS ANGELES, CA	12/20/2004
GRIEL, DOLORES SHELBURNE FALLS, MA	12/20/2004
GUERLINE, JULIO LEHIGH ACRES, FL	12/20/2004
GUEST, REBECCA FAIRFIELD, AL	12/20/2004
HABERMAN, ARTHUR UPLAND, CA	12/20/2004
HALL, DENISE BARDSTOWN, KY	12/20/2004
HALLMARK, FERRIS FAIRFIELD GLADE, TN	12/20/2004
HAZZARD, JENELLE LEWISTOWN, IL	12/20/2004
HERT, JAMES ARLINGTON, TX	12/20/2004
HOLGIN, RICHARD AUSTIN, TX	12/20/2004
HOLSTON, JONNA KERNERSVILLE, NC	12/20/2004
HOOD, GLORIA GOODYEAR, AZ	12/20/2004
HORN, TONY DES MOINES, WA	12/20/2004
HUBBARD, RITA LONDON, KY	12/20/2004
HUNT, MARLA LEE, FL	12/20/2004
HUNTER, ALFRED CINCINNATI, OH	12/20/2004
HUPPERTZ, ANNA CRESCENT SPRINGS, KY	12/20/2004
JACKSON, MICHELE NORTH PORT, FL	12/20/2004
JARMAN, SANDRA FLORENCE, KY	12/20/2004
JOHNSON, MICHELLE LYNN, MA	12/20/2004
JOHNSON, TAMMIE BIRMINGHAM, AL	12/20/2004
JONES, DANA PADUCAH, KY	12/20/2004
JURS, JUDY ROGERS, AR	12/20/2004
KEENAN, ELIZABETH SUMMERFIELD, FL	12/20/2004
KENTZ, PATRICIA RESTON, VA	12/20/2004
KEY, ANNA ASHLAND, KY	12/20/2004
LAMBERT, RONALD BOULDER, CO	12/20/2004
LAWRENCE, JULIE MALONE, FL	12/20/2004
LAWRENCE, SUSAN EVANSVILLE, IN	12/20/2004
LAWSON, LINDA PORT CLINTON, OH	12/20/2004
LEGG, SANDRA JOHNSON CITY, TN	12/20/2004
LEVY, YVONNE PIKEVILLE, KY	12/20/2004
LIPOVSIK, LORI MCKEES ROCKS, PA	12/20/2004
LLOYD, LINDSEY JACKSONVILLE, FL	12/20/2004
LOUCHART, JULIA EAST STROUDSBURG, PA	12/20/2004
LUNDY, CLARENCE THEODORE, AL	12/20/2004
MADDOX, ALBERT ATLANTA, GA	12/20/2004
MAHER, SHARON SELAH, WA	12/20/2004
MANIS, BRISA SCOTTSDALE, AZ	12/20/2004
MARTIN, JOEY HUGHES SPRINGS, TX	12/20/2004
MAUNEY, DEBRA COLUMBIA, SC	12/20/2004
MAZZEO-WHITE, SUNNY BOYNTON BEACH, FL	12/20/2004
MCCANN, LAURAN HOUSTON, TX	12/20/2004
MCCORMICK, JOHN ORLANDO, FL	12/20/2004
MCDOWELL, LANA LAFOLLETTE, TN	12/20/2004
MERILLAT, SUZANNE SILVER SPRINGS, MD	12/20/2004
MIKESELL, STACEY NEWTON, MA	12/20/2004
MILEY, VALERIE REHRERSBURG, PA	12/20/2004
MILLER, DOUGLAS RINGGOLD, GA	12/20/2004
MINGIS, LISA LOUISVILLE, KY	12/20/2004
MOORE, CONNIE CONROE, TX	12/20/2004
MORELAND, JOANN FROST, TX	12/20/2004
MULLINS, STEPHANIE BONNYMAN, KY	12/20/2004
MURPHY, PAULA TACOMA, WA	12/20/2004
NESBY, ROBERTA FEDERAL WAY, WA	12/20/2004
NIELSON, ROBERT MESA, AZ	12/20/2004
NONATO, RONALD ANAHEIM, CA	12/20/2004
NURI, MAJDIAN LAGUNA HILLS, CA	12/20/2004
O'RIORDAN, KAREN BOYNTON BEACH, FL	12/20/2004
ODOM, ELIZABETH DURANT, OK	12/20/2004
PARNELLO, DEBRA ROCKFORD, IL	12/20/2004
PAVAI, TONI MORRISTOWN, FL	12/20/2004
PAYNE, KATHY OWENSBORO, KY	12/20/2004
PAYNE, STEPHANIE OWENSBORO, KY	12/20/2004
PITTS, ELENA BAKERSFIELD, CA	12/20/2004
POWELL, CAREY MOUNT STERLING, KY	12/20/2004
PRATT, KAREN WASHINGTON, PA	12/20/2004
READ, CHERYL POMONA, CA	12/20/2004
REAM, STEPHANIE YORK, PA	12/20/2004
RIZZO, JANET ENGLEWOOD, FL	12/20/2004
ROBERSON, MARIA BELMAR, NJ	12/20/2004
ROBERTS, KRISTI SHELBYVILLE, KY	12/20/2004
ROBERTSON, DEBORAH MIAMISBURG, OH	12/20/2004
ROJCEWICZ, JUDITH WESTMINSTER, MA	12/20/2004
ROWTON, KAREN AUSTIN, TX	12/20/2004
RUNES, VALERIE ARLINGTON HEIGHTS, IL	12/20/2004
RUONA, LUANNE ALEXANDRIA, VA	12/20/2004
RUSSELL, DEBORAH	12/20/2004

Subject, city, state	Effective date
GEORGETOWN, IL	
SALAHADEEN, AQUILA ..... EAST CLEVELAND, OH	12/20/2004
SEBREE, CLARA ..... OWENSBORO, KY	12/20/2004
SEPLOW, ELIZABETH ..... N MIAMI, FL	12/20/2004
SERRANILLA, HERMINIA ..... ANAHEIM, CA	12/20/2004
SICHEL, DEBORAH ..... NEWTON, MA	12/20/2004
SICKORA, MARK ..... CHAMPION, PA	12/20/2004
SILBERSTEIN, JAN ..... EAST HARTFORD, CT	12/20/2004
SILVA, FAITH ..... GLOUCESTER, MA	12/20/2004
SIMON, JUNIOR ..... CAPE CORAL, FL	12/20/2004
SMITH, JAMES ..... CLEARWATER, FL	12/20/2004
SNOW, ANGIE ..... MEDWAY, MA	12/20/2004
SPIRES, LISA ..... TUSCUMBIA, AL	12/20/2004
STEELE, IRIS ..... AMORY, MO	12/20/2004
STEWART, JANICE ..... NEWPORT, TN	12/20/2004
STILLMAN, SPRING ..... ORLANDO, FL	12/20/2004
STONE, NATASHA ..... CAPE CANAVERAL, FL	12/20/2004
STONEBERG, JEREMIAH ..... TUCSON, AZ	12/20/2004
STROUD, LYNETTA ..... RADCLIFF, KY	12/20/2004
STURGILL, CHRISTIANNE ..... STUART, FL	12/20/2004
SUKI SPA, INC ..... PALM HARBOR, FL	12/20/2004
SWINDLE, DANA ..... W RICHLAND, WA	12/20/2004
TANAEL, RICARDO ..... VALLEJO, CA	12/20/2004
TARAN, RICHARD ..... BRENTWOOD, TN	12/20/2004
THOMAS, BELINDA ..... TAMARAC, FL	12/20/2004
TORRES, DORA ..... SAN RAFAEL, CA	12/20/2004
TURNER, RICHARD ..... SEQUIM, WA	12/20/2004
UNDERWOOD, DAWANNA ..... LOUISVILLE, KY	12/20/2004
VANCE, MARY ..... PELL CITY, AL	12/20/2004
WALLACE, ETHEL ..... ASHLAND, KY	12/20/2004
WARREN, THERESA ..... TAMPA, FL	12/20/2004
WEST, ANNIE ..... TUSCALOOSA, AL	12/20/2004
WHITE, VICTORIA ..... WEST WYOMING, PA	12/20/2004
WIATER, MICHAEL ..... OAK GROVE, KY	12/20/2004
WILDMAN, TRACIE ..... BRADENTON, FL	12/20/2004
WOODS, FREDERICK ..... EUCLID, OH	12/20/2004

Subject, city, state	Effective date
FEDERAL / STATE EXCLUSION / SUSPENSION	
ROGERS, JUDY ..... RYE, NH	12/20/2004
ROGERS, WILLIAM ..... RYE, NH	12/20/2004
FRAUD / KICKBACKS / PROHIBITED ACTS / SETTLEMENT AGREEMENTS	
CHARLESTON SPEECH AND HEARING ..... N CHARLESTON, SC	5/14/2004
WATTS, ROBERT ..... N CHARLESTON, SC	5/14/2004
OWNED / CONTROLLED BY CONVICTED ENTITIES	
CLINICAL SOLUTIONS OF SOUTH FLORIDA ..... PEMBROKE PINES, FL	12/20/2004
DAVID WAYNE ENTERPRISE, INC ..... MIAMI BEACH, FL	12/20/2004
DENTAL HEALTH CLINIC, INC HIALEAH, FL	12/20/2004
HEALTHY SMILE DENTISTRY, INC ..... MIAMI LAKES, FL	12/20/2004
HIALEAH DME, INC ..... HIALEAH, FL	12/20/2004
HIGH TECH MEDICAL CENTER ..... MIAMI SPRINGS, FL	12/20/2004
IMAGINE CONSULTING SERVICES, INC ..... MIAMI BEACH, FL	12/20/2004
K & F SERVICES, CORP ..... RED LION, PA	12/20/2004
PALM BCH SPORTS MEDICINE ASSOC ..... BOYNTON BEACH, FL	12/20/2004
RUSSELL M POSNER, DC, PA MONTGOMERY, AL	12/20/2004
SOUTHEAST RESPIRATORY CARE, INC ..... MIAMI, FL	12/20/2004
UNITY HOME HEALTH CARE AND OXYGEN ..... HAMILTON, MT	12/20/2004
DEFAULT ON HEAL LOAN	
BOYKO, JOHN ..... FULLERTON, CA	12/20/2004
BYRNS, DESIREA ..... FORT MYERS, FL	12/20/2004
GREENO, VINCENT ..... READING, MA	12/20/2004
LOPEZ, ROBERTO ..... SEASIDE, CA	12/20/2004
RAMIREZ, RICHARD ..... HOUSTON, TX	10/20/2004
SOMMERFELD, KURT ..... NEW CASTLE, PA	12/20/2004
WALKER, ROBERT ..... LANSING, MI	12/20/2004

Dated: December 1, 2004.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 04–27647 Filed 12–16–04; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Incident Management System Compliance Assurance Support Tool (NIMCAST).

OMB Number: 1660–0087.

Abstract: The National Incident Management System Compliance Assessment Tool (NIMCAST) is a 75 data element instrument used to: (a) Evaluate State, local and Tribal governments' compliance with standards and requirements established in the National Incident Management System (NIMS), (b) determine eligibility for Federal preparedness assistance, and (c) strengthen incident management programs at the department, agency, or jurisdictional level.

Affected Public: State, local and Tribal Government, and not for profit institutions.

Number of Respondents: 4,835 respondents.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 14,505 hours.

Frequency of Response: Once annually for all respondents. Occasionally, subsequent assessments

or follow-ups may be required for some respondents on a case-by-case basis not exceeding two responses per year.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: December 10, 2004.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–27625 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1571–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1571–DR), dated November 15, 2004, and related determinations.

DATES: *Effective Date:* December 9, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now October 18, 2004, through and including October 24, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–27624 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

DATES: *Effective Dates:* December 9, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 16, 2004:

The counties of Brevard, Clay, Duval, Flagler, Highlands, Indian River, Lake, Manatee, Marion, Martin, Okeechobee, Osceola, Orange, Palm Beach, Pasco, Polk, Seminole, St. Johns, St. Lucie, and Volusia for Individual Assistance.

The counties of Citrus and Lee for Individual Assistance (already designated for emergency protective measures [Category B] under the Public Assistance Program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–27623 Filed 12–16–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–51]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 9, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–27401 Filed 12–16–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bureau of Reclamation

[INT–FES–04–47]

Final Environmental Impact Statement/ Environmental Impact Report for Proposed Adoption of the Lower Colorado River Multi-Species Conservation Program, Final Lower Colorado River Multi-Species Habitat Conservation Plan, Final Biological Assessment, Incidental Take Permit Application, Draft Implementing Agreement, and Draft Funding and Management Agreement

AGENCIES: Fish and Wildlife Service, Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) and the Bureau of Reclamation (Reclamation) published a **Federal Register** notice on June 18, 2004 (69 FR 34185) that informed the public of the availability of the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for the Lower Colorado River Multi-Species Conservation Program (LCR MSCP), Application for Section 10 Incidental Take Permit (ITP), Draft Lower Colorado River Multi-Species Habitat Conservation Plan (HCP), Draft Biological Assessment (BA), and Draft Implementing Agreement (IA).

The notice provided for a 60-day comment period; comments were accepted pursuant to the notice through August 18, 2004. The notice also advised the public that the Service received an ITP application for the LCR MSCP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The ITP would authorize the LCR MSCP permittees' incidental take of the following federally listed and candidate species: southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher), Yuma clapper rail (*Rallus longirostris yumanensis*) (clapper rail), desert tortoise (*Gopherus agassizii*) (tortoise), bonytail (*Gila elegans*) (bonytail), humpback chub (*Gila cypha*) (humpback), razorback sucker (*Xyrauchen texanus*) (razorback), yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo), and relict leopard frog (*Rana onca*) (frog). The ITP would also address incidental take for 19 other species of animals and plants that are not federally listed or candidate species at this time. The proposed take would occur in Mohave, La Paz, and Yuma counties, Arizona; San Bernardino, Riverside, and Imperial counties, California; and Clark County, Nevada, as a result of water storage and delivery, power generation, and other associated federal and non-federal water management actions and activities on the lower Colorado River from the full pool elevation of Lake Mead to the Southerly International Boundary with Mexico.

A Final HCP, which makes revisions to the Draft HCP submitted as part of the application package (Application), has been submitted to the Service as required by the Act for consideration of issuance of an ITP, pursuant to section 10(a)(1)(B). The HCP provides measures to minimize and mitigate the effects of the proposed incidental take of listed, candidate, and other species.

Reclamation, the Service, Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), National Park Service (NPS), and Western Area Power Administration (Western), have completed a Final BA, which includes an evaluation of the effects of specific ongoing and potential future federal actions, including Reclamation's discretionary LCR operations and maintenance activities. In addition, the BA addresses Reclamation's proposed implementation of the conservation plan and conservation measures described in the BA and in the HCP for the listed, candidate, and other covered species.

The Service, Reclamation, and The Metropolitan Water District of Southern California, as joint lead agencies, have issued a Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) to evaluate the impacts of, and alternatives for, the possible issuance of an ITP and the implementation by Reclamation of conservation measures described in the BA and the HCP.

As of the June 18, 2004, **Federal Register** Notice, a Draft IA that represented the positions of the federal and non-federal entities that are anticipated to participate in the LCR MSCP had not yet been completed. Subsequent to the publication of the June 18, 2004, **Federal Register** notice, letters of financial commitment from representatives of the States of Arizona, California and Nevada were received by the Secretary of the Interior on August 17, 2004, during the public comment period on the Draft LCR MSCP program documents. These letters provide a commitment to ''share in the agreed upon LCR MSCP costs equally with the United States on a 50/50 federal/non-federal basis.''

A number of other public comments received pursuant to the June 18, 2004, **Federal Register** notice sought information regarding the financial assurances necessary to implement the LCR MSCP. The commitments contained in the August 17, 2004, letters from Arizona, California, and Nevada have now been incorporated into a Draft Funding and Management Agreement (FMA), which was developed during negotiations between the federal and non-federal parties to the LCR MSCP and is published as Exhibit A to the Final HCP. In addition, the parties have also developed a Draft IA, which is published as Exhibit B to the Final HCP.

Subsequent to publication of this **Federal Register** Notice and the FEIS/FEIR and other program documents, the Draft IA and Draft FMA will be presented to the relevant approving officials and respective boards. No final decisions have been made by the federal or non-federal parties with respect to the financial commitments or other provisions set forth in the August 17th letters and the Draft FMA, or with respect to the provisions in the Draft IA. Appropriate revisions, if any, will be included in any Final FMA and Final IA. Appropriate information regarding the issues addressed in the Draft FMA and the Draft IA will also be included in any Record of Decision (ROD) issued by the Secretary with respect to the LCR MSCP.

DATES: No decision will be made on the proposed action until at least 30 days after the United States Environmental Protection Agency's (EPA) Notice of Availability for the LCR MSCP FEIS/FEIR has been published in the **Federal Register**. At this time, it is anticipated the Secretary of the Interior will complete a ROD in January 2005.

ADDRESSES: Copies of the LCR MSCP FEIS/FEIR, Final HCP, Final BA, Draft IA, and Draft FMA are available for public inspection and review at the locations listed in the **SUPPLEMENTARY INFORMATION** section. An internet version of the documents is available on the LCR MSCP Web site, *http://www.lcrmscp.org.* In addition, copies are available upon request from Mr. Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021; or Mr. Glen Gould, Bureau

of Reclamation, P.O. Box 61470, LC–2011, Boulder City, NV, 89006–1470.

FOR FURTHER INFORMATION, CONTACT: Mr. Steve Spangle, Field Supervisor, Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021 or (602) 242–0210; or Mr. Glen Gould, Bureau of Reclamation, P.O. Box 61470, LC–2011, Boulder City, NV, 89006–1470 or (702) 293–8702.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Service and Reclamation, with the participation of other federal and non-federal agencies, have gathered the information necessary to: (1) Formulate alternatives and determine impacts for the FEIS/FEIR related to the issuance of an ITP for the LCR MSCP; and (2) develop and implement the HCP, which provides measures to minimize and mitigate the effects of incidental take of federally listed species to the maximum extent practicable.

Section 9 of the Act prohibits the ''taking'' of threatened and endangered species. However, the Service, under limited circumstances, may issue ITPs to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing issuance of ITPs pursuant to the Act are published at 50 CFR Parts 13 and 17. This notice is provided pursuant to Section 10(c) of the Act and applicable NEPA regulations (40 CFR 1506.6).

The LCR MSCP, the conservation program described in the HCP, and the BA were developed over the past seven years in a public process involving participants and stakeholders from potentially affected or interested groups on the LCR. These groups include federal agencies, *i.e.*, the Service, Reclamation, BLM, BIA, NPS, and Western; six Tribes; the Lower Basin States of Arizona, California, and Nevada; and other interested LCR stakeholders. The groups were organized into a Steering Committee and various subject matter subcommittees to oversee the development of the LCR MSCP. Meetings of the Steering Committee were open to the public and time for public comment was included at each meeting. The LCR MSCP website contains information on meetings and documents. Three sets of public meetings were held from 1999 through 2003 to explain the need for the LCR MSCP, request information on important issues for the NEPA process, receive input on the conservation program, and present alternatives. Three public hearings were held in July 2004 to receive public comment on the DEIS/DEIR.

Proposed Action: The proposed action has two components. The first is the issuance of an ITP by the Service for covered activities on the LCR undertaken by the HCP applicants, pursuant to section 10(a)(1)(B) of the Act. The activities that would be covered by the ITP are water- and power-related actions, and other specific identified non-federal activities involving the LCR. The area covered by the ITP (and the LCR MSCP) includes Lake Mead up to its full pool elevation of 1,229 feet, Lake Mohave up to its full pool elevation of 647 feet, Lake Havasu up to its full pool elevation of 450 feet, and the LCR and its historical floodplain from the highest elevation of Lake Mead to the Southerly International Boundary with the Republic of Mexico. The requested term of the permit is 50 years. To meet the requirements of a section 10(a)(1)(B) ITP, the LCR MSCP participants have developed and, with the cooperation of Reclamation, will implement the conservation plan described in the BA and in the HCP, which provides measures to minimize and mitigate incidental take of flycatchers, clapper rails, tortoises, bonytails, humpbacks, and razorbacks to the maximum extent practicable, and which ensures that the incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild. The conservation plan identified in the BA and the HCP also addresses potential impacts on the cuckoo and frog (candidate species) and 19 other species of animals and plants.

The second component is the completion of consultation under section 7(a)(2) with Federal action agencies for their covered actions (identified in Chapter 2 of the BA), including implementation of the conservation plan by Reclamation as part of its proposed action (along with its identified continued and future operations and maintenance activities on the LCR).

Alternatives: Three other alternatives are being considered as part of this process, as follows:

1. No ITP—No issuance of an ITP. This alternative would require the LCR MSCP participants to pursue individual ESA compliance activities to address incidental take resulting from their actions or activities on the LCR or avoid taking actions that would result in incidental take. This approach would require the federal action agencies to consult separately on any proposed discretionary actions on the LCR.

2. Listed Species Only—Issuance of an ITP authorizing the same covered actions by the LCR MSCP participants but only requesting incidental take coverage for the six species currently listed as endangered or threatened pursuant to the Act. This alternative includes measures to minimize and mitigate for the potential take of federally listed species.

3. Off-Site Conservation—Issuance of an ITP authorizing the same covered actions by the LCR MSCP participants and the same list of 27 species. Habitat restoration activities would occur outside of the LCR MSCP planning area in adjacent river basins. This alternative includes measures to minimize and mitigate for the potential take of federally listed species, candidate species, and other covered species.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D.D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This **Federal Register** notice provides notice of a step in the review and processing for the potential issuance of a section 10(a)(1)(B) permit; any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with ''No Surprises'' assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances, consistent with the Court's order.

Copies of the FEIS/FEIR, Final HCP, Final BA, ITP Application, Draft IA, and Draft FMA are available for public inspection and review at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C. St. NW., Washington, DC, 20240.
- Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, NM, 87102.
- Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021.
- Bureau of Reclamation, Lower Colorado Region, 500 Date Street, Boulder City, NV, 86009–1470.
- Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 6107, Salt Lake City, UT, 84138–1102.

- Bureau of Reclamation Library, Denver Federal Center, 6th Avenue and Kipling, Building 67, Room 167, Denver, CO, 80225.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ, 85021.
- Metropolitan Water District of Southern California, 700 N. Alameda St., Los Angeles, CA, 90017.
- Government Document Service, Arizona State University, Tempe, AZ, 85287.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ, 85384.
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA, 92225.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ, 86442.
- Laughlin Library, 2840 South Needles Hwy., Laughlin, NV, 89029.
- Clark County Library, 1401 East Flamingo Road, Las Vegas, NV, 89119.
- James I. Gibson Library, 280 Water Street, Henderson, NV, 89015.

Dated: December 14, 2004.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–27677 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW154595]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the Ten Mile Rim Tract described below in Sweetwater County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., on Wednesday, January 19, 2005. Sealed bids must be submitted on or before 4 p.m., on Tuesday, January 18, 2005.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107) of the BLM Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Julie Weaver, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6260, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Bridger Coal Company. The Federal coal tract being considered for sale is adjacent to the Jim Bridger Mine operated by Bridger Coal Company. The coal resources to be offered consist of all reserves recoverable by underground mining methods in the following-described lands located in Sweetwater County north of Point of Rocks, Wyoming. It is approximately 10 miles north of Interstate 80 and is immediately adjacent to the northwestern boundary of the existing Jim Bridger surface mine.

T. 21 N., R. 100 W., 6th PM, Wyoming. Sec. 6: Lots 8–14, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
T. 22 N., R. 100 W., 6th PM, Wyoming. Sec. 30: Lots 5–8, E½W½, E½;
T. 22 N., R. 101 W., 6th PM, Wyoming. Sec. 26: Lots 1–16; Sec. 34: Lots 1, 2, 6–8, 13, NE¼SE¼, SW¼SE¼.

Containing 2,242.18 acres, more or less.

The tract is adjacent to sections within an existing federal coal lease to the south, to alternating sections under a private coal lease, and to an imbedded section under a State of Wyoming lease, all controlled by the Jim Bridger Mine. It is also adjacent to additional unleased federal and private coal to the east, north, and west.

All of the acreage offered has been determined to be suitable for underground mining. There are no existing surface facilities or structures that will be impacted by the proposed underground mine. There are no producing oil and/or gas wells on the tract. All of the surface estate is controlled by the Jim Bridger Mine.

The tract contains underground mineable coal reserves in the Deadman zone of the Fort Union formation currently being recovered in the adjacent, existing surface mine. In this area, the Deadman occurs in numerous seams, but only the D–41 seam is considered to be recoverable in the proposed mine area. This seam ranges from about 7–16 feet thick and occurs over the entire LBA. The depth from the surface ranges from about 250–1050 feet from the shallow southwest corner to the deep northeast corner.

The tract contains an estimated 32,145,000 tons of recoverable coal based on a longwall recovery method. This method assumes 7–8.5 foot recovery for continuous miner sections and 7–11 foot recovery for longwall panels. The estimate of recoverable reserves includes only the D–41 seam.

The Ten Mile Rim LBA coal is ranked as subbituminous B. The overall average quality is approximately 9,900 BTU/lb. with about 10.25% ash, 0.59% sulfur, and 3.21% sodium in the ash. These quality averages are generally higher than the reserves currently being mined in the adjacent surface mine.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, January 18, 2005, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW154595, are available for inspection at the BLM Wyoming State Office.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 04–27486 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1610–DS]

Notice of Availability of the Draft Environmental Impact Statement for the Rawlins Resource Management Plan Revision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Draft Environmental Impact Statement (DEIS) for the Rawlins Resource Management Plan (RMP), Wyoming.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) announces the availability of the DEIS for the Rawlins RMP Revision.

The DEIS describes and analyzes alternatives for the planning and management of public lands and resources administered by the BLM Rawlins Field Office.

DATES: The Rawlins RMP and DEIS will be available for review for 90 calendar days from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. The BLM can best utilize comments and resource information submissions within this review period.

Formal hearings and open houses will be scheduled to provide the public additional opportunities to submit comments on the Rawlins RMP revision and DEIS. All meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, Rawlins RMP Web site announcements, or mailings.

ADDRESSES: A copy of the DEIS has been sent to affected Federal, State, and local Government agencies and to interested parties. The document will be available electronically on the following Web site: *http://www.wy.blm.gov/rfo/rfoplan.htm.* Copies of the DEIS will be available for public inspection at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, Wyoming 82301

FOR FURTHER INFORMATION CONTACT: Mr. John Spehar, Project Manager, BLM Rawlins Field Office, 1300 N. Third Street, Rawlins, WY 82301. Requests for information may be sent electronically to: *Rawlins_wymail@blm.gov* with ''Attention: Rawlins RMP Information Request'' in the subject line. Mr. Spehar may also be reached at (307) 328–4264.

SUPPLEMENTARY INFORMATION: The administrative area is located in south central and southeastern Wyoming and includes approximately 11.2 million acres of land in Albany, Carbon, Laramie, and Sweetwater Counties. Within that area, the BLM administers approximately 3.3 million acres of public land surface and underlying Federal mineral estate. The BLM administers an additional 0.1 million acres of surface estate over State and private minerals, and administers an additional 1.2 million acres of Federal mineral estate under private or State-owned surface.

In 1990, the BLM approved the Great Divide RMP. This RMP established management direction for the surface and mineral estates and associated resources administered by the BLM Rawlins Field Office, Wyoming. In July 2001, an evaluation of the Great Divide RMP, predecessor to the Rawlins RMP, concluded that the RMP was deficient in certain areas as a result of changed conditions and demands on the area's resources.

In 2002, under the provisions found at 43 CFR 1610, the BLM published a Notice of Intent to prepare an Environmental Impact Statement (EIS) that would be used to review and analyze current conditions considering new data, new or revised policies, and circumstances affecting the entire or major portions of the geographic area addressed in the Great Divide RMP. To reflect changes in administrative units, the BLM also established that the revised plan would henceforth be known as the Rawlins RMP.

The DEIS describes the physical, biological, cultural, historic, and socioeconomic resources in and around the planning area. The focus for impact analysis is based on resource issues and concerns identified during scoping and public involvement activities and opportunities. Potential impacts of concern regarding possible management direction and planning decisions (not in priority order) are development of energy resources and mineral-related issues; special management designations; resource accessibility; wildland-urban interface; special status species management; water quality; vegetation management; and recreation, cultural and paleontological resources management.

The DEIS documents the direct, indirect, and cumulative environmental impacts of four alternatives for management of BLM-administered public lands within the Rawlins Field Office. When completed, the revised RMP will fulfill the obligations set forth by NEPA, the Federal Land Policy and Management Act, and associated Federal regulations. Four alternatives are analyzed in detail:

1. *Alternative 1.* Continues Existing Management Direction (''No Action'' Alternative);

2. *Alternative 2.* Encourages development and use opportunities while minimizing adverse impacts to cultural and natural resources (Development Alternative);

3. *Alternative 3.* Fosters conservation of natural and cultural resources while providing for compatible development and use (Protection Alternative);

4. *Alternative 4.* Provides development opportunities while protecting sensitive resources (Agency Preferred Alternative).

The Rawlins RMP DEIS considers, and is in conformance with, BLM's National Fire Plan. The potential for energy development in the Rawlins RMP planning area is high, both east and west of Rawlins, Wyoming. Based on the high potential within the area administered by the Rawlins Field Office, the DEIS considers oil and gas and wind energy development in support of the National Energy Plan.

In the time since the BLM published its Notice of Intent to prepare an RMP and EIS in the **Federal Register**, BLM has conducted open houses, taken surveys, and issued mailings to solicit comments and input. The Rawlins Field Office has been coordinating with various County Governments, Conservation Districts, and Wyoming State Government throughout the development of the DEIS. Tribal Governments with interests in the Rawlins area were also contacted. Commencing with the date that BLM's NOI was published in the **Federal Register**, through April 7, 2003, the BLM solicited for, and received, in excess of, 26,000 comments from interested parties. In addition, public meetings were held to provide the public with an opportunity to acquire information about the RMP revision process, as well as to provide the public with an opportunity to submit comments. Public meetings were held in: Rock Springs, Wyoming, March 3, 2003; Rawlins, Wyoming, March 4, 2003; Baggs, Wyoming, March 5, 2003; and Laramie, Wyoming, March 6, 2003. BLM has considered all comments presented throughout the process in the preparation of the Draft RMP EIS. Background information and maps used in developing the Draft RMP EIS are available for public viewing in the Rawlins Field Office.

How To Submit Comments

The BLM welcomes comments on the Rawlins RMP DEIS. Comments may be submitted as follows:

1. The Rawlins RMP Revision Web site at *www.rawlinsrmp.com* is designed to allow commenters to submit comments electronically by resource subject directly onto a comment form posted on the Web site;

2. Comments may be uploaded in an electronic file directly to the above Web site;

3. Comments may be electronically mailed to *comments@rawlinsrmp.com.*

4. Comments may be submitted during the public open houses and hearings that will be held at a later date; and

5. Written comments may be mailed directly, or delivered, to the BLM at:Rawlins RMP/EIS, Bureau of Land Management Rawlins Field Office, 1300 N. Third Street, P.O. Box 2407, Rawlins, WY 82301–2407.

BLM will only accept comments on the Rawlins RMP DEIS if they are submitted in one of the five methods as described above. To facilitate analysis of comment and information submitted, BLM strongly encourages the public to submit comments in an electronic format through either the Web site or electronic mail. To be given consideration by BLM all DEIS comment submittals must include the commenter's name and street address.

Our practice is to make comments, including the names and street addresses of each respondent, available for public review at the BLM office listed above during business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Your comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address or both from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: January 4, 2004.

Editorial Note: This document was received at the Office of the Federal Register December 13, 2004.

Robert A. Bennett,

State Director.

[FR Doc. 04–27532 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of Draft Environmental Impact Statement for the Buckman Water Diversion Project, Santa Fe County, New Mexico

AGENCIES: Bureau of Land Management, Interior. Forest Service, Agriculture.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management, Taos Field Office, and Forest Service, Santa Fe National Forest, announce the availability of the Draft Environmental Impact Statement (DEIS) for the Buckman Water Diversion Project.

DATES: The Buckman Water Diversion Project DEIS will be available for review for 60 days from the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register.** The Bureau of Land Management and Forest Service can best utilize your comments and resource information submissions within the 60 day review period provided above. Any meetings or public involvement activities associated with distribution of the DEIS will be announced at least 15 days in advance through the local media, at Web site *http://www.nm.blm.gov,* and/or mailings.

ADDRESSES: Copies of the DEIS have been sent to affected Federal, State, and local government agencies and to interested parties, and will be available via the Internet at *http://www.nm.blm.gov.*

Copies of the DEIS will also be available at the following locations:

- Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505.
- Forest Service, Santa Fe National Forest, 1474 Rodeo Road, Santa Fe, NM 87505.
- Tetra Tech, Santa Fe Office, 502 West Cordova Road, Santa Fe,NM 87505.
- City of Santa Fe, Sangre de Cristo Water Division, 801 West San Mateo, Santa Fe, NM 87504.
- Santa Fe County, Utilities Department, 205 Montezuma Ave., Santa Fe, NM 87501.
- USDI Bureau of Reclamation, 555 Broadway Ave., Albuquerque, NM 87102.

Comments must be sent to Mr. Sandy Hurlocker (Buckman Diversion Comments), Espanola Ranger District, PO Box 3307, Espanola, New Mexico 87533. E-mail comments may be directed to the following e-mail address: *comments-southwestern-santafe-espanola@fs.fed.us*

FOR FURTHER INFORMATION CONTRACT: The Bureau of Land Management contact is Ms. Sher Churchill, Planning and Environmental Coordinator, Taos, Field Office, 226 Cruz Alta Rd., Taos, New Mexico 87571, telephone (505) 751–4725. The Forest Service contact is Mr. Sandy Hurlocker, NEPA Coordinator, Espanola Ranger District, P.O. Box 3307, Espanola, New Mexico 87533, telephone (505) 753–7331.

SUPPLEMENTARY INFORMATION: The project area is located northwest of Santa Fe, New Mexico. The DEIS describes and analyzes the impacts of alternatives for approximately 9 miles of upgrades to an existing access road and for construction and operation of a water diversion intake on the Rio Grande; sediment settling ponds; pumps and water pipelines to move the withdrawn water approximately 15 miles to the vicinity of its use; two water treatment plants; and and two power lines a 115 Kv and a 12.47 Kv plus one substation.

If authorized, the project will be predominantly located on public lands administered by the Bureau of Land Management and the Forest Service; and a relatively small portion of the project facilities will be located on private lands and Bureau of Land Management lands leased to the City of Santa Fe.

The Forest Service and Bureau of Land Management are co-lead agencies for this project; the Department of Interior Bureau of Reclamation (contributing funds), City of Santa Fe and Santa Fe County are cooperating agencies. The City of Santa Fe, Santa Fe County and Las Companas Limited Partnership are the project applicants.

The project applicants (City of Santa Fe, Santa Fe County, and Las Companas Limited Partnership) have proposed the Buckman Water Diversion Project to meet the immediate need for a sustainable means of accessing water supplies that make more direct use of the Applicants' water rights by diverting San Juan-Chama Project water and native Rio Grande water while reducing impacts to the aquifer. The Applicants propose to construct and operate a surface water diversion facility at the Rio Grande near the western terminus of Buckman Road located within the Santa Fe National Forest, near the existing Buckman Well Field. The water will be pumped to the Santa Fe vicinity where it will serve municipal and community water supply customers.

The Buckman Water Diversion is proposed to be constructed with the capacity necessary to meet the near-term need for water, based on physical, technical, and environmental limitations. The proposed project has an independent utility from the long-term water management strategy being undertaken by the City and the County.

The scoping process has included public meetings, field reviews, and interactions with various State and

Federal agencies. Issues identified during scoping led to the development of alternatives to a number of components in the proposed action. Also, on-going discussions and evaluations conducted by the lead agencies and Applicants have resulted in the identification of additional action items (such as power infrastructure and road upgrades) that have been incorporated into the proposed action and other action alternatives. The DEIS describes and analyzes the direct, indirect and cumulative effects of a range of action alternatives and the No Action alternative in detail. The alternatives, including the Agencies' Preferred Alternative, conform to existing laws and regulations, and provide for resource protection.

Sam DesGeorges,

BLM Taos Field Manager.

Gilbert Zepeda,

Santa Fe Forest Supervisor.

[FR Doc. 04–26871 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group's Transportation Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Transportation Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. Task Group meetings are open to the public.

DATES: A PAWG Transportation Task Group meeting is scheduled for January 25, 2005, from 1 p.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG Transportation Task Group will be held in the Lovatt room of the Pinedale Library at 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Bill Wadsworth, BLM/Transportation TG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., PO Box 738, Pinedale, WY 82941; 307–367–5341.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003 (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups, including one for Transportation. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth.

The agenda for this meeting will include information gathering and discussion related to developing a transportation monitoring plan to assess the impacts of development in the Pinedale Anticline gas field, and identifying who will do and who will pay for the monitoring. Task Group recommendations are due to the PAWG in February, 2005. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: December 8, 2004.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 04–27648 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Wednesday and Thursday, Feb. 2 and 3, 2005, in Redding, California. On Feb. 2, the council members convene at 10 a.m. at the BLM Redding Field Office, 355 Hemsted Dr., and depart immediately for a field tour of projected land exchange sites. Members of the public are welcome on the tour, but they must provide their own transportation and lunch. On Feb. 3, the council convenes at 8 a.m. in the Conference Center at the McConnell Foundation headquarters, 800 Shasta View Drive in Redding. Time for public comment has been set aside for 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Rich Burns, BLM Ukiah Field Office manager, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include the proposed ''Area 51'' land exchange, other land exchange issues, transportation funding and recreation issues. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: December 10, 2004.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 04–27592 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0151).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the rulemaking for 30 CFR 250, Subpart B, ''Plans and Information.''

DATES: Submit written comments by February 15, 2005.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0151 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Identify with the Information Collection number in the subject line.
- Fax: 703–787–1093. Identify with the Information Collection Number.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0151'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and associated forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR 250, Subpart B, ''Plans and Information.''

OMB Control Number: 1010–0151.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) or development and production plans (DPPs) to the Secretary for approval prior to commencing these activities.

Section 43 U.S.C. 1356 requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes. * * *'' Section 43 U.S.C. 1332(6) also states, ''operations in the [O]uter Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases.

MMS proposed a complete revision of the 30 CFR 250, subpart B regulations (67 FR 35372, May 17, 2002), and OMB approved the information collection requirements under control number 1010–0151, expiration June 2005. This submission is a renewal of the information requirements for the rulemaking and is required to prevent the expiration of OMB approval under 1010–0151; the ICR reflects what we expect to be in our final rulemaking, which is in surnaming.

Specifically, MMS uses the information to evaluate, analyze, determine, or ensure that:

- Ancillary activities comply with appropriate laws or regulations and are conducted safely, protect the environment, and do not interfere or conflict with the other uses of the OCS (*i.e.*, military use, subsistence activity).
- Points of contact and responsible parties are designated for proposed activities.
- Surveying, monitoring, or other activities do not interfere or conflict with preexisting and other uses of the area.
- Plans or actions meet or implement lease stipulation requirements.
- Proposed exploration, drilling, production, and pipeline activities are conducted in a safe and acceptable manner for the location and water depth proposed and conserve reservoir energy to allow enhanced recovery operations in later stages of lease development.
- Unnecessary or incompatible facilities are not installed on the OCS.
- Shallow drilling hazards (such as shallow gas accumulations or mud slide areas) are avoided.
- Areas are properly classified for H_2S, and appropriate procedures are in place.
- Appropriate oil spill planning measures and procedures are implemented.
- Expected meteorological conditions at the activity site are accommodated.
- Environmentally sensitive areas are identified, and the direct and cumulative effects of the activities are minimized.
- Offshore and onshore air quality is not significantly affected by the proposed activities.
- Waste disposal methods and pollution mitigation techniques are appropriate for local conditions.
- State CZM requirements have been met.
- Archaeological or cultural resources are identified and protected from unreasonable disturbances.
- Socioeconomic effects of the proposed project on the local community and associated services have been determined.
- Support infrastructures and associated traffic are adequately covered in plans.

The following forms used in the Gulf of Mexico Region (GOMR) are also submitted to MMS. With the exception of the last form, OMB approved these forms as part of the information collection for the current subpart B regulations.

- Form MMS–137 (Plan Information Form) is submitted to summarize plan information. MMS uses the information to assist in data entry and review of submitted OCS plans. This form asks for, in either fill in the blanks or check marks: General information relating to the company; description of proposed

activities; tentative schedule of proposed activities; description(s) of drilling rig, production platform, lease term pipelines; proposed well structure location; and anchor locations for drilling rig or construction barge.

- Forms MMS–138 (GOM Air Emissions Calculations for Exploration Plans) and MMS–139 (GOM Air Emissions Calculations for Development Operations Coordination Documents (DOCDs)) are submitted to standardize the way potential air emissions are estimated and approved as part of the OCS plan. These forms are intended to be thorough but flexible to meet the needs of different operators. The data from these forms determine the air emissions on the environment. These forms consist of: Title sheet, factors sheet, emissions spreadsheet and a summary sheet which will describe and calculate emissions from an activity. Respondents are asked to categorize emissions into 9 factors: natural gas prime movers, diesel-fired prime movers, heaters/boilers/firetubes/NG-fired, gas glares, liquid flares, tanks, fugitives, glycol dehydrator vent, and gas venting.
- Form MMS–141 (ROV Survey Report) is submitted to report the observations and information recorded from 2 sets of ROV monitoring surveys to identify high-density biological communities that may occur on the seafloor in deep water. The form asks respondents for general operator/facility information and a transect drawing of the survey pattern made by the ROV; a video tape (VHS) and transcript of what was visualized at the bottom throughout deployment (the form includes a guide to animal groups and a guide to physical features), and any additional imagery that helps depict bottom conditions. We use the information when such areas are found to help design mitigation measures to avoid these areas in the future. We also use the information to help assess the effectiveness of avoidance criteria and expand the knowledge base regarding the benthic habitats of the deep water seafloor.
- Form MMS–NEW (Environmental Impact Analysis Matrix) is a new fill in the blank matrix form proposed to be submitted to identify the environmental impact-producing factors (IPFs) for the listed environmental resources. We use the information to assess impact and determine compliance with the National Environmental Policy Act. A form number will be assigned when final regulations take effect. Respondents are asked to fill in the blank by placing an ''x'' in the space under each IPF category associated with the proposed activity that may impact a particular environmental resource. The environmental resources listed on this form are: Site-specific at Offshore Location such as chemosynthetic communities, water quality, fisheries to name a few; Vicinity of Offshore Location such as essential fish habitat; Coastal and Onshore such as beaches and wetlands.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.196, ''Data and information to be made available to the public''. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 150 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 267,880 hours. During the interim period between proposed and final rules, OMB approved the renewal of the information collection burden in the current subpart B regulations (1010–0049). After consultations with respondents, we revised the estimates of the hour burdens and the annual number of responses. We have incorporated those updated burden adjustments in this renewal. Therefore, we are requesting an ''adjustment'' increase of 52,935 hours for 1010–0151. The following chart details the individual components and respective hour burden estimates of this ICR. 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 250 subpart B	Reporting & recordkeeping requirement	Hour burden
200 through 206	General requirements for plans and information	Burden included with specific requirements below.
208	Notify MMS and other users of the OCS before conducting ancillary activities	10.
210(a)	Submit report summarizing & analyzing data/information obtained or derived from ancillary activities.	1.
210(b)	Retain ancillary activities data/information	2.
211 through 228	Submit EP and accompanying information (including forms MMS–137, MMS–138, MMS–NEW used in GOMR) and provide notifications.	640.
232(d); 234; 235(a); 281(d)(3); 283; 284; 285.	Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP	120.
241 through 262	Submit DPP or DOCD and accompanying information (including forms MMS–137, MMS–139, MMS–NEW used in GOMR) and provide notifications.	690.
267(d); 272(a); 273; 283; 284; 285.	Submit amended, modified, revised, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD.	GOM Region 95. Pacific Region 600.
269(b)	Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities.	2.
281(a)	Submit various applications	Burdens included under appropriate subpart or form (1010–0044;1010–0059; 1010–0058; 1010–0050).
282	Retain monitoring plans, data/information	2.
	Submit monitoring plans	1.
282(b)	Submit monitoring reports and data (including form MMS–141 used in GOMR)	2.
288 through 294	Submit DWOP	750.
296 through 298	Submit CID	443.

Citation 30 CFR 250 subpart B	Reporting & recordkeeping requirement	Hour burden
200 through 299	General departure and alternative compliance requests not specifically covered elsewhere in subpart B regulations.	2.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

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: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) 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.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: December 13, 2004.

E.P. Danenberger,

Chief, Offshore Regulatory Programs.

[FR Doc. 04–27652 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plans, Environmental Impact Statements, Guadalupe Mountains National Park and Big Bend National Park, TX, and Carlsbad Caverns National Park, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notices of Intent to prepare Environmental Assessments for the Fire Management Plans at Guadalupe Mountains National Park, Big Bend National Park, and Carlsbad Caverns National Park.

SUMMARY: In Notices of Intent published October 10, 2002 (67 FR 63151) November 15, 2002 (67 FR 69239), and June 11, 2003 (68 FR 35002), the National Park Service (NPS) announced its intent to prepare EIS's for the Fire Management Plans at Guadalupe Mountains National Park, Carlsbad Caverns National Park and Big Bend National Park, respectively. The NPS has since determined that environmental assessments (EA), rather than EIS's, are the appropriate environmental documentation to proceed with for the Fire Management Plans at those parks.

SUPPLEMENTARY INFORMATION: The NPS had begun working on EIS's for the Fire Management Plans for each park following the publication of the Notices of Intent. Internal discussions and meetings, and comments from public scoping sessions helped frame the alternatives and issues related to each Fire Management Plan. In the development of each EIS, the effects of the alternatives have been examined in detail. Based on these findings and the input received during public scoping, the NPS has decided to proceed with an EA as the National Environmental Policy Act documentation for the update and review of these parks' Fire Management Plans.

At an undetermined date following the publication of this Notice of Intent, the parks will release their Fire Management Plan EA's for 30-day public comment.

FOR FURTHER INFORMATION CONTACT: John Lujan, Superintendent, Guadalupe Mountains National Park, HC 60 Box 400, Salt Flat, TX 79847–9400, (915)828–3251 x104, *GUMO_Superintendent@nps.gov.,* John King, Superintendent, Big Bend National Park, P.O. Box 129, Big Bend National Park, TX 79834–0129, (432)477–1101, *BIBE_Superintendent@nps.gov,* John Benjamin, Acting Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway Carlsbad, NM 88220, (505)785–3027 *CAVE_Superintendent@nps.gov.*

Dated: October 13, 2004.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 04–27607 Filed 12–16–04; 8:45 am]

BILLING CODE 4312–C4–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Revision, Final Environmental Impact Statement, Petrified Forest National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the Record of Decision on the Final Environmental Impact Statement for the General Management Plan Revision, Petrified Forest National Park.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 852, 853, codified as amended at 42 U.S.C. § 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan Revision, Petrified Forest National Park, Arizona. On October 15, 2004, the Director, Intermountain Region, approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the preferred alternative contained in the FEIS issued on August 25, 2005. The following course of action will occur under the selected alternative: Reusing and maintaining the historic integrity of Painted Desert headquarters complex will be a priority. Visitor services at Painted Desert Inn (rehabilitated) will be expanded. Facility improvements will be made at Rainbow Forest. Park lands will be managed similar to now, but with greater protection for natural and cultural resources from increased monitoring and adapting to new information. Some trails and turnouts will be added, and visitor hours will be expanded in the north. Most park collections will be housed in a new facility. This course of action, along with a no action alternative and two other action alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopsis of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a conclusion.

FOR FURTHER INFORMATION CONTACT: Lee Baiza, Superintendent, Petrified Forest National Park, P.O. Box 2217, Petrified Forest National Park, Arizona 86028, (928) 524–6228, *lee_baiza@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available from the Superintendent listed above or on the Internet at: *http://planning.nps.gov/plans.cfm.*

Dated: October 15, 2004.

Stephen P. Martin,

Director, Intermountain Region, National Park Service.

[FR Doc. 04–27608 Filed 12–16–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Environmental Impact Statement for the Arrowhead-Weston Transmission Line River Crossing/Right-of-Way Request, Saint Croix National Scenic Riverway, WI

AGENCY: National Park Service.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final environmental impact statement (FEIS) for the Arrowhead-Weston Transmission Line River Crossing/Right-of-Way Request, Saint Croix National Scenic Riverway, Wisconsin.

DATES: There will be a 30-day waiting period before the record of decision is signed on the final from the day the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the FEIS will be sent to agencies, Tribes, and individuals that made substantive comments on the draft EIS, and to public libraries throughout the project area. Please check the Saint Croix National Scenic Riverway (SACN) website for a listing of the libraries to which the FEIS will be sent. The FEIS is approximately 600 pages in length with many figures and oversize color plates. Due to the size of the document, it was not possible to provide it over the Internet. A limited number of hardcopies are available upon request on a first-come first serve basis. Additional copies are available on compact disk. To request a hardcopy of the FEIS or a copy on compact disk, please write to the Superintendent, Saint Croix National Scenic Riverway, P.O. Box 708, St. Croix Falls, WI 54024, Attention: Kevin Iverson or telephone him at 715–483–3284, Extension 606.

FOR FURTHER INFORMATION CONTACT: Jill Medland, Planning and Compliance Specialist, Saint Croix National Scenic Riverway, P.O. Box 708, 401 Hamilton Street, St. Croix Falls, WI 54024, or by telephone 715–483–3284, Extension 609.

SUPPLEMENTARY INFORMATION: The Arrowhead-Weston Project (Project) is a 345kV Electric Transmission Line proposed by Minnesota Power, Wisconsin Public Service Corporation, and American Transmission Company (Applicant) that would run for 220 miles from Duluth, Minnesota, to Wausau, Wisconsin. The governmental entity with approval authority for the overall Project is the Public Service Commission of Wisconsin (PSCW). The PSCW approved the Project in 2001 and re-approved it in 2003. According to the Applicant, and as reflected in the PSCW decision, the purpose of the overall Project is to: (1) Strengthen the bulk transmission system by providing a second high-capacity connection across the Minnesota-Wisconsin interface; and (2) to transmit electricity from the upper Midwest to markets in the eastern Wisconsin area.

The State-approved route of the Project would cross the Namekagon River, which is part of the Riverway, in Washburn County at a location approximately 10 miles downstream of the city of Hayward, Wisconsin. The NPS has received a right-of-way (ROW) request from the Applicant to cross the Riverway with the State-approved Project. To reach a decision about the ROW request and comply with the NEPA, the NPS is preparing an EIS. The Corps of Engineers is a cooperating agency on the EIS, since they would also need to issue a permit for the river crossing.

The Applicants propose to cross the Namekagon River at an existing 161kV electric transmission line corridor granted to Xcel Energy as an easement by private landowners prior to NPS land acquisition in the area. All alternatives (except no action) would require additional right-of-way from the NPS. The following alternatives are under consideration for crossing the Namekagon River:

No Action (Deny ROW Request): 161kV line as present on 70′ wood poles (would require that the utilities go around the Namekagon River and reopening of the State process);

Alternative 1: Double circuit the 345kV and 161kV lines overhead on 145–150′ single steel poles (Applicant's preferred);

Long-span Option: Alternative 1 using long-span conductors (shorter poles set

back out of line of sight from the river, fewer, but thicker conductors);

Alternative 2: Single circuit 345kV overhead on 120–130′ single steel poles, underground 161kV, transition structures at overhead to underground changeover;

Alternative 3: 161kV upgraded on 85–95′ steel poles, 345kv underground, transition structures at underground to overhead changeover;

Alternative 4: 345kv and 161kV underground, transition structures at underground to overhead changeover.

The NPS preferred alternative is alternative 1: Long-span Option.

Persons wishing to comment on the FEIS may do so by any one of several methods. They may mail comments to Superintendent, Saint Croix National Scenic Riverway, P.O. Box 708, 401 Hamilton Street, St. Croix Falls, Wisconsin 54024, Attention: Jill Medland. They also may comment via e-mail to *sacn_aw_row_eis@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to Riverway Headquarters, St. Croix National Scenic Riverway, 401 Hamilton Street, St. Croix Falls, Wisconsin 54024.

The NPS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

The responsible official is Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: October 18, 2004.

Alan M. Hutchings,

Acting Regional Director, Midwest Region.

[FR Doc. 04–27610 Filed 12–16–04; 8:45 am]

BILLING CODE 4312–96–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for Fort Raleigh National Historic Site, Manteo, NC

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and National Park Service policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the National Park Service will prepare an Environmental Impact Statement for the General Management Plan for Fort Raleigh National Historic Site. The authority for publishing this notice is contained in 40 CFR 1506.6.

The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Historic Site. This General Management Plan and Environmental Impact Statement are being prepared in response to the requirements of the National Parks and Recreation Act of 1978, Pub. L. 95–625. The National Park Service is currently accepting comments from interested parties on issues, concerns, and suggestions pertinent to the management of Fort Raleigh.

Suggestions and ideas for managing the cultural and natural resources and visitor experiences at Fort Raleigh are encouraged. Comments may be submitted in writing to the address listed at the end of this notice or through the GMP Web site, which is linked to the park's Web site at *http://www.nps.gov/fora.*

The National Park Service will publish periodic newsletters on the GMP Web site to present scoping issues and preliminary management concepts to the public as they are developed. Public meetings to present draft management concepts will be conducted in the local area. Specific locations, dates, and times will be announced in local media and on the GMP Web site.

Please note that due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Anonymous comments will not be considered. However, individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the National Park Service Southeast Regional Office, Planning and Compliance Division. This information will also be published on the General Management Plan Web site for Fort Raleigh.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Fort Raleigh National Historic Site, 1401 National Park Drive, Manteo, North Carolina, 27954. Telephone: 252–473–2111, ext. 150.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Raleigh National Historic Site, 1401 National Park Drive, Manteo, North Carolina, 27954. Telephone: 252–473–2111, ext. 150.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: October 28, 2004.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 04–27609 Filed 12–16–04; 8:45 am]

BILLING CODE 4312–KA–P

DEPARTMENT OF INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA)of 1969, the National Park Service (NPS) announces its intent to prepare a General Management Plan and

Environmental Impact Statement (GMP/EIS) for the George Washington Birthplace National Monument, Westmoreland County, Virginia. The park contains 550 acres that comprise significant portions of the 17th and 18th century Washington family plantation holdings, including the site of the home where George Washington was born and spent his early years. Prepared byplanners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing the George Washington BirthplaceNational Monument.

FOR FURTHER INFORMATION CONTACT: Superintendent, George Washington Birthplace National Monument, (804) 224–1732

SUPPLEMENTARY INFORMATION: Consistent with the site's mission, NPS policy, andother laws and regulations, alternatives will be developed to guide the management of the siteover the next 15 to 20 years. The alternatives will incorporate various zoning and managementprescription to ensure resource preservation and public enjoyment of the site. The environmentalconsequences that could result from implementing the various alternatives will be evaluated inthe plan. Impact topics will include cultural and natural resources, visitor experience, parkoperations, the socioeconomic environment, impairment, and sustainability. The public will beinvited to express opinions about the management of the site early in the process through publicmeetings and other media; and will have an opportunity to review and comment on a draftGMP/EIS. Following public review processes outlined under NEPA, the final plan will becomeofficial, authorizing implementation of a preferred alternative. The target date for the Record ofDecision is December 2007.

Dated: November 22, 2004.

Vidal Martinez,

Superintendent, George Washington Birthplace National Monument.

[FR Doc. 04–27606 Filed 12–17–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for an Elk Management Plan, Wind Cave National Park, SD

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Under the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for an Elk Management Plan for Wind Cave National Park (WICA), South Dakota. An elk management plan is needed to manage the elk population within established acceptable levels, to identify a range of elk management strategies that are compatible with long-term protection of other park resources and natural ecosystems and processes, and to test for and manage disease situations in the elk population. A number of factors contribute to the need for this plan. The elk population within the park has fluctuated since reintroduction and dictated both lethal and translocation control in the past. Due to the insufficient number of predators and the limited movement of elk in and out of the park, the elk population will likely continue to grow unchecked. Excessive browsing caused by high densities of elk may adversely affect mixed-grass prairie and other forage, as well as cultural resources in the park. Furthermore, this plan is needed because the NPS has the responsibility to manage the elk population within the park at levels that are compatible with park goals.

DATES: The National Park Service (NPS) intends to conduct public scoping at locations in South Dakota, including Pierre, Sioux Falls, Rapid City, Custer, and Hot Springs. Public scoping is intended to identify issues and concerns that should be addressed in the development of an Elk Management Plan for WICA. To be most helpful to the scoping process, comments should be received within 60 days of the publication of this notice in the **Federal Register**. See details for sending comments in **SUPPLEMENTARY INFORMATION** below. Please check local newspapers, the WICA Web site at *http://www.nps.gov/wica*, or contact the name listed below to find out when and where these open houses will be held and to view draft documents and other current information regarding elk management and the EIS. In addition to this scoping process, there will be additional opportunities to comment on the plan throughout the planning process, including the draft and final document.

ADDRESSES: Information will be available for public review and comment at WICA headquarters located 14 miles north of Hot Springs, SD. The address is: Wind Cave National Park, RR1, Box 190, Hot Springs, SD 57747.

FOR FURTHER INFORMATION CONTACT: Tom Farrell, Public Information Officer, or Linda Stoll, Superintendent, at 605–745–4600.

SUPPLEMENTARY INFORMATION: The NPS seeks to complete an EIS to address elk management at WICA. Section 4.4.2 of the NPS Management Policies (2001) provides for the active management of native animals when management of a population is necessary because it occurs in unnaturally high or low numbers because of human influence. An elk management strategy is needed at WICA because past and current actions within and beyond the park have created conditions that allow the WICA elk population to increase with little or no control. These conditions include the insufficient number of elk predators, the limited effectiveness of public hunting outside of the park as a population control method for elk that range primarily within the park, lack of significant winter kill and other environmentally-caused elk mortalities, high reproductive and survival rates, and the discontinuation of translocating elk from the park.

Elk were reintroduced to the park in 1913 to restore an extirpated native species. The park is surrounded by thirty-seven miles of 7 foot high and four miles of 4.5 foot high woven-wire fence. This fence was designed to allow for movement of most wildlife, yet confines bison within the park. Wolves and bears have been extirpated since the late 1800s, and effective natural predation on ungulates is limited to that which occurs by mountain lions, coyotes and bobcats. Since elk reintroduction in 1913, the population has doubled approximately every 3 years. Research was conducted in the mid-1960s and again in 2003 to provide insight into the forage requirements of elk and other grazers in the park. The resulting data, which considers the forage needs of all ungulates in the park, suggested the park could maintain approximately 350–400 elk. Since reintroduction, the population has exceeded 400 at various times, prompting the removal of animals by both lethal and translocation means. In the fall of 2002, chronic wasting disease (CWD) was found in the park. The NPS policy dictates that translocation of elk may only occur if the animals are free of disease, which removes the possibility of translocation of animals from WICA. Currently, the elk herd numbers about 700, exceeding the maximum number of animals that data suggest can be sustained long-term without negatively affecting other park resources.

A determination of the effects of the elk management plan will be conducted

in accordance with NEPA (42 U.S.C. 4372 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

The South Dakota Game, Fish and Parks Department will serve as a Cooperating Agency in the preparation of the EIS, per NEPA guidelines.

If you wish to comment on the scoping brochure or any other issues associated with the plan, you may submit your comments by any one of several methods. Written comments may be mailed or hand-delivered to the Superintendent at the address above. You may e-mail comments to *wica_forum@nps.gov.* Please submit internet comments as a text file and avoid the use of special characters and any form of encryption. Please put in the subject line ''Elk Management Plan,'' and include your name and return address in your message. If you do not receive a confirmation from the system that we have received your message, contact Tom Farrell, Public Information Officer, at the number listed above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 20, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 04–27611 Filed 12–16–04; 8:45 am]

BILLING CODE 4312–AL–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 104–TAA–7 and AA1921–198–200 (Second Review)]

Sugar From Belgium, European Union, France, and Germany

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty order on sugar from the European Union and the antidumping findings on sugar from Belgium, France, and Germany.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on sugar from the European Union and the antidumping findings on sugar from Belgium, France, and Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On December 6, 2004, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.[1] The Commission found that the domestic interested party group response to its notice of institution (69 FR 53466, September 1, 2004) was adequate and that the respondent interested party group response to its notice of institution was inadequate. The Commission also found that other circumstances warranted conducting full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 13, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–27650 Filed 12–16–04; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioners Marcia E. Miller and Jennifer A. Hillman dissented, voting to conduct expedited reviews on the basis that the domestic interested party group response was adequate but the respondent interested party group response was inadequate.

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA030016 (Jun. 13, 2003)

Rhode Island
RI030005 (Jun. 13, 2003)

Volume II

Virginia
VA030014 (Jun. 13, 2003)
VA030044 (Jun. 13, 2003)
VA030059 (Jun. 13, 2003)
VA030067 (Jun. 13, 2003)

Volume III

None

Volume IV

Illinois
IL030001 (Jun. 13, 2003)
IL030002 (Jun. 13, 2003)
IL030004 (Jun. 13, 2003)
IL030005 (Jun. 13, 2003)
IL030023 (Jun. 13, 2003)
IL030039 (Jun. 13, 2003)
IL030056 (Jun. 13, 2003)
IL030059 (Jun. 13, 2003)
IL030060 (Jun. 13, 2003)
IL030062 (Jun. 13, 2003)
IL030064 (Jun. 13, 2003)

Volume V

Arkansas
AR030001 (Jun. 13, 2003)
AR030008 (Jun. 13, 2003)
AR030027 (Jun. 13, 2003)

Missouri
MO030003 (Jun. 13, 2003)
MO030006 (Jun. 13, 2003)
MO030010 (Jun. 13, 2003)

Volume VI

Utah
UT030034 (Jun. 3, 2003)

Wyoming
WY030006 (Jun. 13, 2003)
WY030007 (Jun. 13, 2003)
WY030008 (Jun. 13, 2003)

Volume VII

California
CA030004 (Jun. 3, 2003)
CA030013 (Jun. 3, 2003)
CA030029 (Jun. 3, 2003)
CA030030 (Jun. 3, 2003)
CA030032 (Jun. 3, 2003)
CA030033 (Jun. 3, 2003)

Nevada
NV030005 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 9th day of December, 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–27396 Filed 12–16–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

NSF–NASA–Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following NSF–NASA–Astronomy and Astrophysics Advisory Committee meeting (#13883):

Date and Time: January 18–19, 2005.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

Agenda: To hear presentations of current programming by representatives from NSF and NASA; to discuss current and potential areas of cooperation between the two agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: December 14, 2004.

Susanne E. Bolton,

Committee Management Office.

[FR Doc. 04–27617 Filed 12–16–04; 8:45 am]

BILLING CODE 9555–01–M

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation and maintenance of the system. This electronic information management system was known as the Licensing Support System (LSS). In November, 1998 the Commission approved amendments to 10 CFR Part 2 that renamed the Licensing Support System Advisory Review Panel as the Licensing Support Network Advisory Review Panel.

Membership on the Panel continues to be drawn from those interests that will be affected by the use of the LSN, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and a coalition of nuclear industry groups. Federal agencies with expertise and experience in electronic information management systems may also participate on the Panel.

The Nuclear Regulatory Commission has determined that renewal of the charter for the LSNARP until December 9, 2006 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: December 13, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–27612 Filed 12–16–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability and Draft Report for Comment, ''Evaluation of Loss of Offsite Power Events at Nuclear Power Plants: 1986–2003''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of the Office of Nuclear Regulatory Research draft report entitled, ''Evaluation of Loss of Offsite Power Events at Nuclear Power Plants: 1986–2003,'' and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the Office of Nuclear Regulatory Research draft report entitled, ''Evaluation of Loss of Offsite Power Events at Nuclear Power Plants: 1986–2003.''

DATES: Comments on this document should be submitted by January 31, 2005. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to Michael Lesar, Chief Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments attention to Michael Lesar, 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically NRCREP@nrc.gov.

This document is available at the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under Accession No. ML043380322, and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's Web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Dale Rasmuson, Operating Experience Risk Analysis Branch, Office of Nuclear Regulatory Research, telephone (301) 415–7571, e-mail *dmr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft Report Entitled, ''Evaluation of Loss of Offsite Power Events at Nuclear Power Plants: 1986–2003''

This report is an update of two previous reports analyzing loss of offsite power (LOOP) events at U.S. commercial nuclear power plants. LOOP data over the period 1986–2003 were collected and analyzed. Frequency and duration estimates for critical and shutdown operations were generated for five categories of LOOPs: plant centered, switchyard centered, grid related, severe weather related, and extreme weather related. Overall, LOOP frequencies during critical operation have decreased significantly in recent years, while LOOP durations have increased. Various additional topics of interest were also addressed. These topics include potential effects of deregulation, seasonal impacts on LOOP frequencies, consequential LOOPs and others. Finally, additional engineering analyses of the LOOP data were presented. This information is needed in probabilistic risk assessment models of U.S. commercial nuclear power plants to accurately model current risk from LOOP and associated station blackout scenarios.

The NRC is seeking public comment in order to receive feedback from the widest range of parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review

public comments received on the document, incorporate suggested changes as necessary, and issue the final report for use.

Dated at Rockville, Maryland, this 13th day of December, 2004.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 04–27613 Filed 12–16–04; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collections; Comment Request

Summary: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections. The information collections numbered below are pending at RRB and will be submitted to OMB within 60 days from the date of this notice.

Comments Are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and Purpose of Information Collection

Railroad Separation Allowance or Severance Pay Report; OMB 3220–0173

Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, section 4(a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 to obtain, on a quarterly basis, the information needed from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. All reports contain a one-line entry for each such payment or adjustment. Completion is mandatory. Responses are requested quarterly. The RRB proposes no changes to Form BA–9.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form #	Annual responses	Time (min)	Burden (hrs)
BA–9	2,030	75	2,537

2. Title and Purpose of Information Collection

Representative Payee Parental Custody Monitoring; OMB 3220–0176

Under section 12(a) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) is authorized to select, make payments to, and to conduct transactions with, a beneficiary's relative or some other person willing to act on behalf of the beneficiary as a representative payee. The RRB is responsible for determining if direct payment to the beneficiary or payment to a representative payee would best serve the beneficiary's interest. Inherent in the RRB's authorization to select a representative payee is the responsibility to monitor the payee to assure that the beneficiary's interests are protected. Triennially, the RRB utilizes Form G–99d, Parental Custody Report, to obtain information needed to verify that a parent-for-child representative payee still has custody of the child. One response is required from each respondent. The RRB proposes no changes to Form G–99d.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–99d	1,230	5	103

Additional Information or Comments: To request more information regarding any of the information collections listed above or to obtain copies of the information collection justifications, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.gov*. Comments regarding the information collections should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.gov*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–27649 Filed 12–16–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Absolute Health and Fitness, Inc.; Order of Suspension of Trading

December 15, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Absolute Health and Fitness, Inc. (''Absolute Health'') because of questions regarding the accuracy of assertions by Absolute Health, and by others, in public statements to investors concerning, among other things, its corporate status and its ownership of certain health and fitness facilities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST December 15, 2004 through 11:59 p.m. EST, on December 29, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27766 Filed 12–15–04; 1:39 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Aimsi Technologies, Inc.; Order of Suspension of Trading

December 15, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aimsi Technologies, Inc. (''AIMT'') because of questions regarding the accuracy of statements made by AIMT to the public in press releases and in fax tout sheets concerning, among other things, Aimsi's contract with China Global Distribution Corp. for the distribution of Aimsi's Automatic Large Area Remote Mapper.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, on December 15, 2004 through 11:59 p.m. EST, on December 29, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–27767 Filed 12–15–04; 1:39 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50834; File No. SR–BSE–2004–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Trading Hours for Options Contracts Overlying the Nasdaq 100 Index Trading Stock® on the Boston Options Exchange

December 10, 2004.

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 1, 2004, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal, as amended, as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] 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 a section of the Boston Options Exchange (''BOX'') rules regarding the hours during which options transactions may be made on BOX. The text of the proposed rule change, as amended, is set forth below.

Proposed new language is in *italics.*

* * * * *

CHAPTER V. DOING BUSINESS ON BOX

Sec. 1–2 No Change

Sec. 3 Days and Hours of Business

(a) No change.

(b) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on BOX shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying BOX options; provided, however, that transactions may be effected in an options class on BOX until two (2) minutes after the primary market on which the underlying security trades closes for trading. (See BSE Rules Chapter I–B, ''Business Hours'', Section 1, ''Primary Session''). *Notwithstanding the foregoing, transactions may be effected in options contracts overlying the Nasdaq 100 Index Trading Stock® on BOX until 4:15 p.m.*

(c) No change.

* * * * *

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 statutory 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 permit the hours during which options contracts overlying the Nasdaq 100 Index Trading Stock® (the ''Index Trading Stock'') may be made on BOX to remain unchanged after the Index Trading Stock lists on the Nasdaq Stock Market (''Nasdaq'') beginning December 1, 2004. Prior to December 1, 2004, the Index Trading Stock was listed on the American Stock Exchange and trading in the options contracts overlying the Index Trading Stock traded on BOX until 4:15 p.m. Eastern Time.

Currently, Chapter V, Section 3(b) of BOX's rules provides that hours during which transactions in options on individual stocks may be made on BOX shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the securities underlying BOX options; provided, however, that transactions may be effected in an options class on BOX until two (2) minutes after the primary market on which the underlying security trades closes for trading. Because Nasdaq will trade the Index Trading Stock until 4 p.m. Eastern Time, under its current rules, BOX can only trade in the options contracts overlying the Index Trading Stock until 4:02 p.m. Eastern Time.

BOX Market Makers have requested that BOX consider maintaining the status quo, and allow trading in options contracts overlying the Index Trading Stock to continue until 4:15 p.m. Eastern Time. The rules of other options exchanges currently provide for trading in these options contracts to continue until this time.[6] BOX believes the investment community would benefit from maintaining continuity and consistency in the marketplace. As a result, the Exchange proposes to amend Chapter V, Section 3(b) of BOX's rules to allow trading in options contracts overlying the Index Trading Stock to continue until 4:15 p.m. Eastern Time.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the proposed rule change in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Rule 7.1, commentary .02 of the rules of the Pacific Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to 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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change, as amended, as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.[11] The Commission notes that accelerating the operative date will allow the trading hours for options contracts overlying the Index Trading Stock to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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.[14]

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–BSE–2004–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–55. 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, 450 Fifth Street, NW., Washington, DC 20549. 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–BSE–2004–55 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3701 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 3, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50840; File No. SR–CBOE–2004–79]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Trading Hours for Options on Units and Options on the Nasdaq-100 Index Tracking Stock

December 10, 2004.

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 30, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 prepared by the Exchange. On December 10, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 is incorporated into this notice.

Exchange filed the proposal, as amended, as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] 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 its rules relating to the hours of trading for options on Units[6] and options on the Nasdaq-100 Index Tracking Stock. The text of the proposed rule change is set forth below.

Proposed new language is in *italics.* Proposed deletions are in brackets.

* * * * *

CHAPTER VI

Doing Business on the Exchange Floor (Rule 6.1–6.85)

Section A: General

Rule 6.1—Days and Hours of Business.

Rule 6.1.—No Change.

* * * Interpretations and Policies:

.01–.02 No Change.

.03 *Options on Units, as defined under Interpretation and Policy .06 to Rule 5.3, and options on the Nasdaq-100 Index Tracking Stock may be traded on the Exchange until 3:15 p.m. each business day.*

.04 The Board of Directors has determined that the Exchange will not be open for business on New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. The Board has also determined that, when any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday, and that when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

.05 [.04] No Change.

Rule 6.2–6.85 No Change.

* * * * *

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] ''Units'' are defined in Interpretation and Policy .06 to CBOE Rule 5.3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 6.1 (''Days and Hours of Business'') by adding a new Interpretation and Policy .03 that will codify CBOE's practice of trading options on Units[7] and options on the Nasdaq-100 Index Tracking Stock (''QQQs'') until 3:15 p.m. (CST). Since CBOE began trading options on Units and options on the QQQs, the trading hours for these options have lasted until 3:15 p.m. (CST).

The 3:15 p.m. termination time coincides with the trading hours termination time for options on stock indexes, including options on the NDX index. Recently, the Nasdaq Stock Market, Inc. (''Nasdaq'') announced its intention to transfer the listing of the QQQs from the American Stock Exchange (''Amex'') to Nasdaq with trading to begin on December 1, 2004. The QQQs traded on the Amex until 3:15 p.m. (CST), and as of December 1, 2004, Nasdaq will close trading on the QQQs at 3 p.m. (CST), but will allow trading in the QQQs to continue in after hours trading until 7 p.m. (CST). CBOE intends to continue to trade options on the QQQs during its regular trading session until 3:15 p.m. (CST), as it does options on other index or basket products.

CBOE notes that the Amex and the Pacific Exchange, Inc. (''PCX'') are allowed under their respective rules to specifically trade options on QQQs until 3:15 p.m. (CST).[8] The new Interpretation and Policy .03 will codify CBOE's longstanding practice of trading options on QQQs and Units until 3:15 p.m. (CST). CBOE represents that this will serve to avoid any confusion in the marketplace over the trading hours of QQQs options in light of Nasdaq's shift of the listing venue of QQQs and to codify the trading hours for options on Units and on QQQs.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] 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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 designated the proposed rule change, as amended, as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule

[7] Interpretation and Policy .06 to CBOE Rule 5.3 provides the listing standards for Units and other similar types of products.

[8] *See* Commentary .02 to Amex Rule 1 and Commentary .02 to PCX Rule 7.1.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.[13] The Commission notes that accelerating the operative date will allow the trading hours for options on Units and options on the QQQs to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

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.[16]

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–CBOE–2004–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–79. 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, 450 Fifth Street, NW., Washington, DC 20549. 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–CBOE–2004–79 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3700 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 10, 2004, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50837; File No. SR–CBOE–2004–76]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a DPM and Market-Maker Transaction Fee in Options on the Mini-Nasdaq-100 Index

December 10, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on November 23, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

CBOE proposes to amend its Fee Schedule to establish a $.10 per contract license fee on all Designated Primary Market-Maker and market-maker contracts traded in options on the Mini-Nasdaq-100 Index (''MNX''). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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, Proposed Rule Change

1. Purpose

The Exchange proposes to establish a $.10 per contract license fee on all Designated Primary Market-Maker (''DPM'') and market-maker contracts traded in MNX options.

Currently, the MNX DPM is charged a $.25 per contract supplemental transaction fee for transactions for its proprietary account, in addition to the regular transaction fee of $.24 per contract. The $.25 per contract supplemental transaction fee is charged to the DPM to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock Market (''Nasdaq'') for its license to trade the MNX product.[3]

On November 23, 2004, MNX options will begin trading on the Exchange's Hybrid Trading System (''Hybrid''). In light of MNX options moving to the Hybrid system, the Exchange has determined to spread the license fee obligation among all market-makers in the MNX trading crowd, including the DPM. Instead of assessing only the MNX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54322 (September 7, 2000) (SR–CBOE–00–33).

DPM a supplemental fee of $.25 per contract, the Exchange proposes to assess the MNX DPM and all MNX market-makers a license fee of $.10 per contract (in addition to the regular transaction fee of $.24 per contract) to help the Exchange meet its license fee obligation to Nasdaq.

The Exchange believes that the proposed license fee results in a more equitable allocation of the MNX license fee obligation in MNX's new Hybrid Trading System environment. The proposed license fee is consistent with similar license fees that the Exchange has previously implemented to recover license costs for the RUT and DJX option classes.[4] The Exchange intends to implement this license fee on December 1, 2004.

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)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CBOE–2004–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–76. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2004–76 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3703 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[4] Securities Exchange Act Release No. 49601 (April 22, 2004), 69 FR 23836 (April 30, 2004) (SR–CBOE–2004–19) (RUT license fee), and Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003) (SR–CBOE–2003–26) (DJX license fee).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50839; File No. SR–ISE–2004–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the International Securities Exchange, Inc., Relating to the Hours of Trading for Options on Fund Shares, Including the Nasdaq 100 Tracking Stock

December 10, 2004.

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 2, 2004, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 6, 2004, the Exchange filed Amendment No. 1 to the proposed rule change, and on December 9, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[3] The Exchange filed the proposed rule change, as amended, as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] 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

ISE proposes to codify its existing policy relating to hours of trading for options on certain Fund Shares, including the Nasdaq 100 Tracking Stock (''QQQ''). The text of the proposed rule change, as amended, is set forth below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The substance of Amendment Nos. 1 and 2 is incorporated into this notice.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

Proposed new language is in *italics.* Proposed deletions are in brackets.

* * * * *

Rule 700. Days and Hours of Business

The Board shall determine the days the Exchange shall be open for business (referred to as ''business days'') and the hours of such days during which transactions may be made on the Exchange. No Member shall make any bid, offer, or transaction on the Exchange before or after such hours.

(a) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on the Exchange shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the stocks underlying Exchange options; provided, however, that transactions may be effected in an options class on the Exchange until two (2) minutes after the primary market on which the underlying stock trades closes for trading.

(b) Options on Fund Shares, as defined in Rule 502(h), may be traded on the Exchange until 4:15 p.m. each business day.

[(b)]*(c)* The Exchange shall not be open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of, and statutory 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. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE Rule 700 (''Days and Hours of Business'') by adding a new subsection (b) that will codify ISE's practice of trading options on certain Fund Shares, including the QQQ, until 4:15 p.m. (New York Time). The 4:15 p.m. termination coincides with the trading hours termination time for options on stock indexes. Recently, the Nasdaq Stock Market, Inc. (''Nasdaq'') announced its intention to transfer the listing of the QQQ from the American Stock Exchange (''Amex'') to Nasdaq, effective as of the opening of trading on December 1, 2004. QQQ previously traded on the Amex until 4:15 p.m., but as of December 1, 2004, Nasdaq closes trading in the QQQ at 4 p.m., but will allow trading in the QQQ to continue in after hours trading until 8 p.m. ISE intends to continue to trade options on the QQQ during its regular trading session until 4:15 p.m., as it does options on certain other Fund Shares and indexes.

ISE notes that Amex and the Pacific Exchange, Inc. (''PCX'') trade options on QQQ until 4:15 p.m. (New York Time) under their respective rules.[6] The new proposed subsection (b) to ISE Rule 700 will codify ISE's longstanding practice of trading options on QQQ and certain Fund Shares until 4:15 p.m. The ISE submits that this rule change will serve to avoid any confusion in the marketplace over the trading hours of QQQ options in light of Nasdaq's shift of the listing venue of QQQ and to codify the trading hours for options on certain Fund Shares and on QQQ.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to 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.

[6] *See* Commentary .02 to Amex Rule 1 and Commentary .02 to PCX Rule 7.1.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change, as amended, as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.[11] The Commission notes that accelerating the operative date will allow the trading hours for options on the QQQ to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing proposed rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

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.[14]

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–ISE–2004–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–39. 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, 450 Fifth Street, NW., Washington, DC 20549. 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–ISE–2004–39 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3702 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 9, 2004, the date the Exchange filed Amendment No. 2 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50838; File No. SR–NASD–2004–128]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change To Modify the Annual Fee for Certain Issuers Listed on the Nasdaq Stock Market, Inc.

December 10, 2004.

I. Introduction

On August 25, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''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 the annual fee for domestic and foreign issuers (other than American Depositary Receipts) listed on the Nasdaq National Market and for all issuers listed on The Nasdaq SmallCap Market. The proposed rule change was published for notice and comment in the **Federal Register** on October 28, 2004.[3] The Commission received no comments in response to the proposal as published in the **Federal Register.** The Nasdaq Office of General Counsel, however, received one comment letter before the proposal was published for comment.[4] This order approves the proposed rule change as filed.

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50577 (Oct. 21, 2004), 69 FR 62926 (Oct. 28, 2004). Footnote number 3 of the release incorrectly identified Mr. Golub; his correct information is: Arnold Golub, Office of General Counsel, Nasdaq.

[4] *See* letter from Dorrance W. Lamb, Chief Financial Officer, Performance Technologies, Inc., to Nasdaq Office of General Counsel, dated October 20, 2004.

II. Summary of Comments

The Nasdaq's Office of General Counsel received one letter in response to an e-mail it sent to listed issuers, before the proposal was published in the **Federal Register,** notifying listed issuers of the planned rule filing and the potential fee increase.[5] The commenter did not file a comment on the proposal with the Commission; however, the Nasdaq forwarded the letter to the Commission and the Commission placed the letter in the public file. The commenter opposed the proposed increase in the annual fee and expressed concern over the fee for the listing of additional shares. In particular, the commenter opined that the fee charged for listing additional shares unfairly burdens listed issuers who reissue treasury shares as a result of stock option exercises and, accordingly, can result in total fees consistent with, or more than, the fees charged to listed issuers with a higher range of total shares outstanding.

III. The Nasdaq's Response to the Comment

The Nasdaq acknowledged the commenter's concerns, but explained that the Nasdaq does not charge the fee for listing additional shares in connection with the reissuance of treasury shares.[6] Further, the Nasdaq affirmed that the proposed fee schedule does not, by its terms, preference any class of listed issuers, but rather applies equally to all similarly situated listed issuers.[7] The Nasdaq also noted that issuers falling into a higher total shares outstanding category similarly would be subject to the fee for listing additional shares, which fee would be proportionate to their total shares outstanding.[8] The Commission believes that the Nasdaq's response to the commenter's concerns is reasonable.

IV. Discussion and Commission Findings

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

[5] *See id.* The proposal was published in the **Federal Register** on October 28, 2004, eight days after the date of Performance Technologies, Inc.'s letter to Nasdaq.

[6] Telephone conference between Arnold Golub, Office of General Counsel, Nasdaq, and Richard Holley, Attorney, Division of Market Regulation, Commission, on December 3, 2004.

[7] *See id.*

[8] *See id.*

association,[9] and, in particular, the requirements of Section 15A(b)(5) of the Act.[10] The Commission believes that the proposed rule change will result in the equitable allocation of annual fees among listed issuers. The Commission notes that the Nasdaq plans to use the proposed fee increase to support its ongoing costs of issuer services and to fund future product and service investments.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–2004–128) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3706 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 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).

[10] 15 U.S.C. 78*o*-3(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50828; File No. SR–NYSE–2004–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot for Its Automatic Execution Facility for Certain Limit Orders (NYSE Direct+®)

December 9, 2004.

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 22, 2004, the New York Stock Exchange, Inc. (''NYSE'' 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 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 extend until December 23, 2005 the effectiveness of the pilot program (''Pilot'') for NYSE Direct+® (''Direct+''). The Pilot was initially approved on a one-year basis and subsequently extended until December 23, 2004.

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

In light of the fact that the Commission is still considering the Exchange's proposed enhancements to Direct+ (''hybrid market proposal''),[3] the Exchange seeks to extend the Pilot as it currently operates for an additional year until December 23, 2005. Direct+ was originally approved as a one-year pilot ending on December 21, 2001.[4] The Pilot was subsequently extended for three additional one-year periods, and is currently scheduled to end on December 23, 2004.[5]

The Pilot provides for the automatic execution of limit orders of 1099 shares or less (''auto ex orders'') against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

The Exchange proposes to extend the Pilot for an additional year until December 23, 2005. Four filings which impact Direct+ and that have been approved by the Commission during the current Pilot are now part of the Pilot.[6] These filings are set forth below.

(a) A filing which amended NYSE Rule 1000 to provide that Direct+ executions would not be available if the resulting trade would be more than five cents away from the last sale.[7] The amendment also provided that during the process for completing NYSE Rule 127 transactions, the specialist should publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange.

(b) A filing which (i) amended NYSE Rule 13 to provide for a one-year pilot program (also expiring on December 23, 2004) to expand Direct+ order size eligibility (for up to 10,000 shares) for Exchange-Traded Funds (''ETFs'') and Holding Company Depositary Receipts (''HOLDRs''); (ii) amended NYSE Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amended NYSE Rule 1005 to reflect that the rule applies to ETFs and HOLDRs.[8]

(c) A filing which amended NYSE Rule 1005 to permit entry of limit orders up to 1099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor has procedures to monitor compliance with the separate terminal requirement.[9]

(d) A filing which amended NYSE Rules 1000 and 1001 in connection with the NYSE LiquidityQuote℠ initiative.[10] In conjunction with autoquoting of bids and offers, NYSE Rule 1000 was amended to provide that a Direct+ order equal to or greater than the size of the published bid/offer would exhaust the entire bid/offer rather than decrease it to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) and 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (SR–NYSE–2004–05).

[4] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–00–18).

[5] *See* Securities Exchange Act Release Nos. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50); 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47); and 48772 (November 12, 2003), 68 FR 65756 (November 21, 2003) (SR–NYSE–2003–30).

[6] In addition, SR–NYSE–2003–20 proposed to disengage Direct+ in five actively-traded stocks on a pilot basis. However, this pilot expired on June 20, 2003 and, therefore, does not impact the Pilot as proposed to be extended. *See* Securities Exchange Act Release No. 47965 (June 2, 2003), 68 FR 34691 (June 10, 2003) (SR–NYSE–2003–20).

[7] *See* Securities Exchange Act Release No. 47463 (March 7, 2003), 68 FR 12122 (March 13, 2003) (SR–NYSE–2002–44).

[8] *See* Securities Exchange Act Release No. 47024 (December 18, 2002), 67 FR 79217 (December 27, 2002) (SR–NYSE–2002–37).

[9] *See* Securities Exchange Act Release No. 47353 (February 12, 2003), 68 FR 8318 (February 20, 2003) (SR–NYSE–2002–58).

[10] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

100 shares, and NYSE Rule 1001(c) was deleted.[11]

The above-mentioned filings became part of the Direct+ rules and were incorporated into the Pilot upon their respective approvals by the Commission.[12] Therefore, the Exchange proposes that an extension of the Pilot for an additional year would also extend the above-mentioned filings as part of the Pilot.

However, if the Commission approves the hybrid market proposal during the extension of the Pilot period (December 24, 2004 to December 23, 2005), the Exchange proposes that the hybrid market proposal would supersede this filing.

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, because it is 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 Exchange also believes that the proposed rule change is designed to support the principles of Section 11A(a)(1) of the Act[15] in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market, and provides an opportunity for investors' orders to be executed without the participation of a dealer.

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.

[11] NYSE Rule 1001(c) formerly provided that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market.

[12] *See* Amendment No. 1 to SR–NYSE–2002–47, *supra* note 5.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

The Exchange requests that the Commission waive the five business days pre-filing requirement and the 30-day operative delay under Rule 19b–4(f)(6)(iii).[19] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid inconvenience and interruption to the public.

The Commission believes that waiver of the 30 days operative delay is consistent with the protection of investors and the public interest,[20] because it will allow the Exchange to continue, without interruption, the existing operation of its Pilot for an additional year, while the Commission considers the hybrid market proposal. Accordingly, the Commission designates that the proposal shall become operative as of the date of this notice.

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–NYSE–2004–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–66. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2004–66 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3704 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50830; File No. SR–PCX–2004–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan and Recommended Fine Schedule

December 9, 2004.

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 2, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the PCX Minor Rule Plan (''MRP'') and Recommended Fine Schedule (''RFS''). The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.[3]

* * * * *

Rules of the Pacific Exchange, Inc.

Rule 10

Disciplinary Proceedings and Appeals

* * * * *

Minor Rule Plan

Rule 10.12(a)–(g)—No change.

(h) Minor Rule Plan: Options Floor Decorum and Minor Trading Rule Violations.

(1)–(44)—No change.

(45) Failure to maintain adequate procedures and controls to monitor and supervise the entry of electronic orders by Users to prevent the prohibited practices set forth in Rules 6.87(d) and 6.90(e). (Rules 6.87(c)(4) and 6.90(d)(3)).

(i) No change.

(j) No change.

Rule 10.12(k) Minor Rule Plan: Recommended Fine Schedule [1]

(i) Options Floor Decorum and Minor Trading Rule Violations.

1.–44.—No change.

45. *Failure to maintain adequate procedures and controls to monitor and supervise the entry of electronic orders by Users to prevent the prohibited practices set forth in Rules 6.87(d) and 6.90(e). (Rules 6.87(c)(4) and 6.90(d)(3)).*

1st Violation	*2nd Violation*	*3rd Violation*
$1,000.00	*Full Disciplinary Proceeding*	*Full Disciplinary Proceeding.*

* * * * *

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 PCX's MRP and RFS to add provisions for violations by an Order Entry Firm [4] of PCX Rules 6.87(c)(4) and 6.90(d)(3), which require Order Entry Firms to maintain adequate procedures and controls to monitor and supervise the entry of electronic orders.[5] Currently, the MRP sets forth penalties and sanctions for improperly dividing up an order to make its parts eligible for execution on Auto-Ex or PCX Plus.[6] The Exchange believes that the proposed amendments to its MRP and RFS are appropriate to include as part of the MRP and RFS since failure to monitor Users [7] regarding the entry of electronic orders corresponds to the violation of improperly dividing up an order to make its parts eligible for execution on Auto-Ex or PCX Plus.

The Exchange proposes a fine of $1,000 for the first violation for failure to maintain adequate procedures and controls to monitor and supervise the entry of electronic orders pursuant to PCX Rules 6.87(c)(4) and 6.90(d)(3). In lieu of proposing fines for a second and third violation, the Exchange proposes to treat subsequent violations as a formal disciplinary matter. A formal disciplinary proceeding would be appropriate to the extent that it addresses an Order Entry Firm's repeated failure to maintain proper procedures given that the Order Entry Firm has already been charged with an MRP violation. Thus, the Exchange believes that an Order Entry Firm's repeated failure to have proper procedures in place, which are essential for the monitoring and supervising of the entry of electronic orders, warrants a formal disciplinary proceeding.

The Exchange believes that the proposed rule change will strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization (''SRO''). The proposed rule change should also aid the Exchange in carrying out its surveillance and enforcement functions. The Exchange does not minimize the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's MRP. The Exchange relies on its MRP as a tool to address enumerated violations to provide the Exchange with greater flexibility to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PCX noted that there was a typographical error appearing in the proposed rule change. Note 1 should tie to PCX Rule 10.12(i) instead of Rule 10.12(k). PCX agrees to correct this error in an amendment to the rule filing to be filed prior to the expiration of the public comment period. Telephone conversation between Tania J.C. Blanford, Staff Attorney, PCX, and Jennifer C. Dodd, Attorney, Division of Market Regulation, Commission, on December 9, 2004.

[1] Fines for multiple violations of Options Floor Decorum and Minor Trading Rules are calculated on a running two-year basis.

[4] *See* PCX Rule 6.87(a)(3).

[5] PCX Rule 6.87(c)(4) requires Order Entry Firms to maintain adequate procedures and controls that will permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users. Order Entry Firms must monitor and supervise the entry of orders by Users to prevent prohibited practices set forth in PCX Rule 6.87(d). PCX Rule 6.90(d)(3) sets forth the equivalent requirement for Order Entry Firms with respect to PCX Plus.

[6] *See* PCX Rules 10.12(h)(33) and 10.12(i)(33).

[7] *See* PCX Rule 6.87(a)(2).

address violations that may not require formal disciplinary proceedings. Under the proposed rules, the Enforcement Department would continue to exercise its discretion under Rule 10.12(f) and pursue certain cases as a formal disciplinary matter, and not within the MRP process, to the extent that the facts or circumstances warrant such action.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The proposal is also consistent with Sections 6(b)(6)[10] and 6(b)(7),[11] which require that members and persons associated with members are appropriately disciplined for violations of Exchange rules and are provided a fair procedure for disciplinary procedures.

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. 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 self-regulatory organization 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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78f(b)(7).

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 *rules-comments@sec.gov.* Please include Filed No. SR–PCX–2004–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–PCX–2004–58. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2004–58 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3705 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50833; File No. SR–Phlx–2004–86]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Definition of an Exchange-Traded Fund Share

December 10, 2004.

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 1, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 prepared by the Phlx. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 Phlx Rule 1000(b)(42) to include the Nasdaq-100 Index Tracking Stock[5] in its definition of ''Exchange–Traded Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq–100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to Phlx, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

Share.'' The text of the proposed rule change is set forth below.

Proposed new language is in *italics.*

* * * * *

Applicability, Definitions and References

Rule 1000. (a) No change.

(b) 1.–41. No change.

42. Exchange-Traded Fund Share—For purposes of these Rules, the term Exchange-Traded Fund Share shall include the *Nasdaq-100 Index Tracking Stock and* Exchange-listed securities representing interests in open end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities.

(c)–(d) No change.

* * * * *

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 Phlx included statements concerning the purpose of, and statutory 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of an Exchange Traded Fund Share (''ETF'') to include the Nasdaq-100 Index Tracking Stock (''QQQ'') in order to preserve the Exchange's ability to trade options overlying QQQ until 4:15 p.m. ET and to be clear that throughout the Exchange's options rules, QQQ continues to be, by definition, an ETF.

As of December 1, 2004, the QQQ has been listed and has begun trading on the Nasdaq under the new symbol QQQQ.

Under the Exchange's current rule, because Nasdaq is not a national securities exchange as defined under the Act, QQQ does not qualify as an ETF, currently defined in Exchange Rule 1000(b)(42) as an ''exchange-listed'' security. The fact that QQQ is no longer an ''exchange-listed'' security (and therefore under the current rule is not by definition an ETF) affects the hours of trading in options overlying QQQ. The trading session for most equity options ends at 4:02 p.m. ET. However, pursuant to Exchange Rule 101, options overlying indexes and ETFs (such as QQQ) trade on the Phlx until 4:15 p.m. ET. Because QQQ is no longer included in the definition of an ETF, it would not be eligible for trading past 4:02 p.m. ET under current Exchange rules.

In order to preserve the Exchange's ability to trade options overlying QQQ until 4:15 p.m. ET, the proposed rule change would specifically include reference to the Nasdaq-100 Index Tracking Stock in the definition of an ETF.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and 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 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 inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing notice requirement and the 30-day operative delay period.[10] The Commission notes that accelerating the operative date will allow the trading hours for options overlying the QQQ to remain unchanged and provide continuity to the marketplace. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

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.[13]

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–Phlx–2004–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–86. This file number should be included on the

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(C).

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, 450 Fifth Street, NW., Washington, DC 20549. 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–Phlx–2004–86 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3707 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50832; File No. SR–Phlx–2004–62]

Self–Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Waive the Options Specialist Shortfall Fee for One Specialist Unit That Did Not Have a Specialized Quote Feed in Place

December 9, 2004.

On September 23, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 waive the options specialist shortfall fee for the period May 2004 through August 2004 for one specialist unit that did not have a specialized quoted feed in place that could price an option accurately for any option where the primary volume in the underlying security shifted to another market. The proposed rule change was published for comment in the **Federal Register** on November 1, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

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[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[6] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that failure to grant the proposed waiver would result in an inequitable application of the Exchange's options specialist shortfall fee for one particular specialist that, because of a unique situation, did not have a specialized quote feed in place for the period from May 1, 2004 through August 31, 2004. The Commission's decision to approve this waiver from the Phlx specialist shortfall fee is limited in scope to this particular specialist at this time.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8], that the proposed rule change (SR–Phlx–2004–62) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3708 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50591 (October 26, 2004), 69 FR 63427.

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] The waiver of the options specialist shortfall fee in this instance is fact-specific. Future requests for similar waivers, should any arise, must be filed for notice and comment pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). *See also,* March 27, 2003 letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, National Association of Securities Dealers.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50836; File No. SR–Phlx–2004–70]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Impose New License Fees and To Modify the Calculation of the Firm-Related Equity Option and Index Option Fee Cap

December 10, 2004.

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 1, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 9, 2004, Phlx filed Amendment 1 to the proposed rule change.[3] Phlx filed this proposal pursuant to Section 19(b)(3)(A)(ii)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder as a proposal establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx made minor technical changes; clarified the calculation of the $50,000 cap (described below), specifically as it relates to the firm-related equity option and index option comparison and transaction charges for products without license fees and with license fees; and further clarified that applicable firm-related charges for the QCX, QCE, and FXI will not be counted towards the $50,000 cap. For purpose of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 9, 2004, the date that the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt various license fees to be assessed per contract side for equity option ''firm'' transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions and firm/proprietary facilitation transactions). These license fees will be imposed after the Exchange's $50,000 ''firm-related'' equity option and index option comparison and transaction fee cap, described more fully below, is reached. In addition, the Exchange proposes to impose the normal (not fixed) firm-related equity option and index option comparison and transaction fees, if applicable, for certain options, which would not be subject to the $50,000 cap. The Exchange also proposes to make a minor change to its Summary of Equity Option Charges fee schedule.

The text of the proposed rule change is available at Phlx and at the Commission.

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 Phlx included statements concerning the purpose of and basis for its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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

Current Fee Structure

Currently, the Exchange imposes a cap of $50,000 per member organization[6] on all ''firm-related'' equity option and index option comparison and transaction charges combined. Specifically, such ''firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively ''firm-related charges'').[7] Thus, such firm-related charges for equity options and index options, in the aggregate for one billing month, may not exceed $50,000 per month per member organization.

The Exchange also imposes a license fee of $0.10 per contract side for equity option ''firm'' transactions on options on Nasdaq-100 Index Tracking Stock[sm] [8] traded under the symbol QQQ (''QQQ'') after the $50,000 cap, as described above, is reached. Therefore, when a member organization exceeds the $50,000 cap (comprised of combined firm-related charges), the member organization is charged $50,000, plus the QQQ license fee of $0.10 per contract side for any QQQ trades (if any) over those that were included in reaching the $50,000 cap. In other words, the $0.10 license fee is imposed in addition to the $50,000 cap, if the cap is reached, on firm-related transactions.

Proposed Changes to the $50,000 Firm Related Equity Option and Index Option Cap Proposed Fixed Fee Program

The Exchange proposes to adopt the specific license fees per contract side for the following products for equity option firm transactions, which will be imposed after the $50,000 cap is reached:

Product	License fee per contract side
Russell 1000 Growth iShares (''IWF'')	$0.10
Russell 2000 iShares (''IWM'')	0.10
Russell 2000 Value iShares (''IWN'')	0.10
Russell 2000 Growth iShares (''IWO'')	0.10
Russell Midcap Growth iShares (''IWP'')	0.10
Russell Midcap Value iShares (''IWS'')	0.10
NYSE Composite Index (''NYC'')	0.10
NYSE U.S. 100 Index (''NY'')	0.10

Thus, when a member organization exceeds the $50,000 cap, the member organization will be charged $50,000 plus any applicable license fees listed above (as well as QQQ license fees) for any trades over those trades that were included in reaching the $50,000 cap.[9]

In addition, the Exchange proposes to impose the normal (not fixed) firm-related charges for the following three options: Full-size index options (''QCX'') and Mini index options (''QCE'') on the Nasdaq Composite Index, Inc.® [10] and options listed on the iShares FTSE/Xinhua China 25 Index Fund (''FXI Options''),[11] an exchange-traded fund. Thus, a member organization will be charged the applicable firm-related charges for the QCX, QCE or FXI, regardless of whether the $50,000 cap described above is reached, and these charges will not be counted towards the $50,000 cap.

The fees set forth in this proposal are scheduled to become effective for transactions settling on or after November 1, 2004.

The purpose of assessing the various license fees per contract side after

[6] The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[7] On October 28, 2004, the Exchange submitted a proposed rule change to the Securities and Exchange Commission (''Commission'') to delineate two separate ''firm'' charges on the Summary of Index Option and FXI Option Charges fee schedule: firm/proprietary and firm/proprietary facilitation, to be more consistent with the reference to the firm transaction charges on the Exchange's Summary of Equity Option Charges. *See* Securities Exchange Act Release No. 50679 (November 16, 2004), 69 FR 68208 (November 23, 2004) (SR–Phlx–2004–69).

[8] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares[SM], Nasdaq-100 Trust[SM], Nasdaq-100 Index Tracking Stock[SM], and QQQ[SM] are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the ''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust[SM], or the beneficial owners of Nasdaq-100 Shares[SM]. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[9] Consistent with current practice, when calculating the $50,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option transaction and comparison charges for products with license fees (*i.e.*, QQQ license fees) that are assessed by the Exchange after the $50,000 cap is reached. *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003) (SR–Phlx–2003–61, Exhibit 3).

[10] The Nasdaq Composite Index® is a registered trademark of The Nasdaq Stock Market, Inc., and is licensed for use by Phlx.

[11] The Exchange began listing FXI Options, a product that is an equity option, on October 19, 2004, but are assessed fees pursuant to the Summary of Index Option and FXI Options Charges. *See* Securities Exchange Act Release No. 50676 (November 16, 2004), 69 FR 38206 (November 23, 2004) (SR–Phlx–2004–67).

reaching the $50,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges. The purpose of allowing the QCE, QCX and FXI products to be charged the normal (not fixed) firm-related charges is to generate revenue (that was previously capped) because these are not the products in which the Exchange is seeking to attract firm-related volume from other exchanges.

In addition to the foregoing, the Exchange proposes to make a minor change to its Summary of Equity Option Charges to delete the word ''transaction'' from the reference to the firm/proprietary facilitation option transaction charge and to delete reference to the QQQ license fees of $0.10 per contract side from the Summary of Index Option and FXI Options Charges, as this language is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder as a proposal establishing or changing a due, fee, or other charge imposed by the self-regulatory organization. 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.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2004–70 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3709 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] *See supra* note 3.

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #10003]

State of North Carolina (NC–00001)

Pender County and the contiguous counties of Bladen, Brunswick, Columbus, Duplin, New Hanover, Onslow, and Sampson in the State of North Carolina constitute a disaster area as a result of damages caused by tornadoes created from remnants of Hurricane Charley that occurred August 12–13, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 8, 2005 and for economic injury until the close of business on September 9, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	6.375
Homeowners Without Credit Available Elsewhere:	3.187
Businesses With Credit Available Elsewhere:	5.800
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	2.900
Others (Including Non-Profit Organizations) With Credit Available Elsewhere:	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	2.900

The number assigned to this disaster for physical damage is 10003 and for economic damage is 10004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 9, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–27651 Filed 12–16–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4935]

Determination Pursuant to Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act, as Amended, Placing Al Manar on the Terrorist Exclusion List

Acting under the authority of Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1182(a)(3)(B)(vi)(II), and in consultation with the Attorney General and the Secretary of Homeland Security, the Secretary of State has concluded that Al Manar is a ''terrorist organization'' within the meaning of that section of the INA.

This notice shall be published in the **Federal Register**, and is effective upon publication.

Dated: December 15, 2004.

William P. Pope,

Coordinator for Counterterrorism, Acting, Department of State.

[FR Doc. 04–27801 Filed 12–16–04; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4936]

Foreign Terrorists and Terrorist Organizations; Designation: Jam'at al Tawhid Wa'al-Jihad et al.

In the Matter of the Amended Designation of Jam'at al Tawhid wa'al-Jihad, also known as The Monotheism and Jihad Group, also known as the al-Zarqawi Network, also known as al-Tawhid, also known as Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn, also known as The Organization of al-Jihad's Base in Iraq, also known as The Organization of al-Jihad's Base of Operations in Iraq, also known as al-Qaida of Jihad in Iraq, also known as al-Qaida in Iraq, also known as al-Qaida in Mesopotamia, also known as al-Qaida in the Land of the Two Rivers, also known as al-Qaida of the Jihad in the Land of the Two Rivers, also known as al-Qaida of Jihad Organization in the Land of the Two Rivers, also known as al-Qaida Group of Jihad in Iraq, also known as al-Qaida Group of Jihad in the Land of the Two Rivers, also known as The Organization of Jihad's Base in the Country of the Two Rivers, also known as The Organization Base of Jihad/Country of the Two Rivers, also known as The Organization of al-Jihad's Base in the Land of the Two Rivers, also known as The Organization Base of Jihad/Mesopotamia, also known as The Organization of al-Jihad's Base of Operations in the Land of the Two Rivers, also known as Tanzeem qa'idat al Jihad/Bilad al Raafidaini, as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act.

Based upon a review of the administrative record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Deputy Secretary of State has concluded that there is a sufficient factual basis to find that Jam'at al Tawhid wa'al-Jihad, also known as the Zarqawi Network and other aliases, has changed its name to Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn, and that the relevant circumstances in section 219(a)(1) of the Immigration and Nationality Act, as amended (8U.S.C. 1189(a)(1)) still exist with respect to that organization.

Therefore, effective upon the date of publication in the **Federal Register**, the Deputy Secretary of State hereby amends the 2004 designation of that organization as a foreign terrorist organization, pursuant to § 219(a)(4)(B) of the INA (8 U.S.C. 1189(a)(4)(B)), to include the following new names:

Tanzim Qa'idat al-Jihad fi Bilad al-Rafidayn,

The Organization of al-Jihad's Base in Iraq,

The Organization of al-Jihad's Base of Operations in Iraq,

al-Qaida of Jihad in Iraq, al-Qaida in Iraq,

al-Qaida in Mesopotamia,

al-Qaida in the Land of the Two Rivers,

al-Qaida of the Jihad in the Land of the Two Rivers,

al-Qaida of Jihad Organization in the Land of the Two Rivers,

al-Qaida Group of Jihad in Iraq,

al-Qaida Group of Jihad in the Land of the Two Rivers,

The Organization of Jihad's Base in the Country of the Two Rivers,

The Organization Base of Jihad/Country of the Two Rivers,

The Organization of al-Jihad's Base in the Land of the Two Rivers,

The Organization Base of Jihad/Mesopotamia,

The Organization of al-Jihad's Base of Operations in the Land of the TwoRivers,

Tanzeem qa'idat al Jihad/Bilad al Raafidaini.

Dated: December 15, 2004.

William P. Pope,

Acting Coordinator for Counterterrorism Department of State.

[FR Doc. 04–27799 Filed 12–16–04; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4937]

Designation of the Libyan Islamic Fighting Group Also Known as LIFG as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, the Deputy Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in Section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA''), 8 U.S.C. 1189, exist with respect to the Libyan Islamic Fighting Group. The Libyan Islamic Fighting Group is also known as LIFG.

Therefore, the Deputy Secretary of State hereby designates that organization as a Foreign Terrorist Organization pursuant to Section 219(a) of the INA.

Dated: December 15, 2004.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 04–27800 Filed 12–16–04; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–19834]

Proposed Advisory Circular 45–2C, Identification and Registration Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 45–2C, Identification and Registration Marking, for review and comments. The proposed AC provides guidance and information to comply with the requirements for identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks. This AC provides a means, but not the only means, of demonstrating compliance with the requirements of Title 14, Code of Federal Regulations (14 CFR), part 45, Identification and Registration Marking.

DATES: Comments submitted must identify the proposed AC 45–2C and be received no later than January 18, 2005.

ADDRESSES: Copies of this proposed AC can be obtained from the Federal Aviation Administration, Airworthiness Certification Branch, AIR–230, Production and Airworthiness Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591 or at *http://dms.dot.gov.* Send comments on this AC 45–2C, Identification and Registration Marking to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19834, at the beginning of your comments. You may also submit comments to the Internet at *http://dms.dot.gov.* You may review the public docket containing AC 45–2C, Identification and Registration Marking, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) in on the plaza level of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: David Broughton, Airworthiness Certification Branch, AIR–230, Production and Airworthiness Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

Proposed AC 45–2C is written in the Plain Language format to provide information and guidance on the requirements of identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks.

Comments Invited

Interested persons are invited to comment on proposed AC 45–2C listed in this notice by submitting such written data, views, or arguments, as they desire, to the above specified address. The Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final AC.

Comments received on the proposed AC may be examined before and after the comment closing date as explained above.

Issued in Washington, DC, on December 10, 2004.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. 04–27597 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Amended Notice of Public Comment Period for Draft Environmental Impact Statement (DEIS) for Proposed Relocation of the Panama City-Bay County International Airport to a New Site in Bay County, FL

AGENCY: Federal Aviation Administration (FAA), DOT. The U.S. Army Corps of Engineers (USACE) is a cooperating federal agency, having jurisdiction by law because of the proposed federal action has the potential for significant wetland impacts.

ACTION: Amended notice of public comment period.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this amended notice to advise the public that the public comment period for the Draft Environmental Impact Statement (DEIS)—Proposed Relocation of the Panama City—Bay County International Airport, has been extended from January 21, 2005, to January 28, 2005, due to requests from the public. Original notices of availability of the DEIS was published in the **Federal Register** by USEPA on November 26, 2004 [68 FR 68899] and by FAA on December 3, 2004 [69 FR 70302]. Written requests for the DEIS and written comments on the DEIS can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Specialist, Federal Aviation Administration, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822. Ms. Lane can be contacted at (407) 812–6331 (voice), (407) 812–6978 (facsimile).

Issued in Washington, DC on December 13, 2004.

Ralph Thompson,

Manager, Community and Environmental Needs Division, Office of Airport Planning and Programming.

[FR Doc. 04–27691 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–91]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Jan Thor, (425) 227–2127, Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 10, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–18747.

Petitioner: Lockheed Martin Aircraft and Logistics Centers.

Sections of 14 CFR Affected: 14 CFR 25.807(g)(1) and 25.807(i)(1).

Description of Relief Sought/Disposition: To permit relief from the requirements of the regulations to allow carriage of six non-crewmembers (commonly referred to as supernumeraries) on the Gulfstream Model GV–SP (G550) airplanes which have been converted from a passenger to a Compartment Airborne Early Warning (CAEW) configuration.

Partial Grant of Exemption, 12/03/04, Exemption No. 8453.

[FR Doc. 04–27684 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–89]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 10, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Dispositions of Petitions

Docket No.: FAA–2001–8634.

Petitioner: Comair, Inc., d.b.a. Delta Connection.

Section of 14 CFR Affected: 14 CFR 93.127.

Description of Relief Sought/ Disposition: To permit Comair, Inc., d.b.a. Delta Connection, to conduct domestic operations using its eight international slots at LaGuardia Airport.

Grant, 10/28/2004, Exemption No. 7434B.

Docket No.: FAA–2004–19341.

Petitioner: Bell Agusta Aerospace Company.

Section of 14 CFR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit Bell Agusta Aerospace Company to obtain special purpose pilot authorizations for its pilots to ferry and operate U.S.-registered AB 139 helicopters to various U.S. locations for the purpose of flight training.

Grant, 10/28/2004, Exemption No. 8431.

Docket No.: FAA–2002–11883.

Petitioner: Department of the Army.

Section of 14 CFR Affected: 14 CFR 91.169(a)(2) and (c).

Description of Relief Sought/ Disposition: To permit the Department of the Army to file instrument flight rules flight plans in accordance with the regulations prescribed by the United States Army.

Grant, 10/28/2004, Exemption No. 8430.

Docket No.: FAA–2000–7980.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 121.311(b).

Description of Relief Sought/ Disposition: To permit Air Transport Association of America-member airlines and other similarly situated part 121 operators to permit qualified flight attendants not required by § 121.391(c) to perform duties related to the safety of the airplane and its occupants during aircraft movement on the surface.

Grant, 10/26/2004, Exemption No. 5533F.

Docket No.: FAA–2002–13588.

Petitioner: United States Hang Gliding Association, Inc.

Section of 14 CFR Affected: 14 CFR 103.1(a) and (b).

Description of Relief Sought/ Disposition: To permit the United States Hang Gliding Association, Inc., to operate unpowered ultralight vehicles (hang gliders) weighing less than 155 pounds, with another occupant, for the purpose of sport, training, or recreation.

Grant, 10/25/2004, Exemption No. 4721I.

Docket No.: FAA–2001–8841.

Petitioner: Hammerhead Aerobatics, Inc.

Section of 14 CFR Affected: 14 CFR 91.315.

Description of Relief Sought/ Disposition: To permit Hammerhead Aerobatics, Inc., to operate its Sukhoi Su–29 aircraft, which holds an experimental airworthiness certificate, for the purpose of dual instruction and demonstration flights for compensation, until the Su–29 can be certificated under 14 CFR part 23.

Denial, 10/21/2004, Exemption No. 8427.

Docket No.: FAA–2004–19374.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 91.529(b).

Description of Relief Sought/ Disposition: To permit flight engineers, employed by The Boeing Company, to serve as flight engineers on B–707 and B–747 aircraft if they have logged a minimum of 20 hours in lieu of the required 50 hours flight time as flight engineers on the particular type aircraft within the preceding 12 calendar months, provided the combined flight time in any Boeing model 707 or 747 aircraft, or Level B, C, or D simulator that represents any Boeing model 707 or 747 aircraft, is at least 100 hours in the preceding 12 calendar months.

Grant, 10/21/2004, Exemption No. 2718A.

Docket No.: FAA–2001–9032.

Petitioner: Ameriflight, Inc.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c), 91.203(a) and (b), 121.153(a)(1), and 121.383(a)(2).

Description of Relief Sought/ Disposition: To permit Ameriflight, Inc., to temporarily operate its aircraft in accordance with parts 121 and 135 of 14 CFR without airworthiness and registration certificates onboard (and properly displayed in the case of airworthiness certificates) while obtaining replacements, subject to certain conditions and limitations.

Grant, 10/28/2004, Exemption No. 7143C.

Docket No.: FAA–2004–18703.

Petitioner: ABX Air, Inc.

Section of 14 CFR Affected: 14 CFR 121.613, 121.623, and 121.625.

Description of Relief Sought/ Disposition: To permit ABX Air, Inc., to dispatch aircraft under instrument flight rules when conditional language in a one-time increment of weather forecast states that the weather at the destination airport, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state that the weather conditions will be at or above the authorized weather minimums, subject to certain conditions and limitations.

Grant, 10/28/2004, Exemption No. 8432.

Docket No.: FAA–2004–19324.

Petitioner: Pomona Valley Pilots Association.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Pomona Valley Pilots Association to conduct local sightseeing flights for the Pomona Valley Air Fair at the Cable Airport, Upland, California, on or about January 8 and 9, 2005, for compensation and hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations.

Grant, 11/1/2004, Exemption No. 8435.

Docket No.: FAA–2004–19047.

Petitioner: Mr. James Vernon Ricks, Jr.

Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I and J to part 121.

Description of Relief Sought/ Disposition: To permit Mr. James Vernon Ricks, Jr., to conduct local sightseeing flights at the Greenwood-Leflore Airport, Greenwood, Mississippi, on or about the dates mentioned in the petition, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations.

Grant, 11/4/2004, Exemption No. 8436.

Docket No.: FAA–2004–19417.

Petitioner: Lufthansa Cargo AG.

Section of 14 CFR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit pilots employed by Lufthansa Cargo AG to be eligible for the issuance of special purpose pilot authorizations under part 61, subject to certain conditions and limitations.

Grant, 11/4/2004, Exemption No. 8437.

Docket No.: FAA–2000–8182.

Petitioner: Washoe County Sheriff's Office.

Section of 14 CFR Affected: 14 CFR 61.113(e).

Description of Relief Sought/ Disposition: To permit members of the Washoe County Sheriff's Air Squadron who hold private pilot certificates an amendment to Exemption No. 7473A, which would permit them to transport needed supplies and search specialists or teams, such as dogs, mantrackers, and technical rescue teams, to the scene of a rescue when conducting search and location missions.

Denial, 11/4/2004, Exemption No. 7473B.

Docket No.: FAA–2001–10205.

Petitioner: Massachusetts Institute of Technology, Lincoln Laboratory.

Section of 14 CFR Affected: 14 CFR 142.57(a)(1).

Description of Relief Sought/ Disposition: To permit the Massachusetts Institute of Technology, Lincoln Laboratory, to use a Boeing 707 airplane that operates as a public aircraft to conduct training under 14 CFR part 61 for Lincoln Laboratory flight crewmembers.

Denial, 11/4/2004, Exemption No. 8438.

Docket No.: FAA–2003–14309.

Petitioner: Kenmore Air Harbor, Inc.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To permit Kenmore Air Harbor, Inc., to conduct seaplane operations under visual flight rules, outside controlled airspace, over water, and at an altitude below 500 feet above ground level.

Grant, 11/15/2004, Exemption No. 2528M.

Docket No.: FAA–2002–13066.

Petitioner: Department of the Army.

Section of 14 CFR Affected: 14 CFR 91.209(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit the Department of the Army to conduct certain military training operations at night without lighted aircraft position lights.

Grant, 11/15/2004, Exemption No. 3946I.

Docket No.: FAA–2000–8337.

Petitioner: Alaska's Lake Clark Inn.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Alaska's Lake Clark Inn to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/15/2004, Exemption No. 7426B.

Docket No.: FAA–2002–11715.

Petitioner: Chevron U.S.A.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Chevron U.S.A. to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/15/2004, Exemption No. 8440.

Docket No.: FAA–2004–19611.

Petitioner: Seattle Jet Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Seattle Jet Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/15/2004, Exemption No. 8441.

Docket No.: FAA–2004–19553.

Petitioner: Flightworks Executive Charter.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Flightworks Executive Charter to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/15/2004, Exemption No. 8443.

Docket No.: FAA–2004–19514.

Petitioner: Midwest Airlines, Inc.

*Section of 14 CFR Affected:*14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

*Description of Relief Sought/ Disposition:*To permit Midwest Airlines, Inc., to conduct its supplemental operations within the 48 contiguous United States and the District of Columbia using the flight regulations for alternate airports as required by § 121.619 and fuel reserve requirements as required by § 121.639 that are applicable to domestic operations, subject to certain conditions and limitations.

Grant, 11/16/2004, Exemption No. 8444.

Docket No.: FAA–2002–13297.

Petitioner: United Airlines, Inc.

*Section of 14 CFR Affected:*14 CFR 121.665 and 121.697(a) and (b).

*Description of Relief Sought/ Disposition:*To permit United Airlines, Inc., to continue to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature.

Grant, 11/16/2004, Exemption No. 2466O.

Docket No.: FAA–2000–8180.

Petitioner: Regional Airline Association.

*Section of 14 CFR Affected:*14 CFR 61.3(a) and (c).

*Description of Relief Sought/ Disposition:*To permit Regional Airline Association member carriers and similarly situated 14 CFR part 135 air carriers the establishment of special procedures that enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based on information contained in the operator's approved record system.

Grant, 11/16/2004, Exemption No. 5560E.

Docket No.: FAA–2001–10501.

Petitioner: Mr. P. Barton Richards.

*Section of 14 CFR Affected:*14 CFR 61.129(c)(4)(ii).

*Description of Relief Sought/ Disposition:*To permit Mr. P. Barton Richards to obtain a commercial pilot certificate with a rotorcraft category and helicopter class rating by substituting the requirement for 5 hours of solo night flight time with 5 hours of night flight time as pilot in command with another pilot aboard the helicopter.

Denial, 11/17/2004, Exemption No. 8445.

Docket No.: FAA–2004–19545.

Petitioner: Omni Aviation Services.

*Section of 14 CFR Affected:*14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Omni Aviation

Services to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft listed in the petition.

Grant, 11/19/2004, Exemption No. 8446.

Docket No.: FAA–2004–19650.

Petitioner: Smoky Mountain Helicopters, Inc., d.b.a. Inter Island Helicopters of Kauai.

*Section of 14 CFR Affected:*14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Smoky Mountain Helicopters, Inc., d.b.a. Inter Island Helicopters of Kauai, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/22/2004, Exemption No. 8447.

Docket No.: FAA–2004–19662.

Petitioner: Mulchatna Air Service, LLC.

*Section of 14 CFR Affected:*14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Mulchatna Air Service, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/22/2004, Exemption No. 8448.

Docket No.: FAA–2004–19481.

Petitioner: Embry-Riddle Aeronautical University.

*Section of 14 CFR Affected:*14 CFR 61.71(a).

*Description of Relief Sought/ Disposition:*To permit Embry-Riddle Aeronautical University to issue a commercial pilot certificate to John Robert Bounds, Joseph Sylvester Vidas, Peter Scott Vallely, and Luke Klassen Snyder upon successfully completing their practical test, subject to certain conditions and limitations.

Grant, 11/18/2004, Exemption No. 8449.

Docket No.: FAA–2004–19663.

Petitioner: Global Lift Helicopters, LLC.

*Section of 14 CFR Affected:*14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Global Life Helicopters, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/22/2004, Exemption No. 8450.

Docket No.: FAA–2001–8881.

Petitioner: Mr. Allen N. Banen.

*Section of 14 CFR Affected:*14 CFR 91.109(a) and (b)(3).

*Description of Relief Sought/ Disposition:*To permit Mr. Allen N. Banen to conduct certain flight instruction and simulated instrument flight to meet recent instrument experience requirements in Beechcraft Baron and Bonanza airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 11/19/2004, Exemption No. 7467B.

Docket No.: FAA–2001–9141.

Petitioner: Business Aviation Courier.

*Section of 14 CFR Affected:*14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:*To permit Business Aviation Courier an amendment to Exemption No. 7488, which will allow the Fairchild Metro III aircraft, N366AE–AC681B, to operate under part 135 without a TSO–C112 (Mode S) transponder installed on the aircraft.

Grant, 11/26/2004, Exemption No. 7488B.

Docket No.: FAA–2003–14227.

Petitioner: Kenmore Air Harbor, Inc.

*Section of 14 CFR Affected:*14 CFR 135.154(b)(2).

Description of Relief Sought/ Disposition: To permit Kenmore Air Harbor, Inc., to operate nine single-pilot, single-engine, turbine-powered seaplanes (two De Havilland DHC–2 MK III Turbo Beavers and seven De Havilland DHC–3 Turbo Otters) within and outside the United States afterMarch 29, 2005, without being equipped with an approved terrain awareness and warning system that meets the requirements for class B equipment in Technical Standard Order C151.

Denial, 11/30/2004, Exemption No. 8451.

Docket No.: FAA–2001–8744.

Petitioner: Evergreen Aviation Museum.

Section of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: To permit Evergreen Aviation Museum to operate its Boeing B–17 aircraft, Serial No. 44–83785, and its Grumman TBM–3E Avenger Torpedo Bomber, Serial No. 91726, which hold a limited category airworthiness certificate for purpose of carrying passengers on local flights in return for donations.

Grant, 11/30/2004, Exemption No. 6632F.

Docket No.: FAA–2004–19105.

Petitioner: C & S Aviation, Ltd.

Section of 14 CFR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit C & S Aviation Ltd., to operate one Gulfstream G1159 airplane, U.S. Registration No. N400WY, Serial No. 467, without the digital flight data recorder required by the regulation.

Denial, 11/30/2004, Exemption No. 8452.

Docket No.: FAA–2000–8148.

Petitioner: Epps Aviation.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Epps Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/30/2004, Exemption No. 6037E.

Docket No.: FAA–2002–11285.

Petitioner: Commemorative Air Force.

Section of 14 CFR Affected: 14 CFR 91.319, 119.5(g), and 119.25(b).

Description of Relief Sought/ Disposition: To permit Commemorative Air Force to operate certain military aircraft for the purpose of carrying passengers on local educational flights.

Grant, 12/1/2004, Exemption No. 6802D.

Docket No.: FAA–2004–19488.

Petitioner: Air Maui.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Air Maui to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 11/15/204, Exemption No. 8442.

[FR Doc. 04–27685 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (05–05–CX–00–DRO) To Impose and To Use a Passenger Facility Charge (PFC) at the Durango-La Plata County Airport, Submitted by the County of La Plata and the City of Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Durango-La Plata County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Dent, A.A.E. at the following address: Durango-La Plata County Airport, 1000 Airport Road, Box 1, Durango, Colorado 81303.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Durango-La Plata County Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (05–05–C–00–DRO) to impose and use a PFC at the Durango-La Plata County Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 10, 2004, the FAA determined that the application to impose and use PFC submitted by the County of La Plata and the City of Durango, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 12, 2005.

The following is a brief overview of the application.

Level of the Proposed PFC: $4.50.

Proposed Charge-Effective Date: December 1, 2004.

Proposed Charge-Expiration Date: December 30, 2008.

Total Requested for Collection Approval: $1,604,120.

Brief Description of Proposed Projects: Construct north ramp and access taxiway, realign airport entrance road and resurface terminal roadways, prepare environmental assessment of south Taxiway A extension, design south Taxiway A extension, acquire south runway protection zone land, acquire glycol recovery system, construct south Taxiway A extension.

Class or Classes of Air Carriers That the Public Agency Has Requested Not be Required to Collect PFC's: None.

Any person may inspect the application inperson at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Durango-La Plata County Airport.

Issued in Renton, Washington on December 10, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–27692 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lafayette Regional Airport, Lafayette, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, TX 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Gregory Roberts, Director of Aviation for Lafayette Regional Airport at the following address: Mr. Gregory Roberts, Director of Aviation, Lafayette Airport Commission, 200 Terminal Drive, Lafayette, LA 70508–2159.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, TX 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Fedr3eal Aviation Regulations (14 CFR part 158).

On December 9, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was su7btantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 8, 2005.

The following is a brief overview of the application.

Level of the Proposed PFC: $4.50.

Proposed Charge Effective Date: January 1, 2005.

Proposed Charge Expiration Date: February 1, 2008.

Total Estimated PFC Revenue: $2,270,000.

PFC Application Number: 05–04–C–00–LFT.

Brief description of Proposed project(s):

Projects to Impose and Use PFC's

1. Replace Taxiway Guidance Signs.
2. Rehabilitate Airfield Electrical System.
3. Upgrade Runway 11/29 Lighting.
4. Rehabilitate Airfield Lighting Control System.
5. Upgrade Taxiway Lighting.
6. PFC Application Development and Administrative Fees.

Proposed Class or Classes of Air Carriers to be Exempted From Collecting PFC's: FAR part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA

regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lafayette Regional Airport.

Issued in Fort Worth, Texas on December 9, 2005.

D. Cameron Bryan,

Acting manager, Airports Division.

[FR Doc. 04–27690 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dominic T. Stuth, Grants and Planning Administrator, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA, 93940. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, Environmental Planning and Compliance Section Supervisor, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2778, extension 610. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 10, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 2005.

The following is a brief overview of the impose and use application.

No. 05–11–C–00–MRY:

Level of Proposed PFC: $4.50.

Proposed Charge Effective Date: March 1, 2005.

Proposed Charge Expiration Date: September 1, 2011.

Total Estimated PFC Revenue: $957,132.

Brief Description of the Proposed Projects: Terminal Passenger Circulation and Building Improvements, Airport Rescue and Fire Fighting Equipment, and Terminal Elevator.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required To Collect PFCs: Non-Scheduled On-Demand Air Carriers (formerly Air Taxi/Commercial Operators) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Lawndale, California, on December 10, 2004.

John P. Milligan,

Supervisor, Programming Section, Western-Pacific Region.

[FR Doc. 04–27694 Filed 12–16–04; 8:45 am]

BILLING CODE 4901–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (05–04–U–00–TEX) To Use a Passenger Facility Charge (PFC) at the Telluride Regional Airport, Submitted By the Telluride Regional Airport Authority, Telluride, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use a PFC at the Telluride Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before January 18, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard W. Nuttall, Airport Manager, at the following address: Telluride Regional Airport, 1500 Last Dollar Road, Suite 1, Telluride, Colorado 81435.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Telluride Regional Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 05–04–U–00–TEX) to use PFC revenue at the Telluride Regional Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 10, 2004, the FAA determined that the application to use a PFC submitted by the Telluride Regional Airport Authority, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the

application, in whole or in part, no later than March 12, 2005.

The following is a brief overview of the application.

Level of the Proposed PFC: $4.50.

Actual Impose Only Charge—Effective Date: April 1, 2002.

Proposed Charge—Expiration Date: December 31, 2007.

Total Requested for Use Approval: $215,000.

Brief Description of Proposed Project: Land acquisition.

Class or Classes of Air Carrier That the Public Agency Has Requested Not be Required To Collect PFC's: Air taxi operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Telluride Regional Airport.

Issued in Renton, Washington on December 10, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–27693 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In October 2004, there were four applications approved. This notice also includes information on three applications, approved in September 2004, inadvertently left off the September 2004 notice. Additionally, 27 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant toparagraph d of § 158.29.

PFC Applications Approved

Public Agency: Wayne County Airport Authority, Romulus, Michigan.

Application Number: 04–05–C–00–DTW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $440,790,156.

Earliest Charge Effective Date: September 1, 2029.

Estimated Charge Expiration Date: October 1, 2032.

Class of Air Carriers not Required to Collect PFC's: All air carriers or foreign air carriers which enplane fewer than 500 passengers each per year.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Detroit Metropolitan Wayne County Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

North terminal apron.

McNamara Terminal phase II program.

Third aircraft rescue and firefighting facility.

West airfield improvements.

Interconnect re-route.

Taxiway Q construction.

Runway 4R/22L shoulders/overburden.

Deicing pad at runway 22L.

Deicing pads at runways 4R and 3L.

Perimeter fencing and other security enhancements.

Surface movement guidance control system.

Runway 3L/21R planning.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Runway 3R/21L design and pavement evaluation.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Part 150 study update.

Determination: The approved amount is less than the amount requested due to the issuance of an Airport Improvement Program grant for this project after the FAA's receipt of the PFC application.

Brief Description of Withdrawn Project: Airfield safety vehicles and equipment.

Date of Withdrawal: September 20, 2004.

Decision Date: September 28, 2004.

For Further Information Contact: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: Broome County Department of Aviation, Binghamton, New York.

Application Number: 04–07–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $237,624.

Earliest Charge Effective Date: August 1, 2005.

Estimated Charge Expiration Date: February 1, 2006.

Class C-Air Carriers not required to collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Projects Approved for Collection and Use:

Glycol collection system rehabilitation.

Runway 10/28 safety area study.

Airport wildlife hazard study.

Taxiway rehabilitation—design.

Brief Description of Project Approved for Collection: Airport entrance road improvements.

Brief Description of Project Approved for Use: Runway 16/34 refurbishment, design/construction.

Decision Date: September 29, 2004.

For Further Information Contact: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: Chemung County, Elmira, New York.

Application Number: 04–01–C–00–ELM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $791.873

Earliest Charge Effective Date: December 1, 2004.

Estimated Charge Expiration Date: January 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Elmira/Corning Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Purchase airport sweeper.
Rehabilitate and mark taxiway A, rehabilitate and mark terminal apron.
Security vulnerability assessment.
Snow removal equipment building expansion.
Purchase and install passenger boarding bridge.
Hazard beacon (obstruction lights) study.
Rehabilitate and strengthen taxiways C, G, and H.
Construct itinerant aircraft apron.
Update/upgrade airport security access control system.
Environmental assessment for the extension of runway 6 end.
Install security fence at Schweizer property, T-hangar access area and maintenance area.
Airfield storm water drainage study, phase 1.
Acquire multi-purpose snow removal equipment.
Master plan update.
Acquire aircraft rescue and firefighting command/friction survey vehicle.

Brief Description of Projects Approved for Collection: Rehabilitate taxiway D; Runway end 6 extension, phase 1 (design).

Brief Description of Disapproved Project: Purchase multi-purpose snow removal equipment.

Determination: Disapproved. This project was not included in the airline consultation process.

Decision Date: September 30, 2004.

For Further Information Contact: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: City of Kansas City, Missouri.

Application Number: 04–04–C–00–MCI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $4,066,500.

Earliest Charge Effective Date: October 1, 2017.

Estimated Charge Expiration Date: December 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Kansas City International Airport.

Brief Description of Project Approved for Collection and Use: Reconstruct runway 1/19.

Decision Date: October 8, 2004.

For Further Information Contact: Nicoletta S. Oliver, Central Region Airports Division, (816) 329–2642.

Public Agency: County of Milwaukee, Milwaukee, Wisconsin.

Application Number: 04–11–U–00–MKE.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To be Used in This Decision: $825,000.

Charge Effective Date: March 1, 2017.

Estimated Charge Expiration Date: September 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: E concourse aircraft ramp.

Decision Date: October 8, 2004.

For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Commonwealth Ports Authority, Saipan, Northern Mariana Islands.

Applications Number: 04–01–C–00–GSN; 04–01–C–00–GRO; and 04–01–C–00–TNI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved In This Decision: $33,442,548 ($29,920,680 at Francisco C. Ada/Saipan International Airport (GSN); $1,797,042 at Rota International Airport (GRO); and $1,724,826 at Tinian International Airport (TNI)).

Earliest Charge Effective Date at Each Airport: January 1, 2005.

Estimated Charge Expiration Date at Each Airport: August 1, 2016.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection At GSN, GRO, and TNI and Use at GSN:
Electrical upgrade/generator.
Conversion of restaurant to holdroom.
Sewer line connection.
Enclosure and air conditioning of corridor.
Environmental assessment for hardstand and taxiways.
Connecting taxiway.
Storm drainage master plan.
Parallel taxiway.
Aircraft waste disposal.
Perimeter fencing.
New aircraft rescue and firefighting vehicle.
Environmental assessment for taxiways.
Flight information display.
Radio communications upgrade.
Runway 7/25 rehabilitation—phases I and II.
Aircraft rescue and firefighting training facility (burn pit).
Noise mitigation.
Airport security enhancements.
Aircraft rescue and firefighting training facility (classroom).
Terminal roof replacement.
Runway safety area improvements.
PFC implementation and administration.
Terminal modernization program, phase I.

Brief Description of Projects Approved for Collection at GSN, GRO, and TNI and Use at GRO:
Apron expansion.
Air conditioning arrival area.
Runway rehabilitation.
Airport visual guidance system.
Environmental assessment for runway 9/27 extension.

Brief Description of Project Approved for Collection at GSN, GRO, and TNI for Future Use at GRO: Design and construct runway 9/27 extension.

Brief Description of Projects Approved for Collection at GSN, GRO, and TNI and Use at TNI:
New runway improvement.
Aircraft rescue and firefighting vehicle.

Decision Date: October 15, 2004.

For Further Information Contact: Gordon K. Wong, Honolulu Airports District Office, (808) 541–3565.

Public Agency: Tri-State Airport Authority, Huntington, West Virginia.

Application Number: 04–05–C–00–HTS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $436,233.

Earliest Charge Effective Date: December 1, 2007.

Estimated Charge Expiration Date: December 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Tri-State Airport.

Brief Description of Projects Approved for Collection and Use:
Taxiway A rehabilitation.
Water system rehabilitation.
Acquire friction measuring equipment.
Aircraft rescue and firefighting building rehabilitation.
Airfield drainage rehabilitation.

PFC preparation.

Main terminal building renovations and loading bridge.

Relocate and replace rotating beacon.

Acquire snow removal equipment.

Air carrier apron rehabilitation.

Brief Description of Project Approved for Collection: General aviation apron rehabilitation.

Decision Date: October 18, 2004.

For Further Information Contact: Larry F. Clark, Beckley Airports District Office, (304) 252–6216.

Amendments to PFC Approvals

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–02–C–02–MCI; Kansas City, MO	07/20/04	$23,844,977	$9,556,186	08/01/09	01/01/06
95–01–C–04–MCI; Kansas City, MO	07/22/04	215,381,098	300,111,676	01/01/08	07/01/13
94–01–C–02–SBN; South Bend, IN	09/14/04	8,889,854	8,887,430	12/01/02	09/01/01
02–05–C–01–FLL; Fort Lauderdale, FL	09/22/04	26,533,770	29,460,819	03/01/11	02/01/12
92–01–C–03–GFK; Grand Forks, ND	09/29/04	663,847	621,965	08/01/96	09/01/95
96–03–C–01–GFK; Grand Forks, ND	09/29/04	86,463	58,141	08/01/96	12/01/95
97–04–C–02–GFK; Grand Forks, ND	09/29/04	551,993	522,970	09/01/98	11/01/98
02–06–C–01–DLH; Duluth, MN	10/07/04	901,280	721,079	07/01/05	11/01/04
96–02–C–01–MOT; Minot, ND	10/19/04	287,477	186,282	08/01/00	03/01/98
98–03–C–02–MOT; Minot, ND	10/19/04	227,141	231,153	02/01/04	12/01/99
99–04–C–02–MOT; Minot, ND	10/19/04	757,551	759,503	02/01/04	04/01/03
*97–11–C–02–CHO; Charlottesville, VA	10/19/04	205,900	205,900	12/01/04	02/01/07
*99–12–C–02–CHO; Charlottesville, VA	10/19/04	181,069	181,069	10/01/04	02/01/07
99–13–U–02–CHO; Charlottesville, VA	10/19/04	NA	NA	10/01/04	02/01/07
*01–14–C–02–CHO; Charlottesville, VA	10/19/04	348,874	348,874	07/01/06	02/01/07
*3–15–C–01–CHO; Charlottesville, VA	10/19/04	850,000	850,000	01/01/08	02/01/07
94–01–C–03–RIC; Richmond, VA	10/22/04	17,153,645	11,846,867	06/01/01	05/01/98
97–02–C–01–RIC; Richmond, VA	10/22/04	3,978,514	4,325,673	08/01/01	07/01/99
99–03–C–02–RIC; Richmond, VA	10/22/04	106,296,040	111,407,401	07/01/15	07/01/15
03–05–C–01–RIC; Richmond, VA	10/22/04	6,032,887	6,032,887	05/01/25	05/01/25
*99–03–C–03–RIC; Richmond, VA	10/22/04	111,407,401	111,407,401	07/01/15	10/01/19
*01–04–C–03–RIC; Richmond, VA	10/22/04	3,900,333	3,900,333	09/01/16	10/01/19
*03–05–C–02–RIC; Richmond, VA	10/22/04	6,032,887	6,032,333	05/01/25	10/01/19
00–03–C–01–AVP; Wilkes-Barre, PA	10/25/04	9,918,271	8,004,756	11/01/10	04/01/11
98–06–C–05–PHL; Philadelphia,PA	10/25/04	23,060,410	23,560,410	03/01/08	03/01/08
01–09–C–01–PHL; Philadelphia, PA	10/25/04	22,250,000	24,400,000	03/01/08	03/01/08
01–04–C–02–RIC; Richmond, VA	10/29/04	3,900,333	3,401,433	10/01/19	11/01/16

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Charlottesville, VA and Richmond, VA, this change is effective on January 1, 2005.

Issued in Washington, DC on December 13, 2004.

Joseph G. Washington,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–27689 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 29, 2004. No comments were received.

DATES: Comments must be submitted on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Frances Jerry, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: 202–366–5861; FAX: 202–366–5980; or e-mail: *frances.jerry@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Uniform Financial Reporting Requirements.

OMB Control Number: 2133–0005.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners acquiring ships from MARAD on credit, companies chartering ships from MARAD, and companies having Title XI guarantee obligations.

Forms: MA–172.

Abstract: The Uniform Financial Reporting Requirements are used as a basis for preparing and filing semi-annual and annual financial statements with the Maritime Administration (MARAD). Regulations requiring financial reports to MARAD are authorized by Section 801, Merchant Marine Act, 1936, as amended.

Annual Estimated Burden Hours: 1862 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on December 10, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–27603 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on July 29, 2004 [69 FR 45370–45371].

DATES: Comments must be submitted on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: P.L. Moore at the National Highway Traffic Safety Administration, Office of International Policy, Fuel Economy and Consumer Programs (NVS–131), 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Mr. Moore's telephone number is (202) 366–5222.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 575.104; Uniform Tire Quality Grading Standard.

OMB Number: 2127–0519.

Type of Request: Extension of a currently approved information collection.

Abstract: Part 575 requires tire manufacturers and tire brand owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information is used by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grades: (1) The grades are molded into the sidewall of the tire so that they can reviewed on both the new and old tires that are to be replaced; (2) a paper label is affixed to the tread face of the new tires that provides the grades of that particular tireline along with an explanation of the grading system; (3) tire manufacturers provide dealers with brochures for public distribution listing the grades of all tirelines they offer for sale; (4) NHTSA compiles the grading information of all manufacturer's tirelines into a booklet that is available to the public both in printed form and on the website.

Affected Public: All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

Estimated Total Annual Burden: NHTSA estimates that 79,650 man-hours are required at a cost of approximately $4 million to the tire manufacturers to comply with this regulation.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 8, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–27683 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 656]

Motor Carrier Bureaus—Periodic Review Proceeding

AGENCY: Surface Transportation Board.

ACTION: Request for comments.

SUMMARY: Pursuant to 49 U.S.C. 13703(c), the Surface Transportation Board is instituting a proceeding to conduct its periodic review of motor carrier collective-activities agreements previously approved under 49 U.S.C. 13703. The Board is seeking comments from those motor carrier bureaus that wish to have Board approval for their collective-activities agreements continued. The Board also is seeking comments from all interested persons on how those agreements, as ordered conditioned by the Board, have been working.

DATES: Opening comments may be filed by the bureaus and any interested member of the public by February 15, 2005. Reply comments may be filed by March 17, 2005. Rebuttal comments may be filed by April 6, 2005.

ADDRESSES: Any filing submitted in this proceeding must refer to STB Ex Parte No. 656 and must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Because all comments will be posted to the Board's Web site, persons filing them with the Board need not serve them on other participants but must furnish a hard copy on request to any participant.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 13703, the Board may authorize motor carriers (including motor carriers of passengers and household goods) to enter into ''bureau'' agreements for the collective establishment of rates, fares, classifications, and certain ancillary activities. Board authorization immunizes activities taken under the approved agreements from the antitrust laws. Under section 13703(c), the Board must, every 5 years, institute a proceeding to review the motor carrier bureau agreements previously approved under section 13703 and shall change the conditions of approval of an agreement or terminate it when necessary to protect the public interest.

Under this provision, the Board must now commence a review proceeding. The Board is hereby commencing the required statutory review proceeding. Approvals of existing agreements will continue in effect unless the Board determines otherwise.

Each bureau should, at a minimum, file a statement with the Board indicating whether it desires to continue to have its collective-activities agreement approved by the Board. The Board's records indicate that approvals for the agreements of the following ratemaking bureaus have expired for lack of timely compliance with the conditions on renewal imposed by the Board during the prior review cycle: Machinery Haulers Association, Inc.; Motor Carriers Traffic Association; Nationwide Bulk Trucking Association, Inc.; New England Motor Rate Bureau; and Willamette Tariff Bureau, Inc.[1] If the Board's records are incorrect in this respect, each affected bureau must notify the Board.

The Board also is particularly interested in whether anything affecting the public interest has changed since the prior review cycle. In that review cycle, the Board approved the bureaus' applications for renewal of their agreements, subject to conditions.[2] In particular, the Board required the National Classification Committee to amend its agreement to provide: (1) Shippers with access to specified additional information at an earlier stage in the classification process; (2) resolution of classification dockets by a single, expedited decision; and (3) the right to seek an initial review of that decision by a neutral arbitrator.[3] The Board required the ratemaking bureaus to amend their agreements to provide for: (1) The furnishing of a ''truth-in-rates notice'' when collective rates are quoted; and (2) a prohibition of use of a loss-of-discount penalty for late payment of rates.[4] Information on whether these conditions are working as intended would be especially helpful.

Board filings, decisions, and notices are available on its Web site at *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: December 13, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27629 Filed 12–16–04; 8:45 am]

BILLING CODE 4915–01–P

[1] In *EC–MAC Motor Carriers Service Association, Inc., et al.*, STB Section 5a Application No. 118 (Sub-No. 2), *et al.* (STB served Oct. 16, 2003), the Board summarily approved the agreements of certain bureaus after noting their full compliance with the required conditions, and, for other bureaus, the Board listed the specific steps required for individual bureau compliance.

[2] The agreement of the National Bus Traffic Association, Inc., was approved without conditions. *Application of the National Bus Traffic Association, Inc., for Extended Approval of its Conformed Agreement*, Section 5a Application No. 9 (Amendment No. 8) (STB served May 24, 2002). The Household Goods Carriers' Bureau Committee has been operating under its previously approved agreement, and may continue to do so, until the Board rules on its application for renewal of that agreement.

[3] *See National Classification Committee—Agreement*, 3 S.T.B. 917 (1998), 4 S.T.B. 496 (2000), and decisions served Nov. 20, 2001, Mar. 27, 2003, Oct. 16, 2003, and Dec. 10, 2003.

[4] *See EC–MAC Motor Carriers Service Association, Inc., et al.*, STB Section 5a Application No. 118 (Sub-No. 2), *et al.* (STB served Nov. 20, 2001, Mar. 27, 2003, and Oct. 16, 2003); *Niagara Frontier Tariff Bureau, Inc.—Agreement*, STB Section 5a Application No. 45 (Amendment No. 17) (STB served Oct. 16, 2003); *Middlewest Motor Freight Bureau, Inc.—Renewal of Agreement*, STB Section 5a Application No. 34 (Sub-No. 10) (STB served Jan. 21, 2004); and *Pacific Inland Tariff Bureau, Inc.—Renewal of Agreement*, STB Section 5a Application No. 22 (Sub-No. 8) (STB served Jan. 15, 2004).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34615]

Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Alabama & Tennessee River Railway, LLC

Patrick D. Broe (Mr. Broe) and OmniTRAX, Inc. (OmniTRAX), noncarriers, have filed a verified notice of exemption to continue in control of Alabama & Tennessee River Railway, LLC (ATN), upon ATN's becoming a Class III rail carrier.

The transaction is expected to be consummated on or shortly after December 31, 2004.

The transaction is related to STB Finance Docket No. 34611, *Alabama & Tennessee River Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.,* wherein ATN seeks to lease from CSX Transportation, Inc. (CSXT) and operate approximately 122 miles of rail lines in Alabama as follows: (1) Between milepost SG 737.1 of the Belt Connecting Track at Birmingham and milepost 0AG 85.2 at Guntersville; and (2) the Ivalee Branch, between milepost 0LE 443.0 near Moragne and milepost 0LE 447.9 at Moragne.

Mr. Broe directly controls OmniTRAX that currently controls 10 Class III railroads: Chicago Rail Link, LLC (CRL), Georgia Woodlands Railroad, LLC (GWRC), Great Western Railway of Colorado, LLC (GWR), Great Western Railway of Iowa, LLC (CBGR), Manufacturers' Junction Railway, LLC (MJ), Newburgh & South Shore Railroad Limited (NSR), Northern Ohio & Western Railway, LLC OW), Panhandle Northern Railroad, LLC (PNR), Alliance Terminal Railroad, LLC (ATR), and Fulton County Railway, LLC (FCR).[1] OmniTRAX also controls ATN, a Colorado Limited Liability Company formed for the purpose of leasing and operating certain rail lines owned by CSXT in the State of Alabama. Applicants state that the purpose sought to be accomplished by the proposed transaction is to reduce overhead expenses, and coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries, and thereby improve the overall efficiency of rail service provided by the 11 railroads.[2]

Applicants state that: (i) The rail lines being leased by ATN do not connect with any of the lines of the railroads under their control or within their corporate family, (ii) the transaction is not a part of a series of anticipated transactions that would connect the rail lines being leased by ATN with any railroad in the OmniTRAX corporate family, and (iii) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice 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 transaction.

[1] CRL's and MJ's lines are located in Illinois; GWRC's line and FCR's lines are located in Georgia; GWR's lines are located in Colorado; CBGR's lines are located in Iowa; NOW's line and NSR's lines are located in Ohio; and PNR's line and ATR's lines are located in Texas.

[2] OmniTRAX indicates that it will soon file for authority to control a new carrier, Kettle Falls International Railway, LLC, that will be acquiring and leasing rail lines in the State of Washington.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34615, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://WWW.STB.DOT.GOV.*

Decided: December 9, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27628 Filed 12–16–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34611]

Alabama & Tennessee River Railway, LLC—Lease and Operation Exemption—CSX Transportation, Inc.

Alabama & Tennessee River Railway, LLC (ATN), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from CSX Transportation, Inc. (CSXT) and operate approximately 122 miles of rail lines in Alabama as follows: (1) Between milepost SG 737.1 of the Belt Connecting Track at Birmingham and milepost 0AG 85.2 at Guntersville; and (2) the Ivalee Branch, between milepost 0LE 443.0 near Moragne and milepost 0LE 447.9 at Moragne.

This transaction is related to STB Finance Docket No. 34615, *Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Alabama & Tennessee River Railway, LLC*, wherein Patrick D. Broe and OmniTRAX, Inc., seek to continue in control of ATN upon ATN's becoming a Class III rail carrier.

ATN certifies that its projected revenues as a result of this transaction will not result in ATN becoming a Class II or Class I rail carrier. But, because ATN's projected annual revenues will exceed $5 million, ATN certified to the Board on November 1, 2004, that, on that date, it sent the required notice of the transaction to the national offices of all labor unions representing employees on the affected lines and posted a copy of the notice at the workplace of the employees on the affected lines. *See* 49 CFR 1150.32(e).

The transaction is expected to be consummated on or shortly after December 31, 2004 (which is 60 days or more after ATN's certification to the Board that it had complied with the Board's regulation at 49 CFR 1150.32(e)).

If the notice 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34611, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Suite 225, 1455 F St., NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://WWW.STB.DOT.GOV.*

Decided: December 9, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–27627 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Traffic and Capacity Statistics–The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers to file traffic and capacity data pursuant to 14 CFR 241.19 and part 217, respectively. These reports are used to measure air transportation activity to, from, and within the United States.

DATES: Written comments should be submitted by February 15, 2005.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, fax no. 366–3383 or e-mail *bernard.stankus@bts.gov.*

Comments: Comments should identify the OMB # 2138–0040. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0040. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION: *OMB Approval No.:* 2138–0040.

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedules T–100 and T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: Certificated, commuter and Foreign air carriers that operate to, from or within the United States.

Number of Respondents: 330.

Total Burden per Response: 6 hours.

Total Annual Burden: 24,180 hours.

Needs and Uses:

Airport Improvement

The Federal Aviation Administration uses enplanement data for U.S. airports to distribute the annual Airport Improvement Program (AIP) entitlement funds to eligible primary airports, *i.e.*, airports which account for more than 0.01 percent of the total passengers enplaned at U.S. airports. Enplanement data contained in Schedule T–100/T–100(f) are the sole data base used by the FAA in determining airport funding. U.S. airports receiving significant service from foreign air carriers operating small aircraft could be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to more fairly distribute these funds.

Air Carrier Safety

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies. The FAA monitor changes in the number of air carrier operations as a way to allocate inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Acquisitions and Mergers

While the Justice Department has the primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of international routes involved to determine if they would substantially reduce competition, or determine if the transaction would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other thinks, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger. The Justice Department uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Traffic Forecasting

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts. These forecast as used by the FAA, airport managers, the airlines and others in the air travel industry as planning and budgeting tools.

Airport Capacity Analysis

The mix of aircraft type are used in determining the practical annual capacity (PANCAP) at airports as prescribed in the FAA Advisory Circular Airport Capacity Criteria Used in Preparing the National Airport Plan. The PANCAP is a safety-related measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansions or runway construction needs. If the level of operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, the FAA develops ways of increasing airport capacity at congested airports.

Airline Industry Status Evaluations

The Department apprises Congress, the Administration and others of the effect that major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely and inclusive to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

International Negotiations and Routes

Many air services between the United States and foreign countries are governed by bilateral agreements. Evaluations of existing bilateral agreements and proposed changes to such agreements are based on a determination of the traffic and revenues between the United States and foreign countries for scheduled passenger and cargo flights as well as charter services. In order to determine conditions of reciprocity and overall balance of trade, DOT conducts similar analyses for countries with which the United States does not have bilateral aviation agreements. Information used in these analyses includes traffic volume by countries and by city-pairs for passenger and cargo services and the corresponding traffic yields. Load factors, aircraft seating configurations, cargo capacities and aircraft unit cost are also used in the analyses. In limited entry markets, the competing air carriers are required to submit an operating plan. To analyze these plans, the Department uses current and historical traffic and capacity data to determine the reliability of the applicants' forecasts and to evaluate applicants' competing fare and service proposals.

Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. International mail rates are set based on scheduled operations in four geographic areas: Trans-border, Latin America, operations over the Atlantic Ocean and operations over the Pacific Ocean. Separate rates are set for mainline and bush Alaskan operations. The rates are updated every six months to reflect changes in unit costs in each rate-making entity. Traffic and capacity data are used in conjunction with cost data to develop the required unit cost data.

Essential Air Service

The Department reassesses service levels at small domestic communities to assure that capacity level are adequate to accommodate current demand.

System Planning at Airports

The FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to State metropolitan and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data, and service segment data are used to prepare airport activity level forecasts.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements that relate to fares, rates, and rules for international air transportation to ensure that the agreements meet the public interest criteria. Current and historic summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by aircraft type, type of service, and length of haul are needed to conduct these analyses: to (1) Develop the volume elements for passenger/cargo cost allocations, (2) evaluate fluctuations in volume of scheduled and charter services, (3) assess the competitive impact of different operations such as charter versus scheduled, (4) calculate load factors by aircraft type, and (5) monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit applications for authority to operate to the United States. In reviewing these applications the Department must find that the requested authority is encompassed in a bilateral agreement, other intergovernmental understanding, or that granting the application is in the public interest. In the latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their U.S. operations. These benefits are compared and balanced against the benefits U.S. carriers receive from their operations to the applicant's homeland.

Air Carrier Fitness

The Department determines whether U.S. air carriers are and continue to be fit, willing and able to conduct air service operations without undue risk to passengers and shippers. The Department monitors a carrier's load factor, operational, and enplanement data to compare with other carriers with similar operating characteristics. Carriers that expand operations are a high rate are monitored more closely for safety reasons.

International Civil Aviation Organization

Pursuant to an international agreement, the United States is obligated to report certain air carrier

data to the International Civil Aviation Organization (ICAO). The traffic data supplied to ICAO are extracted from the U.S. air carriers' Schedule T–100 submissions.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Assistant Director, Airline Information.

[FR Doc. 04–27588 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) currently must file the two quarterly schedules listed below:

F–1 Report of Financial Data,

F–2 Report of Aircraft Operating Expenses and Related Statistics, and Commuter air carriers must file the Schedule F–1 Report of Financial Data.

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility, and clarity of the information collected.

DATES: Written comments should be submitted by February 15, 2005.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, fax no. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB #2138–0009. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0009. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION: *OMB Approval No:* 2138–0009.

Title: Report of Financial and Operating Statistics for Small Aircraft Operators.

Form No.: BTS Form 298–C.

Type of Review: Extension of a currently approved collection for the financial data.

Respondents: Small certificated and commuter air carriers.

Number of Respondents: 80.

Estimated Time per Response: 4 hours per commuter carrier, 12 hours per small certificated carrier.

Total Annual Burden: 1,600 hours.

Needs and Uses: Program uses for Form 298–C financial data are as follows:

Mail Rates

The Department of Transportation sets and updates the Intra-Alaska Bush mail rates based on carrier aircraft operating expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Essential Air Service

DOT often has to select a carrier to provide a community's essential air service. The selection criteria include historic presence in the community, reliability of service, financial stability and cost structure of the air carrier.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 298–C for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing, and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier begins conducting flight operations, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers prepared for senior DOT officials may use the same information.

Air Transportation Safety and System Stabilization Act

DOT is using financial data reported by small certificated and commuter air carriers to establish benchmarks to assess the reasonableness of air carrier claims under the Stabilization Act.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to,

publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 04–27589 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit a true and complete of its annual audit that is made by an independent public accountant. If a carrier does not have an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether the audit reports are needed by BTS and DOT; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by February 15, 2005.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, fax no. 366–3383 or e-mail *bernard.stankus@bts.gov*.

Comments: Comments should identify the OMB # 2138–0004. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0004. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 84.

Number of Responses: 84.

Total Annual Burden: 21 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases (3) reference material used by analyst in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 04–27590 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether the supplemental reports are needed by BTS to fulfill the United States treaty obligation of furnishing financial and traffic reports to ICAO; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by February 15, 2005.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. 366–3383 or EMAIL *bernard.stankus@bts.gov.*

Comments: Comments should identify the OMB # 2138–0039. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0039. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 04–27593 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Large Certificated Air Carriers

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of the BTS Form 41. Comments are requested concerning whether the continuation of Form 41 is necessary for DOT to carry out its mission of promoting air transportation; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, use and clarity of the data collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by February 15, 2005.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. (202) 366–3383 or EMAIL *bernard.stankus@bts.gov.*

Comments: Comments should identify the OMB # 2138–0013. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0013. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0013.

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 84.

Estimated Time per Response: 4 hours per schedule, an average carrier may submit 90 schedules in one year.

Total Annual Burden: 27,000 hours.

Needs and Uses: Program uses for Form 41 data are as follows:

Mail Rates

The Department of Transportation sets and updates the international and mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

Standard Foreign Fare and Rate Levels

DOT uses Form 41 cost data to calculate the Standard Foreign Fare Level (SFFL) for passengers and the Standard Foreign Rate Level (SFRL) for freight. Any international fare or rate set below this fare level are automatically approved. Separate passenger fare and rate levels are established for Canadian, Atlantic, Latin America, and Pacific areas. In markets where liberal bilateral or multilateral pricing agreements provide for more competitive open market pricing, such agreements may take precedence over the SFFL and SFRL.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial

and traffic data are analyzed. Briefing papers may use the same information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Donald W. Bright,

Assistant Director, Airline Information, Bureau of Transportation Statistics.

[FR Doc. 04–27594 Filed 12–16–04; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen, Republic of.

Dated: December 13, 2004.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 04–27631 Filed 12–16–04; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8893

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8893, Election of Partnership Level Tax Treatment.

DATES: Written comments should be received on or before February 15, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Election of Partnership Level Tax Treatment.

OMB Number: 1545–1912.

Form Number: 8893.

Abstract: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedure. Form 8893 will allow IRS to better track these elections by providing a standardized format for this election.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour, 27 minutes.

Estimated Total Annual Burden Hours: 227.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–27680 Filed 12–16–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–Q

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-Q, Payments From Qualified Education Programs (Under Sections 529 and 530).

DATES: Written comments should be received on or before February 15, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue

Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Payments From Qualified Education Programs (Under Sections 529 and 530).

OMB Number: 1545–1760.

Form Number: 1099–Q.

Abstract: Form 1099–Q is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 230 hours.

Estimated Total Annual Burden Hours: 34,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–27681 Filed 12–16–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7, Application for IRS Individual Taxpayer Identification Number.

DATES: Written comments should be received on or before February 15, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Application for IRS Individual Taxpayer Identification Number.

OMB Number: 1545–1483.

Form Number: Form W–7.

Abstract: Form W–7 is used to apply for an IRS individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the IRS to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. ITINs are intended for tax use only.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 1 Hour, 26 minutes.

Estimated Total Annual Burden Hours: 715,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–27682 Filed 12–16–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
December 17, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT89

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Pacific coast distinct population segment of the western snowy plover (*Charadrius alexandrinus nivosus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In developing this proposal, we evaluated those lands determined to contain habitat features essential to the conservation of the Pacific coast population of the western snowy plover to ascertain if any specific areas are appropriate for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. Section 4(b)(2) requires us to take into account economic and other impacts resulting from designation, and allows us to exclude areas with essential habitat features if the benefits of exclusion outweigh those of designation. Additionally, the newly amended section 4(a)(3) requires exclusion of military lands subject to an Integrated Natural Resources Management Plan (INRMP) that benefits the species. We have excluded several units based on these provisions. Additionally, we have considered, but are not proposing, several areas that were either unoccupied at the time of listing (1993) or are unoccupied now. We include descriptions and maps of these areas and are soliciting public comment regarding the appropriateness of including any of these areas in the final critical habitat designation. We propose to designate approximately 17,299 acres (ac) (7,001 hectares (ha)) within 35 units along the coasts of California, Oregon, and Washington. This rule is being proposed pursuant to a court order issued in July 2003, partially vacating critical habitat established for the Pacific coast population of the western snowy plover and remanding the previous designation of critical habitat for preparation of a new analysis of the economic impacts (*Coos County Board of County Commissioners et al.* v. *Department of the Interior et al.*).

If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity authorized, funded, or carried out by any Federal agency. As required by section 4 of the Act, we will consider the economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

We hereby solicit information and comments from the public on all aspects of this proposal, including data on the economic and other impacts of designation as well as any benefits of the designation (see Public Comments Solicited section below). We are also specifically soliciting public comments on the appropriateness of excluding lands covered by certain approved and pending habitat conservation plans or management plans, and Department of Defense lands pursuant to section 4(b)(2) and 4(a)(3) of the Act from this proposed designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

In the development of our final designation, we will incorporate or address any new information received during the public comment periods, or from our evaluation of the potential economic impacts of this proposal. As such, we may revise this proposal to address new information and/or to either exclude additional areas that may warrant exclusion pursuant to section 4(b)(2) or to add in those areas determined to contain essential habitat features but excluded from this proposal.

DATES: We will accept comments from all interested parties until February 15, 2005. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 31, 2005. The specific times, dates, and locations for any hearings will be announced in the **Federal Register** in the coming months.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825 (telephone 916–414–6600).

2. You may hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the address given above, or fax your comments to 916–414–6713.

3. You may send comments by electronic mail (e-mail) to *WSP_pCH@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

The comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rule, or information on units CA 7 through CA 10, or on units considered to include habitat essential to the conservation of the plover but excluded for the San Francisco Bay area, contact Glen Tarr or Arnold Roessler, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605 Sacramento, CA 95825 (telephone 916–414–6600; facsimile 916–414–6712).

For information on units WA 1 through WA 4, contact Martha Jensen, Western Washington Fish and Wildlife Office, 510 Desmond Dr. SE., Lacey, WA 98503 (telephone 360–753–9000; facsimile 360–534–9331).

For information on units OR 1 through OR 12, contact Fred Seavey, Newport Field Office, 2127 SE Marine Dr., Newport, OR 97365–5258 (telephone 541–867–4558 ext. 239; facsimile 541–867–4551).

For information on units CA 1 through CA 6, contact Jim Watkins, Arcata Fish and Wildlife Office, 1655 Heindon Rd., Arcata, CA 95521 (telephone 707–822–7201; facsimile 707–822–8411).

For information on units CA 11 through CA 19, contact Mike McCrary, Ventura Fish and Wildlife Office, 2493 Portola Rd., Suite B, Ventura, CA 93003 (telephone 805–644–1766; facsimile 805–644–3958).

For information on units CA 20 through CA 27, contact Kevin Clark, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, CA 92009 (telephone 760–431–9440).

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, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other

interested parties concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of western snowy plover habitat, and what habitat features and areas are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Comments or information as to whether further clarity or specificity of the Primary Constituent Elements is necessary;

(7) Some of the lands we have identified as containing habitat features essential for the conservation of the Pacific coast population of the western snowy plover are being considered for exclusion from the final designation of critical habitat or are not included in this proposed designation. We specifically solicit comment on the possible inclusion or exclusion of such areas and:

(a) Whether these areas contain essential habitat features;

(b) Whether these, or other areas proposed but not specifically addressed in this proposal, warrant exclusion; and

(c) Relevant factors that should be considered by us when evaluating the basis for not designating these areas as critical habitat under section 4(b)(2) of the Act).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments to *WSP_pCH@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Western snowy plover'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916–414–6600. Please note that the e-mail address *WSP_pCH@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result of this consequence, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to

provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This situation in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the costs of preparation and publication of the designation, the analysis of the economic effects and the costs of requesting and responding to public comments, and, in some cases, the costs of compliance with National Environmental Policy Act. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and these associated costs directly reduce the scarce funds available for direct and tangible conservation actions.

Background

The western snowy plover (*Charadrius alexandrinus nivosus*), one of two subspecies of snowy plover to nest in North America, is a small shorebird with pale brown to gray upperparts, gray to black legs and bill, and dark patches on the forehead, behind the eyes, and on either side of the upper breast (Page *et al.* 1995a). The species was first described in 1758 by Linnaeus (American Ornithologists' Union 1957). The Pacific coast population distinct population segment of the western snowy plover (Pacific Coast WSP) is defined as those individuals nesting adjacent to tidal waters of the Pacific Ocean, and includes all nesting birds on the mainland coast, peninsulas, offshore islands, adjacent bays, estuaries and coastal rivers. For a more complete discussion of the ecology and life history of this population, please see the final rule for listing the Pacific Coast WSP as a threatened species, which was published in the **Federal Register** on March 5, 1993 (58 FR 12864), and the previously published final rule designating critical habitat for this population segment, which was published on December 7, 1999 (64 FR 68508).

Pacific Coast WSPs typically forage for small invertebrates in wet or dry beach sand, tide-cast kelp, low foredune vegetation, and near water seeps in salt pans. Prey species include mole crabs (*Emerita analoga*), crabs (*Pachygrapsus crassipes*), polychaete worms (*Neridae, Lumbrineris zonata*, etc.), amphipods (*Corophium* spp., etc.), sand hoppers (*Orchestoidea*), flies (*Ephydridae, Dolichopodidae*), and beetles (*Carabidae*, etc.). Accordingly, beach cleaning activities that remove kelp and rake sand can harm plover foraging success (Page *et al.* 1995a;).

The Pacific Coast WSP breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. This habitat is variable because of unconsolidated soils, high winds, storms, wave action, and colonization by plants. Sand spits, dune-backed beaches, beaches at creek and river mouths, and salt pans at lagoons and estuaries are the preferred habitats for nesting plovers (Wilson 1980; Stenzel *et al.* 1981). Additional western snowy plover nesting habitats include bluff-backed beaches, dredged material disposal sites, salt pond levees, dry salt ponds, and river bars (Wilson 1980; Page and Stenzel 1981; Powell *et al.* 1996; Tuttle *et al.* 1997).

The breeding season for Pacific Coast WSPs extends from early March to late September with birds at more southerly locations nesting earlier in the season than birds located farther north (Page *et al.* 1995a). Males establish nesting territories from which they advertise for mates using calls and behavioral displays. Territory sizes can vary from about 0.1 to 1.0 ha (0.25 to 2.5 ac) at interior sites (Page *et al.* 1995a). A study of coastal plovers found a maximum territory size of 0.5 ha (1.2 ac) in coastal salt pan habitat, but speculated that beach territories may have been larger (Warriner *et al.* 1986). After pair formation, both sexes defend the nesting territory from other plovers. The purpose of such defense is apparently unrelated to protection of food resources within the territory, since both sexes frequently forage in non-territorial areas up to 8 km (5 mi) from the nest when not incubating, and since the chicks and attending adults typically leave the nesting territory shortly after hatching (Page *et al.* 1995a).

Clutches normally consist of three eggs laid in a shallow depression scraped in the sand by the male. Such ''nests'' are typically located in open flat areas, often near some conspicuous feature such as a piece of driftwood (Page and Stenzel 1981, Page *et al.* 1995a). They are usually located within 100 m (328 ft) of the shore, but may be farther where shore access remains unblocked by dense vegetation (Page and Stenzel 1981, Page *et al.* 1995a). Pacific Coast WSPs also tend to nest in relatively higher densities near fresh water or brackish wetlands such as river mouths, estuaries, and tidal marshes (Page and Stenzel 1981). They use these areas both as foraging sites, and in the case of freshwater sources, for drinking water (Page and Stenzel 1981, Page *et al.* 1995a). They may also be capable of functioning for long-periods without fresh water by subsisting on water obtained from insect prey (Purdue 1976, Page *et al.* 1995a).

Both sexes incubate the eggs, but females often desert the chicks approximately one week after hatching (Warriner *et al.* 1986, Page *et al.* 1995a). This allows the females to nest up to three times in a season, particularly in more southern areas where nesting seasons are longer in duration. Males typically stay with the chicks until they fledge (take their first flight) about 30 days after hatching. Newly hatched chicks are capable of running and foraging almost immediately; from this point parental behavior consists of defending chicks from other plovers, brooding them in cold weather, leading them to suitable feeding areas, and warning of approaching predators. Adults may also employ distraction displays to lead predators away from their young (Page *et al.* 1995a).

After their first chicks fledge, males may attempt to raise a new brood of chicks with a new partner. Both sexes will also readily attempt to raise new chicks if they lose an entire clutch of eggs or brood of chicks, assuming enough time remains in the nesting season (Page *et al.* 1995a). Both clutches and broods may be lost due to predators, tides and storms, and human recreational activities. Examples of the latter include both repeated flushings of nesting plovers and direct damage to nests or to young, resulting from humans, dogs, horses or vehicles that either approach plover nests too closely or actually overrun plovers and nests. (Service 1993, Ruhlen *et al.* 2003).

Small changes in the adult survival rate can have relatively large effects on population stability (Nur *et al.* 1999), so the maintenance of quality overwintering habitat is important to conservation. In western North America, both coastal and inland-nesting western snowy plovers winter along the coast (Page *et al.* 1995a). Some coastal plovers migrate up or down the coast to wintering locations, while others remain at their nesting beaches. Coastal individuals may also migrate some years and not others (Warriner *et al.* 1986, Page *et al.* 1995a). Wintering birds use many of the beaches used for nesting, but will also winter at several beaches

where nesting does not occur (Stenzel *in litt.* 2004, Page *in litt.* 2004). They also visit human-made salt ponds, and estuarine sand and mud flats (Page *et al.* 1986). Because coastal plovers can switch from being migratory to non-migratory (Warriner *et al.* 1986), they have the option of staying to nest at a hospitable wintering location. Sites that have historically supported nesting, but which currently only support wintering plovers, therefore have the potential to attract new nesters relatively quickly if appropriate management renders such areas suitable for nesting once again. This has been successfully carried out at Coal Oil Point and Hollywood Beach in southern California (M. McCrary, U.S. Fish and Wildlife Service, *in litt.* 2004). Such management successes are important to conservation, since the loss of numerous historical nesting sites was a major consideration in their original listing (Service 1993).

Previous Federal Actions

For a discussion of previous Federal actions regarding the Pacific coast population of the western snowy plover, please see the December 7, 1999, final rule to designate critical habitat for the Pacific coast population of the western snowy plover (64 FR 68508). That rule was remanded and partially vacated by the United States District Court for the District of Oregon on July 2, 2003, in order to conduct a new analysis of economic impacts (*Coos County Board of County Commissioners et. al.* v. *Department of the Interior et al.*, CV 02–6128, M. Hogan). The court set a deadline of December 1, 2004, for submittal of a new proposed critical habitat designation to the **Federal Register**. The court-established deadline for submittal of the final designation is September 20, 2005.

In August 2002 we received a petition to delist the Pacific Coast WSP from the Surf Ocean Beach Commission of Lompoc, California. The City of Morro Bay submitted substantially the same petition dated May 30, 2003. On March 22, 2004, we published a notice that the petition presented substantial information to indicate that delisting may be warranted (69 FR 13326). We are currently conducting both a 12-month and a 5-year status review of the population under sections 4(b)(3)(B) and 4(c)(2) of the Act.

This proposal relies upon the best scientific and commercial data available to us, including the biological and habitat information described in the previous final rules, and recognized principles of conservation biology. Accordingly, this proposal differs from the previous critical habitat designation for the Pacific Coast WSP and includes only those areas we currently consider to have habitat features most essential to the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species 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 and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). If an area occupied by the species is designated it is because the primary constituent elements area currently present in sufficient quantity and quality to assure biological function.

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of the Data Quality Act.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to

the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific data available in determining the areas that contain habitat features essential to the conservation of the Pacific Coast WSP. Data sources include research published in peer-reviewed articles; previous Service documents on the species, including the original critical habitat designation (Service 1999) and final listing determination (Service 1993); numerous surveys; and aerial photographs and GIS mapping information from State sources and in our files.

Our first step was to identify those areas occupied by the Pacific Coast WSP at the time of listing. The second step was to identify, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features (also called primary constituent elements, or PCEs) at those sites that are essential to the conservation of the species. We have mapped critical habitat unit boundaries at each site based on the extent of habitat containing sufficient PCEs to support biological function.

The mapping itself was the third step, while the fourth and final step was to exclude certain units based on sections 4(a)(3), 3(5)(a), and 4(b)(2) of the Act (see Exclusions section below). We discuss each of these four steps more fully below.

Criteria Used To Identify Critical Habitat

To identify sites containing habitat features most essential to the conservation of the Pacific Coast WSP (as defined above in our Methods section), we applied the following three criteria:

(1) Our first criterion for critical habitat unit selection was to choose sites in a geographic region capable of supporting the most breeding plovers. Where appropriate, we adjusted our estimates of the number of breeding birds a site could support according to additional information supplied by surveys and by local species and habitat experts.

(2) We added any major, currently occupied wintering sites not already selected under criterion one. This is necessary to provide sufficient habitat for the survival of breeding birds during the non-breeding season. A ''major'' wintering site must at least support more wintering birds than average for the geographical region.

(3) Finally, we added any additional occupied sites that provide unique habitat, or that are situated to facilitate genetic interchange between otherwise widely separated units. This criterion is based on standard conservation biology principles for the conservation of rare and endangered animals and their habitats (Shaffer 1981, 1987, 1995; Fahrig and Merriam 1985; Gilpin and Soule 1986; Goodman 1987a, 1987b; Stacey and Taper 1992; Mangel and Tier 1994; Lesica and Allendorf 1995; Fahrig 1997; Noss and Csuti 1997; Huxel and Hastings 1998; Redford and Richter 1999; Debinski and Holt 2000; Sherwin and Moritz 2000; Grosberg 2002; Noss *et al.* 2002). By protecting a variety of habitats and facilitating genetic interchange between them, we increase the ability of the species to adjust to various limiting factors that affect the population, such as predators, disease, major storms, and inbreeding.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Our determination of the primary constituent elements for the Pacific Coast WSP is based on the biological needs of the population, and on the relationship of those needs to the population's habitat, as indicated and summarized below by the best scientific data available.

Space for Individual and Population Growth and Normal Behavior

Pacific Coast WSPs establish nesting territories, but these can vary widely in size and do not provide sufficient habitat for foraging (see Background section above). Critical habitat must therefore extend beyond nesting territories to include space for foraging and water requirements during the nesting season, space for overwintering.

Food and Water

Pacific Coast WSPs typically forage in open areas by locating prey visually and then running to seize it with their beaks (Page *et al.* 1995a). They may also probe in the sand for burrowing invertebrates, or charge flying insects that are resting on the ground, snapping at them as they flush. Accordingly they need open areas in which to forage, to facilitate both prey location and capture. Deposits of tide-cast wrack such as kelp or driftwood tend to attract certain invertebrates, and so provide important foraging sites for plovers (Page *et al.* 1995a). Plovers forage both above and below high tide, but not while those areas are underwater. Foraging areas will therefore typically be limited by water on their shoreward side, and by dense vegetation or development on their landward sides.

Coastal plovers use sites of fresh water for drinking where available, but some historic nesting sites, particularly in southern California, have no obvious nearby freshwater sources. Adults and chicks in those areas must be assumed to obtain their necessary water from the food they eat. Accordingly we have not included freshwater sites among the primary constituent elements of the population.

Reproduction and Rearing of Offspring

Pacific Coast WSPs nest in depressions in open, relatively flat areas, near to tidal waters but far enough away to avoid being inundated by daily tides. Typical substrate is beach sand, but plovers may also lay their eggs in existing depressions in harder ground such as salt pan, cobblestones or dredge tailings. Where available, dune systems with numerous flat areas and easy access to the shore are particularly favored for nesting. Plover nesting areas must provide shelter from predators and human disturbance, as discussed below. Unfledged chicks forage with one or both parents, using the same foraging areas and behaviors as adults.

Cover or Shelter

Plovers and their eggs are well camouflaged against light colored, sandy or pebbly backgrounds (Page *et al.* 1995a), so open areas with such substrates actually constitute shelter for purposes of nesting and foraging. Such areas provide little cover to predators, and allow plovers to fully utilize their camouflage and running speed. Chicks may also crouch near driftwood, dune plants and piles of kelp to hide from predators (Page and Stenzel 1981). Open areas do not provide shelter from winds and storms, however, and these cause many nest losses, along with extreme high tides. Plovers readily scrape blown sand out of their nests, but there is little they can do to protect their nests against serious storms or flooding other than to attempt to lay a new clutch if the old one is lost (Page *et al.* 1995a).

No studies have quantified the amount of vegetation cover that would make an area unsuitable for nesting or foraging, but coastal nesting and foraging locations typically have relatively well-defined boundaries between open sandy substrate favorable to plovers and unfavorably dense vegetation inland. Such bounds show up well in aerial and satellite photographs, which we used to map essential habitat features.

Undisturbed Areas

Disturbance of nesting or brooding plovers by humans and domestic animals is a major factor affecting nesting success. Plovers leave their nests when humans or pets approach too closely. Dogs may also deliberately chase plovers and trample nests, while vehicles may directly crush adults, chicks or nests, separate chicks from brooding adults, and interfere with foraging (Warriner *et al.* 1986, Service 1993, Ruhlen *et al.* 2003). Repeated flushing of incubating plovers exposes the eggs to the weather and deplete energy reserves needed by the adult, which may result in reductions to nesting success. Surveys at Vandenberg Air Force Base, California, from 1994 to 1997, found the rate of nest loss on southern beaches to be consistently higher than on north beaches (where recreational use was much lower) (Persons and Applegate 1997). Ruhlen *et al.* (2003) found that increased human activities on Point Reyes beaches resulted in a lower chick survival rate. Recent efforts in various areas have been implemented to isolate nesting plovers from recreational beach users through the use of docents, symbolic fencing, and public outreach have correlated with higher nesting success in those areas (Page, *et al.* 2003 (summer 93 survey), Palermo 2004).

List of Primary Constituent Elements

The primary constituent elements for the Pacific Coast WSP habitat include:

(1) Sparsely vegetated areas above daily high tides (such as sandy beaches, dune systems immediately inland of an active beach face, salt flats, seasonally exposed gravel bars, dredge spoil sites, artificial salt ponds and adjoining levees) that are relatively undisturbed by the presence of humans, pets, vehicles or human-attracted predators (essential for reproduction, food, shelter from predators, protection from disturbance, and space for growth and normal behavior).

(2) Sparsely vegetated sandy beach, mud flats, gravel bars or artificial salt ponds subject to daily tidal inundation but not currently under water, that support small invertebrates such as crabs, worms, flies, beetles, sand hoppers, clams, and ostracods (essential for food).

(3) Surf or tide-cast organic debris such as seaweed or driftwood located on open substrates such as those mentioned above (essential to support small invertebrates for food, and to provide shelter from predators and weather for reproduction).

All areas proposed as critical habitat for the Pacific Coast WSP were occupied by the species at the time of listing and contain sufficient primary constituent elements to support essential biological function.

Unoccupied Areas Identified for Possible Inclusion

The Act has different standards for designation of critical habitat in occupied and unoccupied habitat. For areas occupied by the species, these are: —(i) The specific areas on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection. For areas not occupied, a determination is required that the entire area is essential for the conservation of the species before it can be included in critical habitat. Congress has also cautioned the Service to be ''exceedingly circumspect'' in designating unoccupied habitat.

Because Congress has directed us to be exceedingly circumspect in including unoccupied areas in critical habitat designations, we are identifying some areas which are currently unoccupied or were unoccupied at the time of listing, and requesting comment on whether they should be included in the designation. We seek comment on whether all, only a portion, or none of the unoccupied areas identified are essential to the conservation of the population. Areas not being proposed due to lack of occupancy are identified as such in the Unit Descriptions and Map sections. Those areas are: WA 1, OR 1A, OR 1B, OR 2, OR 4, OR 5A, OR 5B, OR 6, OR 8C, OR 10B, OR 10C, OR 11, OR 12, and CA 11A.

Mapping

Our mapping process was based on the need to exclude areas that lack PCEs, while simultaneously accounting for the dynamic nature of beach habitat, and of the second PCE above. Our mapping process also allowed us to provide a reasonable level of certainty to landowners regarding the location of unit boundaries relative to private lands.

We used Geographic Information Systems (GIS) software to establish landward bounds for those breeding and wintering sites that meet the criteria listed above. We drew the landward bounds so as to exclude habitat lacking PCEs, as determined using the most recent digital orthorectified aerial photographs available. Since most private land is located near the landward bounds, and since the landward side of the unit is likely to change less over time than other sides, we set the landward bounds to remain fixed in place, defined by the UTM NAD 27 coordinates of their vertices and endpoints (UTM NAD 27 stands for ''Universal Transverse Mercatur, North American Datum 1927,'' and is a convention for projecting points of the globe onto a two-dimensional map).

We defined the seaward bounds of each unit according to mean low water (MLW) (including waters of the Pacific Ocean proper, as well as of bays, estuaries and rivers where water level is significantly influenced by the tides). For purposes of estimating unit sizes, we approximated MLW in California using the most recent GIS projection of mean high water (MHW). We chose MHW because it is the only approximation of the coastline currently available in GIS format. We were unable to obtain recent GIS maps of MHW or MLW for Oregon and Washington; therefore, we approximated MLW for units in those States based on aerial photographs.

When determining proposed critical habitat boundaries, we made every effort to avoid proposing the designation of developed areas such as buildings, paved areas, boat ramps and other structures that lack sufficient PCEs to support essential biological functions of the species as well as areas affected by

the use of the structure. Any such structures inadvertently left inside proposed critical habitat boundaries are not considered part of the proposed unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to contain habitat features essential for conservation may require special management considerations or protections. The threats affecting the continued survival and recovery of the Pacific Coast WSP within each of the proposed critical habitat units and that may require special management are described in the critical habitat unit descriptions that follow. Primary threats requiring special management considerations include disturbance of nesting or foraging plovers by humans, vehicles, and domestic animals, high levels of predation on eggs and young, and loss of habitat due to development and encroachment of dune-stabilizing vegetation such as European beachgrass (Ammophila arenaria) (Service 1993).

The areas proposed for designation as critical habitat will require some level of management and/or protection to address the current and future threats to the Pacific Coast WSP and maintain the primary constituent elements essential to its conservation in order to ensure the overall conservation of the species. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the plover. Federal activities that may affect those unprotected areas outside of critical habitat are still subject to review under section 7 of the Act if they may affect the plover. The prohibitions of section 9 (*e.g.*, harm, harass, capture) also continue to apply both inside and outside of designated critical habitat.

Proposed Critical Habitat Designation

The areas we are proposing as critical habitat currently provide all of those habitat components necessary to meet the primary biological needs of the Pacific Coast WSP, as defined by the primary constituent elements. The areas proposed for designation are those areas most likely to substantially contribute to conservation of the Pacific Coast WSP, which when combined with future management of certain habitats suitable for restoration efforts, will contribute to the long-term survival and recovery of the species.

We are proposing 35 units in Washington, Oregon, and California as critical habitat for the Pacific Coast WSP. All these units are within the range occupied by the species, and constitute our best assessment at this time of the areas containing habitat features essential for the conservation of the Pacific Coast WSP. The approximate area encompassed within each proposed critical habitat unit is shown in Table 3, below.

TABLE 1.—APPROXIMATE AREA EXCLUDED FROM PROPOSED CRITICAL HABITAT FOR THE PACIFIC COAST WSP PURSUANT TO SECTIONS 3(5)(A), 4(A)(3) AND 4(B)(2) OF THE ACT

Location	Size	Basis of exclusion	Applicable section of the act
San Nicholas Island, Ventura County, CA. 1 unit	524 ac (212 ha)	INRMP*	4(a)(3).
Salinas River National Wildlife Refuge, Monterey County, CA. Part of one unit.	142 ac (57 ha)	CCP*	4(b)2 and 3(5)(a).
Guadalupe/Nipomo Dunes National Wildlife Refuge, San Luis Obispo County, CA. Part of one unit.	235 ac (95 ha)	Plover mgt plan with section 7 consultation.	
San Diego, CA. One subunit	23 ac (9 ha)	HCP*.	
Marine Corps Base Camp Pendleton, San Diego County, CA. 2 subunits.	507 ac (205 ha)	Use of area for military training	4(b)(2) alone.
Naval Amphibious Base, Coronado, San Diego County, CA. 1 subunit.	144 ac (58 ha)		
San Francisco Bay, CA. 6 subunits totaling	1,847 ac (747 ha)	Multi-agency mgt plan in preparation	
Total Excluded Area	3,422 ac 1,385 (ha)		

*INRMP: Integrated Natural Resource Management Plan.
**CCP: Comprehensive Conservation Plan.
***HCP: Habitat Conservation Plan.

TABLE 2.—APPROXIMATE AREA OF ALL LOCATIONS FITTING THE CRITERIA DEFINED ABOVE AND SUPPORTING HABITAT FEATURES ESSENTIAL TO CONSERVATION (FIRST COLUMN). THESE LOCATIONS ARE BROKEN DOWN ACCORDING TO: UNOCCUPIED AREAS NOT PROPOSED (SECOND COLUMN); EXCLUDED AREAS (THIRD COLUMN); AND PROPOSED CRITICAL HABITAT AREA FOR THE PACIFIC COAST WSP (FOURTH COLUMN)

Areas with essential features	Unoccupied areas not proposed	Excluded areas	Total proposed critical habitat
22,359 (9,048 ha)	1,638 ac (663 ha)	3,422 ac (1,385 ha)	17,299 ac (7,001 ha).

TABLE 3.—CRITICAL HABITAT UNITS PROPOSED FOR THE PACIFIC COAST WSP

Unit	Proposed?	Federal	State/ local	Private	Total				
					acres	ha	acres	ha	acres
Washington									
WA 1. Copalis Spit	No	0	0	446	180.5	0	0	446	180.5
WA 2. Damon Pt, Oyhut	Yes	0	0	908	368	0	0	908	368
WA 3. Midway Beach	Yes	0	0	266	108	520	210	786	318
WA 4. Leadbetter Pt	Yes	270	109	627	254	172	70	1,069	433
Subtotal		270	109	1,801	729	692	280	2,763	1,118
Oregon									
OR 1. Clatsop Spit:									
OR 1A. Columbia River Spit	No	65	26.3	0	0	0	0	65	26.3
OR 1B. Necanicum River Spit	No	0	0	78	31.6	0	0	78	31.6
OR 2. Nehalem River Spit	No	0	0	145	58.7	0	0	145	58.7
OR 3. Bayocean Spit	Yes	85	34	122	49	0	0	207	84
OR 4. Netarts Spit	No	0	0	143	57.9	0	0	143	57.9
OR 5. Sand Lake:									
OR 5A. Sand Lake North	No	0	0	38	15.4	0	0	38	15.4
OR 5B. Sand Lake South	No	0	0	0	0	104	42.1	104	42.1
OR 6. Nestucca River Spit	No	0	0	147	59.5	0	0	147	59.5
OR 7. Sutton/Baker Beaches	Yes	260	105	0	0	0	0	260	105
OR 8. Siltcoos to Tenmile:									
OR 8A. Siltcoos River Spit	Yes	188	76	0	0	0	0	188	76
OR 8B. Dunes Overlook/ Tahkenitch Creek Spit.	Yes	375	152	0	0	0	0	375	152
OR 8C. N Umpqua River Spit	No	74	29.9	37	15	0	0	111	44.9
OR 8D. Tenmile Creek Spit	Yes	235	95	0	0	0	0	235	95
OR 9. Coos Bay N Spit	Yes	278	113	0	0	0	0	278	113
OR 10. Bandon/Cape Blanco:									
OR 10A. Bandon to Floras Lk	Yes	321	130	196	79	163	66	680	275
OR 10B. Sixes River Spit	No	0	0	73	29.5	0	0	73	29.5
OR 10C. Elk River Spit	No	0	0	0	0	88	35.6	88	35.6
OR 11. Euchre Creek Spit	No	0	0	0	0	75	30.4	75	30.4
OR 12. Pistol River Spit	No	0	0	116	46.9	0	0	116	46.9
Subtotal		1,742	705	318	129	163	66	2,223	900
California									
CA 1. Lake Earl	Yes	0	0	13	5	78	32	91	37
CA 2. Big Lagoon	Yes	0	0	280	113	0	0	280	113
CA 3. McKinleyville Area:									
CA 3A. Clam Beach/Little Riv	Yes	0	0	131	53	24	10	155	63
CA 3B. Mad River	Yes	0	0	161	65	217	88	377	153
CA 4. Eel River Area:									
CA 4A. Humboldt Bay, S Spit	Yes	20	8	354	143	0	0	375	152
CA 4B. Eel Riv N Spit/Beach	Yes	0	0	278	112	5	2	283	114
CA 4C. Eel Riv S Spit/Beach	Yes	0	0	4	2	397	161	402	163
CA 4D. Eel River Gravel Bars	Yes	0	0	255	103	938	379	1,193	483
CA 5. MacKerricher Beach	Yes	0	0	1,017	412	31	13	1,048	424
CA 6. Manchester Beach	Yes	0	0	336	136	5	2	341	138
CA 7. Dillon Beach	Yes	0	0	0	0	30	12	30	12
CA 8. Pt Reyes Beach	Yes	462	187	0	0	0	0	462	187
CA 9. Limantour Spit	Yes	124	50	0	0	0	0	124	50
CA 10. Half Moon Bay	Yes	0	0	37	15	0	0	37	15
CA 11. Santa Cruz Coast:									
CA 11A. Waddell Cr Beach	No	0	0	8.1	3.3	1.3	0.5	9.3	3.8
CA 11B. Scott Cr. Beach	Yes	0	0	0	0	19	8	19	8
CA 11C. Wilder Cr. Beach	Yes	0	0	10	4	0	0	10	4
CA 12. Monterey Bay Beaches:									
CA 12A. Jetty Rd to Aptos	Yes	0	0	272	110	0	0	272	110
CA 12B. Elkhorn Sl Mudflat	Yes	0	0	281	114	0	0	281	114
CA 12C. Monterey—Moss Lnd	Yes	10	4	792	321	0	0	803	325
CA 13. Pt Sur Beach	Yes	0	0	61	25	0	0	61	25
CA 14. San Simeon Beach	Yes	0	0	28	11	0	0	28	11
CA 15. Estero Bay Beaches:									
CA 15A. Villa Cr Beach	Yes	0	0	17	7	0	0	17	7
CA 15B. Atascadero Beach	Yes	0	0	144	58	0	0	144	58
CA 15C. Morro Bay Beach	Yes	0	0	611	247	0	0	611	247
CA 16. Pismo Beach/Nipomo	Yes	0	0	770	312	499	202	1,269	513

TABLE 3.—CRITICAL HABITAT UNITS PROPOSED FOR THE PACIFIC COAST WSP—Continued

Unit	Proposed?	Federal	State/ local	Private	Total				
					acres	ha	acres	ha	acres
CA 17. Vandenberg									
CA 17A. Vandenberg North	Yes	626	253	0	0	0	0	626	253
CA 17B. Vandenberg South	Yes	304	123	0	0	0	0	304	123
CA 18. Devereaux Beach	Yes	0	0	36	15	0	0	36	15
CA 19. Oxnard Lowlands:									
CA 19A. Mandalay to Santa Clara R Mouth.	Yes	0	0	245	99	105	42	350	142
CA 19B. Ormond Beach	Yes	0	0	203	82	0	0	203	82
CA 19C. Mugu Lagoon N	Yes	321	130	0	0	0	0	321	130
CA 19D. Mugu Lagoon S	Yes	69	28	18	7	0	0	87	35
CA 20. Zuma Beach	Yes	0	0	60	24	8	3	68	28
CA 21. Santa Monica Bay:									
CA 21A. Santa Monica Beach	Yes	0	0	6	2	19	8	25	10
CA 21B. Dockweiler N	Yes	0	0	43	17	0	0	43	17
CA 21C. Dockweiler S	Yes	0	0	13	5	11	5	24	10
CA 21D. Hermosa Beach	Yes	0	0	10	4	0	0	10	4
CA 22. Bolsa Chica Area:									
CA 22A. Bolsa Chica Reserve	Yes	0	0	0	0	591	239	591	239
CA 22B. Huntington St. Beach	Yes	0	0	4	2	0	0	4	2
CA 23. Santa Ana River Mouth	Yes	0	0	12	5	1	0	13	5
CA 24. San Onofre St Beach	Yes	3	1	46	19	9	4	58	24
CA 25. Batiquitos Lagoon:									
CA 25A Batiquitos West	Yes	0	0	15	6	6	3	21	9
CA 25B. Batiquitos Middle	Yes	0	0	15	6	8	3	23	9
CA 25C. Batiquitos East	Yes	0	0	0	0	21	8	21	8
CA 26. Los Penasquitos	Yes	0	0	24	10	0	0	24	10
CA 27. S San Diego:									
CA 27A. North Island N.	Yes	117	47	0	0	0	0	117	47
CA 27B. North Island S.	Yes	68	28	0	0	0	0	68	28
CA 27C. Silver Strand	Yes	75	30	96	39	3	1	174	70
CA 27D. Delta Beach	Yes	85	35	0	0	0	0	85	35
CA 27E. Sweetwater NWR	Yes	77	31	0	0	51	21	128	52
CA 27F. Tijuana River Beach	Yes	84	34	76	31	22	9	182	74
Subtotal		2,444	989	6,774	2,741	3,095	1,253	12,313	4,983
Total		4,456	1,804	8,893	3,599	3,950	1,599	17,299	7,001

Unit Descriptions

The proposed units described below all contain habitat features essential for the conservation of the Pacific Coast WSP, as defined in the ''Primary Constituent Elements'' section above. All units are located within the range of the population, in the states of Washington, Oregon, and California. They are all considered currently occupied (with documented use by plovers since 2000), unless otherwise noted. Those units not currently occupied are considered essential to the conservation of the population for the reasons provided in the description.

Washington

WA 1, Copalis Spit, 446 ac (180.5 ha): (Unoccupied Area, Identified for Possible Inclusion)

This is the northernmost unit in the range of the species. Copalis Spit is located along the central Washington coast, approximately 20 miles (mi) (32.2 kilometers (km) northwest of Hoquiam. It is a 1.4 mi (2.25 km) long sand spit that is bounded on the landward side by the Copalis River. The unit consists of a long sandy beach with sparsely vegetated dunes that extend to the river, providing nesting and foraging opportunities as well as protection from the weather. The recent northward shift of Connor Creek washed out the beach access road at the southern end, effectively closing the area to motorized vehicles. Because of its relatively remote location, the area receives little human use. The spit historically supported 6 to 12 nesting pairs of plovers, but no use has been documented since 1984 (WDFW 1995). The unit is entirely within Griffith Priday State Park (WA State Parks). The primary threat to the unit at this time is erosion caused by the northward movement of Connor Creek. While this natural occurrence is limiting human use in the area, it has resulted in a gradual but steady decline in available habitat over the past 50 years. Habitat restoration (beachgrass eradication) would improve the likelihood for plovers to recolonize the site in the future.

WA 2, Damon Point/Oyhut Wildlife Area, 908 ac (368 ha)

This unit is located at the southern end of the community of Ocean Shores and is a sandy spit that extends into Grays Harbor. Damon Point includes the following features essential to the conservation of the species: sandy beaches that are relatively undisturbed by human or tidal activity (nesting habitat), large expanses of sparsely vegetated barren terrain, and mudflats and sheltered bays that provide ample foraging areas. Research in the mid 1980's indicated that up to 20 snowy plovers used the area for nesting. Plover use has declined somewhat over the past 20 years; currently between 6 and 9 adult birds use the site during the breeding season (average reproductive success at Damon is 1.5 chicks per male) (WDFW *in litt.* 2003). The conservation goal for WA 2 is 12 adult plovers. Approximately 99 percent of the 908-

acre unit is administered by the State (Washington Department of Fish and Wildlife—227 ac (92 ha); Washington State Parks—63.6 ac (25.7 ha); and Washington Department of Natural Resources—605.6 ac (245.1 ha)). The western edge of the unit lies adjacent to a municipal wastewater treatment facility that is managed by the City of Ocean Shores (9 ac (3.6 ha)). As with Copalis Spit, the access road has washed out and the area is currently inaccessible to motorized vehicles. The primary threats to plovers at this time are recreational use (pedestrians with dogs), habitat loss from European beachgrass, and potential re-opening of the vehicle access road.

WA 3, Midway Beach, 786 ac (318 ha)

This unit is located between the community of Grayland and Willapa Bay and covers an area called Twin Harbors Beaches. Midway is an expansive beach and is nearly 0.5 mi (0.8 km) wide at the widest point. Beach accretion since 1998 has greatly improved habitat conditions, resulting in the re-establishment of a plover population at this site (WDFW *in litt.* 2000). Nearly half of the birds that nest and/or over-winter at Midway were banded in Oregon or Humboldt County, California (WDFW *in litt.* 2003). Threats at Midway include motorized vehicles combined with a lack of enforcement of the wet sand driving restrictions and human activity on holiday weekends (*e.g.*, Fourth of July fireworks). Although public access is restricted on private property, beach driving is permitted below MHW. Approximately 2/3 (about 520 ac (210.4 ha)) of this unit is on private property with the remainder (266 ac (107.6 ha)) on State park lands. Private property rights extend to the mean low water line (MLW) in Washington State. The conservation goal for Midway Beach is 30 adult breeding birds. Twenty-eight plovers nested at this site during the 2003 breeding season, and the site has shown a relatively high average annual production of 1.3 to 1.9 chicks per male (WDFW *in litt.* 2003).

WA 4, Leadbetter Point/Gunpowder Sands, 1,069 ac (433 ha)

The Leadbetter Point/Gunpowder Sands unit is located at the northern end of the Long Beach Peninsula, a 26-mi (41.8-km) long spit that defines the west side of Willapa Bay and extends down to the mouth of the Columbia River. The unit is located just north of the community of Ocean Park. The end of the spit is within the Willapa National Wildlife Refuge. The refuge jurisdiction extends to the mean high -tide mark. The beach below high tide is administered by the Washington Department of Natural Resources, and State regulations, including seasonal motorized vehicle access and recreational use, apply to this area. The area of the beach that falls under State jurisdiction is included in the unit. Leadbetter is the largest of the four proposed critical habitat units in Washington and covers approximately 1,069 ac (433 ha) and over 7 mi (11.3 km) of coastline. Two hundred seventy acres (109.3 ha) of WA 4 is on Willapa National Wildlife Refuge. The Refuge has a plover management plan, which has not yet undergone section 7 consultation. Six hundred twenty -seven acres (253.7 ha) of WA 4 are on State lands, generally below the mean high water line (MHW). Another 172 ac (69.6 ha) of the unit are on private land. Since Leadbetter National Wildlife Refuge extends to the mean high -water line, the area below MHW makes up an important portion of this unit. We therefore used historic aerial photos to estimate a more typical seaward boundary of the north end of the spit. As with the other units, however, the true seaward boundary is the edge of the tidal water. Approximately 30 snowy plovers nest and over-winter on the spit, with about 20–25 birds nesting north of the Refuge boundary and 5–10 birds using the State park and private beaches to the south (Service *in litt.* 2004). The unit provides sandy beaches and sparsely vegetated dunes for nesting as well as miles of surf-cast organic debris and sheltered bays for foraging. The combined dynamics of weather and surf cause large quantities of wood and shell material to accumulate on the spit, providing prime nesting habitat, hiding areas from predators, foraging opportunities, and shelter from inclement weather for plover broods. The plover population at Leadbetter has been slowly increasing since monitoring began in 1993 and we consider the area capable of supporting up to 30 breeding plovers given appropriate management. The primary threat is human disturbance during spring razor clam season, which opens beaches to motorized vehicles and provides access into plover nesting areas that normally receive limited human use. Beaches south of the Refuge are open to public use. The State Parks department is considering posting areas being used by plovers and increasing enforcement of the wet sand driving regulations (Service *in litt.* 2004).

Oregon

OR 1. Clatsop Spit: (Unoccupied Area, Identified for Possible Inclusion)

Although the unit is currently occupied (L. Kelly, Service, *in litt. 2003*), it was not occupied at the time of listing (*F. Seavey, Service* in litt. *2004*).

Subunit OR 1A, Columbia River South Spit, 65 ac (26 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the northwestern coast of Clatsop County, Oregon, about 20 miles (32.2 km) northwest of the City of Astoria. It is bounded by the Columbia River and Fort Stevens State Park and is located about 1 mi (1.6 km) east of the base of the Columbia River South Jetty. The subunit is characteristic of a dune-backed beach adjacent to mud flats and an estuary. It includes the following features essential to the conservation of the species (PCEs): Areas of sandy beach relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high-tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced estuarine mud flats (for foraging). This subunit is part of a larger unit of the 17-mile (27.4 km) Clatsop Plains that is located between the Necanicum River to the south and the Columbia River to the north. Most recently documented plovers for the Clatsop Plains include one breeding plover in 1983 and 1 wintering plover in 1985 (ODFW *in litt.* 1994). The subunit consists of 65 ac (26 ha) of federally owned land. The Oregon Parks and Recreation Department manages the subunit under a Department of Army license. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs, and off-highway vehicles (OHVs) in important foraging and nesting areas; and predators such as the American crow and common raven.

Subunit OR 1B, Necanicum River Spit, 78 ac (32 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the western coast of Clatsop County, Oregon, next to the City of Gearhart and less than 1 mi (1.6 km) north of the City of Seaside. It is bounded by the Necanicum River estuary on the south, City of Gearhart to the east, and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach adjacent to mud

flats and an estuary. It includes the following features essential to the conservation of the species: Wide sand spits or washovers relatively undisturbed by human or tidal activity and sparsely vegetated (for nesting and foraging); areas of sandy beach above and below the high-tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced estuarine mud flats (for foraging). This subunit is part of a larger unit of the 17-mi (27.4 km) Clatsop Plains that is located between the Necanicum River to the south and the Columbia River to the north. Two breeding plovers were documented in this subunit in 2002 (Lauten *et al. in litt.* 2003). This subunit consists of 55 State-owned acres (22 ha) and 23 city-owned acres (9 ha). The Oregon Parks and Recreation Department is the primary land manager. Threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs, and OHVs in important foraging and nesting areas; and predators such as American crow and raccoons.

OR 2, Nehalem River Spit, 145 ac (59 ha): (Unoccupied Area, Identified for Possible Inclusion)

This unit is on the northwestern coast of Tillamook County, Oregon next to the City of Manzanita and about 19 miles (30.6 km) northwest of the City of Tillamook. It is bounded by Nehalem Bay on the east, the City of Manzanita to the north, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and sand spit adjacent to mud flats and an estuary. It includes the following features essential to the conservation of the species: A wide sand spit or washover area relatively undisturbed by human or tidal activity and sparsely vegetated (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced estuarine mud flats (for foraging). One breeding plover was documented in this unit in 1984 (ODFW *in litt.* 1994). This unit provides habitat capable of supporting four breeding plovers under proper management. The unit consists of 145 State-owned acres (58.7 ha) and is managed by the Oregon Parks and Recreation Department as part of the Nehalem Bay State Park. The primary threats that may require special management in this unit are introduced European beachgrass that encroaches on the available nesting and foraging habitat, disturbance from humans and dogs in important foraging and nesting areas, and predators such as American crows and common ravens.

OR 3, Bayocean Spit, 207 ac (84 ha)

This unit is on the western coast of Tillamook County, Oregon, and about 8 mi (12.9 km) northwest of the City of Tillamook. It is bounded by Tillamook Bay on the east, the Tillamook Bay South Jetty to the north, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach in close proximity to mud flats and an estuary. It includes the following features essential to the conservation of the species (PCEs): large areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced estuarine mud flats (for foraging). Two breeding plovers and one wintering plover were documented in this unit in 1993 and 2000, respectively (ODFW *in litt.* 1994; Service *in litt.* 2004). This unit contributes significantly to the conservation goal for the region by providing habitat capable of supporting 16 breeding plovers under proper management. The unit consists of 85 ac (34.4 ha) of federally owned land and 122 ac (49.4 ha) of county-owned land. The primary threats that may require special management in this unit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and horses in important foraging and nesting areas; and predators such as the common raven.

OR 4, Netarts Spit, 143 ac (58 ha): (Unoccupied Area, Identified for Possible Inclusion)

This unit is on the western coast of Tillamook County, Oregon, about 5 mi (8.0 km) southwest of the City of Tillamook. It is bounded by the Pacific Ocean to the west and Netarts Bay to the east and the north. The unit is characteristic of a dune-backed beach and sand spit in close proximity to mud flats. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and large areas of sandy dune relatively undisturbed by human or tidal activity and sparsely vegetated (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced mud flats (for foraging). The unit is considered unoccupied, although three breeding plovers were documented in this unit in 1982 (ODFW *in litt.* 1994). The unit consists of 143 State-owned acres (57.9 ha) managed by Oregon Parks and Recreation Department as Cape Lookout State Park. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat, disturbance from humans and dogs in important foraging and nesting areas, and predators such as the common raven.

OR 5. Sand Lake: (Unoccupied Area, Identified for Possible Inclusion)

This unit includes two subunits, one each on the north and south spits of Sand Lake estuary. Most recently documented plovers for the Sand Lake unit include four breeding plovers in 1986 (ODFW *in litt.* 1994).

Subunit OR 5A, Sand Lake North, 38 ac (15.4 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the southwestern coast of Tillamook County, Oregon, about 7 miles (11.3 km) north of Pacific City. It is bounded by the Sand Lake estuary to the south, the Siuslaw National Forest's Sand Lake National Recreation Area to the north, and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit in close proximity to mud flats and an estuary. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced mud flats (for foraging). The subunit consists of 38 county-owned acres (15.4 ha). The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat, disturbance from humans and dogs in important foraging and nesting areas, and predators such as American crows and common ravens.

Subunit OR 5B, Sand Lake South, 104 ac (42.1 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the southwestern coast of Tillamook County, Oregon, about 7 mi (11.3 km) north of Pacific City. It is bounded by the Pacific Ocean

to the west and the Sand Lake estuary to the north and east. The subunit is characteristic of a dune-backed beach and sand spit in close proximity to mud flats and an estuary. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced mud flats (for foraging). The subunit consists of 104 privately owned acres (42.1 ha). The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs, and OHVs in important foraging and nesting areas; and predators such as the common raven.

OR 6, Nestucca River Spit, 147 ac (59.5 ha): (Unoccupied Area, Identified for Possible Inclusion)

This unit is on the southwestern coast of Tillamook County, Oregon, next to Pacific City and about 20 mi (32.2 km) southwest of the City of Tillamook. It is bounded by Pacific City to the north, Nestucca Bay to the east and south, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and sand spit in close proximity to mud flats and an estuary. It includes the following features essential to the conservation of the species: Wide sand spits or washovers relatively undisturbed by human or tidal activity and sparsely vegetated (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced estuarine mud flats (for foraging). Most recently documented plovers for this unit include 2 breeding plovers in 1988 (ODFW *in litt.* 1994). We therefore consider this unit to be currently unoccupied. The unit consists of 147 State-owned acres (59.5 ha) and is managed by the Oregon Parks and Recreation Department as Robert W. Straub State Park. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and horses in important foraging and nesting areas; and predators such as American crows and common ravens.

OR 7, Sutton/Baker Beaches, 260 ac (105.2 ha)

This unit is on the western coast of Lane County, Oregon, about 8 mi (12.9 km) north of the City of Florence. It is bounded by Sutton Creek to the south, Heceta Head to the north, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and wide sand spits with overwash areas. It includes the following features essential to the conservation of the species: large areas of sandy dunes or sand spit overwashes relatively undisturbed by human or tidal activity (for nesting and foraging) and areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging). Most recently documented plovers for this unit include an average of 2 breeding plovers in 2003 and 8 wintering plovers in 2004 (Lauten *et al. in litt.* 2003; Service *in litt.* 2004). This unit is capable of supporting 12 breeding plovers under proper management. The unit consists of 260 federally owned ac (105.2 ha) managed by the U.S. Forest Service in Siuslaw National Forest. The primary threats that may require special management in this unit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and horses in important foraging and nesting areas; and predators such as the American crow and common raven.

OR 8. Siltcoos to Tenmile

This unit includes four subunits, all within five miles of each other in Lane, Douglas and Coos Counties, Oregon.

Subunit OR 8A, Siltcoos River Spit, 188 ac (76.1 ha)

This subunit is on the southwestern coast of Lane County, Oregon, about 7 mi (11.3 km) southwest of the City of Florence. It includes the sand spits to the north and south of the Siltcoos River and is bounded by the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit in close proximity to a tidally influenced river mouth. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). Most recently documented plovers for this subunit include an average of six breeding plovers in 2003 and 20 wintering plovers in 2004 (Lauten *et al. in litt.* 2003; Service *in litt.* 2004). This subunit, in conjunction with subunit OR 8B, below, is capable of supporting 20 breeding plovers under proper management. The subunit consists of 188 federally owned acres (76.1 ha) managed by the U.S. Forest Service as the Oregon Dunes National Recreation Area in the Siuslaw National Forest. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and OHVs in important foraging and nesting areas; and predators such as the American crow and common raven.

Subunit OR 8B, Dunes Overlook/Tahkenitch Creek Spit, 375 ac (151.8 ha).

This subunit is on the northwestern coast of Douglas County, Oregon, about 10 mi (16.1 km) northwest of the City of Reedsport. It is bounded by Tahkenitch Creek to the south, Carter Lake to the north and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit. It includes the following features essential to the conservation of the species: wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). Most recently documented plovers for this subunit include an average of seven breeding plovers in 2003 and one wintering plover in 2000 (Lauten *et al. in litt.*; 2003; Service *in litt.* 2004). This subunit is capable of supporting 20 breeding plovers in conjunction with subunit OR 8A (above) under proper management. The subunit consists of 375 federally owned acres (151.8 ha) managed by the U.S. Forest Service as the Oregon Dunes National Recreation Area. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and OHVs in important foraging and nesting areas; and predators such as the American crow and common raven.

Subunit OR 8C, North Umpqua River Spit, 111 ac (44.9 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the western coast of Douglas County, Oregon, about 5 mi, (8.0 km) west of the City of Reedsport. It is bounded by the Umpqua River North Jetty to the south and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach. It includes the following features essential to the conservation of the species: areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging). This subunit is capable of supporting four breeding plovers under proper management. The subunit consists of 74 ac (29.9 ha) of federally owned land and 37 ac (15 ha) of State-owned land. The primary land manager is the U.S. Forest Service for the Oregon Dunes National Recreation Area. Threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from OHVs in important foraging and nesting areas; and predators such as the American crow and common raven.

Subunit OR 8D, Tenmile Creek Spit, 235 ac (95.1 ha)

This subunit is on the northwestern coast of Coos County, Oregon, about 12 mi, (19.3 km) southwest of the City of Reedsport. It includes the sand spits and beaches to the north and south of the Tenmile River and is bounded by the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging); and close proximity to tidally influenced freshwater areas (for foraging). The most recently documented plovers for this subunit include an average of 10 breeding and eight wintering plovers in 2003 (Lauten *et al. in litt.* 2003; Service *in litt.* 2004). This subunit is capable of supporting 20 breeding plovers under proper management. The subunit consists of 235 federally owned acres (95.1 ha) managed as the Oregon Dunes National Recreation Area by the U.S. Forest Service. The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans and dogs in important foraging and nesting areas; and predators such as the American crow and common raven.

OR 9, Coos Bay North Spit, 278 ac (112.5 ha)

This unit is on the western coast of Coos County, Oregon, about 5 mi (8.0 km) west of the City of Coos Bay. It is bounded by Coos Bay to the east, the Coos Bay North Jetty to the south, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and interior interdune flats created through dredge material disposal or through habitat restoration. It includes the following features essential to the conservation of the species (PCEs): Expansive sparsely vegetated interdune flats (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging); and close proximity to tidally influenced estuarine areas (for foraging). The most recently documented plovers for this unit include an average of 17 breeding and 3 wintering plovers in 2003 (Lauten *et al. in litt.* 2003; Service *in litt.* 2004). This unit contributes significantly to the regional conservation goal by providing habitat capable of supporting 54 breeding plovers under proper management. The unit consists of 278 federally owned acres (112.5 ha) primarily managed by the Bureau of Land Management. Threats that may require special management in this unit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and OHVs in important foraging and nesting areas; and predators such as the American crow and common raven.

OR 10, Bandon/Cape Blanco Area

This unit consists of three subunits within five miles of each other near the town of Bandon, in Coos and Curry Counties, Oregon.

Subunit OR 10A, Bandon to Floras Lake, 680 ac (275.2 ha)

This subunit is on the southwestern coast of Coos County, Oregon, about 4 mi (6.4 km) south of the City of Bandon. It is bounded by China Creek to the north, the New River to the east, Floras Lake to the south, and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and barrier spit. It includes the following features essential to the conservation of the species: wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (foraging); and close proximity to tidally influenced freshwater areas (for foraging). The most recently documented plovers for this subunit include an average of 15 breeding and 18 wintering plovers in 2003 (Lauten *et al. in litt.* 2003; Service *in litt.* 2004). This subunit is capable of supporting 54 breeding plovers under proper management. The subunit consists of 321 ac (129.9 ha) of federally owned land, 184 ac (75 ha) of State-owned land, 12 ac of county-owned land (5 ha), and 163 ac (66 ha) of privately owned land. The Bureau of Land Management and the Oregon Parks and Recreation Department are the unit's primary land managers. Threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs, horses and OHVs in important foraging and nesting areas; and predators such as the common raven and red fox.

Subunit OR 10B, Sixes River Spit, 73 ac (29.5 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the northwestern coast of Curry County, Oregon, about 8 mi (12.9 km) northwest of the City of Port Orford and just north of Cape Blanco. It includes the sand spits to the north and south of the Sixes River and is bounded by the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit in close proximity to a tidally influenced river mouth. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). No plover use has been documented for this unit, which may be attributed to little, if any, historic survey effort. This subunit is capable of supporting 4 breeding plovers under proper management. The subunit consists of 73 State-owned acres (29.5 ha) managed by Oregon Parks and Recreation Department. The primary threats that may require special management in this subunit are introduced European

beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans and dogs in important foraging and nesting areas; and predators such as the common raven.

Subunit OR 10C, Elk River Spit, 88 ac (35.6 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit is on the northwestern coast of Curry County, Oregon, about 4 mi (6.4 km) northwest of the City of Port Orford and just south of Cape Blanco. It is bounded by the Elk River to the east and north, and the Pacific Ocean to the west. The subunit is characteristic of a dune-backed beach and sand spit in close proximity to a tidally influenced river mouth. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). This subunit is capable of supporting four breeding plovers under proper management. The subunit consists of 88 privately owned acres (35.6 ha). The primary threats that may require special management in this subunit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and OHVs in important foraging and nesting areas; and predators such as the common raven and red fox.

OR 11, Euchre Creek Spit, 75 ac (30.4 ha): (Unoccupied Area, Identified for Possible Inclusion)

This unit is on the western coast of Curry County, Oregon, about 12 mi (19.3 km) north of the City of Gold Beach. It includes the sand spits to the north and south of the Euchre River and is bounded by the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and sand spit in close proximity to a tidally influenced river mouth. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). No Pacific Coast WSP have been documented using the area in recent years, so we consider it to be currently unoccupied. The unit consists of 75 privately owned acres (30.4 ha). The primary threats that may require special management in this unit are European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans and dogs in important foraging and nesting areas; and predators such as the common raven and red fox.

OR 12, Pistol River Spit, 116 ac (46.9 ha): (Unoccupied Area, Identified for Possible Inclusion)

This unit is on the southwestern coast of Curry County, Oregon, about 12 mi (19.3 km) south of the City of Gold Beach. It is bounded by the Pistol River to the east and north, and the Pacific Ocean to the west. The unit is characteristic of a dune-backed beach and sand spit in close proximity to a tidally influenced river mouth. It includes the following features essential to the conservation of the species: Wide sand spits or washovers and sparsely vegetated areas of sandy dune relatively undisturbed by human or tidal activity (for nesting and foraging); areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging); and close proximity to tidally influenced freshwater areas (for foraging). The unit is not considered to be currently unoccupied, as the most recently documented plover in the area was one wintering plover in 1978 (Wilson 1980). The unit consists of 116 State-owned acres (46.9 ha) managed by the Oregon Parks and Recreation Department as the Pistol River State Park. The primary threats that may require special management in this unit are introduced European beachgrass that encroaches on the available nesting and foraging habitat; disturbance from humans, dogs and horses in important foraging and nesting areas; and predators such as the American crow and common raven.

California

CA 1, Lake Earl, 91 ac (37 ha)

This unit is located directly west of the Lake Earl/Lake Tolowa lagoon system and the proposed Pacific Shores housing development. The unit extends from the lagoon breach site in the south, to Kellogg Road at the unit's northern end. The Lake Earl lagoon lies approximately 2 miles (3.2 km) north of Point Saint George and the McNamara Airfield. Essential features of the unit for Pacific Coast WSP conservation include sandy beaches above and below the mean high tide line, wind-blown sand in dune systems immediately inland of the active beach face, and the washover area at the lagoon mouth. The Lake Earl unit is a historical breeding site, and has had a small population of wintering plovers in recent years (Watkins, pers. comm. 2004). We expect this unit to be able to support ten breeding plovers with proper management. The unit contains 90.8 ac (36.7 ha) total. Approximately 12.9 ac (5.2 ha) are managed by the State under the jurisdiction of the California Department of Fish and Game, with the remaining 77.9 ac (31.5 ha) in private ownership. The unit is approximately 3 mi (4.8 km) in length. Degradation of the sand dune system has resulted from the encroachment of European beachgrass. Off-road vehicle (OHV) use is the greatest threat to wintering and nesting plovers using the unit. The U.S. Army Corps of Engineers authorizes the mechanical breach of the Lake Earl/Lake Tolowa lagoon on an annual basis. Monitoring indicates that the practice of breaching has only temporary, short-term effects to wintering plovers.

CA 2, Big Lagoon, 280 ac (113 ha)

This unit consists of a large sand spit that divides the Pacific Ocean from Big Lagoon. The northern extent of the Big Lagoon spit is approximately three mi (4.8 km) south of the Town of Orick. The unit contains the following features essential to the conservation of the Pacific Coast WSP (PCEs): Low lying sandy dunes and open sandy areas that are relatively undisturbed by humans; sandy beach above and below the high tide line that supports small invertebrates; and areas of overwash. The Big Lagoon spit is historical nesting habitat, and currently maintains a winter population of fewer than 10 plovers (Watkins, pers. comm. 2001). We estimate the unit can support 16 breeding plovers. The unit is located on the spit, which is approximately 3.8 mi (6.1 km) in length. Most of the unit (279.2 ac, 113.0 ha) is managed by the California Department of Parks and Recreation (CA State Parks). An additional 0.6 ac (0.26 ha) are Humboldt County-managed. State Parks has conducted habitat restoration at this unit through the hand-removal of non-native vegetation. The primary threat to wintering and breeding plovers that may require special management is the disturbance from humans and dogs walking through winter flocks and potential nesting areas.

CA 3, McKinleyville Area

This unit consists of two subunits in the vicinity of McKinleyville, California, in Humboldt County.

CA 3A, Clam Beach/Little River, 155 ac (63 ha)

The Little River/Clam Beach subunit's northern boundary is directly across from the south abutment of the U.S. Highway 101 bridge that crosses the Little River. The southern subunit boundary is aligned with the north end of the southernmost, paved Clam Beach parking area. The length of the unit is approximately 1.8 mi (2.8 km). Essential features of the subunit that contribute towards the conservation of the Pacific Coast WSP include large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. The subunit currently supports a breeding population of approximately 12 plovers, and a winter population of up to 55 plovers (Colwell, *et al.* 2003). It has developed into one of four primary nesting locations within northern California. We expect the subunit to be able to support six breeding plovers. The primary threats to nests, chicks, and both wintering and breeding adult plovers in this subunit are OHV use, predators, and disturbance caused by humans and dogs. Of the total 154.9 ac (62.7 ha), approximately 81.5 acres (33 ha) are under the jurisdiction of the CA State Parks, 24.1 acres (9.8 ha) are in private ownership, and 49.5 acres (20 ha) are under the ownership and management of Humboldt County.

CA 3B, Mad River Beach, 377 ac (153 ha)

This subunit was largely swept clean of European beachgrass when the Mad River temporarily shifted north in the 1980's and 1990's. The Mad River Beach subunit is approximately 2.8 mi (4.5 km) long, and ranges from the U.S. Highway 101 Vista Point below the Arcata Airport in the north, to School Road in the south. One hundred sixty-one acres (65 ha) are owned and managed by Humboldt County, and 216.5 (87.6 ha) are privately owned. Essential features of the subunit that contribute towards the conservation of the Pacific Coast WSP include large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. We expect the subunit to eventually support 12 breeding plovers with proper management. The current breeding population is believed to be less than 5 plovers, although plovers from this subunit readily intermix with plovers in CA 3A (Colwell, *et al.* 2003). Occasional winter use by plovers has been intermittently documented, with most wintering within the adjacent critical habitat unit to the north (Hall, pers. comm. 2003). The primary threats to nests, chicks, and both wintering and breeding adult plovers are OHV use, and disturbance caused by equestrians and humans with accompanying dogs.

CA 4, Eel River Area

This unit consists of four subunits, one each on the north and south spits of the mouth of the Eel River, one for the Eel River gravel bars supporting nesting plovers about five to ten miles inland, and one extending from the south spit of Humboldt Bay to the beach adjacent to the north Eel River spit subunit.

Subunit CA 4A, Humboldt Bay, South Spit Beach, 375 ac (152 ha)

This subunit is located across Humboldt Bay, less than one mile (<1.6 km) west of the City of Eureka, with the southern boundary being Table Bluff. Three hundred forty-four acres (139.3 ha) of the unit are owned by the California Department of Fish and Game, but are managed by the Federal Bureau of Land Management, 10.1 ac (4.1 ha) are owned and managed by the County of Humboldt, and 20.2 ac (8.2 ha) are owned by the U.S. Army Corps of Engineers. The subunit is 4.8 mi (7.7 km) in total length. The following features essential to the conservation of the Pacific Coast WSP can be found within the unit: large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. The plover wintering population is estimated at under 15 individuals, and three nests, from 4 breeders, were attempted within the subunit in 2003 (Colwell, *et al.* 2003). This subunit is capable of supporting 30 breeding plovers. The Bureau of Land Management has conducted habitat restoration within the subunit, in consultation with us. The primary threats to adult plovers, chicks, and nests, are OHV use, and disturbance from equestrians and humans with dogs.

Subunit CA 4B, Eel River North Spit and Beach, 283 ac (114 ha)

This subunit stretches from Table Bluff on the north to the mouth of the Eel River in the south. The subunit is estimated to be 3.9 miles (6.3 km) long, and is managed by the California Department of Fish and Game, except for five acres of private land. Essential features of the unit include: large areas of sandy, sparsely vegetated dunes for reproduction and foraging, and areas of sandy beach above and below the high tide line supporting small invertebrates for foraging. Driftwood is an important component of the habitat in this subunit, providing shelter from the wind both for nesting plovers and for invertebrate prey species. The subunit's winter population of plovers is estimated at less than 20 (LeValley, 2004). As many as 11 breeders have been observed during breeding season window surveys, with a breeding population estimated at less than 15 (Colwell, *et al.* 2003). We expect this subunit to eventually support 20 breeding plovers with proper management. Threats include predators, OHVs, and disturbance from equestrians and humans with dogs.

Subunit CA 4C, Eel River South Spit and Beach, 402 ac (163 ha)

This subunit encompasses the beach segment from the mouth of the Eel River, south to Centerville Road, approximately 4 miles (6.4 km) west of the Town of Ferndale. The subunit is 5 miles (8.3 km) long. 397.1 acres (160.7 ha) are private, and the remaining 4.4 ac (1.8 ha) are managed by Humboldt County. Essential features of the subunit include: large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. This subunit is capable of supporting 20 breeding plovers. A single nest was found during the 2004 breeding season (McAllister, pers. comm. 2004). The winter population is estimated at under 80 plovers, many of which breed on the Eel River gravel bars (CA 5) (McAllister, pers. comm. 2003, Transou, pers. comm. 2003). Threats include predators, OHVs, and disturbance from equestrians and humans with dogs.

Subunit CA 4D, Eel River Gravel Bars, 1,193 ac (483 ha)

This subunit is inundated during winter months due to high flows in the Eel River. It is 6.4 miles (10.3 km) from the Town of Fernbridge, upstream to the confluence of the Van Duzen River. The Eel River is contained by levees in this section, and consists of gravel bars and wooded islands. The subunit contains a total of 1,192.8 acres (482.7 ha), of which 176.3 ac (71.3 ha) are owned and managed by Humboldt County, 79.1 ac (32 ha) are under the jurisdiction of the California State Lands Commission, and 937.5 ac (379.4 ha) are privately owned. Essential features of this subunit include: bare open gravel bars comprised of both sand and cobble, which support reproduction and

foraging. The Eel River gravel bars are the most important breeding habitat in California north of San Francisco Bay, and have the highest fledging success rate of any areas from Mendocino County to the Oregon border. This subunit is capable of supporting 40 breeding plovers. Twenty-two breeding birds were recorded in this subunit during recent window surveys (LeValley, pers. comm. 2004). Threats include predators, OHVs, and disturbance from gravel mining and humans with dogs.

CA 5, MacKerricher Beach, 1,048 ac (424 ha)

This unit is approximately 3.5 miles (5.5 km) long. The unit is just south of the Ten Mile River, and approximately 4 miles (6.4 km) north of the City of Fort Bragg. 1,017.2 acres (411.6 ha) are managed by CA State Parks, and 31.2 acres (12.6 ha) are private. Essential features of the unit include: large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. State Parks has been conducting removal of European beachgrass to improve habitat for the Pacific Coast WSP and other sensitive dune species within the unit. This unit is capable of supporting 20 breeding plovers. The current breeding population is estimated at less than 10 (Colwell, *et al.* 2003). The winter population of plovers is under 45 (Cebula, pers. comm. 2004). Threats to nests, chicks and both wintering and breeding adults include predators and disturbance from equestrians and humans with dogs.

CA 6, Manchester Beach, 341 ac (138 ha)

The Manchester Beach unit is approximately 3.5 miles (5.7 km) in length. California State Parks manages 336.2 ac (136.1 ha) of the unit, while the remaining 4.8 ac (1.9 ha) are private. Essential features of the unit include: large areas of sandy dunes, areas of sandy beach above and below the high tide line, and generally barren to sparsely vegetated terrain. This unit provides an important wintering site for the region (Service 2001). In 2003, a pair of plovers nested within the unit, and successfully hatched 2 chicks. However, those chicks did not survive (Colwell, *et al.* 2003). The current wintering population is estimated at less than 20 (Cebula, pers. comm. 2004). Threats to nests, chicks and both wintering and breeding adults include predators and disturbance from equestrians and humans with dogs.

CA 7, Dillon Beach, 30 ac (12 ha)

This unit is located at the mouth of Tomales Bay, just south of the town of Dillon Beach. It stretches for about 1.25 mi (2.01 km) north from Sand Point. PCEs provided by the unit include surf-cast debris supporting small invertebrates for foraging, and large stretches of relatively undisturbed, sparsely vegetated sandy beach, both above and below high tide line, for foraging and potentially for nesting. Although nesting has not been noted here, the unit is an important wintering area. One hundred twenty three wintering plovers were counted at this spot during the last winter survey in January 2004 (Page *in litt.* 2004). Other than State lands intermittently exposed below mean high tide, the unit is entirely on private land. Potential threats that may require special management include predators and disturbance by humans and their pets.

CA 8, Pt. Reyes Beach, 462 ac (187 ha)

This unit occupies most of the west-facing beach between Point Reyes and Tomales Point. It is located entirely within the Point Reyes National Seashore, and consists primarily of dune backed beaches. The unit includes the following PCEs essential to plover conservation: sparsely vegetated sandy beach above and below high tide for nesting and foraging, wind-blown sand dunes for nesting and predator avoidance, and tide-cast debris attracting small invertebrates for foraging. It supports both nesting and wintering plovers, and can support 50 breeding birds with proper management. Threats in the area that may require special management include disturbance by humans and pets, and predators (particularly ravens and crows).

CA 9, Limantour Spit, 124 ac (50 ha)

Limantour Spit is a roughly 2.25 mile (4.0 km) sand spit at the north end of Drake's Bay. The unit includes the end of the spit, and contracts to include only the south-facing beach towards the base of the spit. It is completely within the Point Reyes National Seashore. CA 10 can support both nesting and wintering plovers, although nesting has not been documented since 2000 (Page *in litt.* 2003, 2004). Ninety-five wintering plovers were counted at the site during the January 2004 survey (Page *in litt.* 2004). The unit is expected to contribute significantly to plover conservation in the region by providing habitat capable of supporting ten nesting birds. PCEs at the unit include sparsely vegetated beach sand, above and below high tide for nesting and foraging, and tide-cast debris supporting small invertebrates. Threats that may require special management include disturbance by humans and pets, and nest predators such as crows and ravens.

CA 10, Half Moon Bay, 37 ac (15 ha)

This unit stretches for about 1.25 mi (2.01 km) along Half Moon Bay State Beach, and is entirely within California State Parks land. It includes sandy beach above and below the high tide line for nesting and foraging, and surf-cast debris to attract small invertebrates. Small numbers of breeding birds have been found at the location in the past three surveys, including four breeding birds in the most recent survey, conducted in 2003 (Page *in litt.* 2003). The unit also supports a sizeable winter flock, which was 65 birds in 2004 (Page *in litt.* 2004). We expect the unit to eventually support ten breeding birds in the unit under proper management, which makes it a potentially significant contributor to plover conservation. Potential threats in the area that may require special management include disturbance by humans and pets, and nest predators.

CA 11. Santa Cruz Coast

This unit consists of three relatively small pocket beaches in Santa Cruz County, California. The unit forms an important link between larger breeding beaches to the north and south, such as Half Moon Bay and the Monterey Bay beaches.

Subunit CA 11A, Waddell Creek Beach, 9 ac (4 ha): (Unoccupied Area, Identified for Possible Inclusion)

This subunit includes the mouth of Waddell Creek and is located about 20 mi (32.2 km) north of the city of Santa Cruz. It extends about 0.7 mi (1.1 km) north along the coast from a point about 0.1 mi (0.2 km) south of the creek mouth to a point about 0.6 mi (0.4 km) north of the creek. The area provides several essential habitat features, including wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). With proper management, and in conjunction with the other two small units proposed for Santa Cruz County (CA 11B and 11C), this subunit can attract additional nesting plovers and thereby facilitate genetic interchange between the larger units at Half Moon Bay (CA 10) and Palm Beach and Moss Landing (CA 12) (see Criterion 3, Methods section,

above). CA 11A encompasses approximately 8.1 ac (3.3 ha) of State land and 1.3 ac (0.5 ha) of private land. Human disturbance is the primary threat to plovers in the subunit that might require special management.

Subunit CA 11B, Scott Creek Beach, 19 ac (8 ha)

This subunit includes the mouths of Scott and Molino creeks and is located about 13 mi (20.9 km) north of the city of Santa Cruz. It extends about 0.7 mi (1.1 km) north along the coast from the southern end of the sandy beach (0.3 mi (0.5 km) south of Molino Creek) to a point about 0.1 mi (0.4 km) north of Scott Creek. Recent surveys have found from 12 (in 2000) to 1 (in 2004) nesting plovers occupying the area (Page *in litt.* 2004), and it is an important snowy plover wintering area, with up to 114 birds each winter (Page *in litt.* 2004). This subunit is essential to the conservation of the species because with proper management, and in conjunction with the other two small units proposed for Santa Cruz County (CA 11B and 11C), it can attract additional nesting plovers and thereby facilitate genetic interchange between the larger units at Half Moon Bay (CA 10) and Palm Beach and Moss Landing (CA 12) (see Criterion 3, Methods section, above). The subunit includes the following habitat features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). CA 13 is situated entirely on private land. Human disturbance and predators are the primary threats to snowy plovers in this subunit that may require special management.

Subunit CA 11C, Wilder Creek Beach, 10 ac (4 ha)

This subunit is located at the mouth of Laguna Creek and is about 8 mi (12.9 km) north of the city of Santa Cruz. It extends about 0.5 mi (0.3 km) north along the coast from the southern end of the sandy beach to the northern end of the beach across the mouth of Laguna Creek. Five nesting plovers were found in the area in 2000 (Page *in litt.* 2004). The subunit includes the following essential features: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). CA 11C is capable of supporting sixteen breeding birds under proper management. The subunit is entirely situated on State-owned land. Disturbance from humans and pets, development, OHV use, pets, and predators are the primary threats to snowy plovers in this subunit that may require special management.

CA 12. Monterey Bay Beaches

This unit includes three subunits within Monterey Bay, California, including parts of Santa Cruz and Monterey Counties. Two of the subunits are stretches of beach, while the third (CA 12B) includes a wetland adjacent to the shore.

Subunit CA 12A, Jetty Rd to Aptos, 272 ac (110 ha)

This subunit is about 5 mi (8 km) west of the city of Watsonville and includes Sunset and Zmudowski State beaches. The mouth of the Pajaro River is located near the center of the unit, and Elkhorn Slough is at the south end of the unit. It extends about 8.5 mi (13.7 km) north along the coast from Elkhorn Slough to Zils Road. This is an important snowy plover nesting area, with 8–38 birds nesting each year, and is also an important wintering area, with up to 250 birds each winter (Page *in litt.* 2004). This subunit is capable of supporting 54 breeding birds under proper management. It includes the following features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). CA 12A exists entirely on State lands. Human disturbance, development, horses, OHV use, pets, predators, and dune-stabilizing vegetation such as European beachgrass are the primary threats to snowy plovers in this subunit that may require special management.

Subunit CA 12B, Elkhorn Slough Mudflats, 281 ac (114 ha)

CA 12B is about 3.5 mi (5.6 km) north of the city of Castroville along the north side of Elkhorn Slough east of Highway 1. It extends about 1 mi (1.6 km) along the north shore of Elkhorn Slough east of Highway 1 and about 0.5 mi (0.8 km) north from Elkhorn Slough to Bennett Slough. This is an important nesting area, with 6–47 birds nesting each year, and is also an important wintering area, with up to 95 birds each winter (Page *in litt.* 2004, Stenzel *in litt.* 2004). This subunit is capable of supporting 80 breeding birds under proper management. It includes the following features essential to the species: areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). The subunit is situated entirely on State-owned land. Human disturbance, development, horses, OHV use, pets, predators, and vegetation are the primary threats to snowy plovers in this subunit that may require special management.

Subunit CA 12C, Monterey to Moss Landing, 803 ac (325 ha)

CA 12C includes the beaches along the southern half of Monterey Bay from the city of Monterey at the south end of the subunit to Moss Landing and the mouth of Elkhorn Slough at the north end of the unit. The mouth of the Salinas River is located near the center of the unit. It extends about 15 mi (24.2 km) north along the coast from Monterey to Moss Landing. This is an important nesting area, with 61 to 104 nesting birds each year, and is also an important snowy plover wintering area, with up to 190 birds each winter (Page *in litt.* 2004, Stenzel *in litt.* 2004). This subunit is capable of supporting 162 breeding birds under proper management. It includes the following habitat features essential to the species: areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). CA 12C includes approximately 792.2 ac (320.6 ha) of State and local lands, and 10.4 ac (4.2 ha) of Federal land. It would include an additional 142 ac (57.5 ha) of Federal land in the Salinas River National Wildlife Refuge, but we are excluding that area based on the existence of a Comprehensive Conservation Plan for Salinas River NWR that has undergone section 7 consultation (see Exclusions section, below). Human disturbance, development, horses, OHV use, pets, predators, and habitat changes resulting from exotic vegetation are the primary threats to snowy plovers in this subunit that may require special management.

CA 13, Point Sur Beach, 61 ac (25 ha)

This unit is about 17 mi (27.4 km) south of the city of Monterey and immediately north of Point Sur. It extends about 1 mi (1.6 km) north along the coast from Point Sur. This is an important snowy plover wintering area, with up to 65 birds each winter (Page *in litt.* 2004). A few nesting pairs (1–2) also occupy this unit each year (Stenzel *in litt.* 2004). This unit is capable of

supporting 20 breeding birds under proper management. It includes the following features essential to the species: wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). This unit is situated entirely on State-owned land. Human disturbance and habitat changes due to exotic vegetation are the primary threats to snowy plovers in this unit that may require special management.

CA 14, San Simeon Beach, 28 ac (11 ha)

CA 14, which is entirely within San Simeon State Beach, is located about 5 mi (8 km) south of San Simeon. It extends about 0.9 mi (1.5 km) north along the coast from a point opposite the intersection of Highway 1 and Moonstone Beach Drive to the northwestern corner of San Simeon State Beach. This is an important snowy plover wintering area, supporting 143 birds as documented by the most recent winter survey (Page *in litt.* 2004). The unit also supports a small number of nesting plovers: one nest hatched three chicks in 2002, and one nest was initiated but lost to predators in 2003 (Orr *in litt.* 2004). This unit includes the following features essential to the species: areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Human disturbance, pets, and dune stabilizing vegetation are the primary threats to snowy plovers in this unit that may require special management.

CA 15. Estero Bay Beaches

This unit includes three subunits in Estero Bay, California, San Luis Obispo County. The subunits include a pocket beach at the north end of the bay (15A), and the beaches north and south of Morro Rock (15B and 15C), in the vicinity of Morro Bay, California.

Subunit CA 15A, Villa Creek Beach, 17 ac (7 ha)

The Villa Creek subunit is about 3.5 mi (5.6 km) northwest of the city of Cayucos, and is managed by the California Department of Parks and Recreation. Villa Creek Beach is located near the northern boundary of the Estero Bluffs property. It extends 0.3 mi (0.5 km) northwest along the beach from an unnamed headland 1.4 mi (2.3 km) north of Point Cayucos to an unnamed headland northwest of Villa Creek, and inland (north) for 0.25 mi (0.4 km) along Villa Creek. This subunit is an important breeding area that supports between 21 and 38 adults during the breeding season, and up to 31 nests (Larson 2003a). This area is also an important wintering site that supports up to 30 wintering birds (George 2001). It includes the following features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Threats that may require special management include human disturbance, pets, horses, and predators.

Subunit CA 15B, Atascadero Beach, 144 ac (58 ha)

This subunit is located at Morro Strand State Beach near the city of Morro Bay, and is managed entirely by the California Department of Parks and Recreation. It extends about 2.1 mi (3.4 km) north along the beach from Morro Creek to an unnamed rocky outcrop opposite the end of Yerba Buena Street at the north end of Morro Bay. This is an important breeding area supporting up to 40 nests each year (Larson 2003b). CA 15B is also an important wintering area, with up to 152 wintering birds (Page *in litt.* 2004). This subunit is capable of supporting 40 breeding birds under proper management. It includes the following features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Human disturbance, pets, and predators are the primary threats to plovers in this subunit that may require special management.

Subunit CA 15C, Morro Bay Beach, 611 ac (247 ha)

This subunit is located at Morro Bay near Morro Rock. The majority of the beach is managed by the California Department of Parks and Recreation, while the northern tip of the sand spit is owned by the city of Morro Bay. It extends 6.9 mi (11.1 km) north along the beach from a rocky outcrop about 0.2 mi (0.3 km) north of Hazard Canyon to the northern tip of the sand spit. This is an important breeding area that supports more than 100 breeding adults (Page *in litt.* 2003). This is also an important wintering area that supports up to 148 wintering birds (Page *in litt.* 2004). This subunit is capable of supporting 110 breeding birds under proper management. It includes the following features essential to the species: wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Human disturbance, horses, pets, predators, and dune-stabilizing vegetation are the primary threats to plovers in this subunit that may require special management.

CA 16, Pismo Beach/ Nipomo Dunes, 1,269 ac (513 ha)

This unit consists of two larger areas connected by a narrow strip of land below the mean high water (MHW) line. The narrow strip is all that remains of that part of the unit after the exclusion of Guadalupe/Nipomo Dunes National Wildlife Refuge (see Exclusions section, below). The unit is located south of Grover City and Oceano and includes areas of Rancho Guadalupe County Park, managed by Santa Barbara County; and the Guadalupe Oil Field, the Oso Flaco Natural Area and Oceano Dunes Off-road Vehicular Recreation Area, managed by the California Department of Parks and Recreation. The unit extends about 12 mi (19 km) north along the beach from a point about 0.4 mi (0.6 km) north of Mussel Point to a point on the north side of Arroyo Grande Creek at the south end of Strand Way in Oceano. This is an important breeding area capable of supporting between 123 and 246 breeding adults and over 300 wintering birds (George 2001). This unit is capable of supporting 350 breeding birds under proper management. It includes the following features essential to the species: Wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). This unit includes approximately 769.7 ac (311.5 ha) of State and local land, and 498.9 ac (201.9 ha) of private land. CA State Parks and Santa Barbara County Parks are in the early stages of drafting separate HCPs for lands they manage within the unit. If completed by the time of the final critical habitat designation, these HCPs might provide a basis for further exclusions. Potential threats that may require special management include direct human disturbance, OHVs, horses, pets, and predators.

CA 17. Vandenberg

This unit is located on Vandenberg Air Force Base in Santa Barbara County, California. It includes two subunits.

Subunit CA 17A, Vandenberg North, 626 ac (253 ha)

This subunit is located on Vandenberg Air Force Base about 14 mi (22.5 km) southwest of the city of Santa Maria. It extends about 7.9 mi (12.7 km) north along the coast from a point along the beach 0.5 mi (0.8 km) south of Purisima Point to an unnamed creek or canyon 0.6 mi (1 km) south of Lion's Head, an area of rocky outcrops. This is an important breeding area that supports between 90 and 145 breeding adults (SRS 2003). This is also an important wintering area with up to 265 wintering birds (Page *in litt.* 2004). This subunit is capable of supporting 250 breeding birds under proper management. It includes the following features essential to the species: Wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). The subunit is entirely owned by the U.S. Air Force. Disturbance of nesting by humans and pets, military activities, predators, and the spread of dense vegetation are the primary threats to plovers in this subunit that may require special management.

Subunit CA 17B, Vandenberg South, 304 ac (123 ha)

This subunit is located on Vandenberg Air Force Base about 9 mi (14.5 km) west of the city of Lompoc, and is entirely on U.S. Air Force land. It extends about 4.6 mi (7.4 km) north along the coast from an unnamed rocky outcrop 0.2 mi (0.3 km) north of Cañada la Honda Creek to the first rock outcropping along the beach north of the Santa Ynez River (0.8 mi (0.3 km) north of the river). This is an important breeding area that supports between 10 and 97 breeding adults (SRS 2003). This is also an important wintering area with up to 233 wintering birds (Page *in litt.* 2004). This subunit is capable of supporting 150 breeding birds under proper management. It includes the following features essential to the species: Wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Human disturbance, military activities, pets, predators, and the spread of dense-growing vegetation are the primary threats to plovers in this subunit that may require special management.

CA 18, Devereaux Beach, 36 ac (15 ha)

This unit is situated entirely on State and local land at Coal Oil Point, about 7 mi (11.3 km) west along the coast from the city of Santa Barbara. It extends about 3.1 mi (1.9 km) north along the coast from the western boundary of Isla Vista County Park to a point along the beach opposite the end of Santa Barbara Shores Drive. In recent years, up to 18 breeding plovers have occupied this unit (Sandoval 2004). This unit is also an important wintering area; three hundred and sixty birds were found in the area in the most recent winter survey (Page *in litt.* 2004). The unit includes the following features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Disturbance by humans and pets is the primary threat to snowy plovers in this unit that may require special management.

CA 19. Oxnard Lowlands

This unit includes four subunits near the city of Oxnard in Ventura County, California. This is an important snowy plover breeding location for this region of the coast, as the next concentration of nesting snowy plovers to the south is located on Camp Pendleton Marine Corps Base about 100 mi (160 km) away.

Subunit CA 19A, Mandalay Beach to Santa Clara River, 350 ac (142 ha)

This subunit is located near the city of Oxnard. It extends about 6.1 mi (9.8 km) north along the coast from the north jetty of Channel Islands Harbor to a point about 0.5 mi (0.8 km) north of the Santa Clara River mouth. This is an important snowy plover nesting area, with 9 to 70 birds nesting each year and is also an important wintering area for the plover, with up to 33 birds each winter (Page *in litt.* 2004). This subunit is capable of supporting 64 breeding birds under proper management. It includes the following features essential to the species: Wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). This subunit includes approximately 104.5 ac (42.3 ha) of private land. The remaining 245.3 ac (99.3 ha) belongs to State or local agencies. Potential threats that may require special management include direct human disturbance, development, pets, and dune-stabilizing vegetation.

Subunit CA 19B, Ormond Beach, 203 ac (82 ha)

This subunit is locatedon State lands near the cities of Port Hueneme and Oxnard. It extends about 2.9 mi (4.7 km) northwest along the coast from Arnold Road and the boundary of the Navy Base Ventura County, Point Mugu (NBVC) to a point about 0.5 mi (0.8 km) east of the south jetty of Port Hueneme. This is an important snowy plover nesting area for this region of the coast, as the next concentration of nesting snowy plovers to the south (other than the adjacent subunit CA 19C) is located on Camp Pendleton Marine Corps Base about 100 mi (160 km). The number of birds nesting within this subunit has varied from about 20 to 34 per year (Stenzel *in litt.* 2004). CA 19B is also an important wintering area for the plover, with up to 123 birds each winter (Page *in litt.* 2004). This subunit is capable of supporting 50 breeding birds under proper management. It includes the following features essential to the species: Wind-blown sand dunes, areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). Although this subunit is contiguous with CA 19C to the southeast, we have divided the area into two subunits because the beaches within CA 19C are managed by the NBVC. Disturbance from humans and pets is the primary threat that may require special management for snowy plovers in this subunit.

Subunit CA 19C, Mugu Lagoon North, 321 ac (130 ha)

This subunit begins immediately adjacent to subunit CA 19B, at the northern coastal boundary of Navy Base Ventura County, Pt Mugu (NBVC), and extends about 3.3 mi (5.3 km) southeast. Surveys have generally provided information for the entire ''Mugu Lagoon Beach'' area, so plover population information provided here for CA 19C applies to CA 19D as well. The number of birds nesting in the area has varied from about 40 to 80 per year (Stenzel *in litt.* 2004). CA 19C and 19D are also important wintering areas for the plover, with up to 62 birds each winter (Page *in litt.* 2004). CA 19C and 19D are capable of supporting 110

breeding birds under proper management. They include the following features essential to the species: Areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for nesting and foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). CA 19C encompasses approximately 321 ac (130 ha), all of which are owned by the U.S. Air Force. CA 29C is located entirely within the boundaries of the NBVC. Important threats that may require special management include direct human disturbance, military activities, and predators.

Subunit CA 19D, Mugu Lagoon South, 87 ac (35 ha)

This subunit includes the southern spit of land marking the coastal boundary of Mugu Lagoon, and extends southeast along the coast for about 1.7 mi (2.7 km). It is almost entirely on Naval Base Ventura County, Pt Mugu (NBVC) property, except for 18.3 ac (7.4 ha) at its southern end, which extends into Pt Mugu State Park, owned by the California Department of Parks and Recreation. Because surveys have commonly treated CA 19C and 19D as a single unit, plover population information for both subunits is provided in the narrative for CA 19C above.

CA 20, Zuma Beach, 68 ac (28 ha)

This unit is located about 8 mi (3.2 km) west of the city of Malibu. It extends about 2.8 mi (4.5 km) north along the coast from the north side of Point Dume to the base of Trancas Canyon. This unit is an important wintering location for the plover, with 130 birds surveyed in January, 2004 (Page *in litt.* 2004). It includes the following essential features: areas of sandy beach above and below the high tide line with occasional surf-cast wrack supporting small invertebrates (for foraging) and generally barren to sparsely vegetated terrain (for foraging and predator avoidance). This unit encompasses approximately 60 ac (24.3 ha) of CA State Parks lands, and 8 ac (3.2 ha) of privately owned land. Direct human disturbance, development, horses, and pets are the primary threats to snowy plovers in this unit that may require special management.

CA 21, Santa Monica Bay

This unit includes four subunits in Santa Monica Bay, Los Angeles County, California.

Subunit CA 21A, Santa Monica Beach, 25 ac (10 ha)

This subunit is on the west coast of Los Angeles County, immediately west of the City of Santa Monica. It stretches roughly 0.9 miles (1.4 km) from Montana Avenue to the mouth of Santa Monica Canyon. This location includes the following essential habitat features: A wide sandy beach with occasional surf-cast wrack supporting small invertebrates. It supported a wintering flock of 32 plovers in 2004 (Page *in litt.* 2004), and annually supports a significant wintering flock of plovers in a location with high quality breeding habitat. The subunit consists of 25 ac (10 ha), of which 6 ac (2.4 ha) are owned by the CA State Parks, and 19 acres (7.7 ha) are private. The primary threats that may require special management in this subunit are disturbance from human recreational use, as well as beach raking, which removes the wrack line and reduces food resources.

Subunit CA 21B, Dockweiler North, 43 ac (17 ha)

This subunit is located immediately west of the Los Angeles International Airport, south of Ballona Creek and west of the El Segundo Dunes. It stretches roughly 0.5 miles (0.8 km) centered at Sandpiper Street. Essential habitat features (PCEs) in the subunit include a wide sandy beach with occasional surf-cast wrack supporting small invertebrates. This subunit, in conjuction with subunits 21C and 21D, annually supports a significant wintering flock of plovers in a location with high quality breeding habitat (Page *in litt.* 2004). It is entirely owned by the California Department of Parks and Recreation. The primary threats that may require special management are disturbance from human recreational use, as well as beach raking, which removes the wrack line and reduces food resources.

Subunit CA 21C, Dockweiler South, 24 ac (10 ha)

This subunit is located immediately west of the City of El Segundo and the Hyperion Wastewater Treatment Plant. It stretches roughly 0.7 miles (1.1 km) centered at Grand Avenue. This location includes the following essential habitat features: A wide sandy beach with occasional surf-cast wrack supporting small invertebrates. In conjuction with subunits 21B and 21D it annually supports a significant wintering flock of plovers in a location with high quality breeding habitat (Page *in litt.* 2004). This subunit consists of 24 acres (9.7 ha), of which 13 acres (5.3 ha) are owned by the California Department of Parks and Recreation, and 11 acres (4.5 ha) are privately owned. The primary threats that may require special management in this subunit are disturbance from human recreational use, as well as beach raking, which removes the wrack line and reduces food resources.

Subunit CA 21D, Hermosa State Beach, 10 ac (4 ha)

This subunit is located immediately west of the City of Hermosa Beach. This subunit stretches roughly 0.25 miles (0.4 km) from 2nd Street to 6th Street. This location includes a wide sandy beach with occasional surf-cast wrack supporting small invertebrates. This location contained a wintering flock of 33 plovers in 2004, and 43 in 2003 (Clark *in litt.* 2004; Page *in litt.* 2004). In conjunction with subunits 21B and 21C it annually supports a large and significant wintering flock of plovers. This subunit consists of 10 acres (4 ha), all of which are owned by the California Department of Parks and Recreation. The primary threats that may require special management in this subunit are disturbance from human recreational use, as well as beach raking, which removes the wrack line and reduces food resources.

CA 22, Bolsa Chica Area

This unit includes two subunits in the vicinity of the Bolsa Chica wetlands in Orange County, California. The first of these subunits includes essential habitat in the wetlands themselves, while the second comprises a small area of beach immediately adjacent.

Subunit CA 22A, Bolsa Chica Reserve, 591 ac (239 ha)

This subunit is located immediately west of the City of Huntington Beach and east of the Pacific Coast Highway. It contains the following essential habitat features: Tidally influenced estuarine mud flats supporting small invertebrates, and seasonally dry ponds that provide nesting and foraging habitat for snowy plovers. This location supported 31 breeding adult plovers in 2003, and 38 in 2002 (Page *in litt.* 2003). This subunit annually supports one of the largest breeding populations of snowy plovers in the region, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 50 breeding birds under proper management. This subunit consists of 591 acres (239.2 ha), all of which are privately owned. The primary threat that may require special management in this subunit is egg and chick predation. This site, an abandoned oil field, is

planned to undergo significant reconstruction and restoration, which should greatly increase the available breeding habitat for snowy plovers

Subunit CA 22B, Huntington State Beach, 4 ac (2 ha)

This subunit is located immediately west of the City of Huntington Beach and south of CA 22A. It stretches roughly 0.26 miles (0.4 km) from Seapoint Avenue north to the future lagoon mouth channel into Bolsa Chica Ecological Reserve. This location includes the following essential habitat features: a wide sandy beach with occasional surf-cast wrack supporting small invertebrates. The subunit contained a wintering flock of 11 plovers in 2004 (Page *in litt.* 2004), and annually supports a significant wintering flock of plovers in a location with high quality breeding habitat. This subunit consists of 12 ac (4.9 ha) owned by the California Department of Parks and Recreation and 1 ac (0.4 ha) that is privately owned. The primary threats that may require special management in this subunit are disturbance from human recreational use, as well as beach raking, which removes the wrack line and reduces food resources.

CA 23, Santa Ana River Mouth, 13 ac (5 ha)

This unit is on the west coast of Orange County, immediately west of the City of Huntington Beach. It includes the following essential habitat features: a wide sandy beach with surf-cast wrack supporting small invertebrates, and tidally influenced estuarine mud flats that provide nesting and foraging habitat for snowy plovers. This site contains a large breeding colony of California Least Terns and has also supported breeding snowy plovers. This unit is the only beach front location in Orange County that supports adult plovers through the breeding season (see Criterion 3 above). The entire unit is owned by the California Department of Parks and Recreation. The primary threat that may require special management in this unit is disturbance from human recreational use.

CA 24, San Onofre Beach, 58 ac (24 ha)

This unit is on the west coast of San Diego County, at the northwest corner of Marine Corps Base Camp Pendleton. This unit stretches roughly 1.4 miles (2.2 km) from the mouth of San Mateo Creek to the mouth of San Onofre Creek and includes the following essential habitat features: a wide sandy beach with occasional surf-cast wrack supporting small invertebrates. This location contained a wintering flock of 14 plovers in January, 2004, with 60 recorded in January, 2003 (Clark *in litt.* 2004, Page *in litt.* 2004). This unit annually supports a large and significant wintering flock of plovers (Page *in litt.* 2004) and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 15 breeding birds under proper management. The unit consists of 58 acres (23.5 ha), of which 46 ac (18.6 ha) are owned by the California Department of Parks and Recreation, 3 ac (1.2 ha) are owned by the Department of Defense, and 9 ac (3.6 ha) are privately owned. The primary threat that may require special management in this unit is disturbance from human recreational use.

CA 25 (A, B and C), Batiquitos Lagoon, 65 ac (26 ha)

This unit is on the west coast of San Diego County, between the cities of Carlsbad and Encinitas. This unit includes three subunits that make up the breeding islands created for nesting seabirds and shorebirds during restoration of the lagoon in 1996. Also included is a portion of South Carlsbad State Beach that supports a significant wintering population of plovers. This unit includes the following essential habitat features: sandy beaches and tidally influenced estuarine mud flats with tide-cast organic debris supporting small invertebrates. This location contained a wintering flock of 82 plovers in 2004 (Page *in litt.* 2004). Nineteen breeding adults were recorded during the 2003 window survey (Page *in litt.* 2003). This unit annually supports a large and significant wintering flock of plovers, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 70 breeding birds under proper management. This unit consists of a total of 65 acres (26 ha), of which 9 acres (4 ha) are owned by the California Department of Parks and Recreation, 21 acres (8 ha) are owned by the California Department of Fish and Game, and 35 acres (14 ha) are non-public. The primary threats that may require special management in this unit are egg and chick predation, as well as disturbance from human recreational use at South Carlsbad State Beach.

CA 26, Los Penasquitos, 24 ac (10 ha)

This unit is located in San Diego County, immediately south of the City of Del Mar. It includes a portion of Torrey Pines State Beach that supports a significant wintering population of plovers. Essential habitat features supported by the unit include a wide sandy beach with occasional surf-cast wrack supporting small invertebrates, as well as tidally influenced estuarine mud flats with tide-cast organic debris. This location contained a wintering flock of 21 plovers in 2004, and 39 in 2003 (Clark *in litt.* 2004, Page *in litt.* 2004). This unit annually supports a large and significant wintering flock of plovers, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting ten breeding birds under proper management. The unit consists of 24 acres (10 ha), all of which are owned by the California Department of Parks and Recreation. The primary threat that may require special management in this unit is disturbance from human recreational use.

CA 27, South San Diego Beaches

This unit includes six subunits in south San Diego County, California. Four of these subunits are on the Pacific coast, extending southwards from the mouth of San Diego Bay. The remaining two subunits (27D and 27E) are located in the San Diego Bay itself while a sixth subunit (27E) is in San Diego Bay itself.

Subunits CA 27A and CA 27B, North Island/Coronado, 185 ac (75 ha)

These two subunits are separated by a narrow stream outlet and will be considered together here. They are located immediately west of the City of Coronado. The two subunits stretch roughly 2.5 miles (4 km) from Zuniga Point to the south end of Coronado City Beach. They include the following essential habitat features: A wide sandy beach with occasional surf-cast wrack supporting small invertebrates, as well as wind-blown sand in dune systems immediately inland of the active beach face. This location contained a wintering flock of 37 plovers in January, 2004 (Page *in litt.* 2004). Biologists also recorded 17 breeding adults during the 2003 window survey (Page *in litt.* 2003). These subunits annually support a large and significant wintering flock of plovers, and contribute significantly to the conservation goal for the region by providing habitat capable of supporting 20 breeding birds under proper management. CA 27A consists of 117 ac (47 ha), while CA 27B is comprised of 68 ac (28 ha). Both subunits are entirely on land owned by the Department of Defense. The primary threats that may require special management in these subunits are disturbance from human recreational use and military activities, as well as beach raking, which removes the wrack line and reduces food resources.

Subunit CA 27C, Silver Strand, 174 ac (70 ha)

This subunit is located immediately south of the City of Coronado. It stretches roughly 3.5 miles (5.6 km) along the Pacific coast side of the Silver Strand, from the southern end of NAB Coronado to the south end of the Naval Radio Receiving Facility. The essential habitat features of this subunit include a wide sandy beach with occasional surf-cast wrack supporting small invertebrates, as well as wind-blown sand in dune systems immediately inland of the active beach face. In conjunction with excluded habitat on NAB Coronado (see Exclusions, below) this location contained wintering flocks totaling 56 plovers in 2004 (Page *in litt.* 2004). Fifty eight breeding adults were recorded during the 2003 window survey (Page *in litt.* 2003). This subunit annually supports a large and significant wintering flock of plovers (Page *in litt.* 2004), and will contribute significantly to the recovery goal for the region by supporting 65 breeding birds under proper management. The subunit consists of 174 ac (70 ha), of which 75 ac (30 ha) are owned by the U.S. Department of Defense (Navy), 96 ac (39 ha) are owned by the California Department of Parks and Recreation, and 3 ac (1 ha) are non-public land. The primary threat that may require special management in this unit is disturbance from human recreational use and military training, as well as egg and chick predation.

Subunit CA 27D, Delta Beach, 85 ac (35 ha)

This subunit is located immediately south of the City of Coronado on the west side of San Diego Bay. It includes the following essential habitat features: sandy beaches above and below mean high tide line and tidally influenced estuarine mud flats with tide-cast organic debris that provide nesting and foraging habitat for snowy plovers. This location contained a wintering flock of 32 plovers in 2004 (Page *in litt.* 2004). It annually supports a large and significant wintering flock of plovers, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 10 breeding birds under proper management. This subunit consists of 85.3 acres (34.5 ha), all of which are owned by the Department of Defense. The primary threat that may require special management in this subunit is egg and chick predation.

Subunit CA 27E, Sweetwater National Wildlife Refuge, 128 ac (52 ha)

This subunit is located immediately west of the City of Chula Vista on the east side of San Diego Bay. It includes the following essential habitat features: Sandy beaches above and below mean high tide line and tidally influenced estuarine mud flats that provide nesting and foraging habitat for snowy plovers. This location contained a wintering flock of 36 plovers in 2004 (Page *in litt.* 2004). It annually supports a large and significant wintering flock of plovers, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 20 breeding birds under proper management. This subunit consists of 128 ac (51.8 ha), of which 77 ac (31.2 ha) are owned by the U.S. Fish and Wildlife Service, and 51 ac (20.6 ha) are privately owned. The primary threat that may require special management in this subunit is egg and chick predation.

Subunit CA 27F, Tijuana River Beach, 182 ac (74 ha)

This subunit is located immediately south of the City of Imperial Beach. It stretches roughly 2.3 miles (3.7 km) from the end of Seacoast Drive to the U.S./Mexico border. This location includes the following essential habitat features: A wide sandy beach with occasional surf-cast wrack supporting small invertebrates, as well as tidally influenced estuarine mud flats with tide-cast organic debris supporting small invertebrates for foraging. This subunit contained wintering flocks totaling 93 plovers in 2004 (Page *in litt.* 2004). It also supported at least 12 breeding adults in 2003, as indicated by the 2003 window survey (Page *in litt.* 2003). This subunit annually supports a large and significant wintering flock of plovers, and contributes significantly to the conservation goal for the region by providing habitat capable of supporting 40 breeding birds under proper management. The subunit is 182.4 ac (73.8 ha), of which 76 acres (30.8 ha) are owned by the California Department of Parks and Recreation, 83 acres (34 ha) are owned by the U.S. Fish and Wildlife Service, 22 acres (8.9 ha) are non-public, and 1.4 acres (0.5 ha) are owned by the Department of Defense. The primary threats that may require special management in this unit are disturbance from human recreational use and predation of chicks and eggs.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence of'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal

conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide ''reasonable and prudent alternatives'' to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or a conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Pacific Coast WSP or its critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of Pacific Coast WSP is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat for the Pacific Coast WSP include, but are not limited to:

(1) Actions and management efforts affecting Pacific Coast WSP on Federal lands such as national seashores, parks, and wildlife reserves;

(2) Dredging and dredge spoil placement that permanently removes PCEs to the extent the essential biological function of plovers are affected for the foreseeable future;

(3) Construction and maintenance of roads, walkways, marinas, access points, bridges, culverts and other structures which interfere with plover nesting, breeding, or foraging or produce increases in predation;

(4) Stormwater and wastewater discharge from communities;

(5) Flood control actions that change the PCEs to the extent that the habitat no longer contributes to the conservation of the species.

It is important to note that while all lands proposed for designation as critical habitat are within the historical geographic area occupied by the species, and are likely to be used by the Pacific Coast WSP habitat whether for foraging, breeding, growth of juveniles, dispersal, migration or sheltering. Some of these lands are currently subject to activities identified as potentially adversely modifying the critical habitat. To the extent the activities currently take place on designated land, those activities do not adversely modify the habitat. We consider all lands included in this designation to be essential to the conservation of the species. Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section)

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

Generally, we consider a current plan to provide adequate management or protection if it is complete and provides a conservation benefit to the species and is reasonably certain of being implemented that those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the

management plan); and the plan provides a basis for the conservation strategies adopted and their effectiveness (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. No. 108–136) amended the Act to address the relationship of Integrated Natural Resources Management Plans (INRMPs) to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating 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 INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations we may use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering proposing to designate as critical habitat, as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A), and lands excluded pursuant to section 4(b)(2), include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species; (2) draft HCPs that cover the species and have undergone public review and comment; (3) Tribal conservation plans that cover the species; (4) State conservation plans that cover the species; and (5) National Wildlife Refuge System Comprehensive Conservation Plans. We note that additional areas may also be considered for exclusion in the final rule and that any exclusions made in the final rule will be the result of a consideration of new information received, including consideration of all comments received and the findings of the economic and NEPA analyses.

Exclusions

We have considered and excluded ten entire units and portions of two other units from this proposal, based on the three provisions of the Act discussed above.

Section 4(a)(3)

Under section 4(a)(3) of the Act (resource management plans on military land), we are excluding one entire unit, consisting of 534 ac (212 ha) of beach habitat on San Nicholas Island, in Ventura County, California. This area, corresponding roughly to location CA–100 in our Draft Recovery Plan, is owned by the U.S. Navy, and contains habitat capable of supporting 150 breeding plovers with proper management. We base the exclusion of this unit on a completed INRMP addressing plover management for the area which has received a concurring biological opinion from us during formal consultation under section 7 of the Act.

Section 3(5)(A) and Section 4(b)(2)

Under a combination of sections 3(5)(A) (special management) and 4(b)(2) (benefits comparison), we are excluding one entire unit in San Diego, California, as well as portions of two other units in Monterey and San Louis Obispo counties, California. The San Diego unit consists of 23 ac (9.3 ha) at the mouth of the San Diego Flood Control Channel, within area CA–126 in our Draft Recovery Plan (Service 2001). This area falls within the bounds of an approved subarea plan established under the San Diego Multiple Species Conservation Program (MSCP), a regional HCP encompassing more than 236,000 ha (582,000 ac) and involving the City and County of San Diego and numerous other local governments. The MSCP provides for the establishment of approximately 69,573 ha (171,000 ac) of preserve areas for 85 federally listed and sensitive species, including the Pacific Coast WSP. This regional HCP is also a regional subarea plan under the NCCP program and is being developed in cooperation with California Department of Fish and Game.

On the basis of the conservation benefits afforded the Pacific Coast WSP from the measures of the approved subarea plans of the MSCP and the provisions of section 4(b)(2) of the Act, we have excluded from proposed critical habitat those lands determined to be essential to the conservation of the Pacific Coast WSP that are within the boundaries of the approved subareas of the MSCP. We have further determined that the exclusion of these areas from critical habitat would not result in the extinction of the Pacific Coast WSP. The rationale for this determination is detailed below.

We are also excluding those portions of units CA 17 and CA 23 that fall within the Salinas River National Wildlife Refuge (NWR) and the Guadalupe-Nipomo Dunes NWR respectively. The Salinas River NWR has completed a Comprehensive Conservation Plan (CCP) that addresses plovers, while the Guadalupe-Nipomo Dunes NWR has completed a plover management plan. Both plans have undergone section 7 review, and provide a conservation benefit to the species. The amounts of land excluded are 142 ac (57.5 ha) at Salinas River NWR, and 234 ac (94.7 ha) at Guadalupe-Nipomo Dunes NWR.

The three essential habitat areas discussed above do not meet the definition of critical habitat under section 3(5)(A) of the Act because management plans already in place are adequate, and no special management will be required. We are simultaneously excluding them under section 4(b)(2) of the Act because, given the existence of approved management plans, the benefits of exclusion outweigh the benefits of inclusion.

(1) Benefits of Inclusion

The benefits of including areas in a critical habitat designation which are covered by approved HCPs, NCCP/HCPs, CCPs or species-specific NWR management plans are normally small. The principal benefit of any designated critical habitat area is that federally funded or authorized activities in such habitat, that may affect it, require consultation under section 7 of the Act. Such consultation would help ensure the provision of adequate protection to avoid adverse modification or destruction of the critical habitat. Where approved management plans are in place, our experience indicates that this benefit is small or non-existent. The section 7 consultation process for approved and permitted management plans helps assure that such plans are crafted to ensure the long-term survival and conservation of listed and covered species and the protection of their essential habitat within the plan area. Where we have approved such plans, areas located within plan boundaries that we ordinarily would designate as critical habitat for a listed species will

be protected through creation of habitat reserves or through other conservation methods. Such approved plans include habitat management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, NWR lands typically are already understood by the public to have a high conservation value, while the HCP or NCCP/HCP development process for non-Federal lands typically involves extensive public outreach and opportunity for public review, thereby accomplishing the same public education function as might critical habitat designation.

(2) Benefits of Exclusion

The benefits of excluding areas protected by HCPs, NCCP/HCPs, or other approved management plans include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. This benefit is particularly compelling because we have made the determination that once an HCP, NCCP/HCP, or other approved management plan is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Act. Many such management plans can take years to develop, but are considered worth the effort due in part to the streamlining of regulatory compliance that such plans can produce. The imposition of an additional regulatory layer of review after the completion of such plans may therefore jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to the development of such plans. By excluding areas protected by such management plans, we also afford greater regulatory certainty, and encourage the involvement and development of conservation partnerships with entities such as local governments, private conservation organizations, and private landowners.

Another benefit of excluding HCPs or NCCP/HCPs is that it would encourage the continued development of partnerships with HCP or NCCP/HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish. By excluding areas covered by HCPs or NCCP/HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In addition, an approved management plan must undergo consultation pursuant to section 7 of the Act. While this consultation will not include a formal evaluation of the plan's potential to adversely modify critical habitat unless critical habitat has already been designated within the proposed plan area, it will carefully analyze the effects of the plan on essential habitat areas as part of its jeopardy analysis under section 7 of the Act and (for HCPs or NCCP/HCPs) as part of its evaluation of the adequacy of the plan under section 10 of the Act. Because virtually all such plans are developed to minimize and mitigate the impacts of take (as defined in the Act) of covered species resulting from habitat loss within the plan area, a fundamental goal of these plans is to identify and protect habitat essential to the covered species while directing development to non-habitat or lower-quality habitat areas. Thus, the plan's effectiveness in protecting essential habitat within the plan boundaries will have been thoroughly addressed in the management plan itself, and consulted upon. Future Federal actions that may affect listed species would continue to require consultation under section 7 of the Act.

Further, HCPs typically provide for greater conservation benefits to a covered species than consultations pursuant to section 7 of the Act because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by consultations under section 7 of the Act that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP or NCCP/HCP provides. The development and implementation of an HCP or NCCP/HCP provides other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

In general, we find that the benefits of critical habitat designation for the Pacific Coast WSP on lands covered by the approved HCP that protects this population, or on NWR lands with approved CCPs or plover management plans, are small while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouraging the pursuit of additional conservation partnerships, we are excluding lands within approved sub-areas of the San Diego MSCP, and within the Salinas River and Guadalupe-Nipomo Dunes NWRs, from proposed critical habitat for the Pacific Coast WSP.

We find that the above-mentioned management plans adequately protect essential Pacific Coast WSP habitat within their boundaries and provide appropriate management to maintain and enhance the long-term value of such habitat. The education benefits of critical habitat designation have been achieved through the public outreach and notice and comment procedures required prior to approval of these plans. For these reasons, we find that designation of critical habitat has little benefit in areas covered by these plans, and that such benefits are outweighed by the benefits of maintaining proactive partnerships with plan participants and encouraging additional conservation partnerships that will result from exclusion of essential habitat in these plan areas. We also find that the exclusion of these lands from proposed critical habitat will not result in the extinction of the Pacific Coast WSP, nor hinder its recovery because these plans have already been evaluated under section 7 of the Act to ensure that their implementation will not jeopardize the continued existence of the Pacific Coast WSP.

Exclusions Under Section 4(b)(2) Alone

(A) Exclusions of Military Lands

We are also excluding under section 4(b)(2) three units on military lands based on letters we have received from the base commanders establishing that the areas are used for military training. All of these bases are in San Diego County, California. Two of the excluded units, 79 ac (32 ha) and 428 ac (173 ha) in size respectively, are on Marine Corps Base Camp Pendleton (MCBCP)

(roughly corresponding to areas CA–114 and 115 in the Draft Recovery Plan) (Service 2001), while the third (219 ac, 88.6 ha) is on Naval Amphibious Base Coronado (NABC) (CA–128 in the Draft Recovery Plan). Based on the following analysis, we find that after taking into account the impact on national security, the benefit of excluding these units outweighs the benefit of including them.

(1) Benefits of Inclusion

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us pursuant to section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The Marine Corps routinely consults with us for activities on MCBCP that may affect federally listed species to ensure that the continued existence of such species are not jeopardized. The Navy does the same for activities on NABC.

Designation of critical habitat may also provide educational benefits by informing land managers of areas essential to the conservation of the Pacific Coast WSP. In this case such educational value would be minimal, since the areas of essential habitat correspond closely to areas identified as important in the Draft Recovery Plan (CA–114, CA–115, and CA–128 Service 2001). Additionally, NABC was designated as critical habitat for the Pacific Coast WSP in our original designation (Service 1999).

(2) Benefits of Exclusion

The Marine Corps Base, Camp Pendleton is an amphibious training base that promotes combat readiness for military forces and is the only Marine Corps facility on the West Coast where amphibious operations can be combined with air, sea, and ground assault training activities year-round. The Naval Amphibious Base Coronado and its adjacent beaches provide training for Navy SEALs, amphibious insertion and other small units. It is one of only two amphibious training bases in the United States.

Designation of critical habitat in mission-essential training areas at either base would trigger a requirement for the Marine Corps or Navy to consult on activities that may affect designated critical habitat and to reinitiate consultation on activities for which a consultation may have already been completed that assessed the effects to a federally listed species. The requirement to undertake additional consultations or revisit already completed consultations specifically to address the effects of activities on designated critical habitat could delay or impair the ability of the Marine Corps or Navy to train marines and SEALs for combat in support of continuous, global deployment to the western Pacific and southwest Asia (Department of the Navy; 2003 letter).

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the impact to national security and the need of the Navy and Marine Corps to maintain a high level of military readiness and combat capability, we determine that the benefits of excluding mission-essential training areas from proposed critical habitat for the Pacific Coast WSP outweigh the benefits of including them in such designation. We, in conducting this analysis pursuant to section 4(b)(2) of the Act, determined that the exclusion of these lands from critical habitat will not result in the extinction of the Pacific Coast WSP. Although these lands are not included in designated critical habitat, the Marine Corps and Navy will still be required to consult with us on activities that may affect the Pacific Coast WSP, to ensure such activities do not jeopardize the continued existence of the species. Based on our analysis above, we are excluding these lands from proposed critical habitat for the plover pursuant to section 4(b)(2) of the Act based on the potential impacts on national security.

(B) San Francisco Bay Exclusions

We are also excluding under section 4(b)(2) of the Act six units bordering the south San Francisco Bay and totaling 1,847 ac (747.4 ha). Plover habitat in this region consists primarily of artificial salt ponds and associated levees, much of which has recently come under the management of various Local, State and Federal agencies including ourselves and the California Department of Fish and Game. The agencies are developing a management and restoration plan for the salt ponds that will take into account the conflicting habitat needs of at least four threatened or endangered species (Pacific Coast WSPs, clapper rails, salt marsh harvest mice, and least terns), as well as millions of migrating waterfowl and shorebirds that use the areas yearly. The plan is expected to be completed in 2007. (Margaret Kolar, U.S. Fish and Wildlife Service, *in litt.,* May 4, 2004).

(1) Benefits of Inclusion

By including the six San Francisco Bay units in our proposed and final critical habitat designations, we could provide those areas with critical habitat protection by October, 2005, rather than waiting for the salt pond management plan to be completed in 2007. However, as discussed in the analyses for other excluded units above, the protections provided by critical habitat designation largely overlap protections already provided under section 7 of the Act. Three of the excluded units are on the Don Edwards San Francisco Bay National Wildlife Refuge, which is managed by the Service. Any significant changes to salt pond operations within those units would trigger consultation under section 7, as will the completion of the salt pond management plan itself. Two of the units are on land managed by the California Department of Fish and Game (CDFG), while the final and smallest unit is on land managed by a county governmental agency called the Hayward Area Recreation District (HARD). Both of these agencies are participating in development of the management plan, and neither would be directly affected by critical habitat designation since they are not federal agencies. Service participation in development of the management plan, and the consequent necessity to review the plan under section 7 when a draft has been completed, actually afford the Service greater opportunity to influence management of the state and locally owned units than would designating them as critical habitat.

(2) Benefits of Exclusion

By excluding the units from critical habitat designation we avoid interfering with the development of the salt pond management plan, which might otherwise establish habitat managed for plovers in other locations. The six excluded San Francisco Bay units were chosen based on recent high usage of those areas by plovers, but the plovers have demonstrated a willingness to travel relatively large distances within the Bay area to nest wherever habitat is most appropriate (Kolar *in litt.* 2004). Since plover habitat in the area can easily be created or removed in different areas by drying or flooding particular ponds, the management planners currently have the flexibility to move plover habitat to wherever it would be most advantageous in light of the conservation needs of the population and of other threatened and endangered species present in the Bay area. By designating critical habitat according to the current locations of essential habitat,

we would tend to lock the current management scheme into place for the designated units.

Additionally, the management planning process is a collaborative effort involving cooperation and input from numerous stakeholders such as landowners, public land managers, and the general public. This allows the best information and local knowledge to be brought to the table, and may encourage a sense of commitment to the plover's continuing well-being. Due to time constraints, we are unable to match this level of public participation in the critical habitat designation process. Finally, the enhancement and management of plover habitat will benefit greatly from coordination between the various owners and managers in the area. The ongoing planning process can provide for that coordination, whereas the critical habitat designation process cannot.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the plover will obtain greater benefits if we avoid designating habitat in the San Francisco Bay and instead allow participating agencies to complete their salt pond management plan unencumbered by critical habitat considerations. While the salt pond management plan offers considerable benefits in comparison to critical habitat, we must also consider the likelihood that the plan will be completed. In this case we find the likelihood to be high because the major participants are all resource management agencies, and because the management plan is related to the recent purchase by us and CDFG of 16,500 ac (6,677 ha) of salt ponds from a salt manufacturing company. This purchase involved the close cooperation of numerous resource management and environmental organizations, and had the strong support and active participation of U.S. Senator Diane Feinstein of California (Feinstein *in litt.* 2002). Accordingly, we are excluding six units in the south San Francisco Bay from designation. For the same reasons discussed above, and also because the south San Francisco Bay is a relatively small portion of the overall range of the population, we also find that such exclusion will not be likely to result in the population's extinction.

Areas Which May Be Excluded From Final Critical Habitat Designation

Parts of the proposed critical habitat Unit CA 23 (Pismo Beach/Nipomo) in San Luis Obispo County, and all the proposed units in Oregon are located within the potential planning areas of three HCPs which are currently in their planning and development stages. We may exclude some or all of those units in our final designation if the HCPs have undergone public review and provide sufficient assurances of conservation implementation and effectiveness at the time of our final designation. Other units which may be excluded from the final designation following further management planning or consultation include CA 24 and CA 25 (Vandenberg North and South) in Santa Barbara County, California, which are owned by the U.S. Air Force. Vandenberg Air Force Base has been managing plovers according to annual management plans, but presently does not have a long-term plover management plan or INRMP that has undergone formal section 7 consultation with us.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic impact, 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.

An analysis of the economic impacts of proposing critical habitat for the Pacific Coast WSP habitat is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**, and we will invite them to comment during the public comment period on the assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

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

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or adversely affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not

formally reviewed this rule. We are preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The 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.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Pacific Coast WSP habitat is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, etc. within the boundaries of proposed critical habitat. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

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.*), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority, ''if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) Due to current public knowledge of the species' protection, the prohibition against take of the species

both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. Due to current public knowledge of the species' protections, the prohibition against take of the species both within and outside of the proposed areas we do not anticipate that property values will be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California, Oregon and Washington. The designation of critical habitat in areas currently occupied by the Pacific Coast WSP habitat 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 in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified.

While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We 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 designated areas to assist the public in understanding the habitat needs of the Pacific Coast WSP habitat.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the 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).] This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are not tribal lands located in areas determined essential for the conservation of the Pacific Coast WSP habitat.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Sacramento Fish and Wildlife Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping 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 § 17.95(b), revise the entry for ''*Charadrius alexandrinus nivosus*'' under ''BIRDS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Western Snowy Plover (*Charadrius alexandrinus nivosus*)—Pacific coast population

(1) Critical habitat units are depicted on the maps below for the following States and counties:

Washington: Grays Harbor and Pacific counties;

Oregon: Clatsop, Coos, Curry, Douglas, Lane, Lincoln, and Tillamook, counties;

California: Del Norte, Humboldt, Los Angeles, Marin, Mendocino, Monterey, Orange, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Sonoma, and Ventura counties.

(2) The primary constituent elements of critical habitat for the Pacific Coast WSP are the habitat components that provide:

(i) Sparsely vegetated areas above daily high tides (such as sandy beaches, dune systems immediately inland of an active beach face, salt flats, seasonally exposed gravel bars, dredge spoil sites,

artificial salt ponds and adjoining levees) that are relatively undisturbed by the presence of humans, pets, vehicles or human-attracted predators (essential for reproduction, food, shelter from predators, protection from disturbance, and space for growth and normal behavior).

(ii) Sparsely vegetated sandy beach, mud flats, gravel bars or artificial salt ponds subject to daily tidal inundation but not currently under water, that support small invertebrates (essential for food).

(iii) Surf or tide-cast organic debris such as seaweed or driftwood (essential to support small invertebrates for food, and to provide shelter from predators and weather for reproduction).

(3) Critical habitat does not include existing features and structures, such as buildings, paved areas, boat ramps, and other developed areas not containing one or more of the primary constituent elements. Any such structures that were inside the boundaries of a critical habitat unit at the time it was designated are not critical habitat. The land on which such structures directly sit is also not critical habitat, so long as the structures remain in place.

(4) Critical Habitat Map Units—Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercatur, North American Datum 1927 (UTM NAD 27) coordinates. These coordinates establish the vertices and endpoints of the landward bounds of the units. Other bounds are established descriptively according to compass headings and the position of the mean low waterline (MLW). For purposes of estimating unit sizes, we approximated MLW in California using the most recent GIS projection of mean high water (MHW). We chose MHW both because it is the only approximation of the coastline currently available in GIS format. We were unable to obtain recent GIS maps of MHW or MLW for Oregon and Washington; therefore, we approximated MLW for units in those States based on aerial photographs.

(5) **Note:** Maps M1–M4 (index maps) follow:

BILLING CODE 4310–55–P

Figure M-1. Western Snowy Plover Proposed Critical Habitat, Washington.

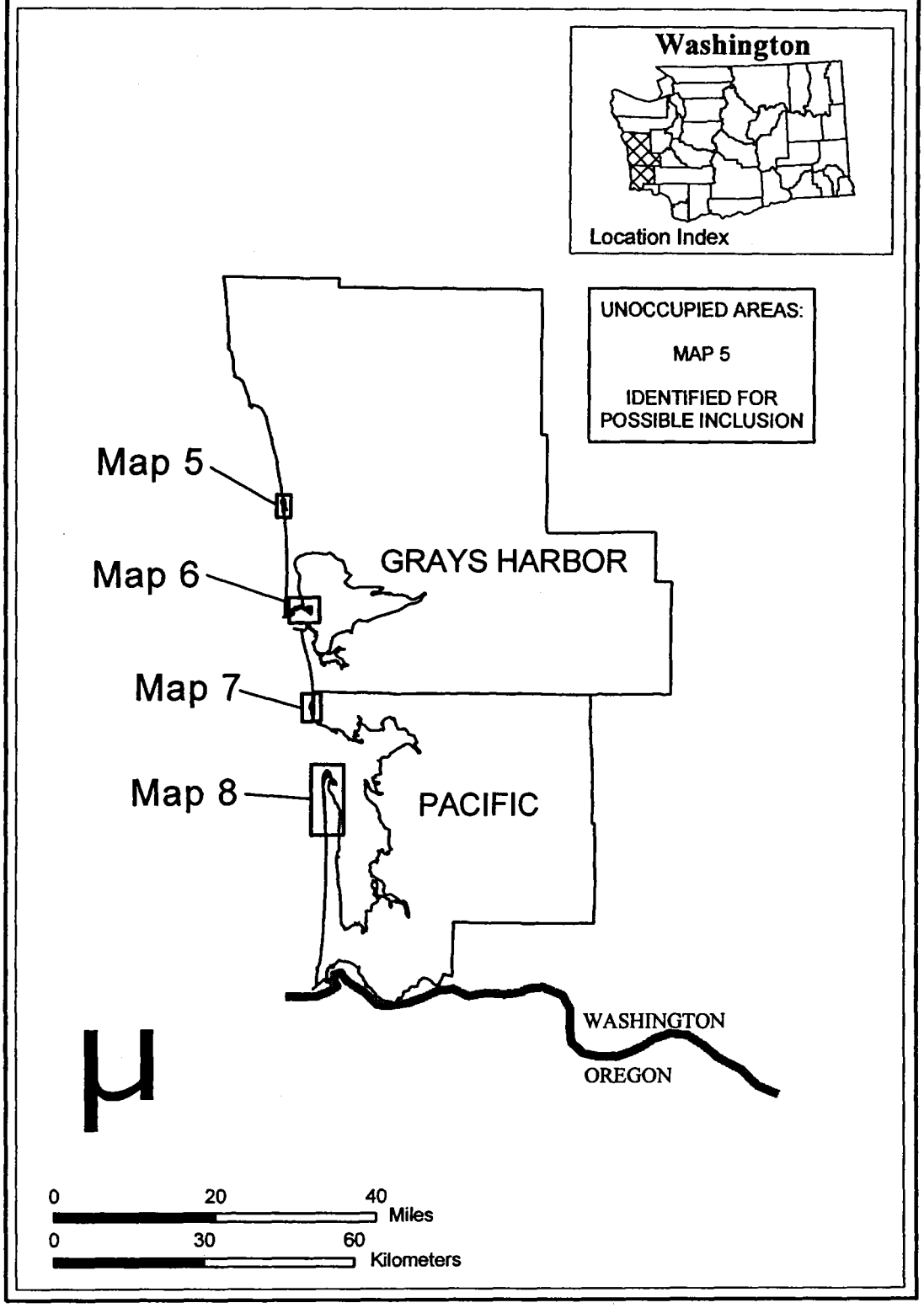


Figure M-2. Western Snowy Plover Proposed Critical Habitat, Oregon.

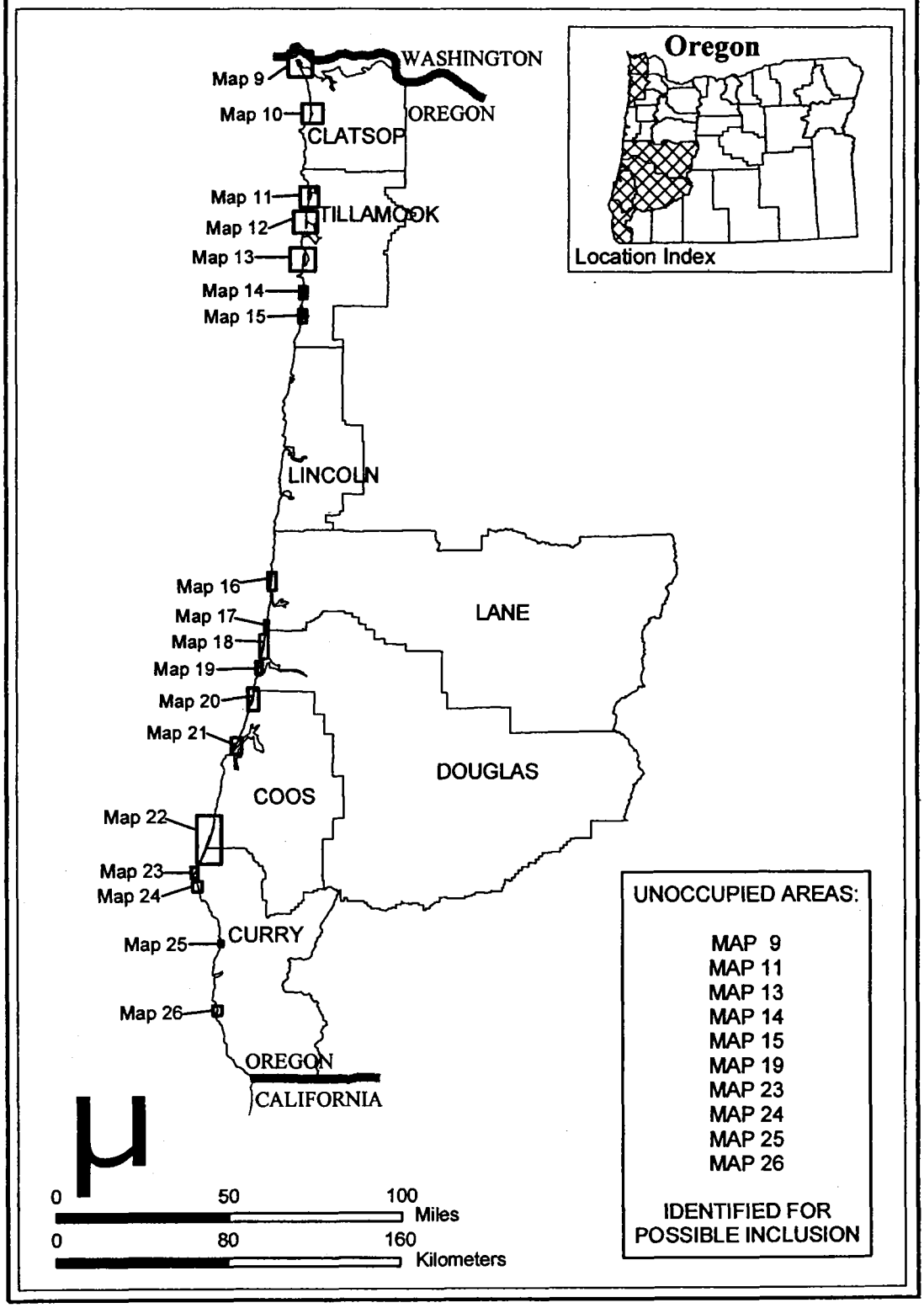


Figure M-3. Western Snowy Plover Proposed Critical Habitat, Northern California.

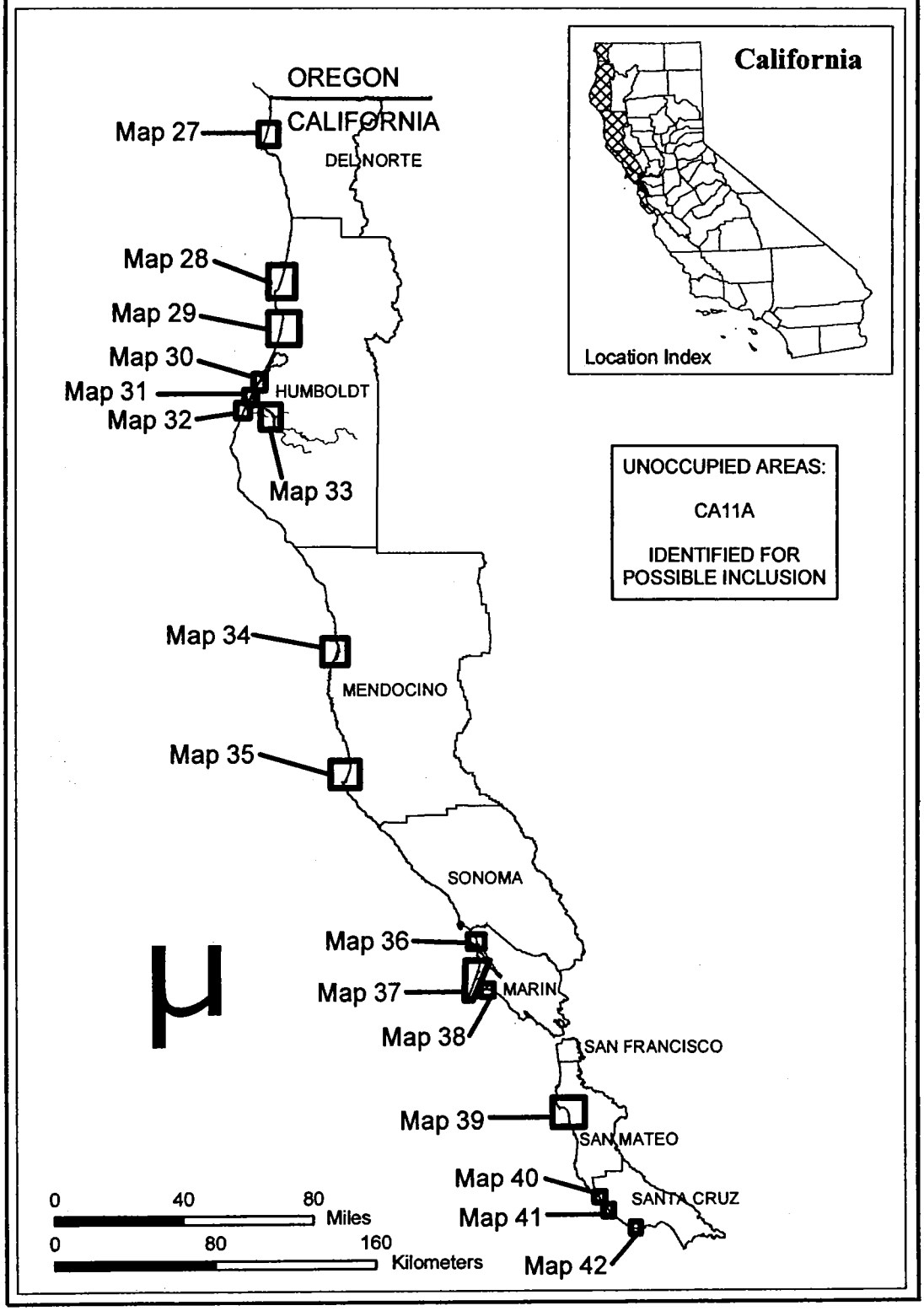
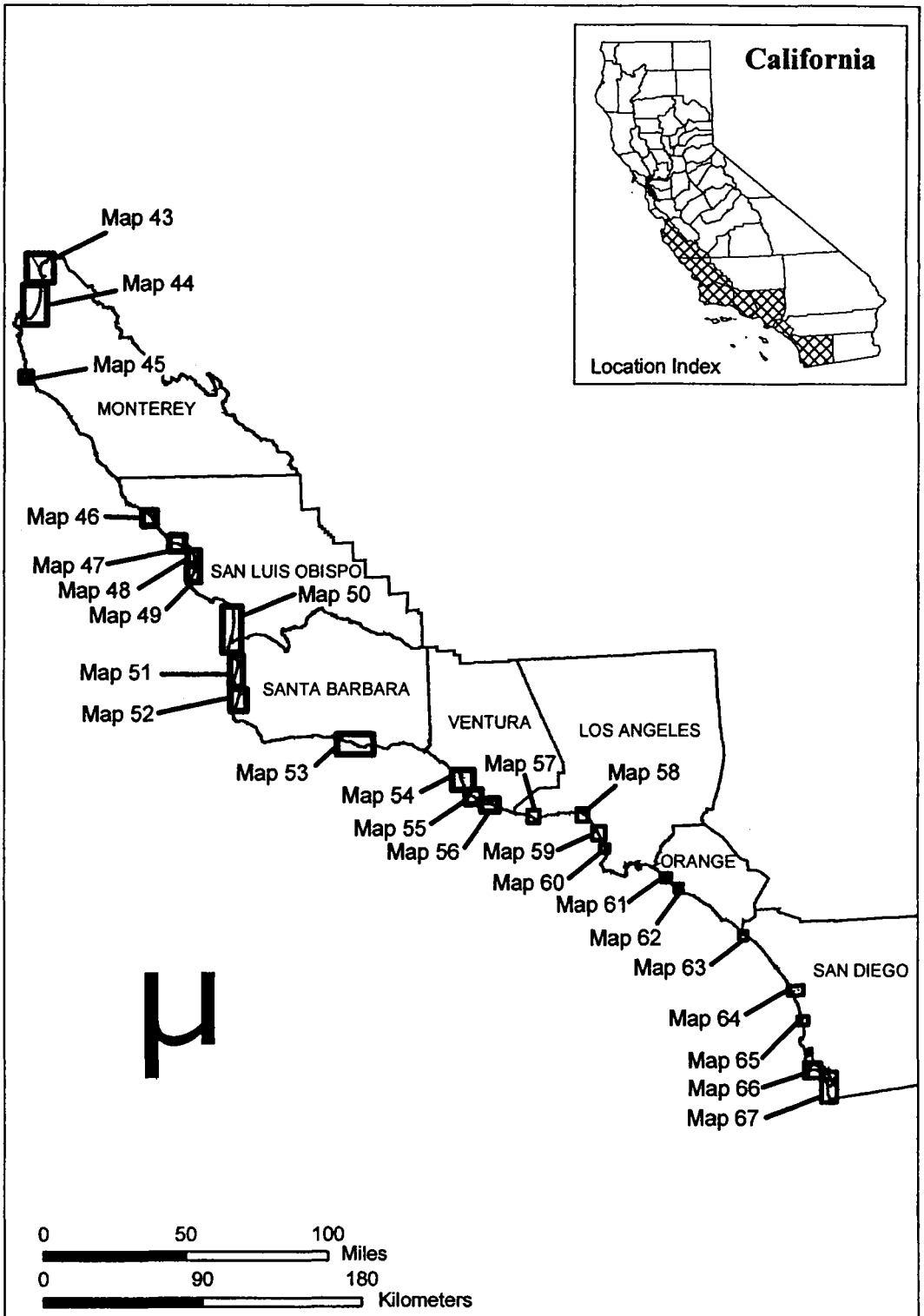


Figure M-4. Western Snowy Plover Proposed Critical Habitat, Southern California.

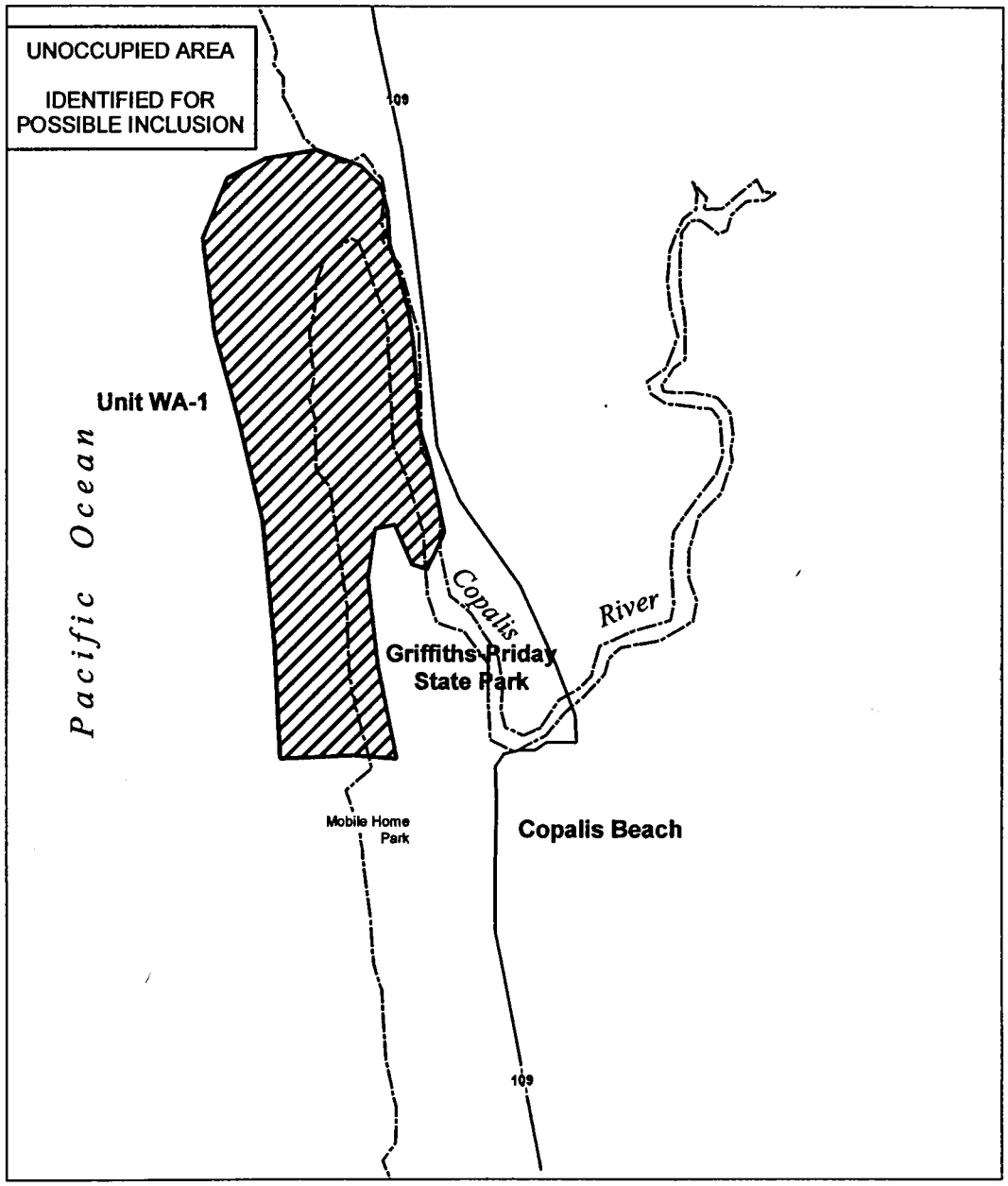


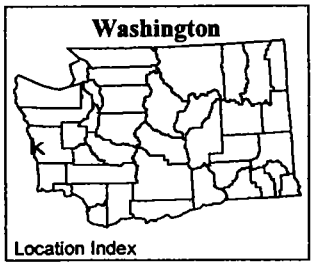
(6) Unit WA–1, Gray's Harbor County, Washington.

(i) From USGS 1:24,000 quadrangle map Copalis Beach, Washington, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 409895, 5219820; 409792, 5220191; 409737, 5220607; 409846, 5220869; 410019, 5220958; 410246, 5220997; 410440, 5220925; 410529, 5220839; 410558, 5220730; 410568, 5220582; 410613, 5220443; 410652, 5220285; 410672, 5220152; 410692, 5219934; 410702, 5219781; 410746, 5219637; 410781, 5219464; 410815, 5219316; 410737, 5219152; 410668, 5219174; 410592, 5219348; 410504, 5219330; 410475, 5219112; 410519, 5218732; 410603, 5218317; 410415, 5218331; 410083, 5218317; 410059, 5218816; 410004, 5219365; returning to 409895, 5219820.

(ii) **Note:** Unit WA 1 (Map M5) follows:

Map 5. Copalis Spit (WA-1) Grays Harbor County, Washington.





Legend

Western Snowy Plover Proposed Critical Habitat Unit

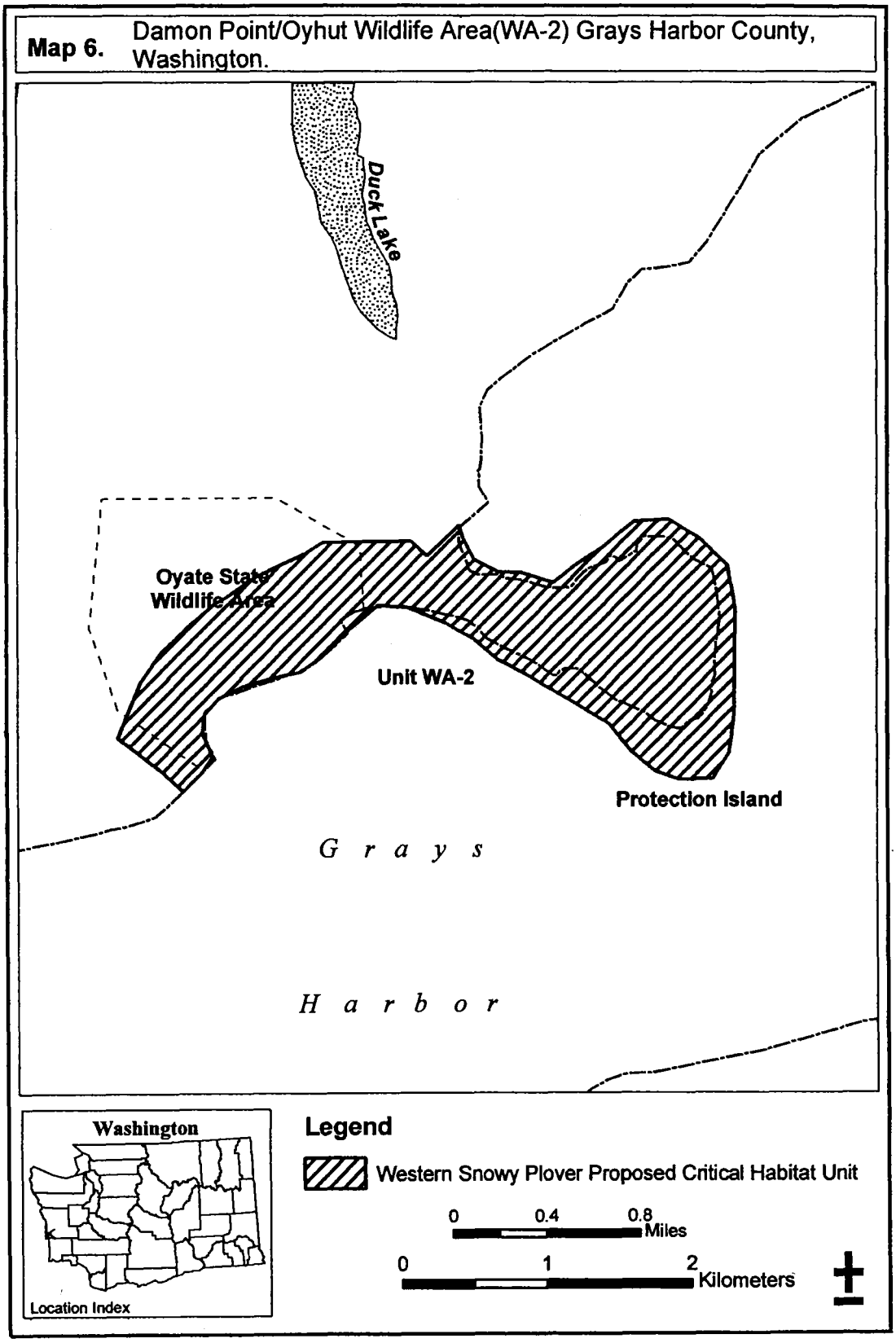
0.5 0 0.5 Miles

1 0 1 Kilometers

(7) Unit WA–2, Gray's Harbor County, Washington.

(i) From USGS 1:24,000 quadrangle maps West Port, and Point Brown, Washington, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 411969, 5198743; 412118, 5198955; 412321, 5199143; 412474, 5199276; 412581, 5199342; 412760, 5199464; 412914, 5199534; 413095, 5199617; 413220, 5199696; 413634, 5199705; 413834, 5199702; 413941, 5199606; 414011, 5199668; 414163, 5199815; 414189, 5199727; 414265, 5199581; 414434, 5199496; 414600, 5199488; 414816, 5199423; 414960, 5199536; 415149, 5199660; 415368, 5199839; 415604, 5199856; 415808, 5199733; 416012, 5199539; 416064, 5199233; 416059, 5198892; 416059, 5198535; 416020, 5198256; 415914, 5198083; 415679, 5198078; 415512, 5198134; 415356, 5198262; 415200, 5198457; 414976, 5198591; 414791, 5198696; 414626, 5198794; 414430, 5198897; 414260, 5199040; 414064, 5199151; 413809, 5199254; 413603, 5199268; 413412, 5199107; 413205, 5198905; 413067, 5198813; 412875, 5198772; 412670, 5198713; 412504, 5198634; 412411, 5198529; 412393, 5198396; 412460, 5198236; 412387, 5198123; 412260, 5197998; 412114, 5198138; 411995, 5198227; 411816, 5198366; returning to 411969, 5198743.

(ii) **Note:** Unit WA 2 (Map M6) follows:

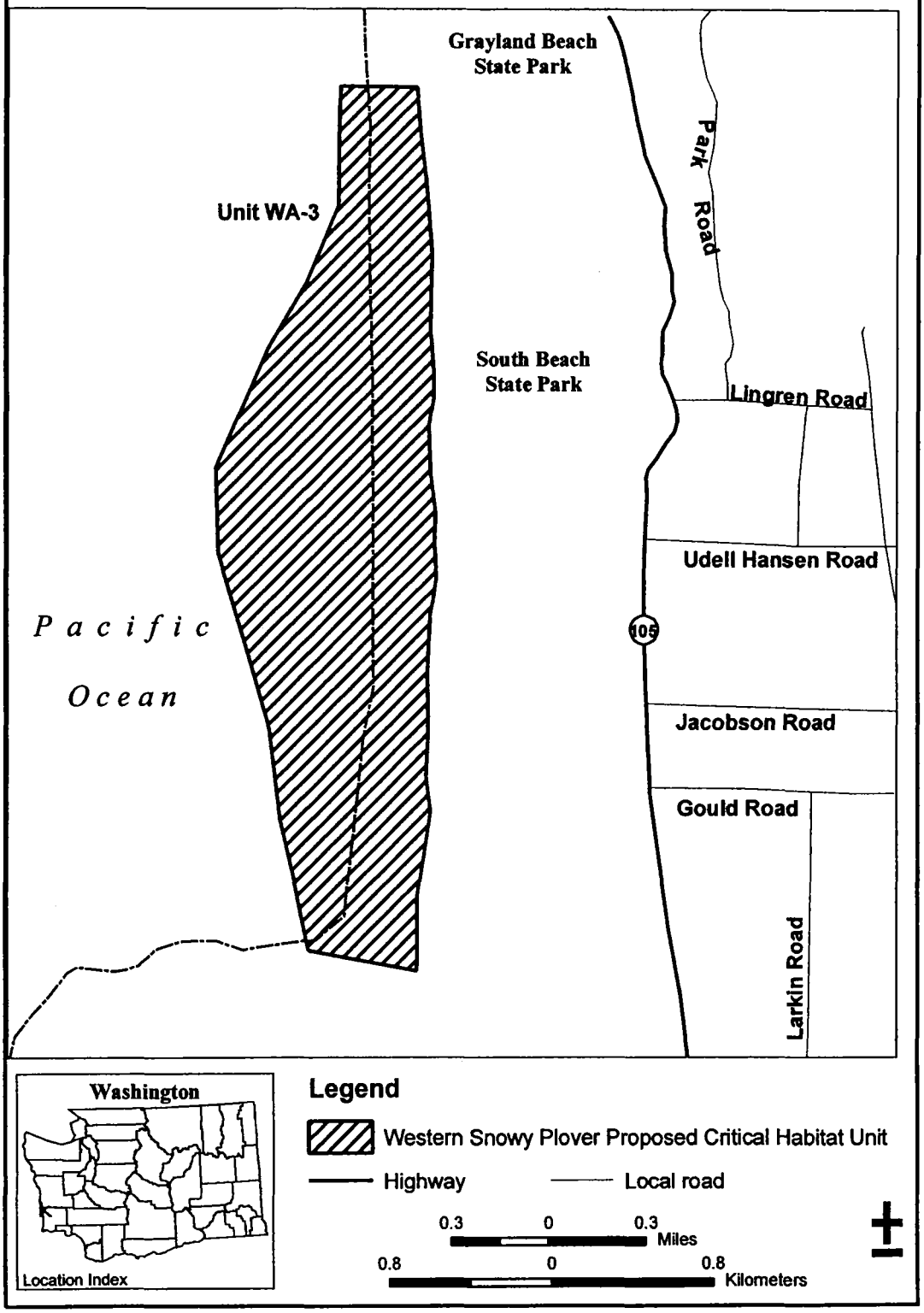

Map 6. Damon Point/Oyhut Wildlife Area(WA-2) Grays Harbor County, Washington.
Duck Lake
Oyate State Wildlife Area
Unit WA-2
Protection Island
G r a y s
H a r b o r
Washington
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
0 0.4 0.8 Miles
0 1 2 Kilometers

(8) Unit WA–3, Pacific County, Washington.

(i) From USGS 1:24,000 quadrangle maps Grayland, and North Cove, Washington, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 416476, 5177381; 415946, 5177482; 415875, 5177830; 415806, 5178119; 415755, 5178555; 415630, 5178985; 415500, 5179419; 415492, 5179835; 415746, 5180411; 415933, 5180734; 416091, 5181113; 416093, 5181429; 416098, 5181688; 416474, 5181685; 416492, 5181483; 416521, 5181242; 416550, 5180859; 416543, 5180507; 416559, 5180293; 416559, 5180171; 416537, 5180035; 416541, 5179894; 416545, 5179798; 416570, 5179614; 416563, 5179469; 416574, 5179293; 416561, 5179199; 416543, 5179101; 416528, 5178820; 416534, 5178526; 416523, 5178330; 416545, 5178157; 416516, 5177956; 416481, 5177740; 416481, 5177511; returning to 416476, 5177381.

(ii) **Note:** Unit WA 3 (Map M7) follows:

Map 7. Midway Beach (WA-3) Pacific County, Washington.

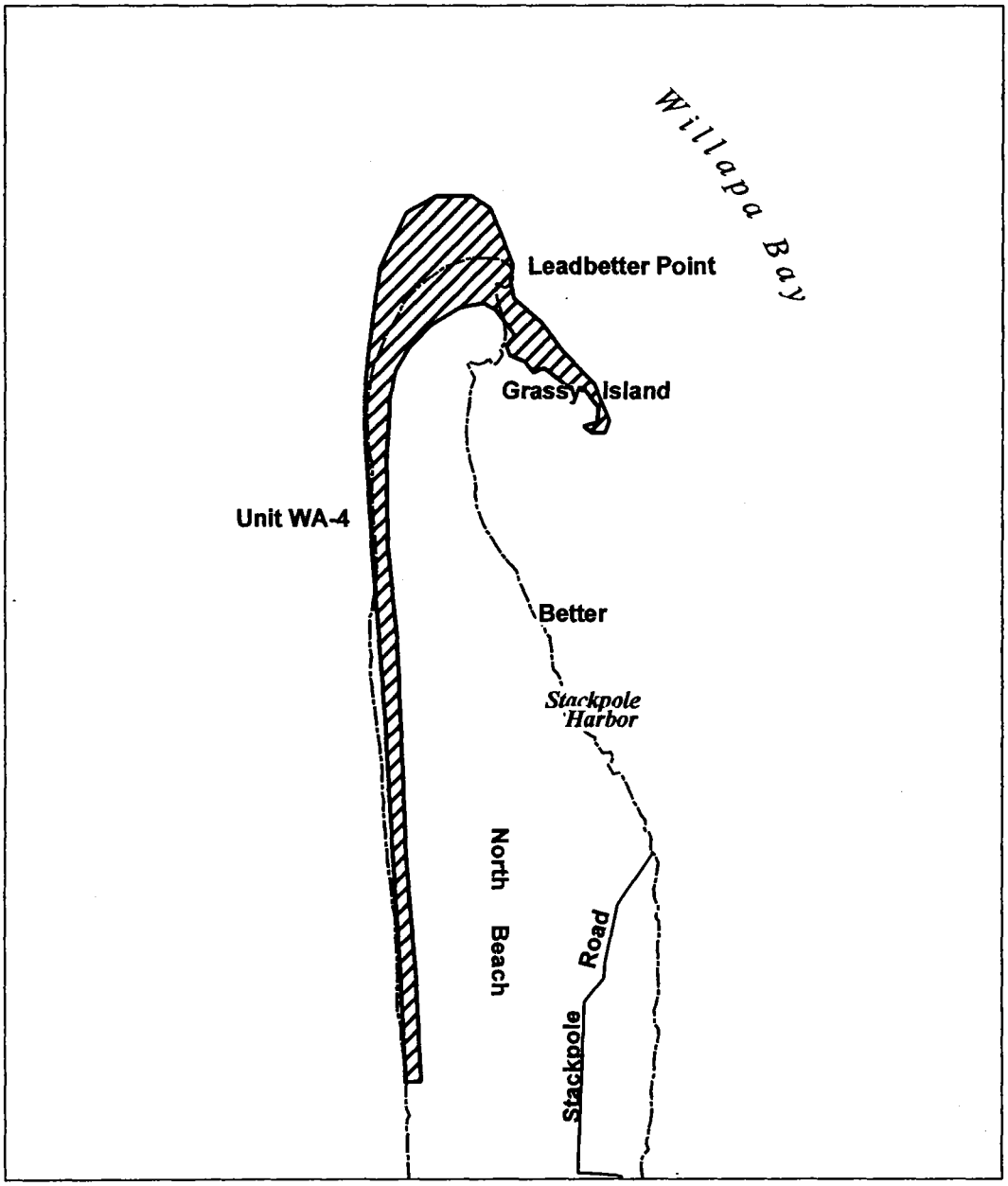


(9) Unit WA–4, Pacific County, Washington.

(i) From USGS 1:24,000 quadrangle maps North Cove, and Oysterville, Washington, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 418747, 5156518; 418673, 5156518; 418673, 5156666; 418617, 5157830; 418525, 5159271; 418433, 5160860; 418285, 5162689; 418193, 5164185; 418201, 5164730; 418262, 5165289; 418377, 5166088; 418684, 5166723; 419029, 5166925; 419464, 5166919; 419684, 5166777; 419815, 5166467; 419951, 5166110; 419928, 5165908; 419966, 5165719; 420273, 5165450; 420539, 5165109; 420908, 5164721; 421093, 5164278; 421040, 5164147; 420879, 5164141; 420790, 5164219; 420951, 5164266; 420964, 5164444; 420797, 5164647; 420665, 5164635; 420317, 5164906; 420188, 5164850; 420088, 5164980; 419916, 5165052; 419874, 5165165; 419975, 5165284; 419744, 5165589; 419600, 5165670; 419319, 5165608; 418994, 5165420; 418728, 5165146; 418559, 5164873; 418488, 5164536; 418451, 5163797; 418470, 5162818; 418577, 5161684; 418631, 5160435; 418690, 5159126; 418802, 5157775; 418863, 5156521; returning to 418747, 5156518.

(ii) **Note:** Unit WA 4 (Map M8) follows:

Map 8. Leadbetter Point/Gunpowder Sands (WA-4) Pacific County, Washington.

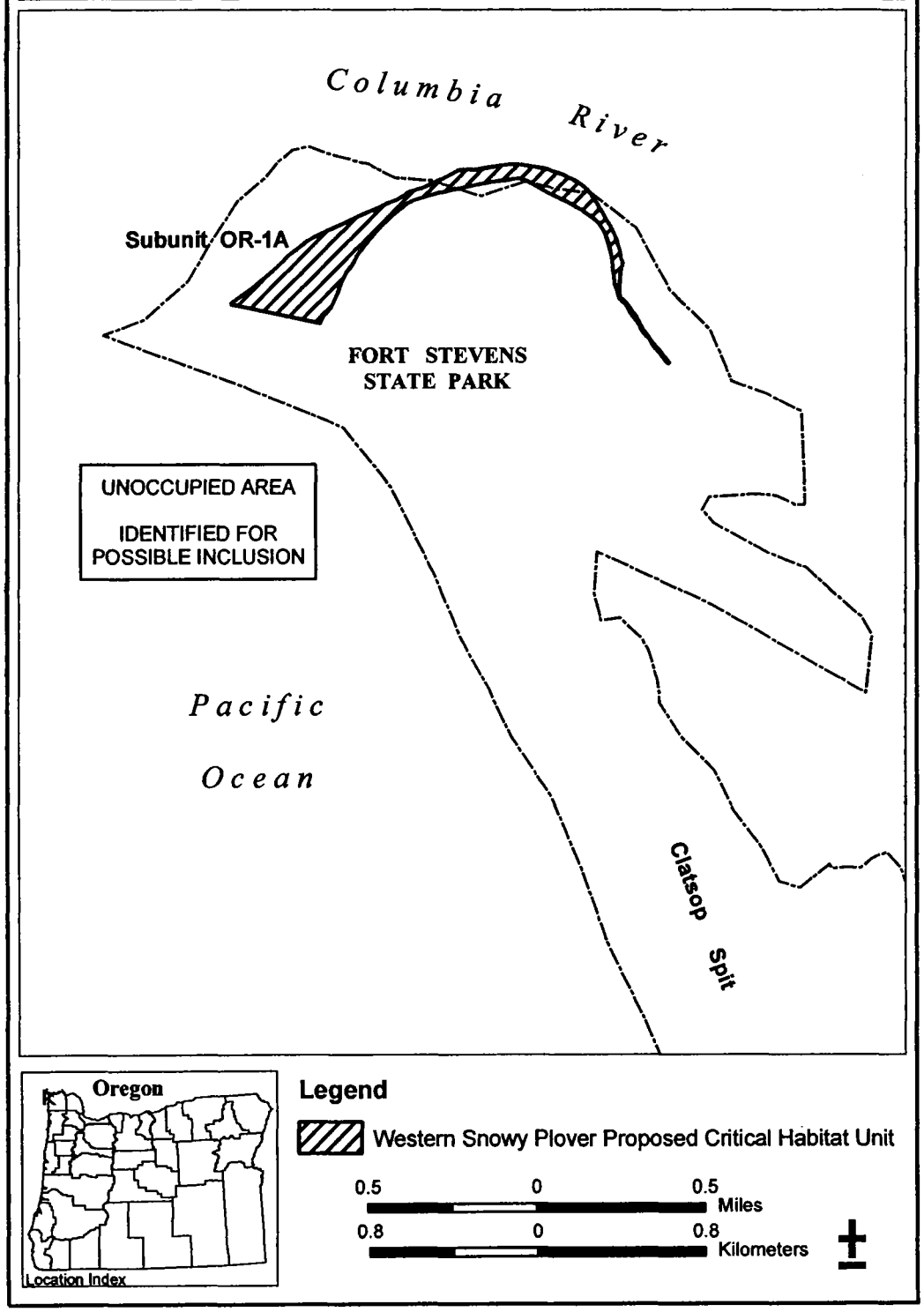


(10) Unit OR–1A, Clatsop County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Clatsop Spit, and Warrenton, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 423261, 5119887; 423249, 5119889; 423241, 5119898; 423229, 5119913; 423212, 5119937; 423194, 5119957; 423180, 5119974; 423169, 5119994; 423153, 5120013; 423134, 5120034; 423125, 5120048; 423120, 5120063; 423112, 5120076; 423101, 5120088; 423088, 5120105; 423073, 5120125; 423063, 5120147; 423047, 5120169; 423037, 5120178; 423023, 5120194; 423015, 5120224; 423004, 5120246; 422999, 5120292; 422995, 5120328; 422985, 5120405; 422968, 5120466; 422948, 5120514; 422926, 5120548; 422896, 5120574; 422844, 5120609; 422775, 5120649; 422684, 5120689; 422613, 5120729; 422589, 5120743; 422548, 5120758; 422537, 5120757; 422515, 5120754; 422486, 5120751; 422428, 5120744; 422355, 5120731; 422257, 5120711; 422164, 5120690; 422079, 5120666; 422036, 5120653; 422013, 5120641; 421945, 5120587; 421885, 5120533; 421858, 5120503; 421815, 5120452; 421770, 5120391; 421748, 5120349; 421723, 5120319; 421695, 5120260; 421685, 5120228; 421647, 5120151; 421616, 5120111; 421596, 5120075; 421165, 5120166; 421191, 5120183; 421251, 5120227; 421306, 5120269; 421377, 5120329; 421442, 5120393; 421534, 5120465; 421675, 5120532; 421794, 5120587; 421842, 5120607; 421883, 5120624; 421923, 5120643; 421951, 5120653; 421962, 5120659; 422000, 5120681; 422024, 5120696; 422054, 5120705; 422082, 5120712; 422124, 5120732; 422179, 5120757; 422222, 5120781; 422250, 5120795; 422269, 5120801; 422301, 5120800; 422337, 5120799; 422388, 5120809; 422449, 5120819; 422506, 5120825; 422555, 5120823; 422619, 5120813; 422663, 5120805; 422706, 5120793; 422755, 5120776; 422778, 5120765; 422824, 5120743; 422852, 5120725; 422872, 5120707; 422893, 5120679; 422903, 5120662; 422919, 5120640; 422943, 5120598; 422962, 5120567; 422982, 5120530; 422996, 5120501; 423005, 5120480; 423013, 5120460; 423018, 5120440; 423024, 5120417; 423033, 5120379; 423038, 5120365; 423038, 5120351; 423029, 5120294; 423023, 5120237; 423024, 5120218; 423027, 5120210; 423031, 5120203; 423033, 5120194; 423039, 5120187; 423048, 5120180; 423058, 5120170; 423070, 5120153; 423080, 5120139; 423087, 5120126; 423102, 5120109; 423111, 5120092; 423120, 5120076; 423128, 5120060; 423135, 5120049; 423160, 5120015; 423178, 5119990; 423195, 5119968; 423205, 5119956; 423220, 5119939; 423234, 5119922; 423246, 5119906; returning to 423261, 5119887.

(ii) **Note:** Unit OR 1A (Map M9) follows:

Map 9. Columbia River Spit (OR-1A), Clatsop County, Oregon.

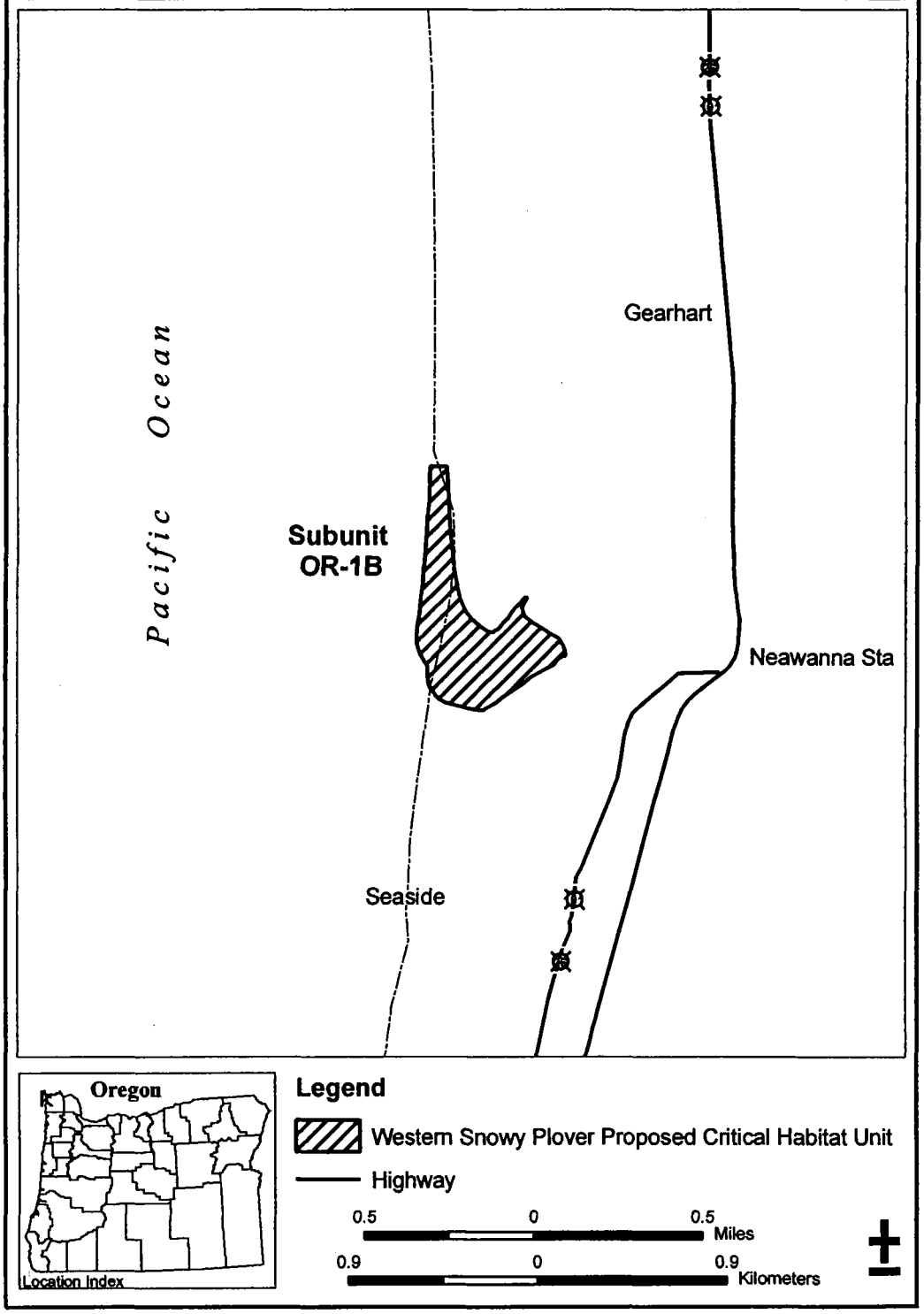


(11) Unit OR–1B, Clatsop County, Oregon.

(i) From USGS 1:24,000 quadrangle map Gearhart, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 428373, 5095247; 428372, 5095242; 428347, 5095244; 428265, 5095257; 428188, 5095276; 428150, 5095296; 428127, 5095323; 428107, 5095351; 428098, 5095397; 428098, 5095450; 428061, 5095508; 428045, 5095554; 428046, 5095596; 428049, 5095636; 428058, 5095694; 428068, 5095768; 428074, 5095824; 428078, 5095923; 428087, 5095993; 428095, 5096141; 428103, 5096225; 428107, 5096353; 428111, 5096391; 428189, 5096392; 428193, 5096303; 428205, 5096107; 428213, 5096007; 428220, 5095939; 428230, 5095882; 428247, 5095802; 428255, 5095763; 428269, 5095732; 428279, 5095706; 428302, 5095679; 428340, 5095645; 428373, 5095623; 428394, 5095611; 428411, 5095612; 428422, 5095619; 428432, 5095623; 428443, 5095634; 428462, 5095659; 428483, 5095679; 428498, 5095703; 428518, 5095730; 428538, 5095748; 428555, 5095767; 428564, 5095775; 428574, 5095774; 428564, 5095754; 428550, 5095728; 428552, 5095709; 428564, 5095683; 428605, 5095653; 428646, 5095627; 428686, 5095601; 428719, 5095583; 428737, 5095558; 428752, 5095528; 428757, 5095499; 428743, 5095496; 428723, 5095486; 428705, 5095458; 428685, 5095449; 428660, 5095435; 428632, 5095420; 428595, 5095400; 428552, 5095366; 428503, 5095335; 428465, 5095309; 428430, 5095280; returning to 428373, 5095247.

(ii) **Note:** Unit OR 1B (Map M10) follows:

Map 10. Necanicum River Spit (OR-1B), Clatsop County, Oregon.

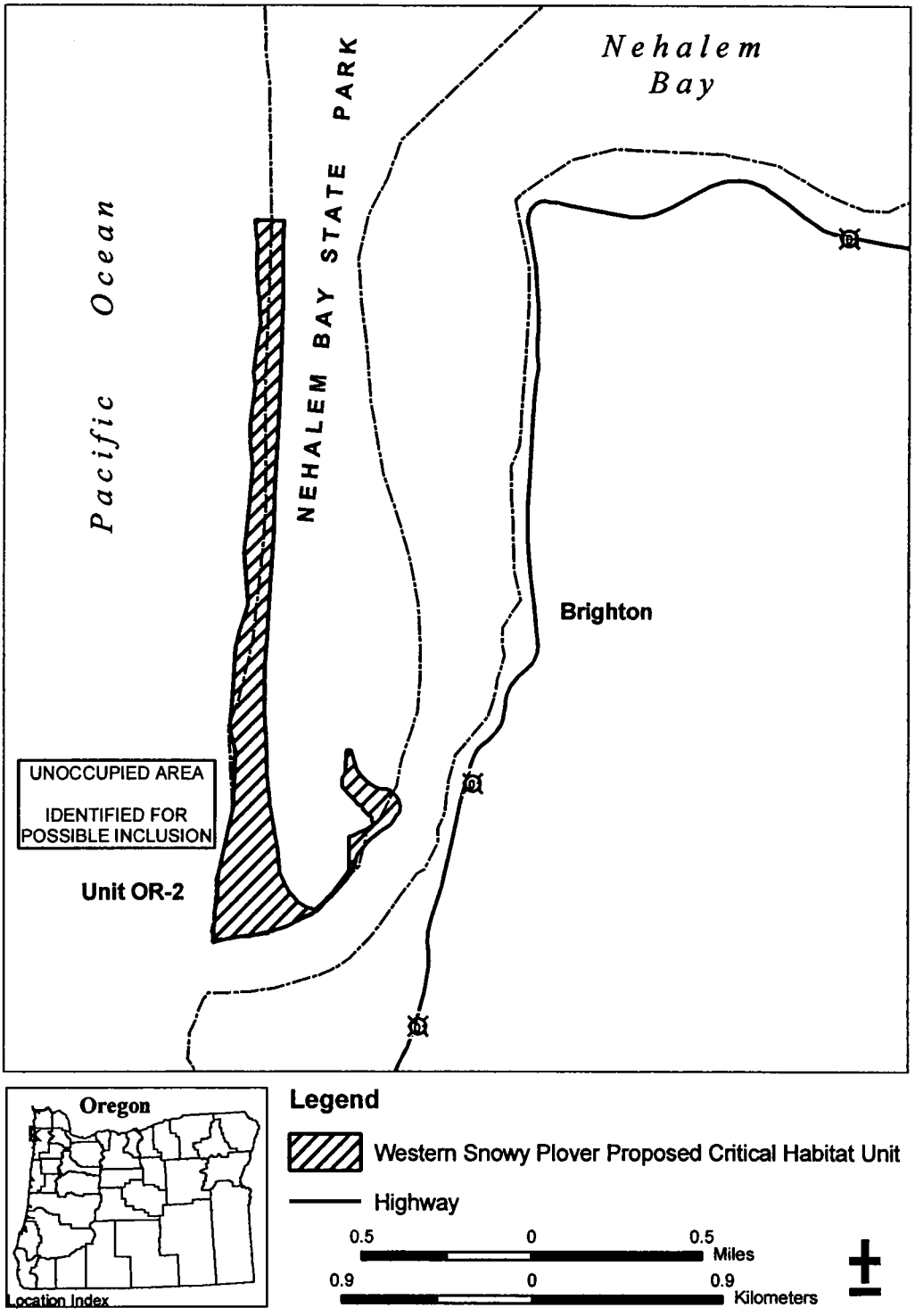


(12) Unit OR–2, Tillamook County, Oregon.

(i) From USGS 1:24,000 quadrangle map Nehalem, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 426638, 5056202; 426648, 5056302; 426646, 5056338; 426661, 5056396; 426661, 5056458; 426663, 5056510; 426687, 5056614; 426732, 5056817; 426740, 5056973; 426742, 5057098; 426718, 5057204; 426726, 5057301; 426737, 5057468; 426745, 5057574; 426761, 5057643; 426803, 5057778; 426792, 5057915; 426782, 5058021; 426792, 5058093; 426808, 5058259; 426824, 5058421; 426811, 5058532; 426811, 5058627; 426824, 5058717; 426835, 5058799; 426827, 5058865; 426844, 5059001; 426860, 5059088; 426852, 5059200; 426844, 5059277; 426841, 5059362; 426845, 5059456; 426836, 5059519; 426831, 5059570; 426968, 5059568; 426964, 5059469; 426963, 5059215; 426955, 5058919; 426943, 5058617; 426927, 5058311; 426922, 5058110; 426910, 5057915; 426900, 5057761; 426893, 5057610; 426881, 5057478; 426882, 5057364; 426882, 5057264; 426889, 5057130; 426892, 5056994; 426900, 5056918; 426908, 5056844; 426917, 5056790; 426933, 5056698; 426943, 5056642; 426954, 5056531; 426996, 5056441; 427037, 5056392; 427080, 5056366; 427119, 5056356; 427129, 5056363; 427150, 5056378; 427180, 5056406; 427204, 5056433; 427245, 5056486; 427274, 5056526; 427281, 5056538; 427282, 5056592; 427282, 5056667; 427281, 5056692; 427285, 5056696; 427300, 5056700; 427323, 5056712; 427356, 5056727; 427391, 5056746; 427396, 5056755; 427389, 5056768; 427389, 5056787; 427370, 5056799; 427349, 5056822; 427345, 5056826; 427348, 5056832; 427340, 5056841; 427333, 5056841; 427321, 5056849; 427314, 5056859; 427303, 5056871; 427285, 5056887; 427267, 5056906; 427249, 5056929; 427249, 5056947; 427248, 5056964; 427256, 5056980; 427262, 5057004; 427266, 5057067; 427266, 5057081; 427267, 5057099; 427291, 5057099; 427300, 5057059; 427312, 5057025; 427318, 5057006; 427341, 5056974; 427377, 5056945; 427400, 5056929; 427425, 5056920; 427454, 5056918; 427476, 5056912; 427502, 5056888; 427517, 5056862; 427525, 5056834; 427522, 5056811; 427506, 5056796; 427494, 5056776; 427478, 5056754; 427434, 5056724; 427380, 5056682; 427342, 5056636; 427321, 5056611; 427317, 5056595; 427312, 5056566; 427296, 5056535; 427273, 5056498; 427249, 5056469; 427196, 5056414; 427165, 5056384; 427146, 5056363; 427128, 5056348; 427098, 5056332; 427067, 5056320; 427029, 5056299; 426991, 5056279; 426969, 5056271; 426936, 5056261; 426896, 5056252; 426872, 5056246; 426843, 5056238; 426812, 5056231; 426790, 5056232; 426767, 5056231; 426715, 5056220; returning to 426638, 5056202.

(ii) **Note:** Unit OR 2 (Map M11) follows:

Map 11. Nehalem River Spit (OR-2), Tillamook County, Oregon.

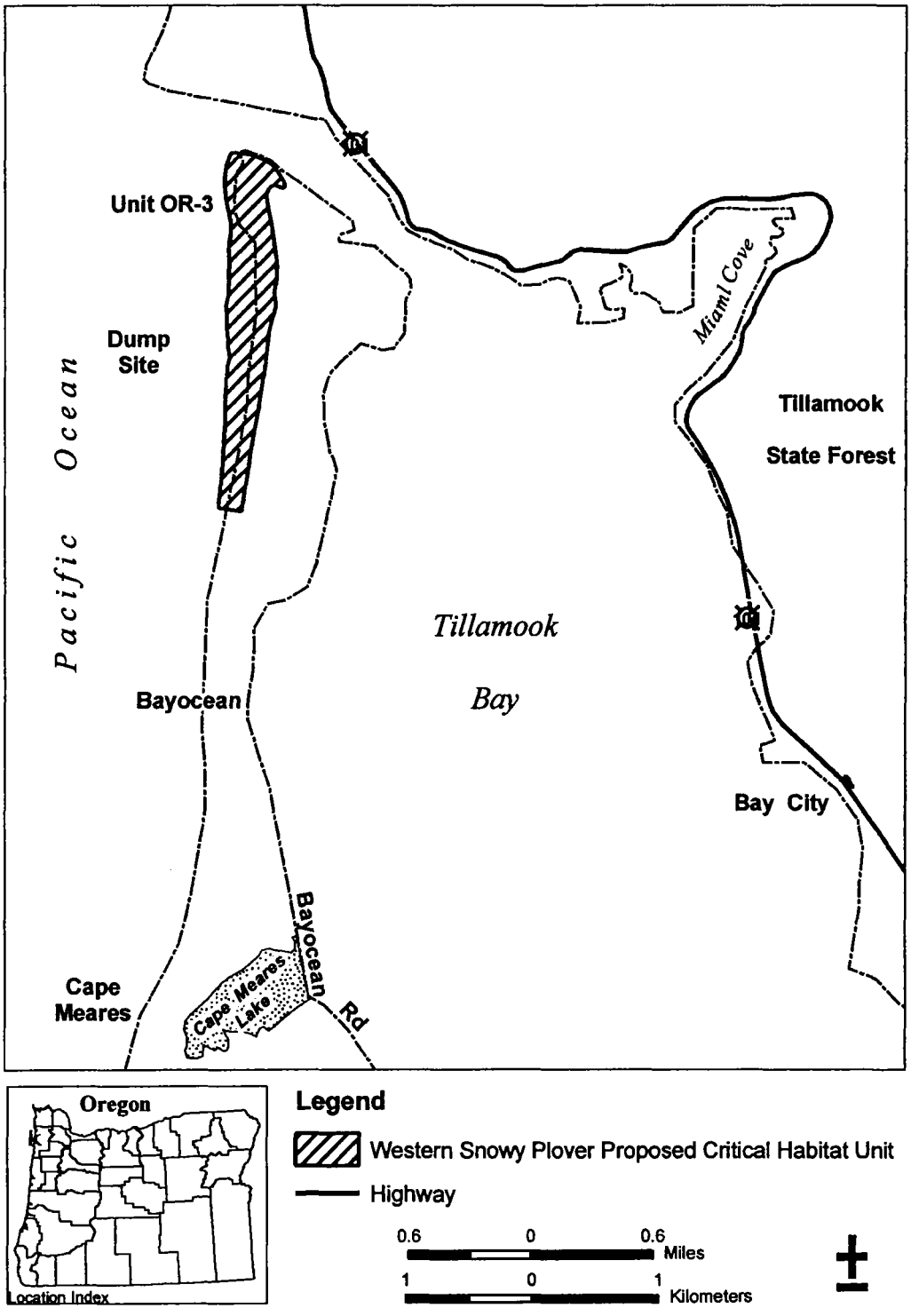


(13) Unit OR–3, Tillamook County, Oregon.

(i) From USGS 1:24,000 quadrangle map Garibaldi, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 425807, 5046046; 425855, 5046042; 425953, 5046029; 426052, 5045994; 426095, 5045969; 426142, 5045939; 426175, 5045895; 426208, 5045840; 426224, 5045807; 426227, 5045780; 426208, 5045772; 426184, 5045778; 426149, 5045794; 426122, 5045784; 426098, 5045756; 426081, 5045721; 426091, 5045643; 426120, 5045495; 426128, 5045441; 426159, 5045231; 426167, 5045131; 426167, 5045049; 426151, 5045006; 426143, 5044953; 426151, 5044898; 426159, 5044844; 426124, 5044732; 426104, 5044648; 426078, 5044433; 426052, 5044257; 426020, 5044062; 425972, 5043800; 425889, 5043253; 425718, 5043279; 425706, 5043277, proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 425807, 5046046.

(ii) **Note:** Unit OR 3 (Map M12) follows:

Map 12. Bayocean Spit (OR-3), Tillamook County, Oregon.

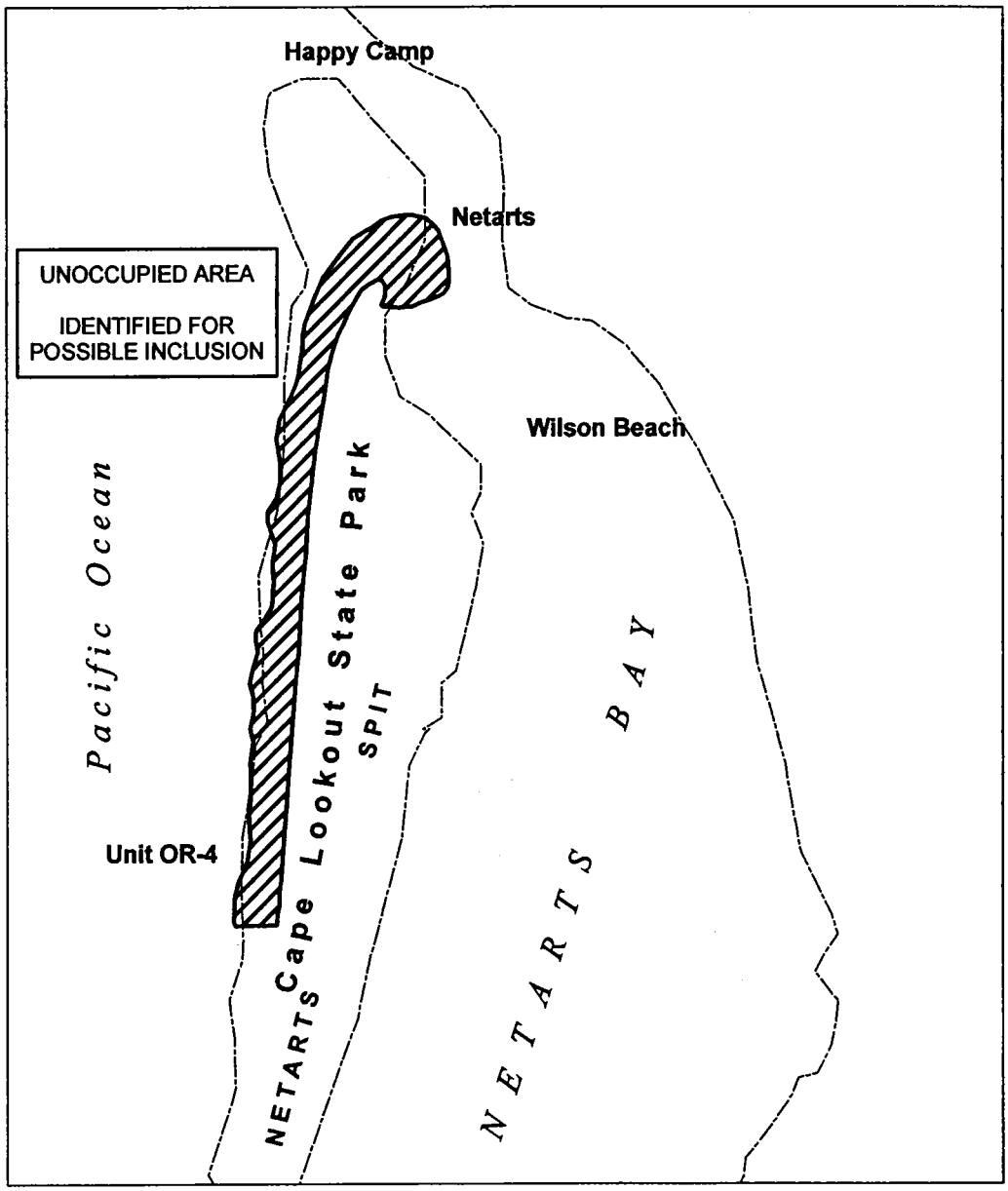


(14) Unit OR–4, Tillamook County, Oregon.

(i) From USGS 1:24,000 quadrangle map Netarts, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 424605, 5028430; 424600, 5028443; 424602, 5028544; 424623, 5028623; 424637, 5028652; 424658, 5028710; 424671, 5028790; 424666, 5028861; 424666, 5028914; 424671, 5028954; 424674, 5029049; 424671, 5029126; 424684, 5029213; 424672, 5029269; 424688, 5029339; 424684, 5029412; 424670, 5029462; 424683, 5029525; 424704, 5029599; 424695, 5029650; 424696, 5029689; 424733, 5029738; 424765, 5029793; 424774, 5029895; 424768, 5029978; 424780, 5030056; 424766, 5030101; 424749, 5030150; 424749, 5030197; 424786, 5030254; 424805, 5030324; 424803, 5030398; 424787, 5030509; 424802, 5030591; 424847, 5030686; 424875, 5030754; 424883, 5030789; 424897, 5030890; 424900, 5030953; 424911, 5031005; 424944, 5031092; 424987, 5031194; 425048, 5031277; 425114, 5031358; 425170, 5031395; 425200, 5031409; 425235, 5031436; 425285, 5031452; 425359, 5031463; 425428, 5031448; 425460, 5031422; 425483, 5031394; 425498, 5031352; 425521, 5031286; 425528, 5031206; 425522, 5031154; 425505, 5031129; 425471, 5031110; 425441, 5031099; 425410, 5031089; 425369, 5031072; 425337, 5031071; 425312, 5031066; 425238, 5031074; 425242, 5031088; 425250, 5031109; 425253, 5031125; 425254, 5031140; 425254, 5031160; 425248, 5031167; 425240, 5031182; 425231, 5031183; 425216, 5031183; 425199, 5031173; 425183, 5031167; 425152, 5031142; 425123, 5031094; 425094, 5031038; 425075, 5030997; 425054, 5030952; 425024, 5030871; 425010, 5030811; 424991, 5030685; 424955, 5030457; 424936, 5030293; 424921, 5030158; 424910, 5029996; 424901, 5029904; 424894, 5029825; 424879, 5029581; 424868, 5029462; 424856, 5029338; 424842, 5029151; 424826, 5028918; 424813, 5028760; 424809, 5028678; 424803, 5028607; 424795, 5028555; 424795, 5028510; 424788, 5028470; 424786, 5028433; returning to 424605, 5028430.

(ii) **Note:** Unit OR 4 (Map M13) follows:

Map 13. Netarts Spit (OR-4), Tillamook County, Oregon.



(15) Unit OR–5A, Tillamook County, Oregon.

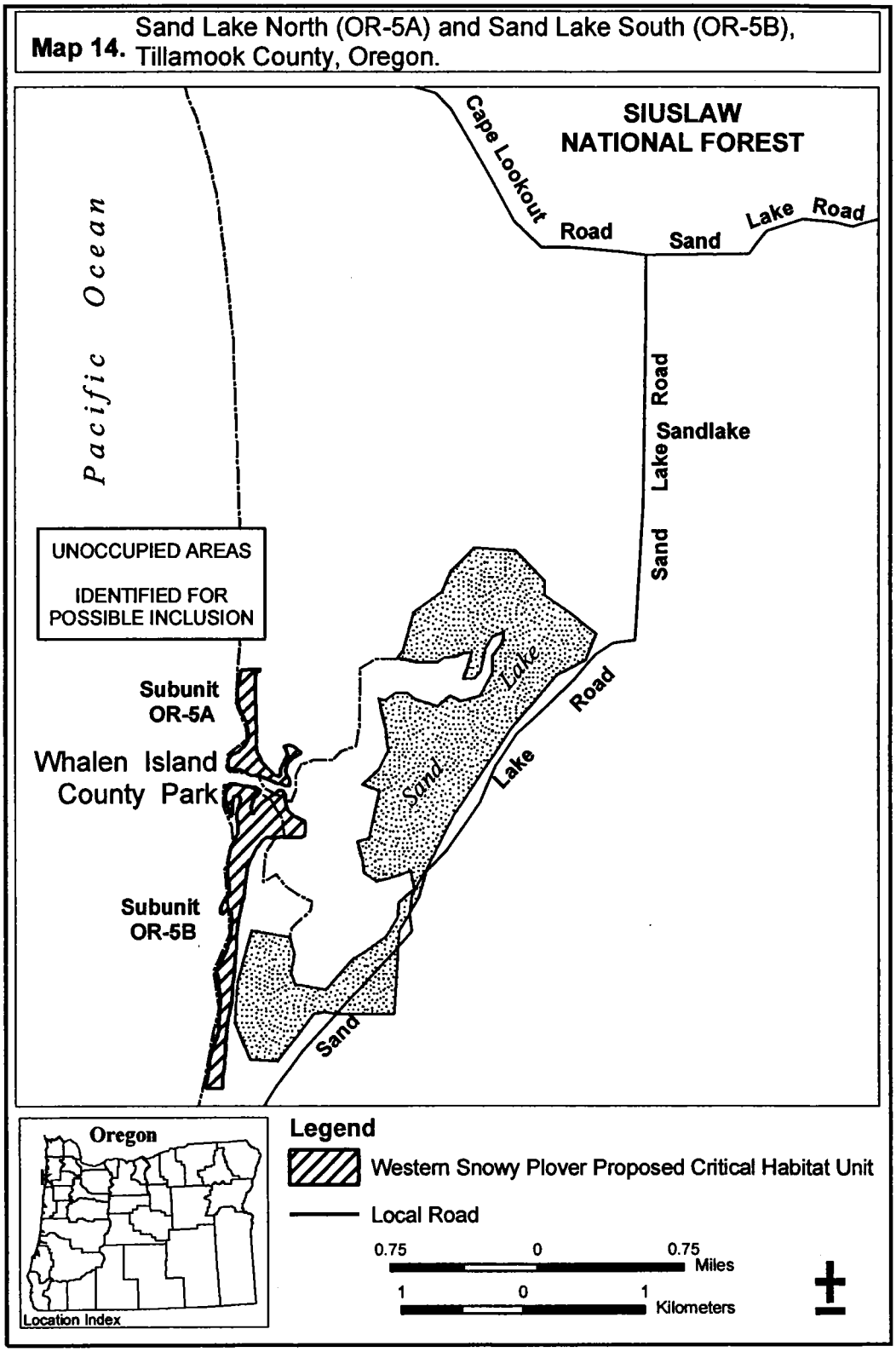
(i) From USGS 1:24,000 quadrangle map Sand Lake, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 424809, 5014200; 424794, 5014205; 424774, 5014213; 424760, 5014217; 424730, 5014223; 424674, 5014247; 424634, 5014265; 424584, 5014284; 424515, 5014286; 424473, 5014308; 424428, 5014331; 424367, 5014334; 424330, 5014347; 424325, 5014405; 424343, 5014448; 424410, 5014477; 424470, 5014530; 424492, 5014585; 424492, 5014644; 424476, 5014728; 424444, 5014789; 424418, 5014845; 424404, 5014890; 424404, 5014940; 424400, 5014987; 424420, 5015042; 424424, 5015092; 424434, 5015143; 424488, 5015147; 424591, 5015155; 424581, 5015133; 424563, 5015131; 424552, 5015101; 424548, 5015035; 424553, 5014871; 424558, 5014709; 424562, 5014617; 424562, 5014513; 424570, 5014465; 424585, 5014446; 424605, 5014398; 424650, 5014346; 424712, 5014289; 424748, 5014276; 424758, 5014294; 424761, 5014320; 424761, 5014339; 424771, 5014365; 424800, 5014420; 424817, 5014455; 424816, 5014474; 424806, 5014485; 424804, 5014498; 424797, 5014508; 424788, 5014520; 424791, 5014526; 424804, 5014531; 424816, 5014534; 424837, 5014536; 424863, 5014527; 424886, 5014508; 424903, 5014493; 424927, 5014479; 424926, 5014468; 424903, 5014455; 424869, 5014435; 424837, 5014406; 424815, 5014377; 424801, 5014339; 424804, 5014307; 424814, 5014285; 424827, 5014254; 424834, 5014226; 424830, 5014204; returning to 424809, 5014200

(ii) **Note:** Units OR 5A, OR 5B (Map M14) follows after description of OR 5B.

(16) Unit OR–5B, Tillamook County, Oregon.

(i) From USGS 1:24,000 quadrangle map Sand Lake, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 424272, 5011745; 424142, 5011750; 424143, 5011756; 424146, 5011801; 424157, 5011855; 424169, 5011928; 424173, 5011972; 424191, 5012066; 424231, 5012163; 424248, 5012228; 424247, 5012294; 424251, 5012360; 424259, 5012478; 424249, 5012566; 424241, 5012663; 424227, 5012699; 424235, 5012727; 424264, 5012775; 424305, 5012859; 424347, 5012988; 424358, 5013105; 424350, 5013183; 424326, 5013208; 424281, 5013167; 424259, 5013174; 424263, 5013221; 424294, 5013281; 424331, 5013344; 424335, 5013377; 424329, 5013436; 424319, 5013477; 424323, 5013545; 424330, 5013618; 424351, 5013709; 424379, 5013760; 424405, 5013811; 424408, 5013842; 424409, 5013877; 424399, 5013926; 424395, 5013967; 424409, 5014019; 424431, 5014068; 424428, 5014106; 424404, 5014124; 424372, 5014112; 424368, 5014067; 424362, 5013985; 424350, 5013948; 424337, 5013991; 424317, 5014049; 424300, 5014106; 424306, 5014151; 424322, 5014207; 424347, 5014221; 424387, 5014215; 424460, 5014198; 424515, 5014192; 424552, 5014188; 424593, 5014166; 424583, 5014143; 424562, 5014117; 424540, 5014097; 424514, 5014036; 424518, 5013979; 424532, 5013970; 424573, 5014031; 424609, 5014065; 424658, 5014104; 424711, 5014134; 424745, 5014162; 424780, 5014161; 424796, 5014126; 424798, 5014075; 424809, 5014018; 424827, 5013987; 424870, 5013954; 424925, 5013929; 424954, 5013916; 424964, 5013883; 424964, 5013843; 424953, 5013798; 424929, 5013784; 424858, 5013782; 424781, 5013785; 424753, 5013785; 424724, 5013780; 424700, 5013777; 424675, 5013782; 424659, 5013786; 424634, 5013778; 424608, 5013758; 424583, 5013721; 424570, 5013704; 424562, 5013699; 424532, 5013643; 424501, 5013584; 424486, 5013545; 424480, 5013506; 424468, 5013413; 424461, 5013319; 424440, 5013237; 424413, 5013129; 424398, 5012999; 424391, 5012877; 424379, 5012757; 424375, 5012675; 424363, 5012598; 424359, 5012499; 424353, 5012437; 424325, 5012324; 424310, 5012226; 424304, 5012130; 424300, 5012047; 424288, 5011936; 424278, 5011836; returning to 424272, 5011745.

(ii) **Note:** Units OR 5A, OR 5B (Map M14) follows:

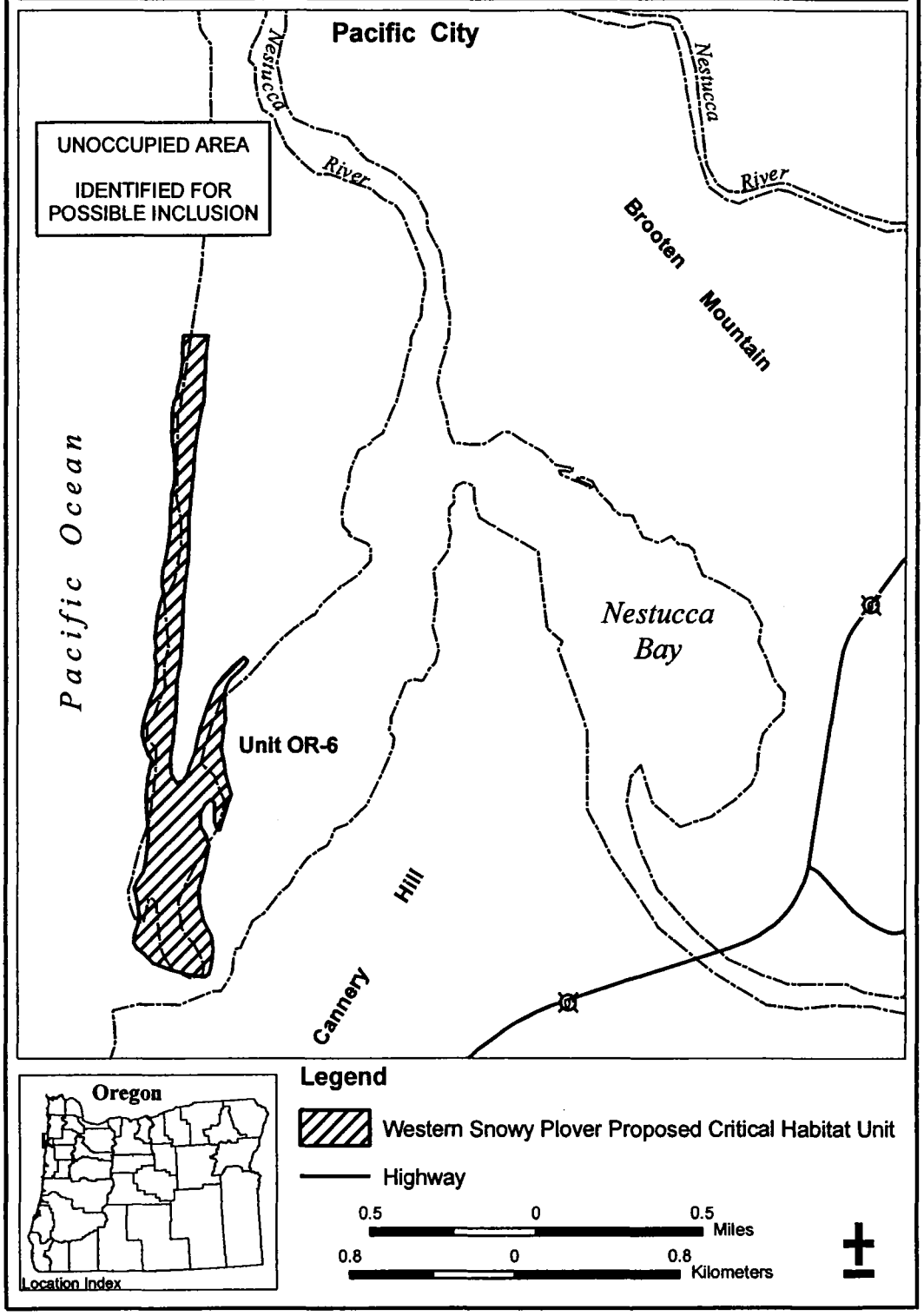

Map 14. Sand Lake North (OR-5A) and Sand Lake South (OR-5B), Tillamook County, Oregon.
SIUSLAW NATIONAL FOREST
Cape Lookout Road
Sand Lake Road
Pacific Ocean
Sand Lake Road
Sandlake
UNOCCUPIED AREAS IDENTIFIED FOR POSSIBLE INCLUSION
Subunit OR-5A
Whalen Island County Park
Subunit OR-5B
Sand Lake
Sand Lake Road
Oregon
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
Local Road
0.75 0 0.75 Miles
1 0 1 Kilometers

(17) Unit OR–6, Tillamook County, Oregon.

(i) From USGS 1:24,000 quadrangle map Nestucca Bay, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 423971, 5000986; 423938, 5000991; 423900, 5000996; 423864, 5001005; 423835, 5001014; 423813, 5001020; 423724, 5001053; 423680, 5001098; 423646, 5001125; 423633, 5001145; 423637, 5001192; 423653, 5001238; 423659, 5001291; 423647, 5001365; 423637, 5001408; 423645, 5001442; 423680, 5001487; 423689, 5001544; 423693, 5001584; 423703, 5001654; 423699, 5001724; 423694, 5001774; 423692, 5001828; 423693, 5001881; 423703, 5001939; 423707, 5001968; 423719, 5002022; 423703, 5002045; 423687, 5002087; 423673, 5002137; 423674, 5002180; 423682, 5002217; 423693, 5002260; 423713, 5002317; 423733, 5002365; 423737, 5002428; 423739, 5002479; 423733, 5002518; 423739, 5002553; 423734, 5002592; 423736, 5002619; 423741, 5002662; 423746, 5002709; 423756, 5002757; 423761, 5002782; 423776, 5002824; 423767, 5002856; 423770, 5002923; 423790, 5003014; 423801, 5003088; 423807, 5003151; 423806, 5003212; 423810, 5003268; 423813, 5003300; 423823, 5003337; 423830, 5003377; 423830, 5003409; 423827, 5003459; 423824, 5003508; 423816, 5003545; 423814, 5003594; 423817, 5003640; 423817, 5003679; 423820, 5003735; 423833, 5003761; 423838, 5003799; 423851, 5003850; 423860, 5003898; 423864, 5003940; 423861, 5003970; 423865, 5004016; 423868, 5004057; 423988, 5004057; 423984, 5004021; 423975, 5003959; 423974, 5003878; 423969, 5003832; 423969, 5003782; 423964, 5003719; 423952, 5003664; 423937, 5003592; 423922, 5003481; 423918, 5003387; 423896, 5003169; 423892, 5002968; 423870, 5002776; 423864, 5002627; 423854, 5002478; 423839, 5002404; 423835, 5002285; 423829, 5002199; 423822, 5002105; 423809, 5002027; 423810, 5001959; 423839, 5001915; 423869, 5001923; 423892, 5001958; 423901, 5001992; 423929, 5002055; 423954, 5002171; 423989, 5002287; 424020, 5002363; 424065, 5002424; 424112, 5002471; 424163, 5002514; 424181, 5002495; 424159, 5002466; 424125, 5002435; 424098, 5002410; 424081, 5002381; 424070, 5002348; 424067, 5002314; 424069, 5002269; 424072, 5002209; 424066, 5002170; 424066, 5002145; 424060, 5002111; 424054, 5002068; 424068, 5002017; 424079, 5001943; 424102, 5001856; 424088, 5001811; 424066, 5001744; 424047, 5001684; 424031, 5001693; 424021, 5001724; 424021, 5001772; 424021, 5001815; 424003, 5001834; 423975, 5001809; 423954, 5001761; 423954, 5001708; 423981, 5001659; 423994, 5001609; 423969, 5001484; 423948, 5001416; 423948, 5001348; 423969, 5001257; 424007, 5001183; 424015, 5001114; 424007, 5001044; 423993, 5000999; returning to 423971, 5000986.

(ii) **Note:** Units OR 6 (Map M15) follows:

Map 15. Nestucca River Spit (OR-6), Tillamook County, Oregon.

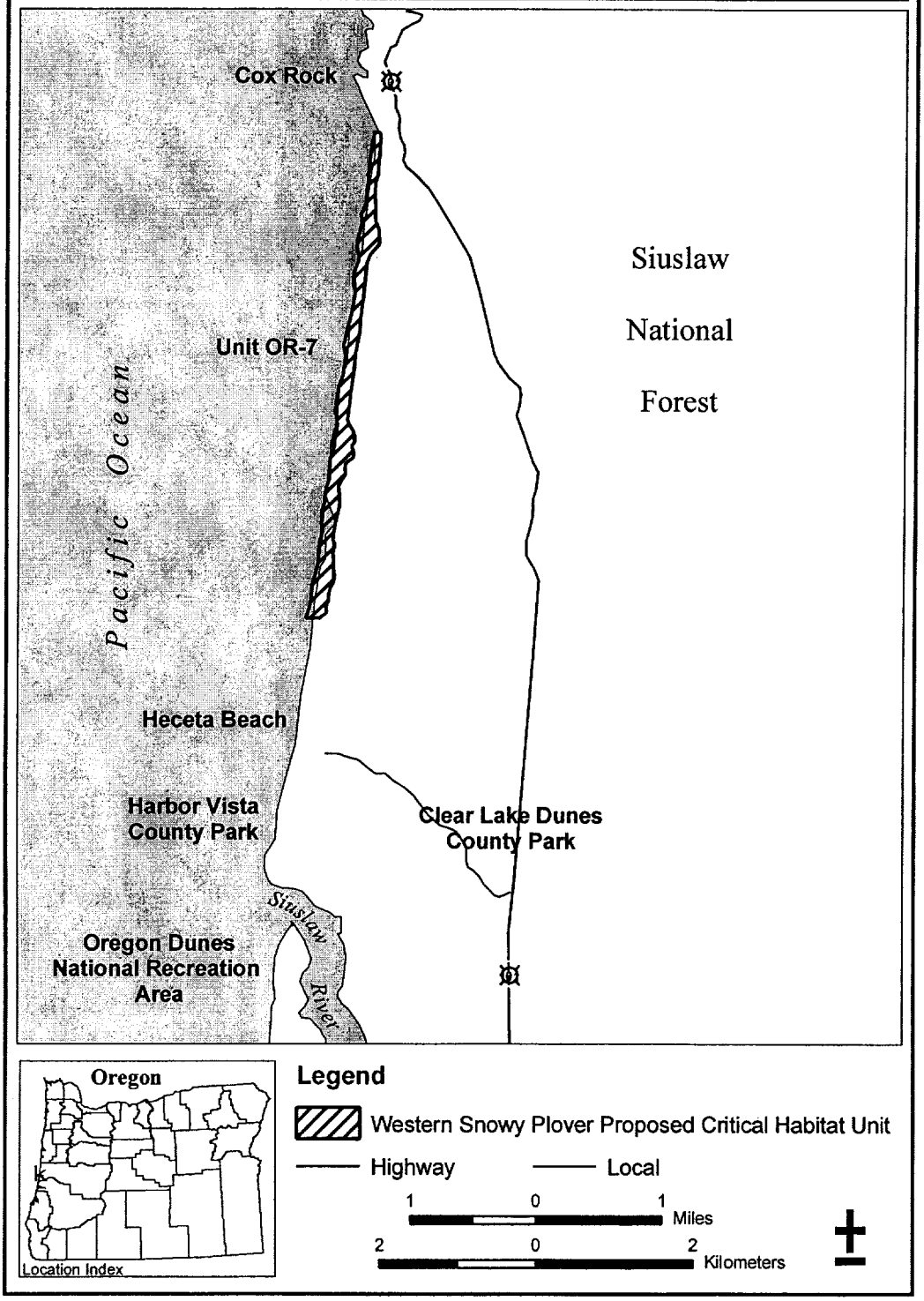


(18) Unit OR–7, Lane County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Mercer Lake OE W, and Mercer Lake, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 410183, 4883959; 410218, 4883951; 410246, 4883955; 410260, 4883947; 410265, 4883920; 410273, 4883864; 410269, 4883809; 410257, 4883747; 410252, 4883652; 410244, 4883585; 410241, 4883515; 410230, 4883391; 410213, 4883323; 410205, 4883270; 410202, 4883221; 410198, 4883167; 410200, 4883104; 410207, 4883029; 410211, 4882970; 410206, 4882928; 410206, 4882870; 410213, 4882806; 410239, 4882738; 410252, 4882699; 410254, 4882655; 410259, 4882615; 410261, 4882590; 410259, 4882532; 410230, 4882501; 410203, 4882470; 410179, 4882445; 410156, 4882418; 410135, 4882388; 410116, 4882344; 410099, 4882271; 410059, 4881847; 410020, 4881553; 410011, 4881367; 409963, 4881129; 409938, 4880858; 409903, 4880597; 409872, 4880368; 409867, 4880331; 409863, 4880299; 409874, 4880271; 409885, 4880244; 409903, 4880212; 409921, 4880180; 409943, 4880130; 409952, 4880094; 409956, 4880050; 409954, 4880012; 409933, 4879992; 409921, 4879973; 409921, 4879955; 409929, 4879927; 409941, 4879890; 409944, 4879863; 409941, 4879833; 409935, 4879815; 409920, 4879804; 409874, 4879770; 409848, 4879743; 409839, 4879717; 409832, 4879667; 409841, 4879634; 409837, 4879601; 409822, 4879571; 409801, 4879536; 409784, 4879508; 409775, 4879488; 409764, 4879474; 409753, 4879444; 409768, 4879273; 409762, 4879169; 409726, 4879017; 409708, 4878913; 409692, 4878839; 409682, 4878765; 409698, 4878740; 409696, 4878733; 409699, 4878717; 409701, 4878694; 409696, 4878656; 409687, 4878598; 409692, 4878500; 409693, 4878433; 409699, 4878296; 409699, 4878270; 409695, 4878244; 409682, 4878211; 409665, 4878174; 409645, 4878126; 409639, 4878088; 409638, 4878061; 409631, 4878025; 409629, 4877989; 409615, 4877967; 409609, 4877942; 409604, 4877919; 409604, 4877895; 409613, 4877852; 409597, 4877832; 409549, 4877801; 409529, 4877773; 409450, 4877776; 409382, 4877775; 409347, 4877775; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 410183, 4883959.

(ii) **Note:** Unit OR 7 (Map M16) follows:

Map 16. Sutton/Baker Beaches (OR-7), Lane County, Oregon.

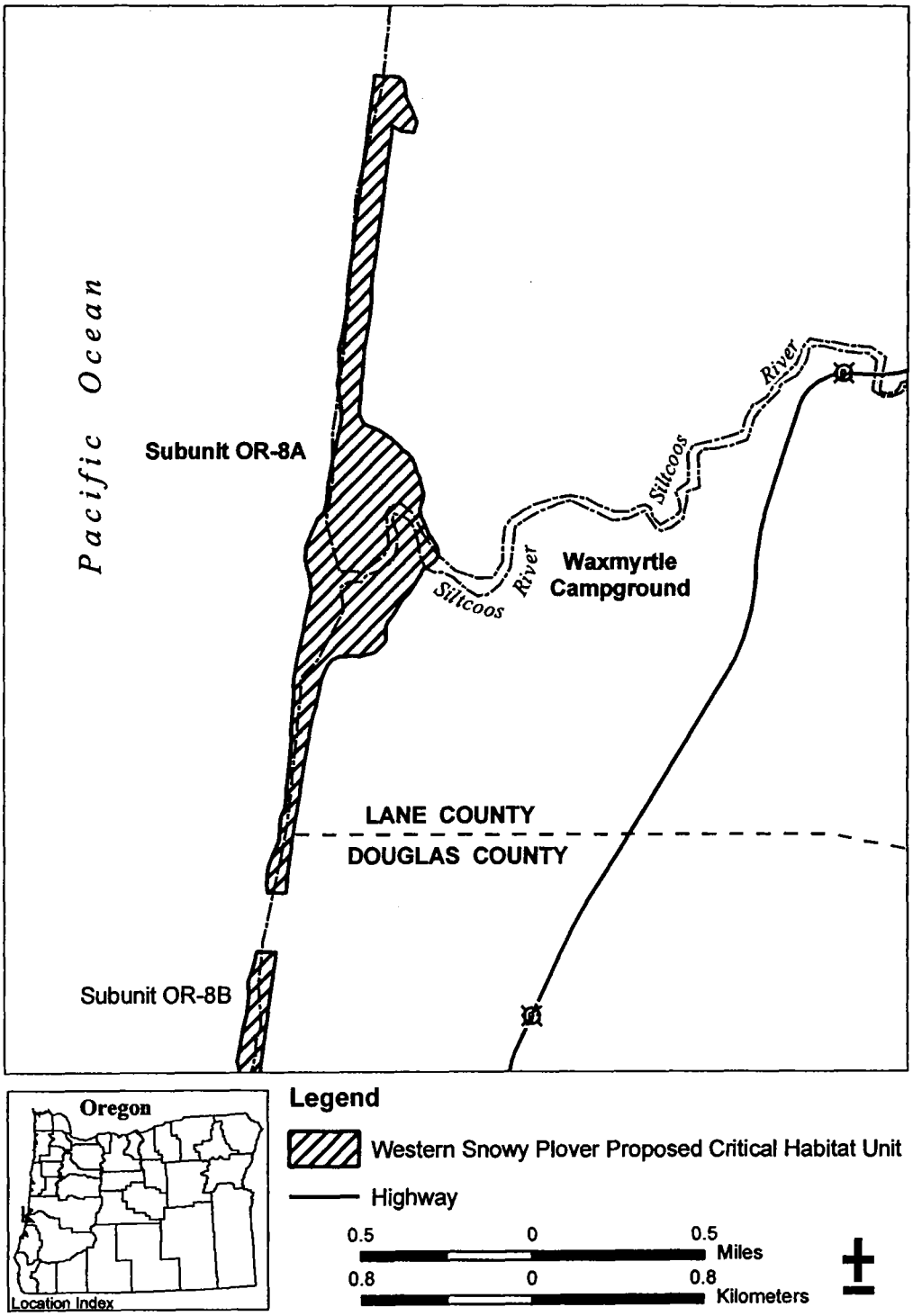


(19) Unit OR–8A, Lane County and Douglas County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Goose Pasture, and Tahkenitch Creek, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 407399, 4860677; 407512, 4860668; 407536, 4860649; 407546, 4860573; 407570, 4860530; 407597, 4860457; 407582, 4860415; 407524, 4860421; 407482, 4860442; 407400, 4859792; 407391, 4859761; 407387, 4859696; 407385, 4859650; 407378, 4859572; 407370, 4859516; 407365, 4859477; 407348, 4859373; 407344, 4859279; 407337, 4859241; 407338, 4859206; 407335, 4859179; 407333, 4859157; 407328, 4859143; 407328, 4859127; 407330, 4859104; 407338, 4859088; 407346, 4859075; 407358, 4859064; 407370, 4859057; 407389, 4859050; 407418, 4859039; 407436, 4859029; 407456, 4859016; 407479, 4858997; 407512, 4858967; 407531, 4858948; 407553, 4858931; 407578, 4858906; 407587, 4858884; 407598, 4858846; 407612, 4858818; 407618, 4858789; 407626, 4858760; 407629, 4858742; 407628, 4858717; 407620, 4858691; 407614, 4858674; 407620, 4858633; 407632, 4858609; 407642, 4858581; 407653, 4858557; 407671, 4858532; 407690, 4858502; 407696, 4858486; 407698, 4858467; 407701, 4858458; 407680, 4858431; 407643, 4858402; 407632, 4858399; 407606, 4858357; 407565, 4858283; 407532, 4858251; 407492, 4858191; 407465, 4858155; 407454, 4858128; 407454, 4858063; 407402, 4858010; 407335, 4857991; 407297, 4857996; 407266, 4857991; 407232, 4857990; 407202, 4857979; 407181, 4857951; 407161, 4857908; 407145, 4857855; 407131, 4857792; 407127, 4857763; 407114, 4857726; 407091, 4857601; 407077, 4857519; 407056, 4857385; 407020, 4857165; 407011, 4857100; 406996, 4856986; 406988, 4856901; 406903, 4856901 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 407399, 4860677.

(ii) **Note:** Unit OR 8A (Map M17) follows:

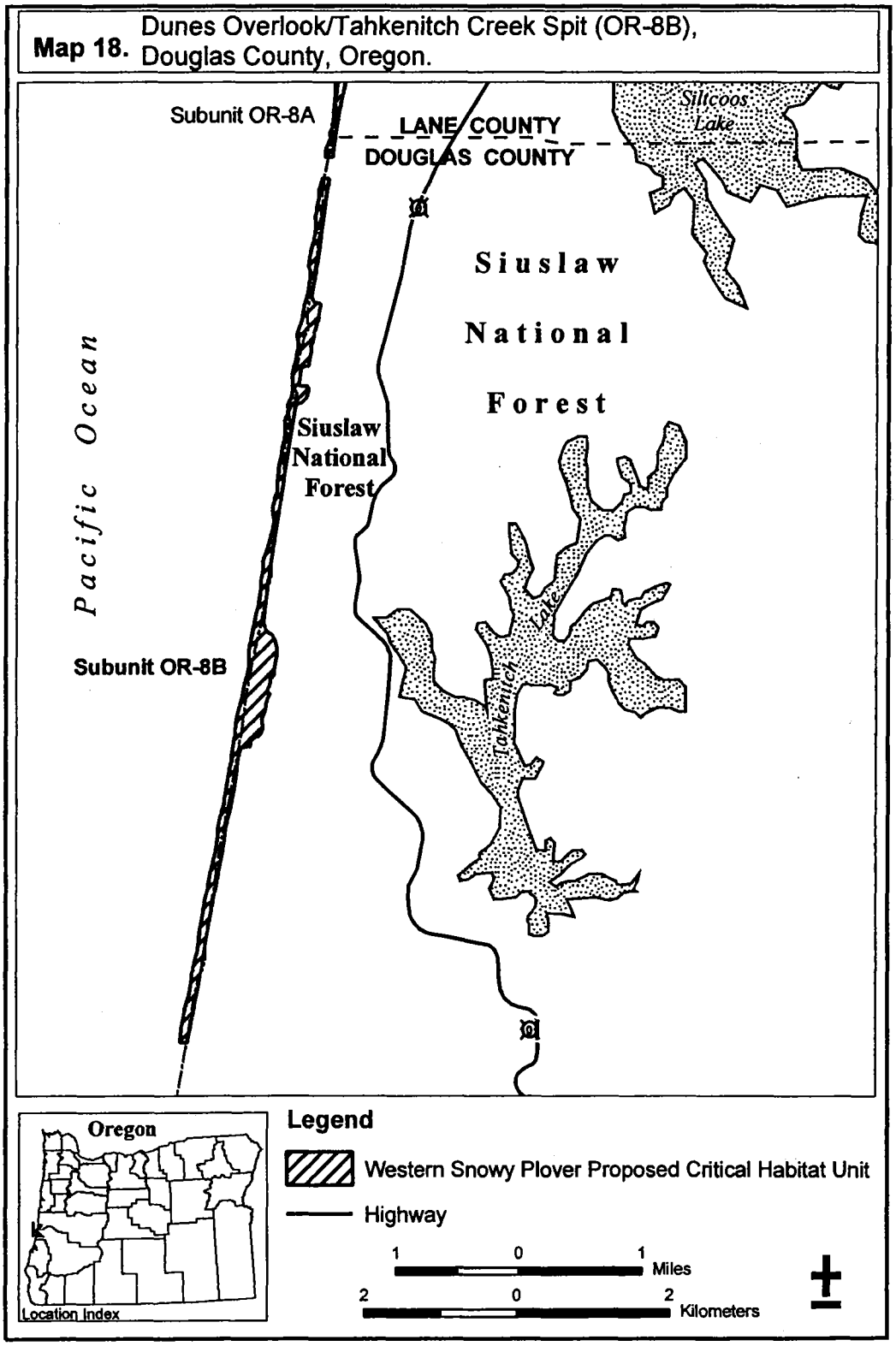
Map 17. Siltcoos River Spit (OR-8A), Lane and Douglas County, Oregon.



(20) Unit OR–8B, Douglas County, Oregon.

(i) From USGS 1:24,000 quadrangle map Tahkenitch Creek, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 406852, 4856627; 406942, 4856626; 406889, 4856228; 406828, 4855764; 406774, 4855388; 406719, 4855094; 406721, 4855073; 406730, 4855047; 406756, 4855023; 406790, 4855013; 406827, 4855005; 406838, 4854996; 406814, 4854864; 406815, 4854839; 406811, 4854804; 406803, 4854769; 406786, 4854746; 406783, 4854725; 406772, 4854680; 406749, 4854626; 406750, 4854588; 406730, 4854491; 406714, 4854455; 406710, 4854438; 406714, 4854398; 406700, 4854301; 406683, 4854216; 406675, 4854197; 406620, 4854190; 406594, 4854176; 406580, 4854166; 406555, 4853957; 406555, 4853937; 406601, 4853932; 406634, 4853937; 406665, 4853927; 406682, 4853910; 406679, 4853865; 406665, 4853815; 406650, 4853786; 406616, 4853747; 406581, 4853723; 406540, 4853705; 406524, 4853687; 406510, 4853680; 406503, 4853648; 406324, 4852508; 406311, 4852397; 406288, 4852279; 406188, 4851651; 406139, 4851272; 406109, 4850981; 406094, 4850862; 406112, 4850810; 406136, 4850769; 406164, 4850739; 406205, 4850717; 406241, 4850648; 406268, 4850527; 406271, 4850439; 406254, 4850357; 406243, 4850277; 406233, 4850190; 406208, 4850159; 406180, 4850148; 406191, 4850118; 406178, 4850052; 406150, 4849995; 406161, 4849964; 406180, 4849942; 406149, 4849887; 406142, 4849859; 406131, 4849818; 406125, 4849763; 406106, 4849709; 406076, 4849613; 406089, 4849501; 406063, 4849426; 406033, 4849393; 405990, 4849385; 405951, 4849350; 405932, 4849323; 405929, 4849295; 405920, 4849255; 405881, 4849256; 405829, 4849252; 405798, 4849226; 405768, 4849126; 405705, 4848682; 405672, 4848514; 405609, 4848210; 405576, 4847990; 405543, 4847814; 405461, 4847397; 405367, 4846902; 405280, 4846370; 405238, 4846136; 405096, 4845425; 405005, 4845433; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 406852, 4856627.

(ii) **Note:** Unit OR 8B (Map M18) follows:

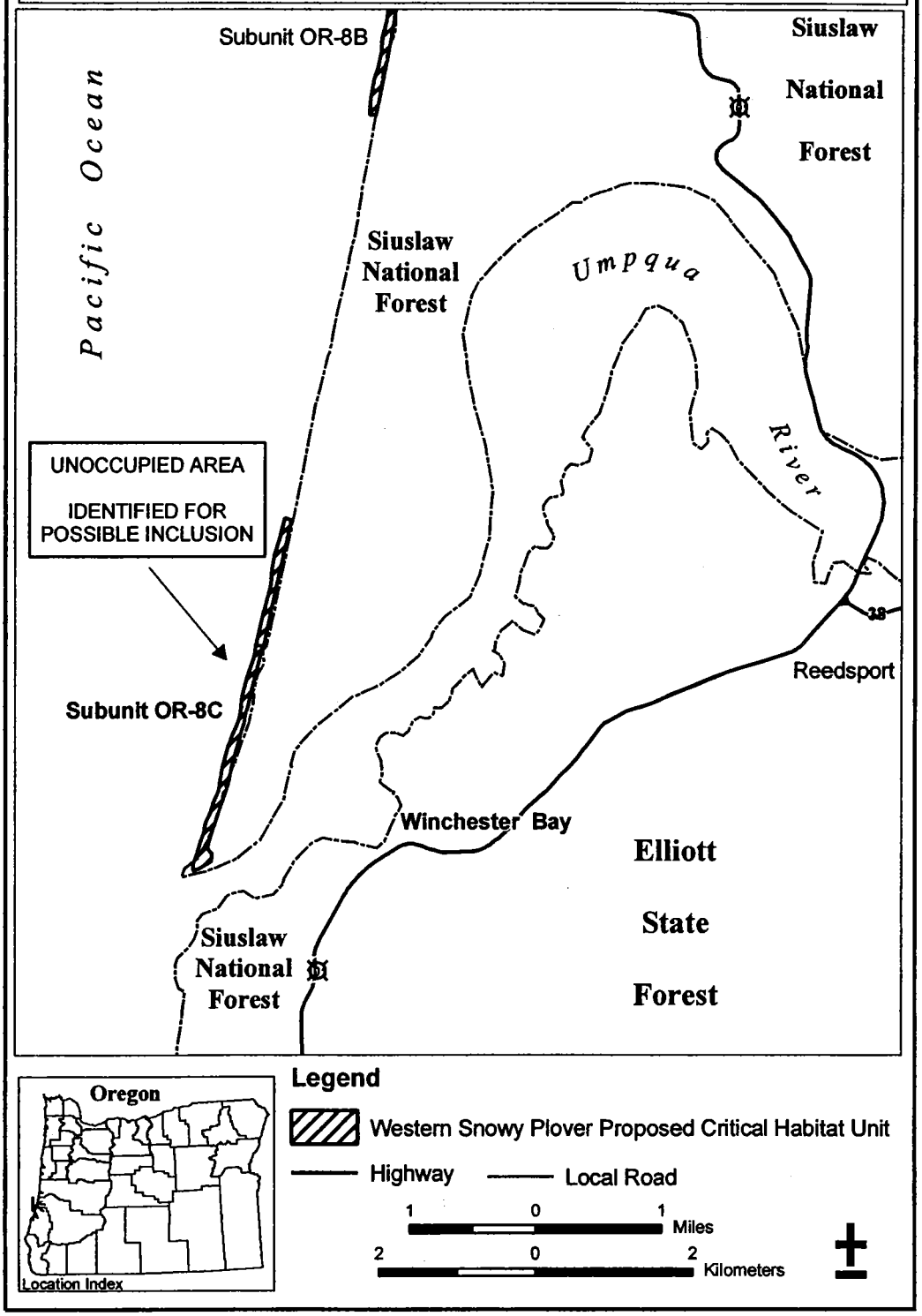

Map 18. Dunes Overlook/Tahkenitch Creek Spit (OR-8B), Douglas County, Oregon.
Subunit OR-8A
LANE COUNTY
DOUGLAS COUNTY
Siltcoos Lake
Siuslaw National Forest
Siuslaw National Forest
Pacific Ocean
Tahkenitch Lake
Subunit OR-8B
Oregon
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
Highway
1 0 1 Miles
2 0 2 Kilometers

(21) Unit OR–8C, Douglas County, Oregon.

(i) From USGS 1:24,000 quadrangle map Winchester Bay, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 403950, 4840360; 404033, 4840333; 403766, 4839137; 403684, 4838764; 403681, 4838748; 403581, 4838751; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 403950, 4840360.

(ii) **Note:** Unit OR–8C (Map M19) follows:

Map 19. North Umpqua River Spit (OR-8C), Douglas County, Oregon.

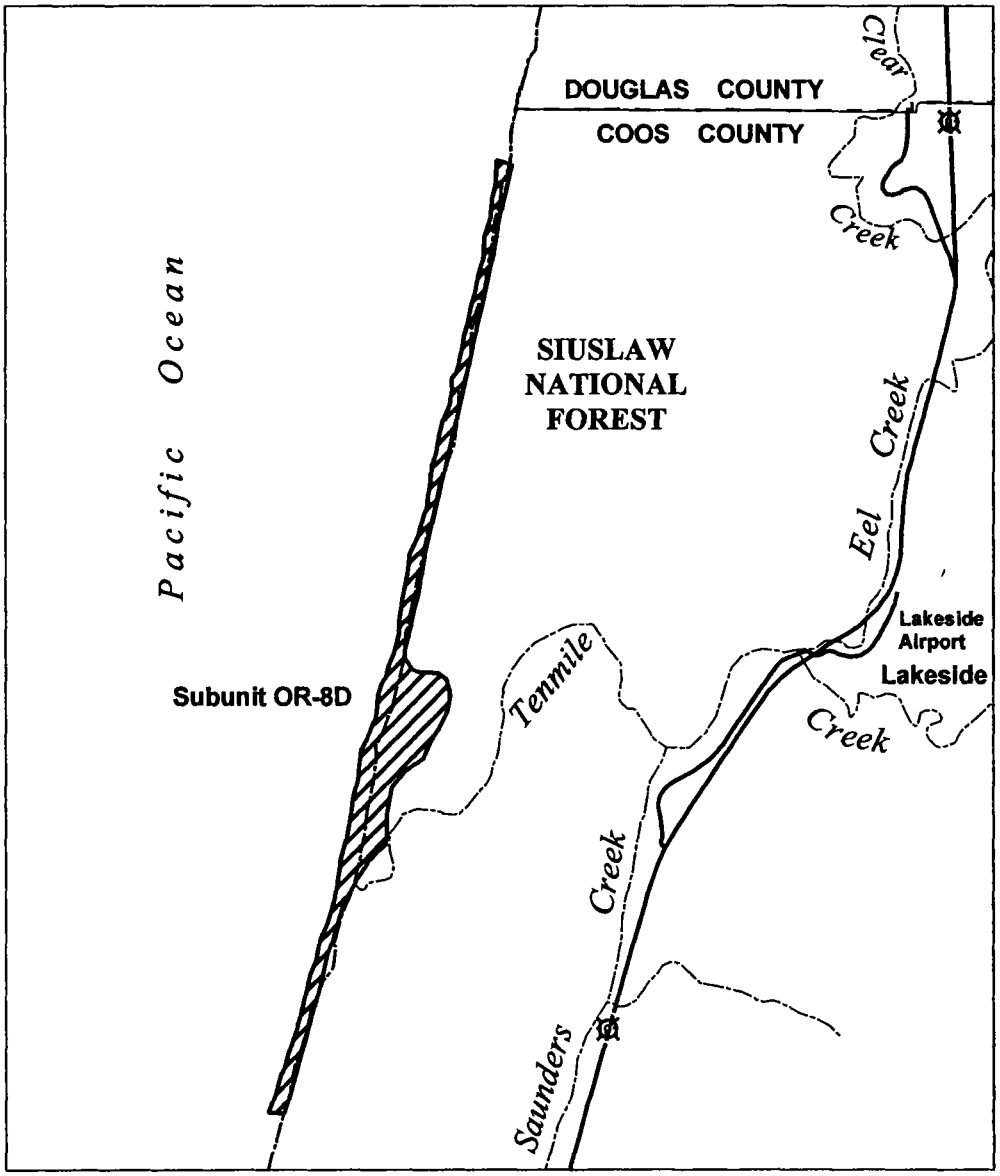


(22) Unit OR–8D, Coos County, Oregon.

(i) From USGS 1:24,000 quadrangle map Lakeside, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 401636, 4828760; 401679, 4828749; 401747, 4828726; 401658, 4828374; 401613, 4828096; 401470, 4827477; 401409, 4827191; 401129, 4826018; 401127, 4826013; 401086, 4825757; 401054, 4825630; 401025, 4825485; 400988, 4825352; 400986, 4825307; 401004, 4825278; 401041, 4825223; 401105, 4825207; 401218, 4825201; 401279, 4825159; 401303, 4825088; 401306, 4825027; 401290, 4824934; 401229, 4824826; 401173, 4824723; 401118, 4824609; 400993, 4824523; 400901, 4824418; 400880, 4824308; 400860, 4824209; 400860, 4824112; 400857, 4824072; 400855, 4824044; 400852, 4824012; 400827, 4823985; 400798, 4823971; 400769, 4823937; 400747, 4823910; 400729, 4823894; 400718, 4823871; 400697, 4823844; 400679, 4823812; 400650, 4823775; 400612, 4823704; 400552, 4823593; 400483, 4823365; 400446, 4823262; 400393, 4823043; 400362, 4822926; 400335, 4822833; 400320, 4822785; 400224, 4822422; 400189, 4822303; 400141, 4822147; 400030, 4822156; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 401636, 4828760.

(ii) **Note:** Units OR 8D (Map M20).

Map 20. Tenmile Creek Spit (OR-8D), Coos County, Oregon.

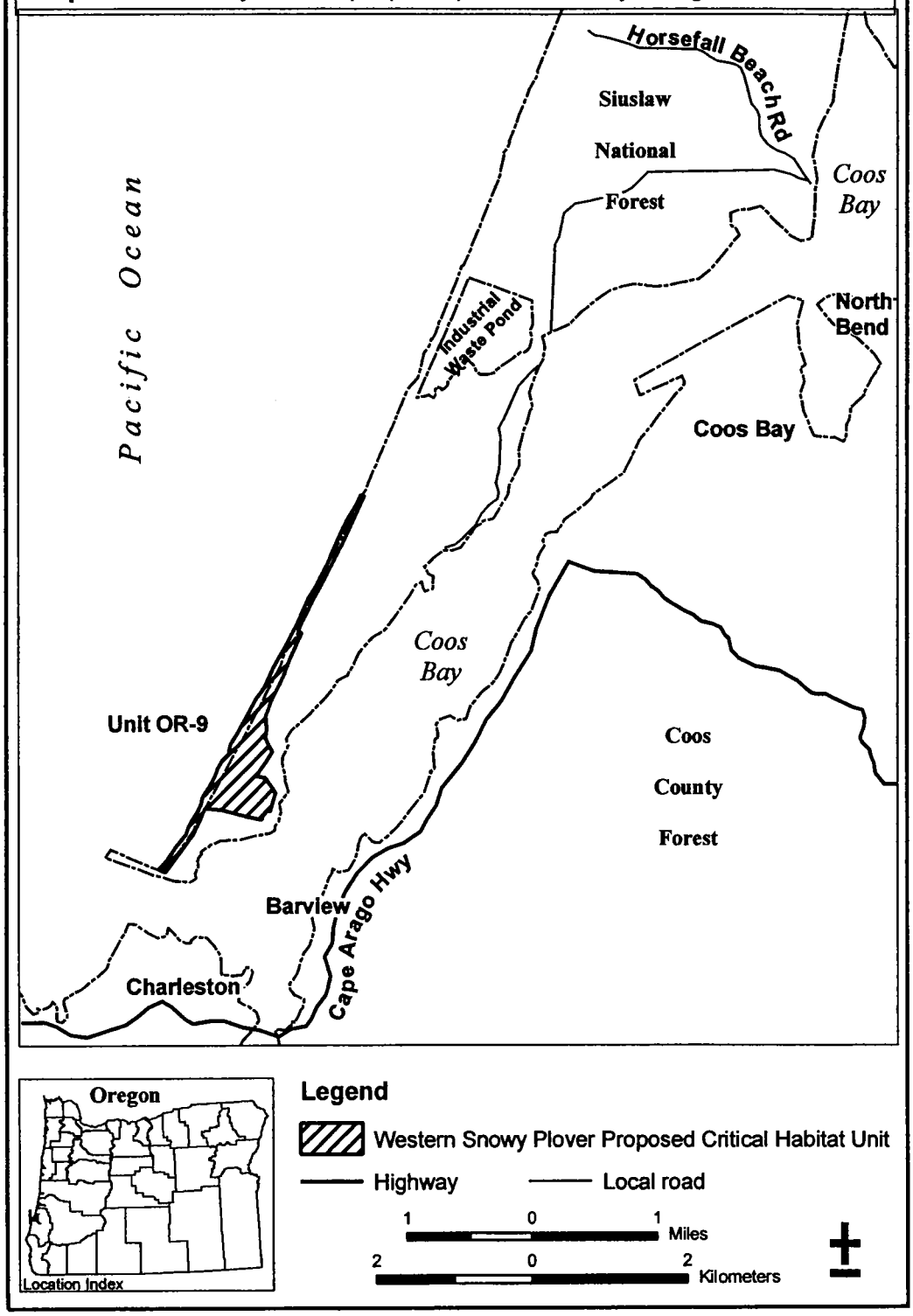


(23) Unit OR–9, Coos County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Empire, and Charleston, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 401636, 4828760; 394245, 4805890; 393957, 4805261; 393701, 4804768; 393592, 4804572; 393390, 4804169; 393440, 4804146; 393286, 4803816; 393209, 4803614; 393042, 4803271; 392971, 4803090; 392984, 4802913; 392971, 4802808; 392997, 4802749; 393060, 4802650; 392984, 4802525; 392909, 4802426; 392851, 4802339; 392965, 4802319; 393103, 4802120; 393037, 4801882; 392991, 4801895; 392942, 4801829; 392915, 4801780; 392702, 4801829; 392390, 4801908; 392192, 4801921; 392137, 4801773; 392058, 4801603; 391696, 4801111; 391595, 480115 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 401636, 4828760.

(ii) **Note:** Units OR 9 (Map M21) follows:

Map 21. Coos Bay North Spit (OR-9), Coos County, Oregon.

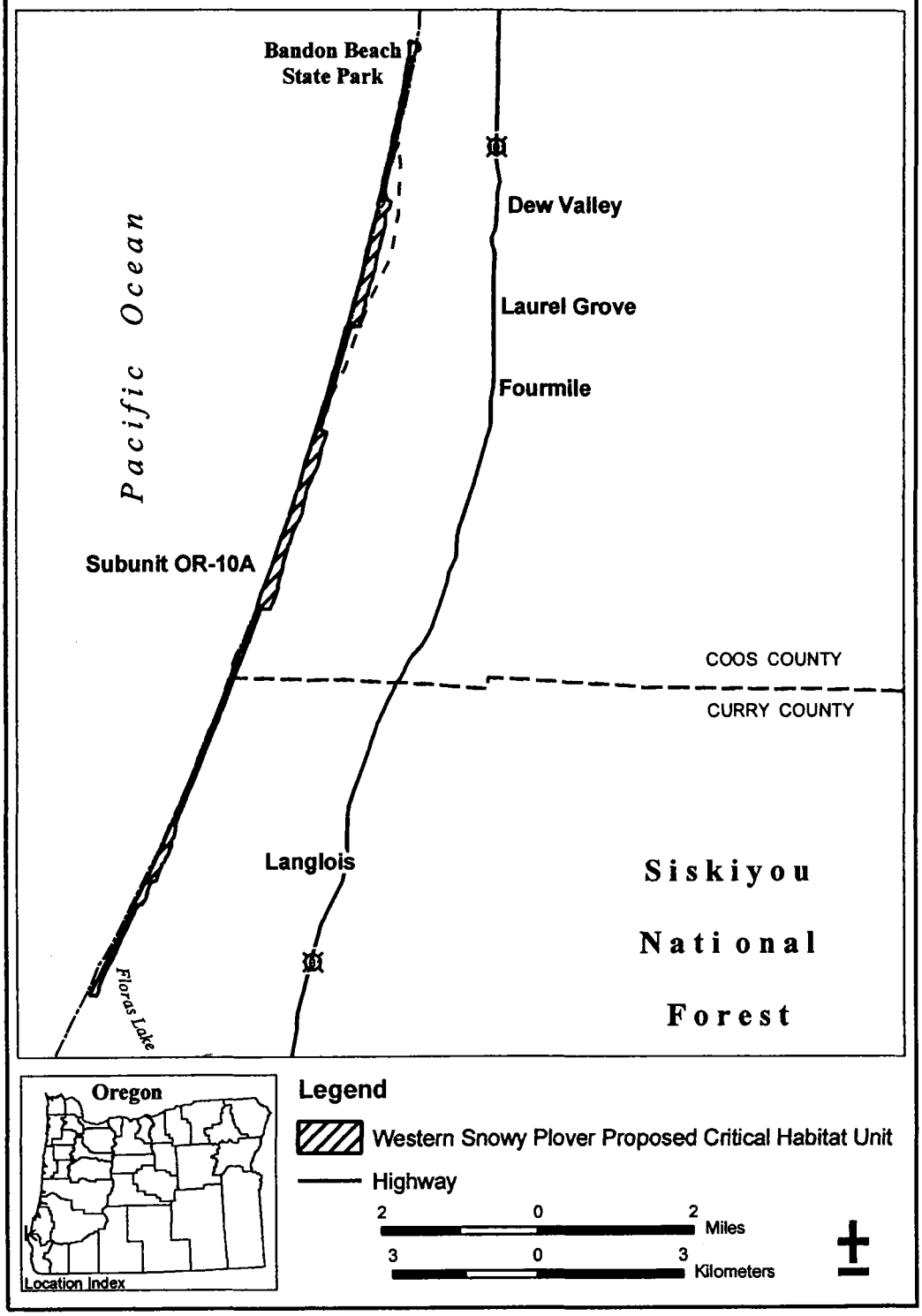


(24) Unit OR–10A, Coos County and Curry County, Oregon.

(i) From USGS 1:24,000 quadrangle maps Bandon, Floras Lake, and Langlois, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 383032, 4769361; 383046, 4769436; 383042, 4769495; 383042, 4769541; 383036, 4769584; 383034, 4769625; 383032, 4769672; 383047, 4769672; 383079, 4769666; 383115, 4769654; 383145, 4769655; 383178, 4769655; 383202, 4769645; 383228, 4769633; 383248, 4769596; 383259, 4769526; 383250, 4769486; 383225, 4769479; 383179, 4769476; 383171, 4769447; 383135, 4769361; 383100, 4769213; 383079, 4769128; 383063, 4769061; 383047, 4768989; 383045, 4768946; 383030, 4768890; 383012, 4768820; 382991, 4768707; 382977, 4768620; 382965, 4768535; 382940, 4768432; 382917, 4768316; 382895, 4768227; 382870, 4768128; 382853, 4768018; 382833, 4767920; 382798, 4767778; 382768, 4767645; 382735, 4767504; 382713, 4767389; 382691, 4767273; 382666, 4767174; 382643, 4767072; 382628, 4766975; 382608, 4766922; 382591, 4766834; 382566, 4766684; 382544, 4766554; 382576, 4766510; 382603, 4766451; 382644, 4766419; 382674, 4766392; 382671, 4766339; 382641, 4766274; 382588, 4766209; 382541, 4766138; 382545, 4766086; 382567, 4766024; 382556, 4765947; 382545, 4765889; 382529, 4765815; 382508, 4765731; 382480, 4765623; 382443, 4765515; 382432, 4765445; 382402, 4765359; 382379, 4765289; 382368, 4765189; 382358, 4765107; 382333, 4765011; 382296, 4764904; 382289, 4764842; 382255, 4764757; 382230, 4764699; 382219, 4764637; 382198, 4764585; 382190, 4764527; 382180, 4764495; 382154, 4764458; 382142, 4764403; 382142, 4764352; 382142, 4764287; 382120, 4764238; 382110, 4764191; 382108, 4764152; 382081, 4764081; 382057, 4764030; 382051, 4764000; 382053, 4763958; 382032, 4763917; 382035, 4763877; 382038, 4763851; 381965, 4763851; 381908, 4763845; 381855, 4763831; 381835, 4763787; 381815, 4763732; 381796, 4763652; 381768, 4763565; 381740, 4763474; 381700, 4763351; 381665, 4763216; 381633, 4763117; 381613, 4763049; 381577, 4762926; 381547, 4762797; 381509, 4762682; 381487, 4762602; 381457, 4762530; 381435, 4762449; 381415, 4762385; 381387, 4762281; 381356, 4762183; 381331, 4762117; 381322, 4762102; 381279, 4761979; 381241, 4761866; 381217, 4761735; 381284, 4761715; 381342, 4761681; 381292, 4761524; 381229, 4761341; 381210, 4761227; 381165, 4761047; 381126, 4760920; 381057, 4760801; 381017, 4760674; 380975, 4760600; 380940, 4760529; 380922, 4760431; 380893, 4760280; 380861, 4760150; 380845, 4760050; 380821, 4759978; 380771, 4759894; 380735, 4759845; 380710, 4759775; 380685, 4759712; 380647, 4759617; 380621, 4759515; 380602, 4759445; 380558, 4759388; 380539, 4759293; 380507, 4759191; 380469, 4759070; 380450, 4758982; 380431, 4758842; 380405, 4758791; 380386, 4758721; 380361, 4758639; 380348, 4758556; 380340, 4758479; 380312, 4758387; 380278, 4758300; 380183, 4758086; 379983, 4758087; 379957, 4757987; 379865, 4757759; 379821, 4757615; 379737, 4757407; 379704, 4757340; 379624, 4757140; 379560, 4756968; 379496, 4756803; 379432, 4756628; 379387, 4756528; 379333, 4756378; 379270, 4756202; 379190, 4756013; 379160, 4755949; 379119, 4755837; 379072, 4755728; 379003, 4755562; 378939, 4755407; 378934, 4755397; 378894, 4755299; 378848, 4755186; 378802, 4755067; 378732, 4754907; 378684, 4754772; 378652, 4754685; 378588, 4754546; 378553, 4754457; 378497, 4754350; 378440, 4754210; 378435, 4754197; 378372, 4754061; 378343, 4753975; 378311, 4753896; 378286, 4753834; 378276, 4753808; 378264, 4753779; 378238, 4753706; 378235, 4753663; 378233, 4753630; 378226, 4753586; 378215, 4753550; 378208, 4753517; 378208, 4753479; 378193, 4753454; 378168, 4753407; 378140, 4753371; 378140, 4753331; 378149, 4753278; 378140, 4753234; 378110, 4753195; 378099, 4753128; 378063, 4753070; 378034, 4753026; 378017, 4752979; 377999, 4752941; 377988, 4752913; 377955, 4752901; 377934, 4752879; 377939, 4752854; 377935, 4752828; 377911, 4752803; 377895, 4752751; 377879, 4752704; 377867, 4752664; 377851, 4752619; 377850, 4752586; 377832, 4752547; 377811, 4752531; 377785, 4752535; 377769, 4752528; 377750, 4752506; 377728, 4752511; 377714, 4752531; 377697, 4752531; 377703, 4752515; 377700, 4752489; 377688, 4752482; 377692, 4752456; 377673, 4752408; 377646, 4752346; 377641, 4752310; 377639, 4752271; 377630, 4752232; 377594, 4752154; 377575, 4752116; 377560, 4752101; 377543, 4752081; 377528, 4752077; 377524, 4752063; 377532, 4752050; 377506, 4752057; 377484, 4752070; 377462, 4752061; 377445, 4752023; 377415, 4751972; 377378, 4751899; 377368, 4751881; 377287, 4751726; 377202, 4751552; 377118, 4751382; 377052, 4751245; 377001, 4751131; 376982, 4751082; 376962, 4751045; 376928, 4750980; 376866, 4750871; 376751, 4750655; 376686, 4750517; 376667, 4750450; 376658, 4750421; 376640, 4750398; 376621, 4750368; 376621, 4750340; 376624, 4750312; 376624, 4750295; 376616, 4750282; 376607, 4750262; 376599, 4750241; 376588, 4750216; 376577, 4750207; 376442, 4750212; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 383032, 4769361.

(ii) **Note:** Units OR 10A (Map M22) follows:

Map 22. Bandon/Floras Lake (OR-10A), Coos and Curry County, Oregon.

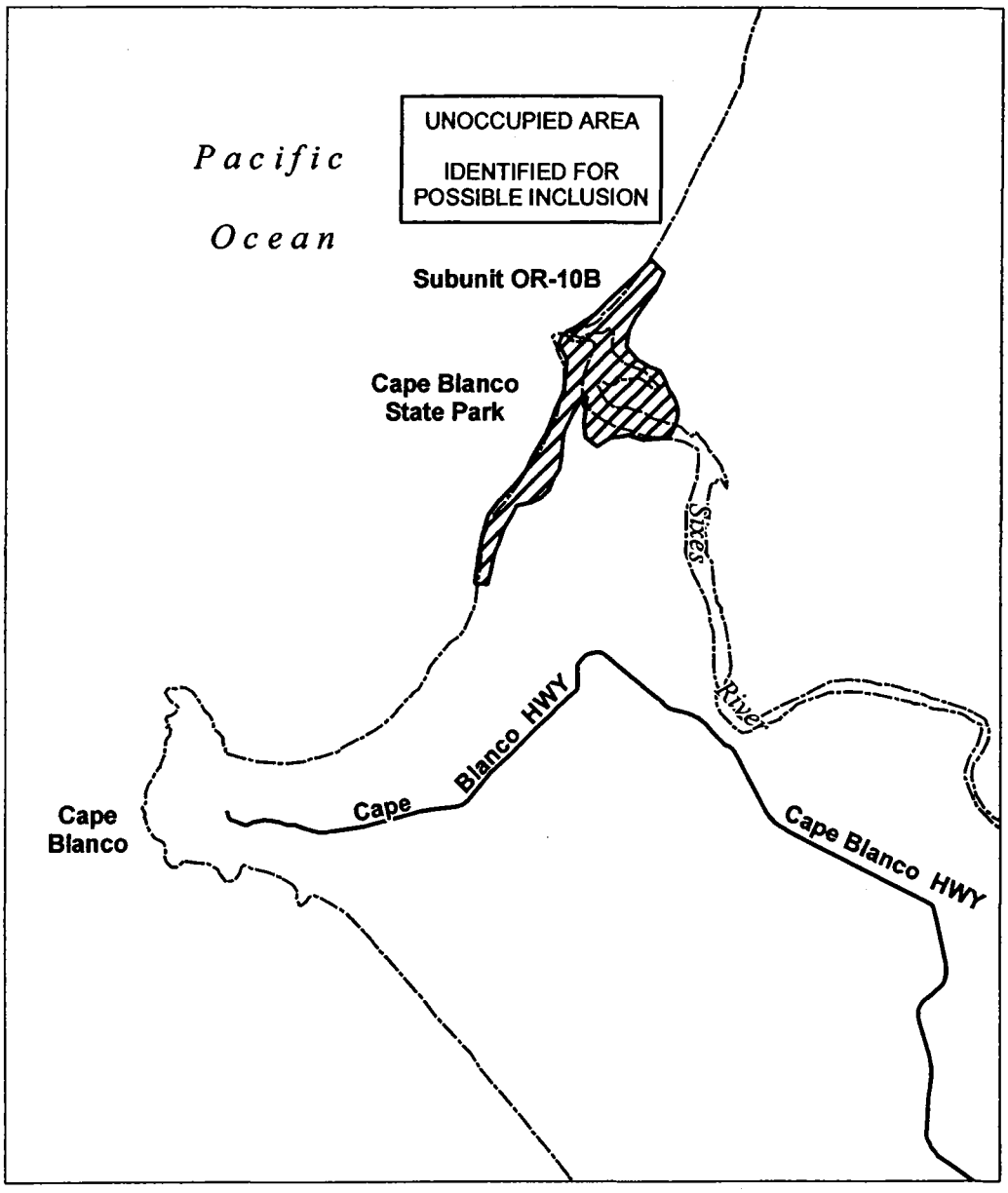


(25) Unit OR–10B, Curry County, Oregon.

(i) From USGS 1:24,000 quadrangle map Cape Blanco, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 374260, 4745960; 374314, 4745907; 374279, 4745835; 374192, 4745721; 374165, 4745664; 374150, 4745590; 374200, 4745538; 374259, 4745504; 374298, 4745489; 374320, 4745451; 374337, 4745406; 374361, 4745373; 374373, 4745337; 374376, 4745298; 374367, 4745268; 374352, 4745232; 374334, 4745205; 374226, 4745194; 374160, 4745216; 374083, 4745202; 374027, 4745166; 373977, 4745207; 373969, 4745263; 373977, 4745329; 373983, 4745379; 373948, 4745350; 373919, 4745300; 373885, 4745231; 373876, 4745161; 373872, 4745115; 373864, 4745070; 373842, 4745035; 373819, 4744978; 373784, 4744944; 373750, 4744929; 373681, 4744915; 373662, 4744875; 373629, 4744819; 373593, 4744717; 373562, 4744578; 373562, 4744578; 373503, 4744580; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 374260, 4745960.

(ii) **Note:** Unit OR–10B (Map M23) follows:

Map 23. Sixes River Spit (OR-10B), Curry County, Oregon.

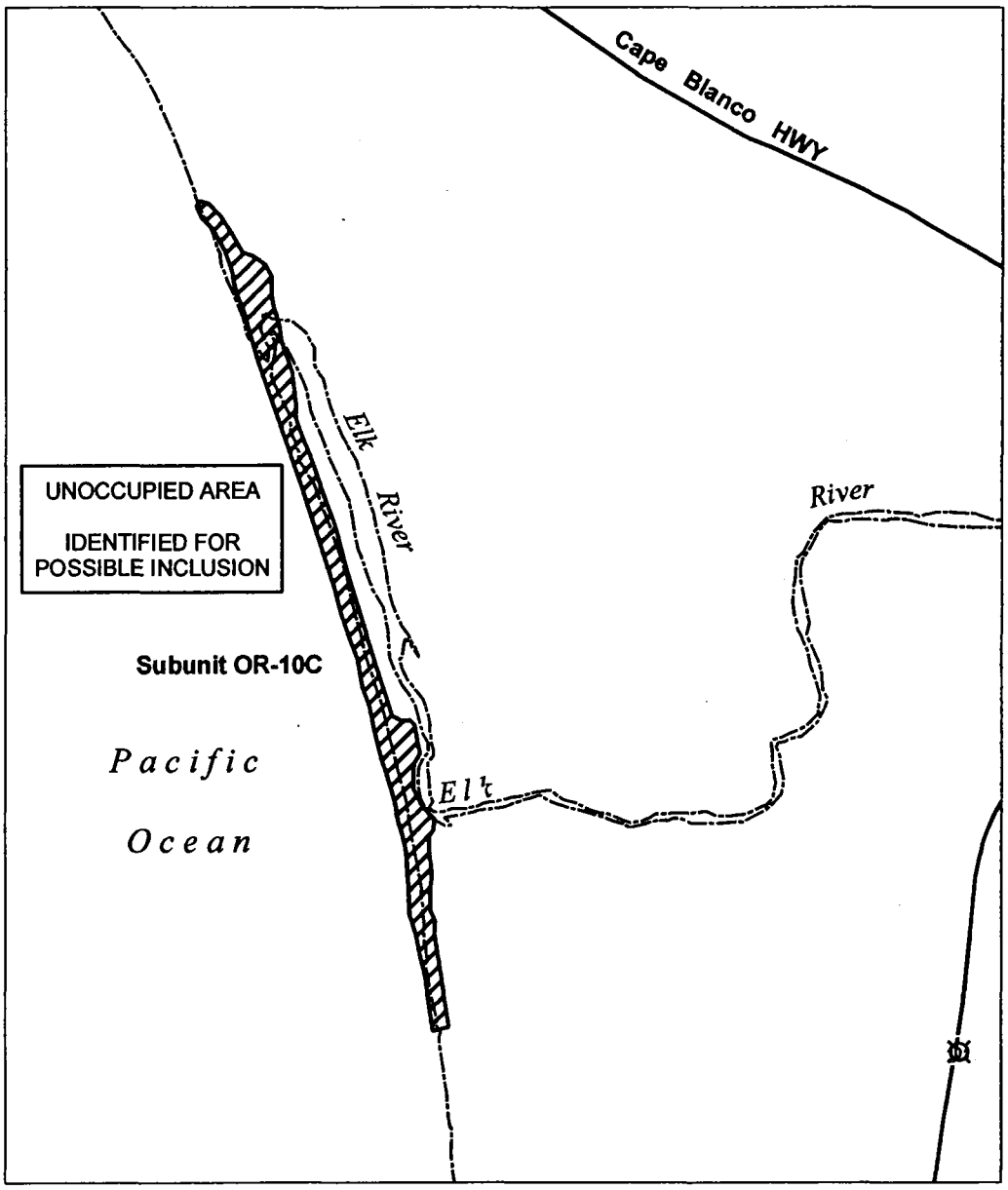


(26) Unit OR–10C, Curry County, Oregon.

(i) From USGS 1:24,000 quadrangle map Cape Blanco, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 374519, 4740961; 374556, 4740953; 374606, 4740901; 374661, 4740817; 374705, 4740740; 374746, 4740729; 374802, 4740690; 374832, 4740636; 374830, 4740602; 374832, 4740565; 374840, 4740512; 374854, 4740467; 374866, 4740424; 374871, 4740375; 374888, 4740319; 374905, 4740272; 374920, 4740229; 374926, 4740181; 374937, 4740107; 374936, 4740037; 374953, 4739984; 374976, 4739927; 374998, 4739875; 375019, 4739820; 375064, 4739692; 375112, 4739562; 375160, 4739383; 375224, 4739164; 375267, 4739024; 375309, 4738905; 375354, 4738763; 375395, 4738741; 375428, 4738744; 375450, 4738722; 375464, 4738651; 375474, 4738603; 375445, 4738554; 375443, 4738453; 375481, 4738378; 375536, 4738323; 375534, 4738275; 375516, 4738246; 375516, 4738194; 375522, 4738128; 375528, 4738072; 375521, 4738023; 375519, 4737985; 375521, 4737931; 375541, 4737888; 375537, 4737835; 375600, 4737434; 375533, proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 374519, 4740961.

(ii) **Note:** Unit OR–10C (Map M24) follows:

Map 24. Elk River Spit (OR-10C), Curry County, Oregon.

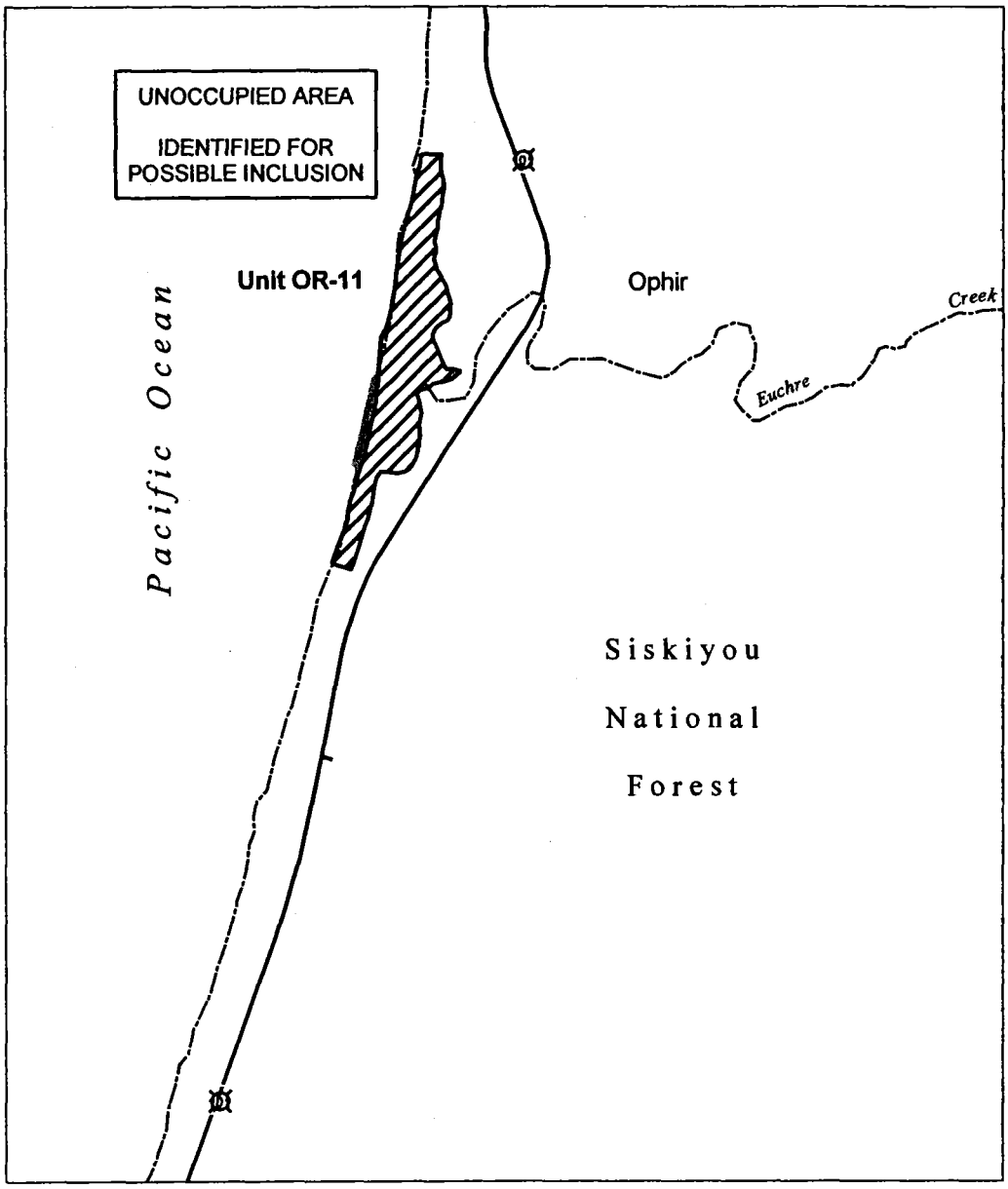


(27) Unit OR–11, Curry County, Oregon.

(i) From USGS 1:24,000 quadrangle map Ophir, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 385905, 4713626; 385993, 4713626; 385989, 4713589; 385989, 4713556; 386000, 4713524; 386001, 4713474; 385994, 4713439; 385991, 4713412; 385982, 4713369; 385976, 4713340; 385973, 4713309; 385965, 4713278; 385962, 4713256; 385966, 4713234; 385966, 4713208; 385957, 4713179; 385970, 4713134; 385994, 4713103; 386012, 4713069; 386019, 4713036; 386031, 4712992; 386027, 4712938; 386014, 4712919; 385995, 4712912; 385965, 4712889; 385952, 4712862; 385956, 4712836; 385970, 4712805; 385992, 4712752; 386009, 4712717; 386043, 4712713; 386074, 4712704; 386054, 4712687; 386032, 4712668; 386009, 4712660; 385987, 4712658; 385956, 4712652; 385931, 4712631; 385902, 4712625; 385885, 4712612; 385898, 4712569; 385904, 4712521; 385895, 4712473; 385896, 4712427; 385893, 4712375; 385885, 4712335; 385864, 4712295; 385836, 4712274; 385804, 4712268; 385762, 4712271; 385729, 4712275; 385711, 4712250; 385704, 4712220; 385699, 4712187; 385694, 4712158; 385692, 4712137; 385685, 4712118; 385675, 4712079; 385663, 4712049; 385652, 4712017; 385649, 4711996; 385600, 4711856; 385600, 4711856; 385531, 4711877; 385513, 4711884; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 385905, 4713626.

(ii) **Note:** Unit OR–11 (Map M25) follows:

Map 25. Euchre Creek Spit (OR-11), Curry County, Oregon.

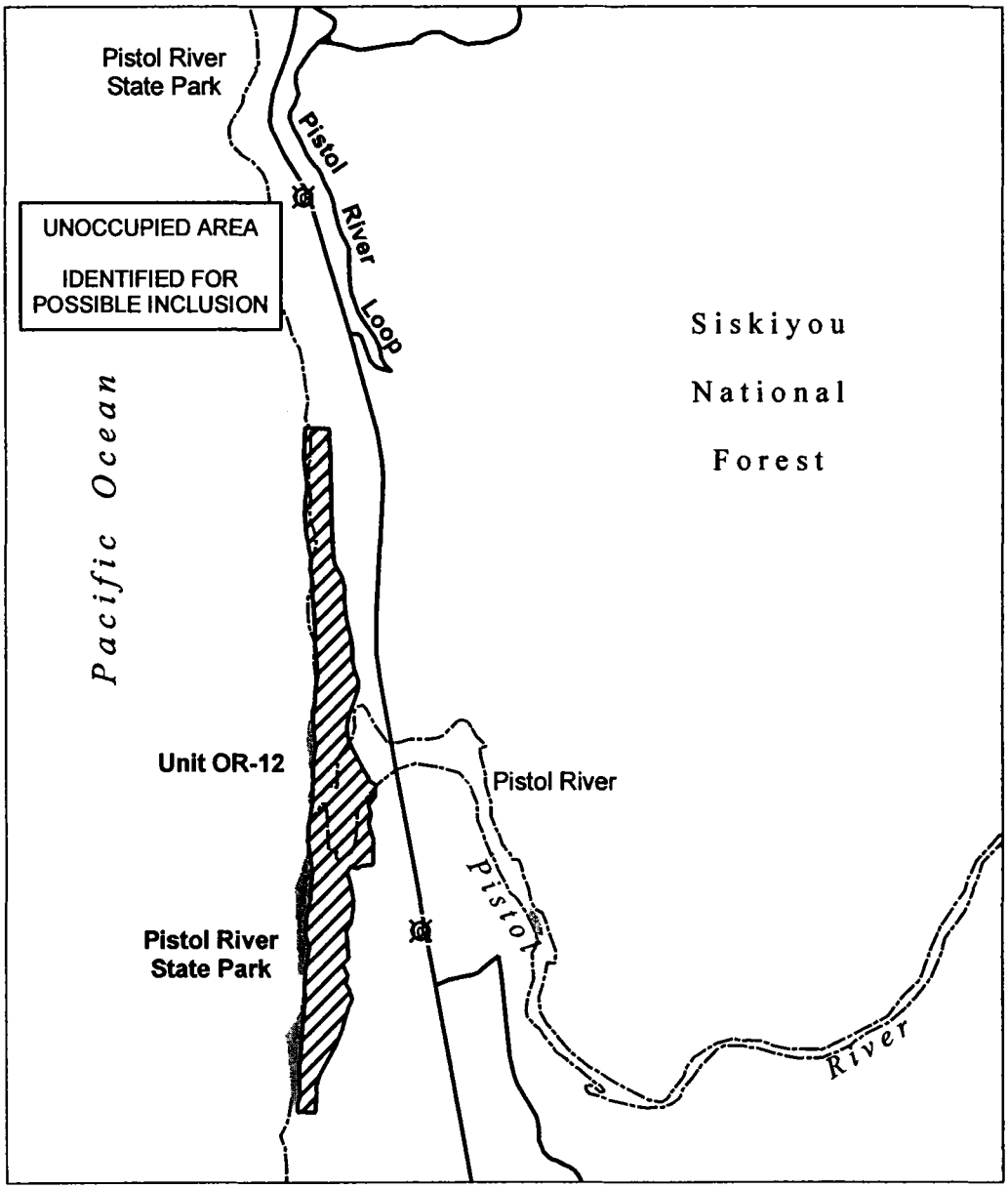


(28) Unit OR–12, Gray's Harbor County, Washington.

(i) From USGS 1:24,000 quadrangle maps Empire, and Charleston, Oregon, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 401636, 4828760; 394245, 4805890; 393957, 4805261; 393701, 4804768; 393592, 4804572; 393390, 4804169; 393440, 4804146; 393286, 4803816; 393209, 4803614; 393042, 4803271; 392971, 4803090; 392984, 4802913; 392971, 4802808; 392997, 4802749; 393060, 4802650; 392984, 4802525; 392909, 4802426; 392851, 4802339; 392965, 4802319; 393103, 4802120; 393037, 4801882; 392991, 4801895; 392942, 4801829; 392915, 4801780; 392702, 4801829; 392390, 4801908; 392192, 4801921; 392137, 4801773; 392058, 4801603; 391696, 4801111; 391595, 480115; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 401636, 4828760.

(ii) **Note:** Unit OR–12 (Map M26) follows:

Map 26. Pistol River Spit (OR-12), Curry County, Oregon.

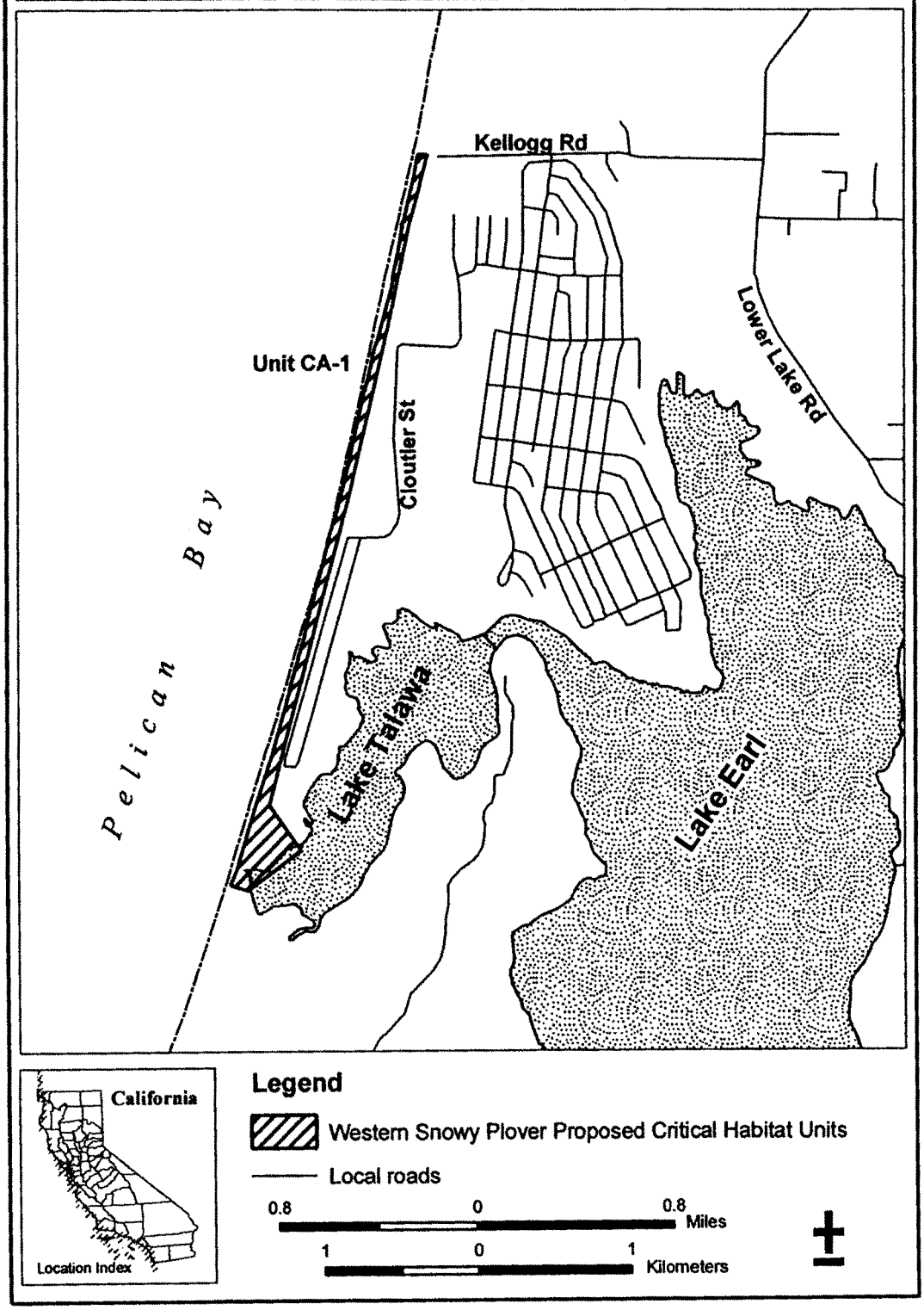


(29) Unit CA–1, Del Norte County, California.

(i) From USGS 1:24,000 quadrangle map Crescent City, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 399441, 4635774; 399504, 4635777; 399425, 4635468; 399384, 4635314; 399275, 4634785; 398991, 4633566; 398466, 4631552; 398670, 4631260; 398324, 4631005; 398324, 4631005; 398209, 4631037; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 399441, 4635774.

(ii) **Note:** Units CA–1 (Map M27) follows:

Map 27. Lake Earl (CA-1), Del Norte County, California.

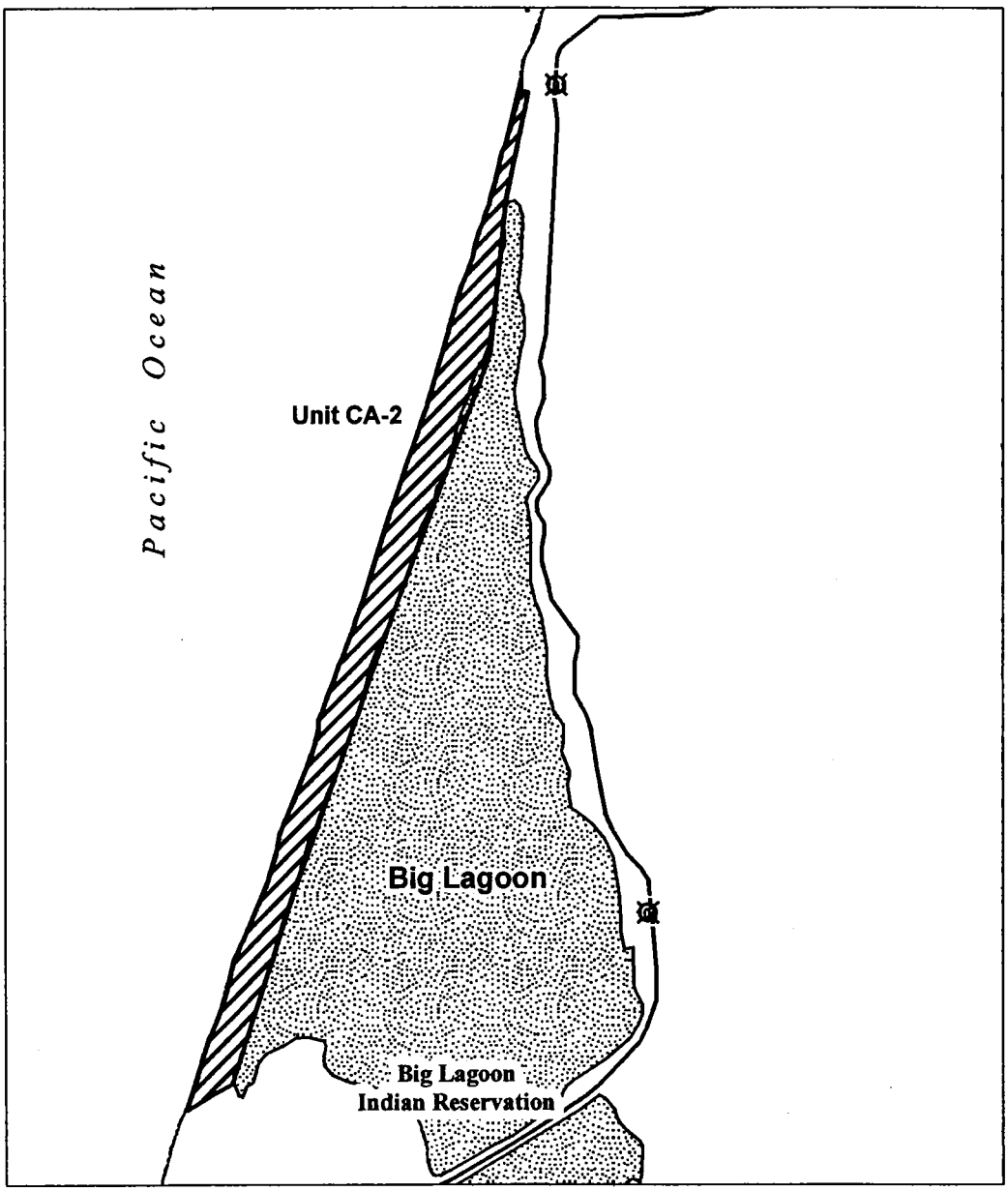


(30) Unit CA–2, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle maps Rodgers Peak, and Trinadad, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 406854, 4563175; 406909, 4563169; 406777, 4562537; 406691, 4561673; 406135, 4560211; 405555, 4558600; 405187, 4557482; 404923, 4557330; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 406854, 4563175.

(ii) **Note:** Units CA–2 (Map M28) follows:

Map 28. Big Lagoon (CA-2), Humboldt County, California.



(31) Unit CA–3A, Humboldt County, California.

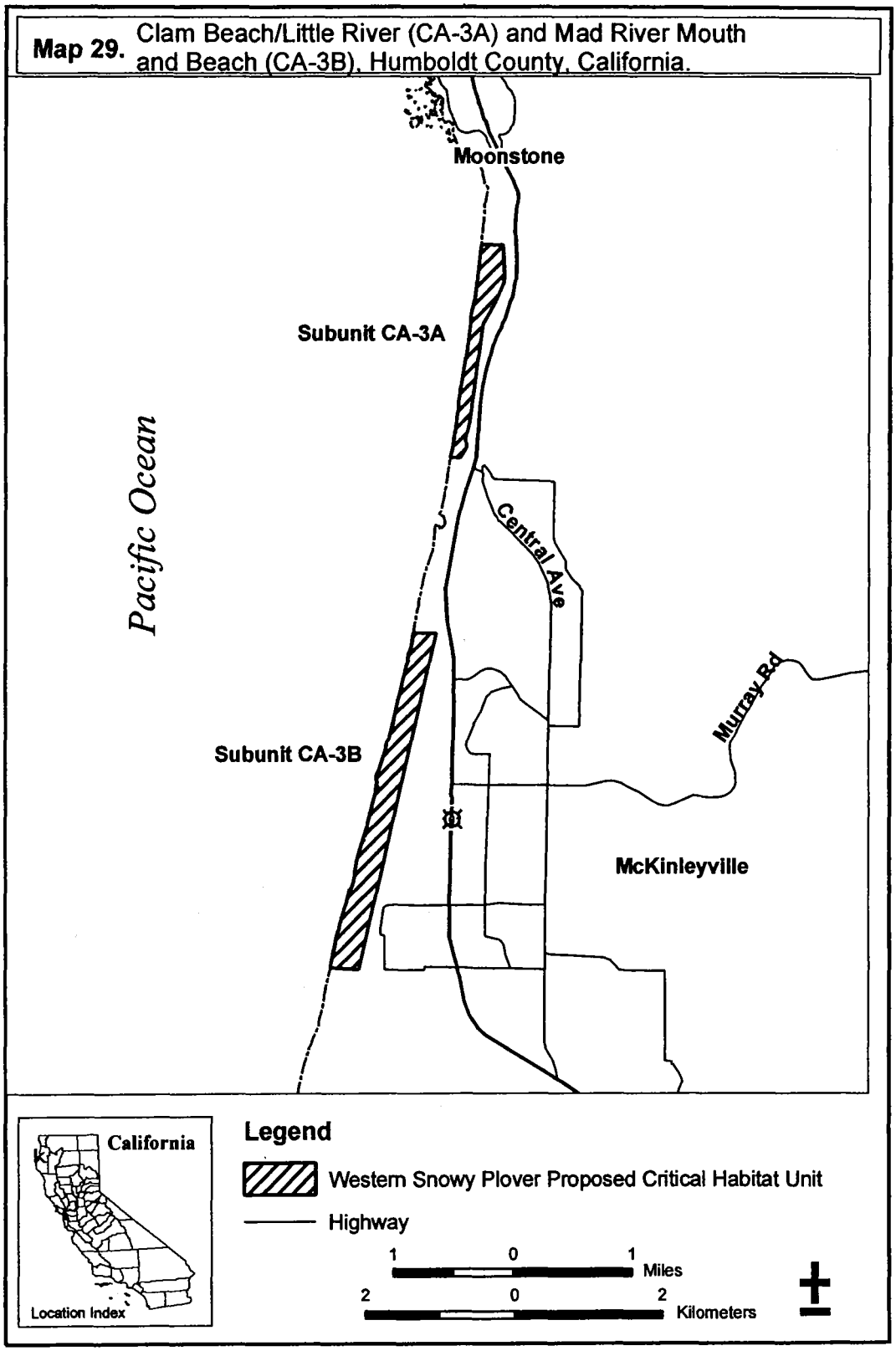
(i) From USGS 1:24,000 quadrangle maps Crannell, and Arcata North, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 406554, 4541473; 406850, 4541471; 406870, 4540965; 406746, 4540695; 406583, 4540426; 406413, 4539149; 406354, 4538891; 406371, 4538797; 406294, 4538652; 406149, 4538652; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 406554, 4541473.

(ii) **Note:** Units CA–3A, CA–3B (Map M29) follows after description of CA–3B:

(32) Unit CA–3B, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle maps Arcata North, and Tyee City, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 405657, 4536319; 405968, 4536317; 404931, 4531851; 404539, 4531879 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 405657, 4536319.

(ii) **Note:** Units CA–3A, CA–3B (Map M29) follows:

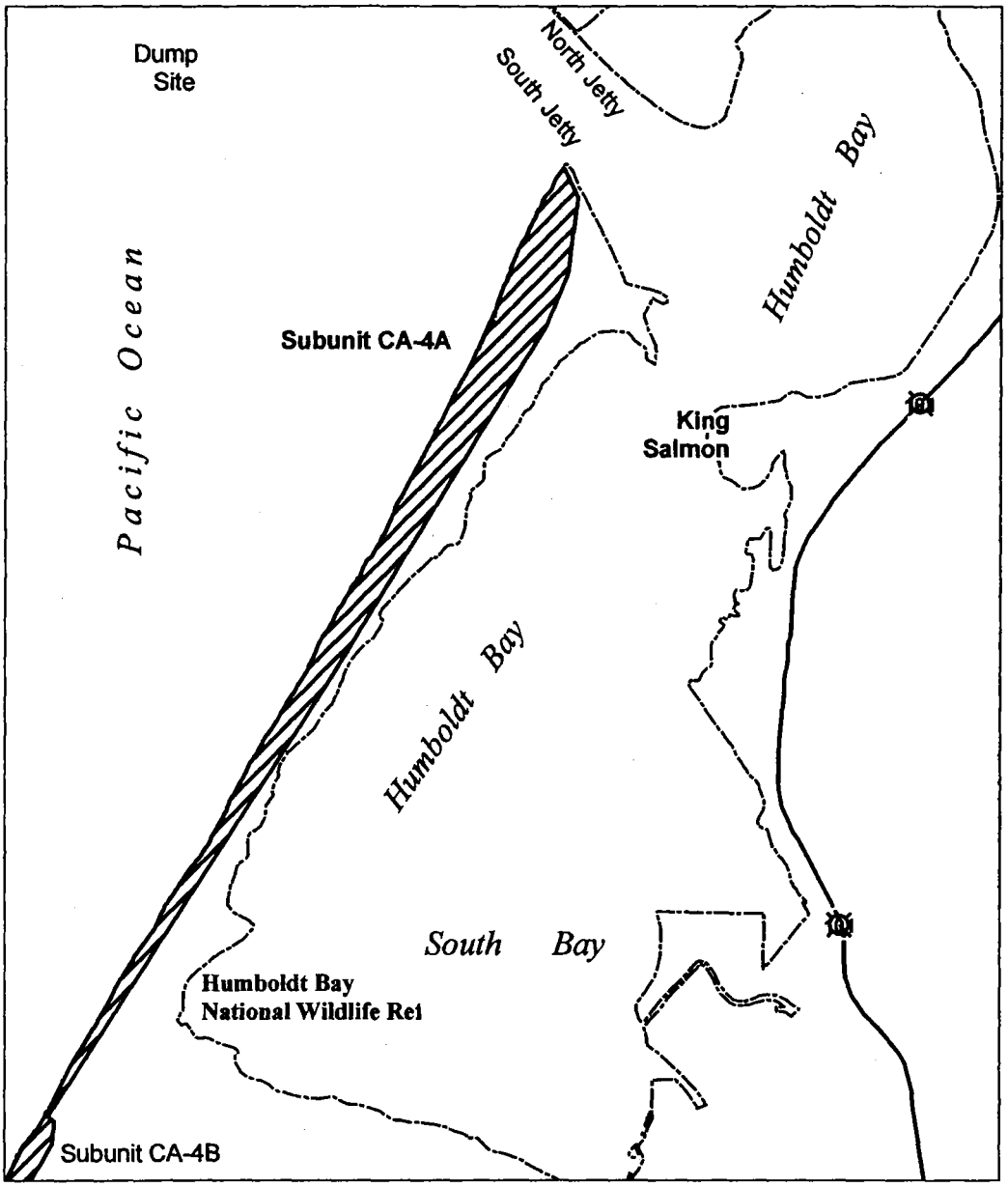

Map 29. Clam Beach/Little River (CA-3A) and Mad River Mouth and Beach (CA-3B), Humboldt County, California.
Moonstone
Subunit CA-3A
Pacific Ocean
Central Ave
Murray Rd
Subunit CA-3B
McKinleyville
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
Highway
1 0 1 Miles
2 0 2 Kilometers

(33) Unit CA–4A, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle maps Eureka, Fields Landing, and Cannibal Island, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 395866, 4512270; 395968, 4512054; 395898, 4511510; 395741, 4511140; 394616, 4509320; 394166, 4508589; 392132, 4505460; 392114, 4505473 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 395866, 4512270.

(ii) **Note:** Units CA–4A (Map M30) follows:

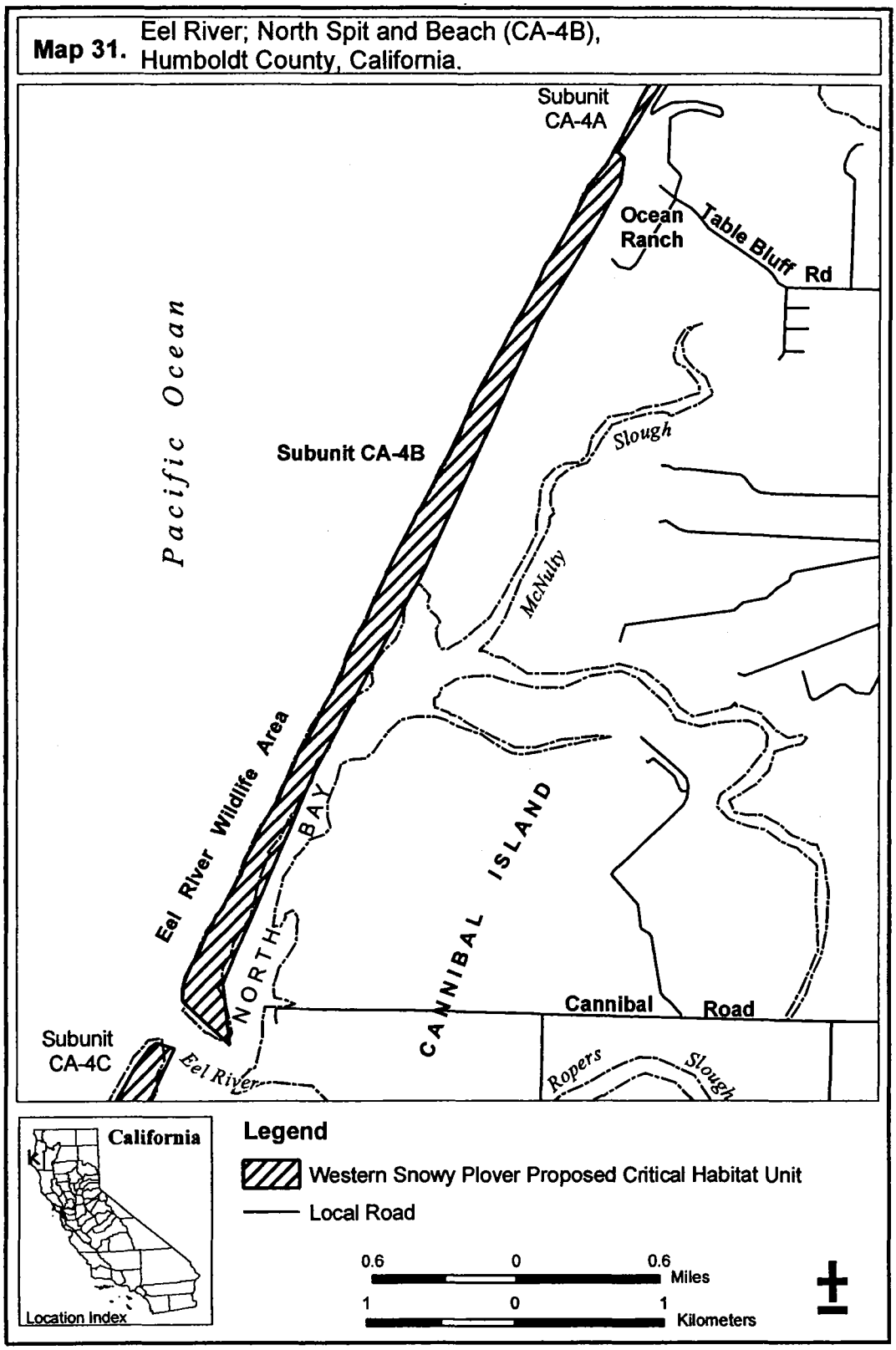
Map 30. Humboldt Bay; South Spit (CA-4A), Humboldt County, California.



(34) Unit CA–4B, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle map Cannibal Island, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 392114, 4505473; 392178, 4505423; 392157, 4505254; 391892, 4504800; 391616, 4504350; 390808, 4502622; 390100, 4501334; 389495, 4499927; 389538, 4499526; 389226, 4499809 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 392114, 4505473.

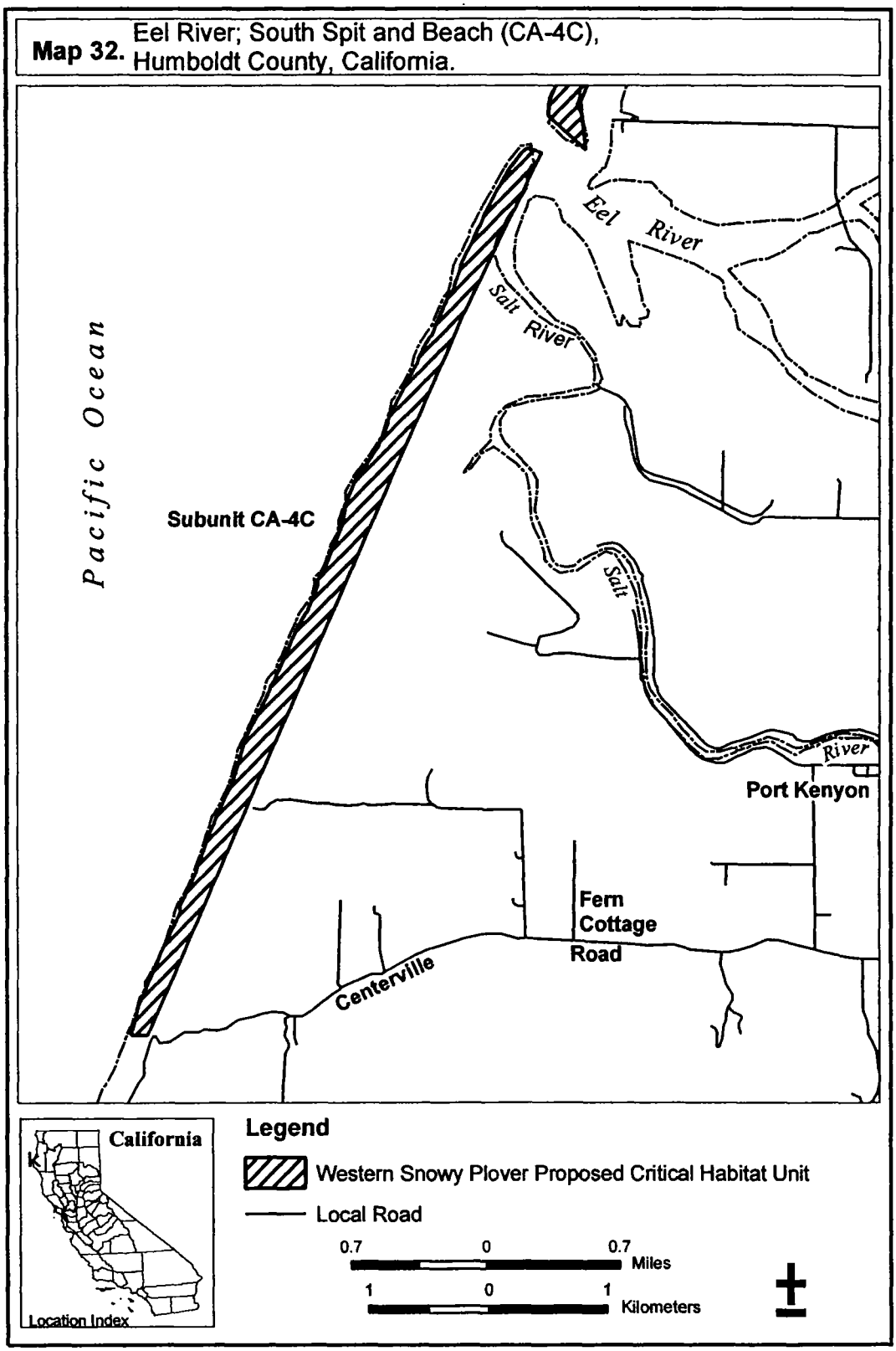
(ii) **Note:** Units CA–4B (Map M31) follows:


Map 31. Eel River; North Spit and Beach (CA-4B), Humboldt County, California.
Subunit CA-4A
Ocean Ranch
Table Bluff Rd
Pacific Ocean
Subunit CA-4B
Slough
McNulty
Eel River Wildlife Area
NORTH BAY
CANNIBAL ISLAND
Cannibal Road
Subunit CA-4C
Eel River
Ropers Slough
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
Local Road
0.6 0 0.6 Miles
1 0 1 Kilometers

(35) Unit CA–4C, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle maps Cannibal Island, and Ferndale, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 389046, 4499539; 389171, 4499501; 388506, 4498145; 385862, 4492184; 385723, 4492184 proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 389046, 4499539.

(ii) **Note:** Unit CA–4C (Map M32) follows:

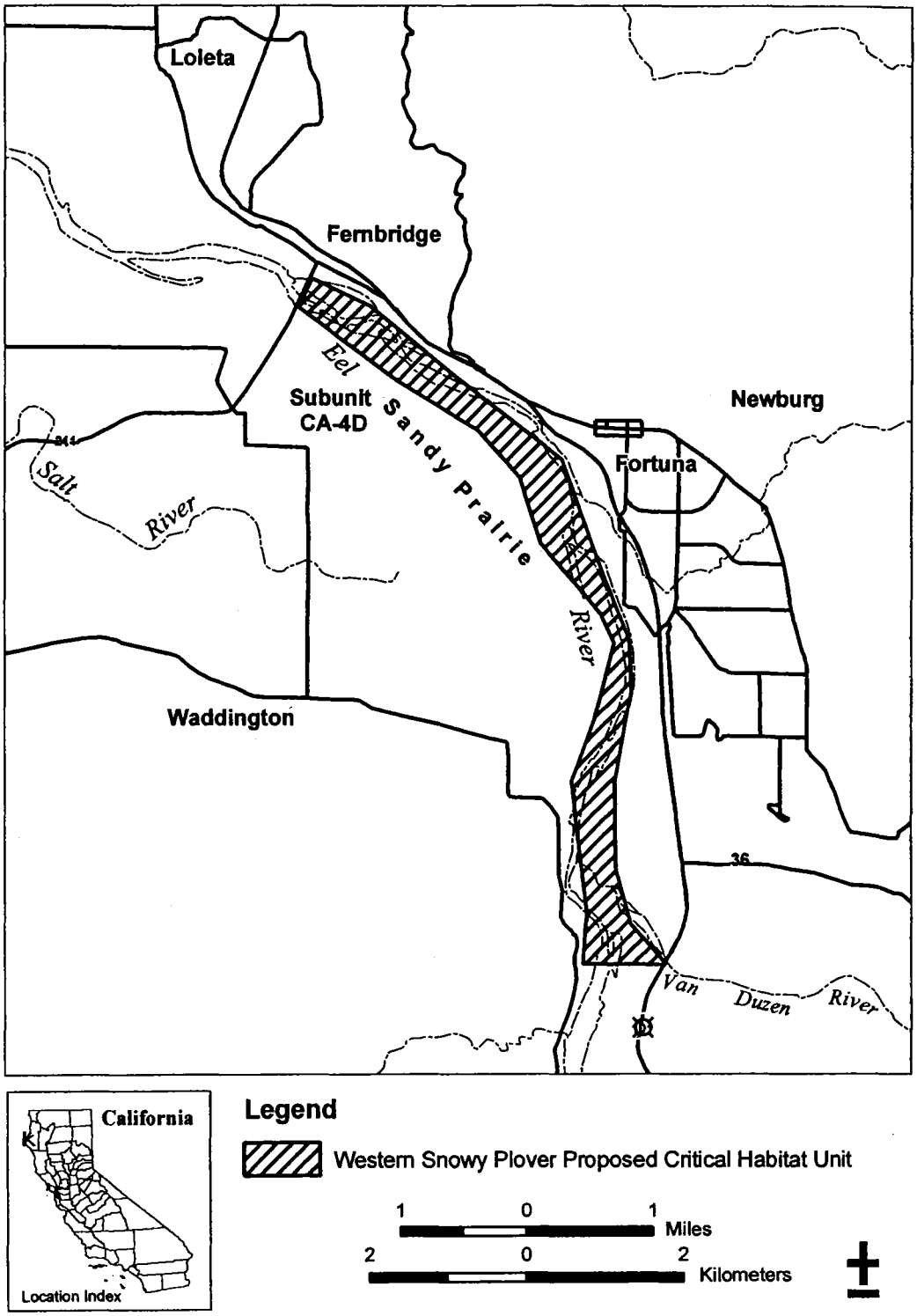

Map 32. Eel River; South Spit and Beach (CA-4C), Humboldt County, California.
Pacific Ocean
Subunit CA-4C
Eel River
Salt River
Salt River
Port Kenyon
Fern Cottage Road
Centerville
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
Local Road
0.7 0 0.7 Miles
1 0 1 Kilometers

(36) Unit CA–4D, Humboldt County, California.

(i) From USGS 1:24,000 quadrangle map Fortuna, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 398394, 4496472; 399149, 4496127; 400242, 4495244; 401586, 4494208; 402142, 4492667; 402449, 4491912; 402481, 4491253; 402263, 4490095; 402276, 4489021; 402468, 4488324; 402916, 4487812; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 398394, 4496472.

(ii) **Note:** Unit CA–4D (Map M33) follows:

Map 33. Eel River Gravel Bars (CA-4D), Humboldt County, California.

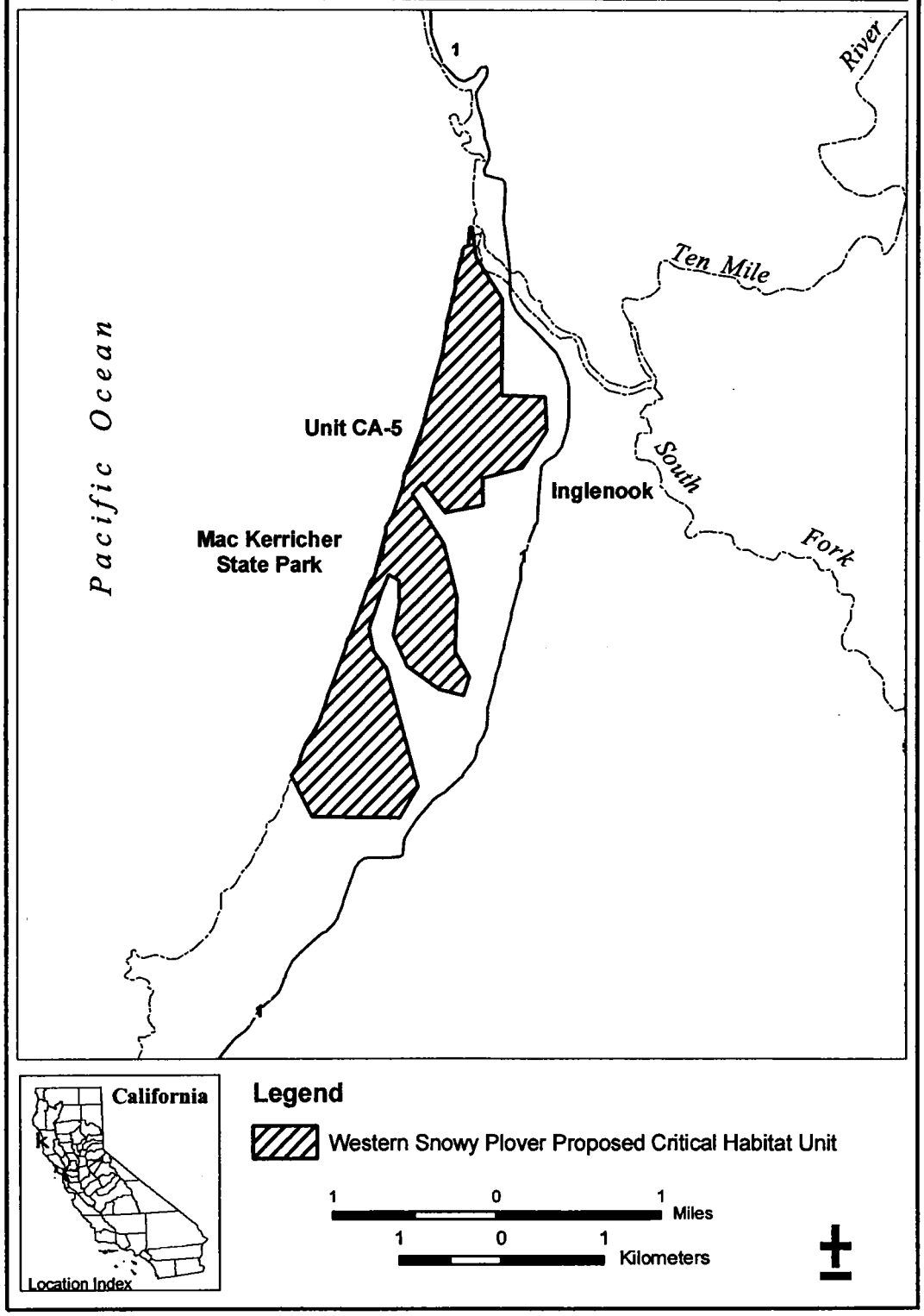


(37) Unit CA–5, Mendocino County, California.

(i) From USGS 1:24,000 quadrangle map Inglenook, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 434183, 4378272; 434210, 4378274; 434246, 4377994; 434507, 4377586; 434498, 4376652; 434928, 4376643; 434941, 4376311; 434702, 4375952; 434316, 4375850; 434321, 4375592; 433949, 4375521; 433722, 4375797; 433623, 4375691; 433938, 4375209; 434062, 4374702; 434048, 4374174; 434190, 4373926; 434133, 4373749; 433892, 4373805; 433570, 4374036; 433436, 4374324; 433498, 4374626; 433493, 4374864; 433391, 4374920; 433325, 4374764; 433205, 4374397; 433246, 4374176; 433373, 4374009; 433684, 4372868; 433502, 4372573; 432647, 4372582; 432442, 4372975; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 434183, 4378272.

(ii) **Note:** Unit CA–5 (Map M34) follows:

Map 34. MacKerricher Beach (CA-5), Mendocino County, California.

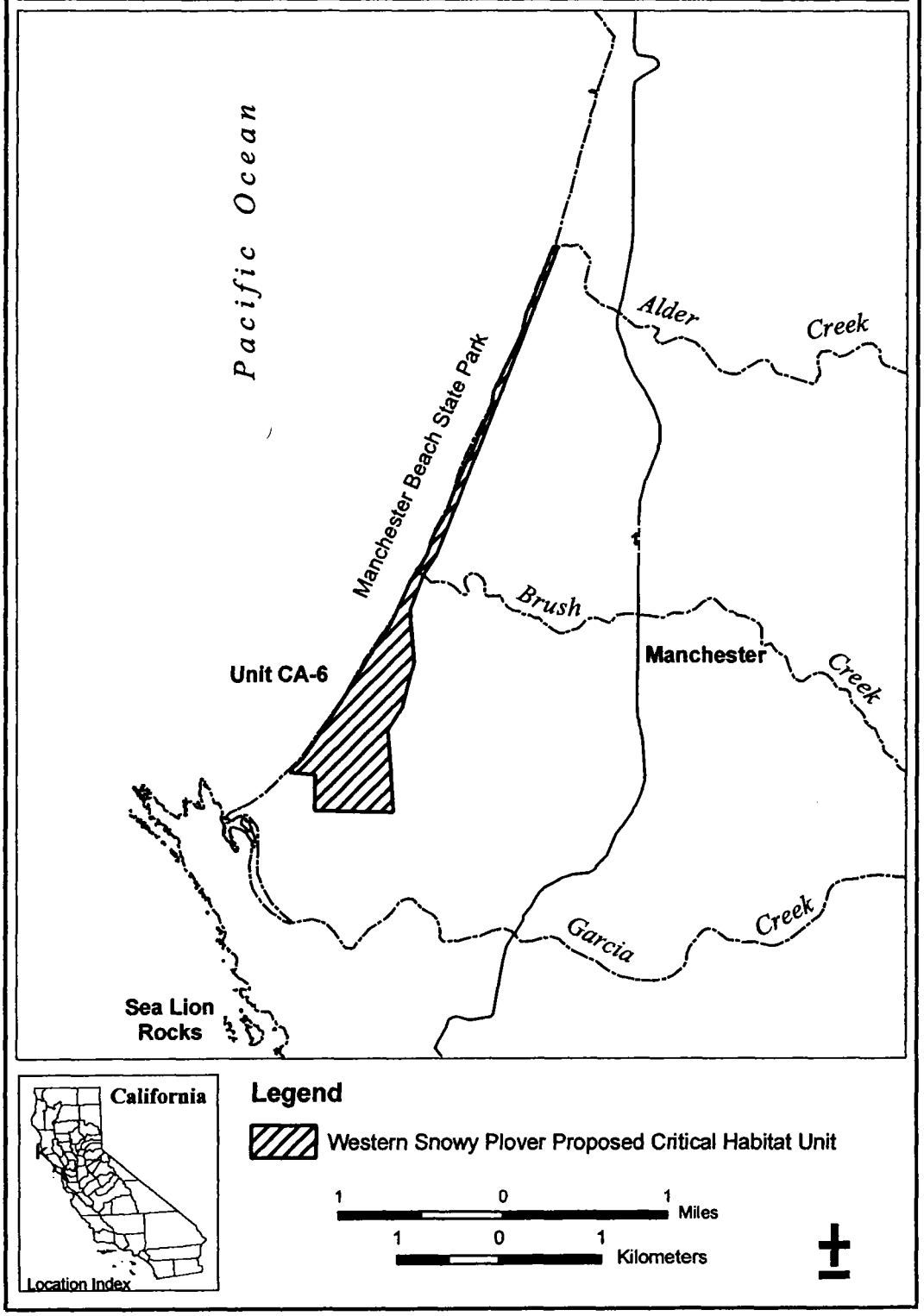


(38) Unit CA–6, Mendocino County, California.

(i) From USGS 1:24,000 quadrangle maps Mallo Pass Creek, and Point Arena California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 439747, 4317317; 439796, 4317313; 439669, 4316995; 439235, 4315894; 438610, 4314327; 438483, 4314133; 438349, 4313805; 438391, 4313293; 438277, 4312863; 438136, 4312640; 438192, 4311851; 437426, 4311863; 437428, 4312213; 437179, 4312237; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 439747, 4317317.

(ii) **Note:** Unit CA–6 (Map M35) follows:

Map 35. Manchester Beach (CA-6), Mendocino County, California.

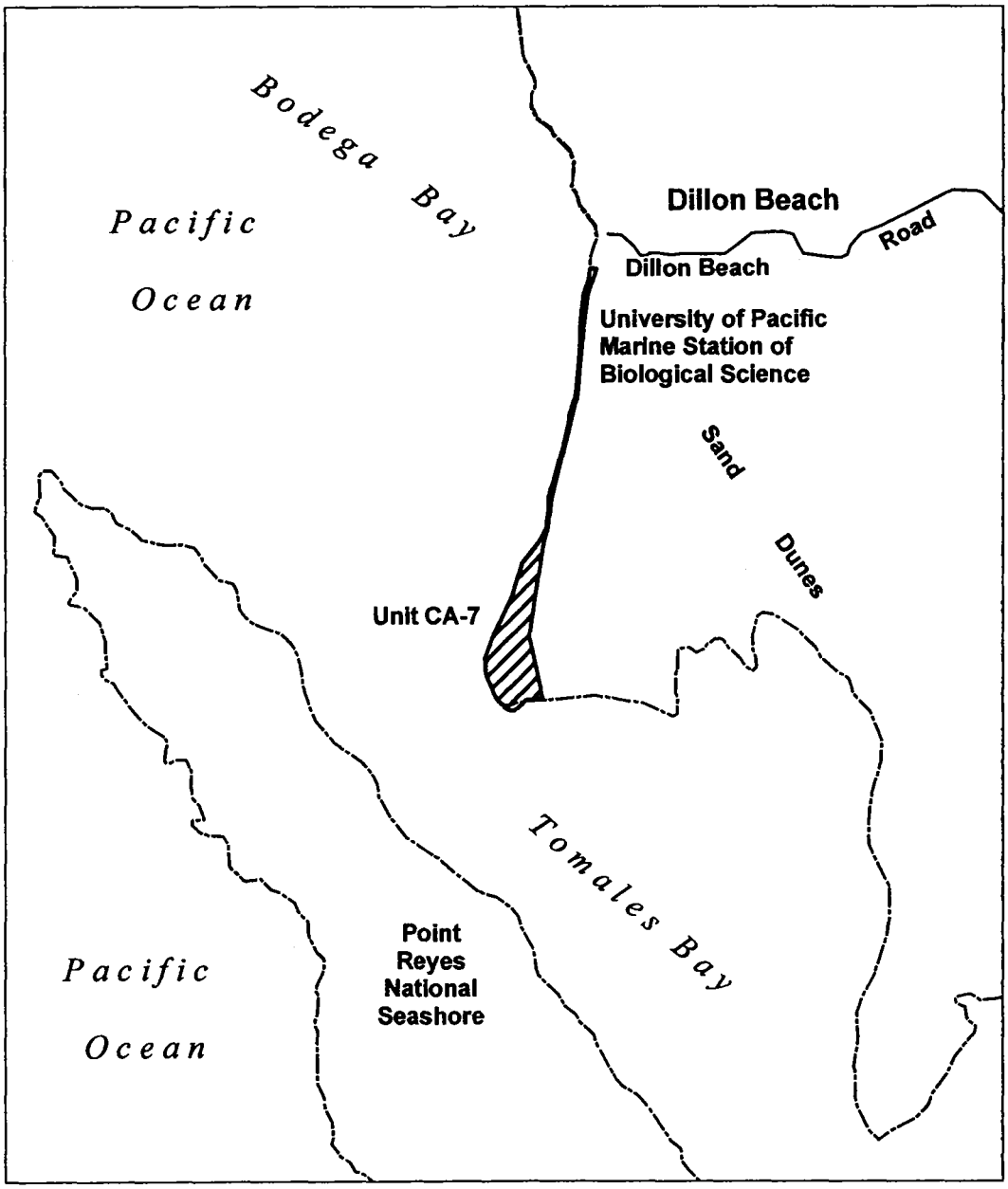


(39) Unit CA–7, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Tomales, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 502478, 4231535; 502518, 4231639; 502600, 4231807; 502640, 4231949; 502716, 4232040; 502749, 4232104; 502757, 4232175; 502756, 4232185; 502756, 4232196; 502756, 4232216; 502759, 4232241; 502764, 4232262; 502768, 4232278; 502771, 4232289; 502774, 4232295; 502823, 4232462; 502850, 4232578; 502850, 4232578; 502852, 4232600; 502856, 4232616; 502861, 4232631; 502864, 4232641; 502868, 4232653; 502878, 4232696; 502898, 4232884; 502900, 4232983; 502901, 4233031; 502914, 4233121; 502916, 4233135; 502936, 4233201; 502942, 4233247; 502973, 4233247; 502935, 4233131; 502915, 4232977; 502884, 4232667; 502772, 4232237; 502758, 4232101; 502740, 4232042; 502672, 4231629; 502733, 4231351; 502660, 4231345; 502650, 4231336; 502642, 4231326; 502633, 4231318; 502621, 4231307; 502614, 4231306; 502606, 4231301; 502600, 4231299; 502591, 4231298; 502582, 4231302; 502574, 4231307; 502568, 4231311; 502565, 4231313; 502556, 4231326; 502553, 4231331; 502549, 4231332; 502526, 4231355; 502516, 4231377; 502500, 4231414; 502498, 4231417; 502493, 4231428; 502485, 4231446; 502485, 4231449; 502483, 4231455; 502480, 4231472; 502480, 4231487; 502480, 4231495; 502480, 4231505; returning to 502478, 4231535.

(ii) **Note:** Unit CA–7 (Map M36) follows:

Map 36. Dillon Beach (CA-7), Marin County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

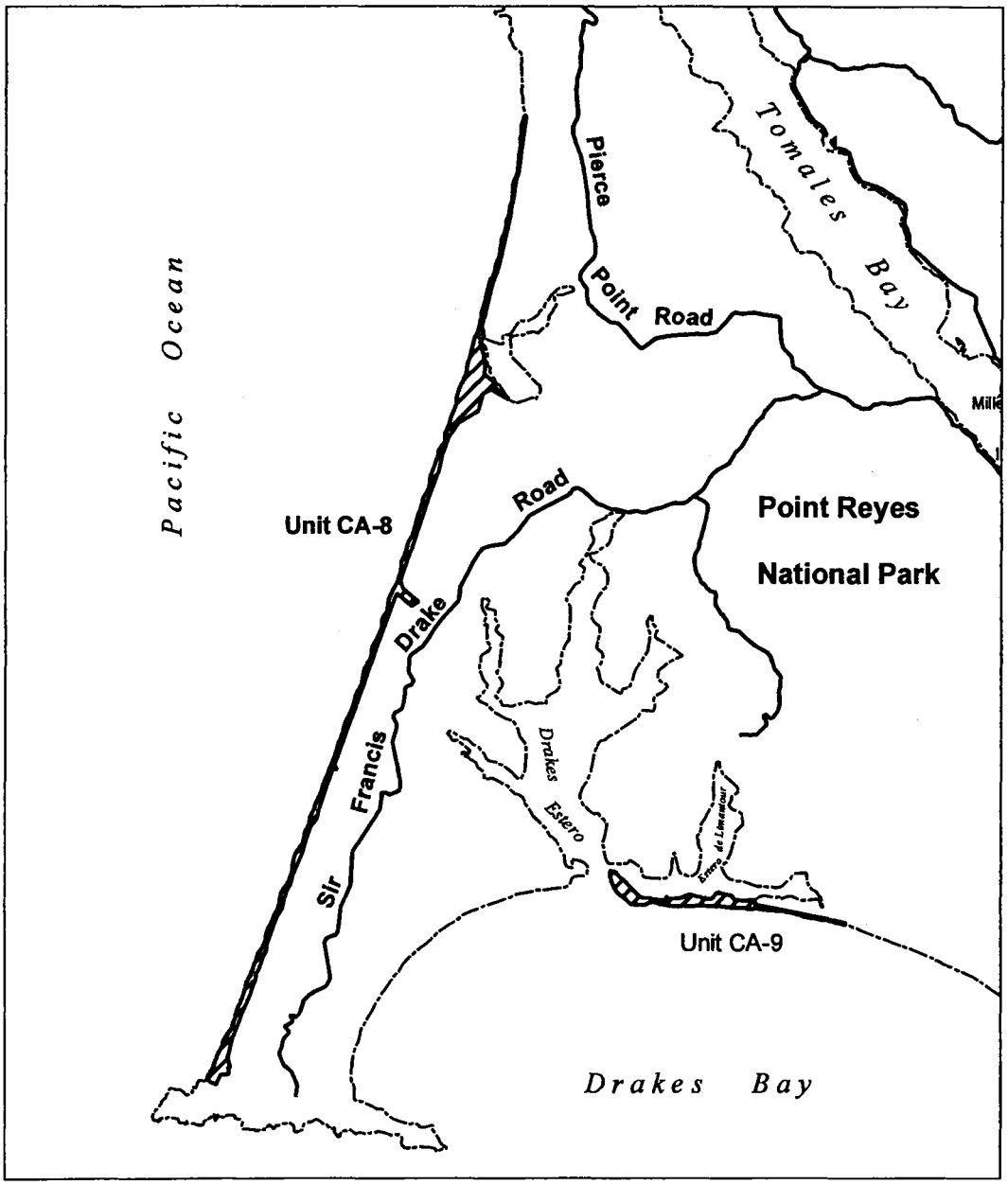
1 0 1 Kilometers

(40) Unit CA–8, Marin County, California.

(i) From USGS 1:24,000 quadrangle maps Tomales, and Drakes Bay, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 504572, 4222726; 504572, 4222726; 504614, 4222726; 504533, 4222176; 504474, 4221753; 504423, 4221606; 504323, 4220932; 504115, 4220064; 504015, 4219779; 503828, 4219017; 503862, 4218832; 503786, 4218734; 503872, 4218442; 503881, 4218252; 503864, 4218189; 504076, 4218038; 504054, 4217950; 504303, 4217736; 503996, 4217911; 503852, 4217840; 503755, 4217538; 503404, 4217327; 503248, 4217088; 503131, 4216783; 503063, 4216501; 502871, 4215990; 502578, 4215108; 502379, 4214536; 502420, 4214406; 502698, 4214160; 502576, 4214092; 502308, 4214311; 501984, 4213425; 501745, 4212755; 501458, 4211988; 501205, 4211284; 501258, 4211192; 501175, 4211211; 500930, 4210500; 500900, 4210342; 500793, 4210193; 500720, 4209996; 500637, 4209716; 500474, 4209346; 500433, 4209173; 500364, 4209049; 500289, 4208756; 500194, 4208591; 500009, 4208106; 499997, 4207982; 499943, 4207897; 499858, 4207658; 499821, 4207609; 499817, 4207502; 499707, 4207202; 499580, 4206933; 499511, 4206729; 499411, 4206501; 499306, 4206118; 499361, 4205940; 499323, 4205958; 499335, 4205836; 499191, 4205825; 499100, 4205651; 498998, 4205696; 498933, 4205752; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 504572, 4222726.

(ii) **Note:** Unit CA–8 (Map M37) follows:

Map 37. Point Reyes Beach (CA-8), Marin County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

2 0 2 Miles

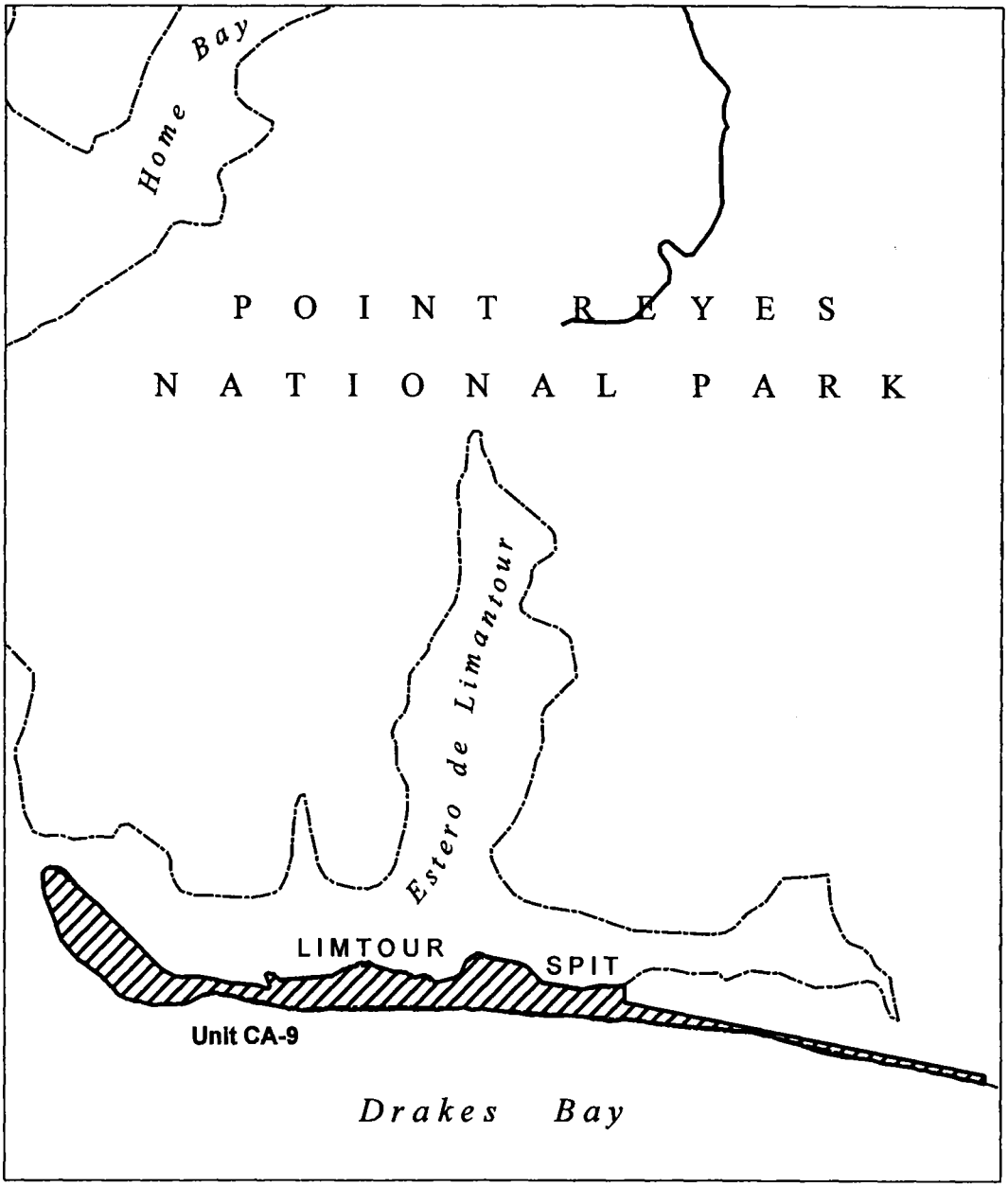
3 0 3 Kilometers

(41) Unit CA–9, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Drakes Bay, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 506112, 4209385; 506127, 4209403; 506148, 4209411; 506156, 4209407; 506160, 4209409; 506164, 4209409; 506175, 4209409; 506181, 4209408; 506190, 4209406; 506199, 4209398; 506212, 4209393; 506224, 4209381; 506227, 4209377; 506236, 4209364; 506250, 4209351; 506258, 4209335; 506283, 4209313; 506304, 4209295; 506356, 4209248; 506636, 4208969; 506702, 4208934; 506808, 4208934; 506886, 4208919; 506941, 4208908; 507068, 4208896; 507113, 4208881; 507123, 4208888; 507103, 4208939; 507113, 4208949; 507123, 4208947; 507125, 4208947; 507125, 4208947; 507136, 4208944; 507169, 4208919; 507257, 4208926; 507262, 4208927; 507276, 4208929; 507278, 4208928; 507398, 4208937; 507451, 4208967; 507465, 4208969; 507473, 4208976; 507475, 4208978; 507479, 4208977; 507486, 4208976; 507497, 4208980; 507504, 4208982; 507509, 4208988; 507513, 4208990; 507524, 4208995; 507539, 4208993; 507554, 4208995; 507557, 4208996; 507564, 4208994; 507571, 4208993; 507588, 4208983; 507672, 4208957; 507725, 4208955; 507734, 4208948; 507740, 4208941; 507742, 4208942; 507745, 4208943; 507754, 4208938; 507759, 4208931; 507809, 4208942; 507821, 4208933; 507826, 4208934; 507829, 4208935; 507833, 4208930; 507835, 4208929; 507838, 4208927; 507841, 4208925; 507848, 4208920; 507853, 4208911; 507860, 4208908; 507934, 4208927; 507969, 4208945; 507995, 4209003; 508011, 4209013; 508013, 4209018; 508016, 4209019; 508030, 4209025; 508047, 4209034; 508048, 4209035; 508050, 4209034; 508068, 4209029; 508081, 4209024; 508098, 4209021; 508101, 4209019; 508150, 4209009; 508228, 4208993; 508269, 4208978; 508305, 4208939; 508313, 4208932; 508315, 4208928; 508330, 4208912; 508483, 4208887; 508485, 4208887; 508500, 4208884; 508513, 4208881; 508589, 4208894; 508691, 4208894; 508700, 4208902; 508700, 4208822; 510301, 4208503; 510301, 4208469; 510275, 4208473; 510258, 4208478; 510237, 4208484; 510228, 4208485; 510202, 4208487; 510165, 4208496; 510134, 4208505; 510112, 4208510; 510072, 4208518; 510040, 4208527; 510006, 4208529; 509977, 4208540; 509963, 4208543; 509958, 4208543; 509938, 4208546; 509898, 4208553; 509862, 4208555; 509851, 4208558; 509835, 4208563; 509824, 4208566; 509802, 4208571; 509778, 4208576; 509750, 4208578; 509731, 4208579; 509680, 4208585; 509627, 4208595; 509577, 4208604; 509563, 4208609; 509555, 4208612; 509539, 4208617; 509508, 4208629; 509462, 4208642; 509448, 4208645; 509439, 4208647; 509429, 4208648; 509392, 4208661; 509385, 4208663; 509347, 4208677; 509308, 4208680; 509279, 4208688; 509258, 4208693; 509232, 4208697; 509196, 4208700; 509178, 4208701; 508902, 4208724; 508704, 4208751; 508696, 4208750; 508682, 4208746; 508665, 4208742; 508632, 4208740; 508601, 4208747; 508577, 4208748; 508560, 4208749; 508545, 4208753; 508525, 4208758; 508498, 4208761; 508450, 4208766; 508431, 4208764; 508396, 4208761; 508350, 4208763; 508347, 4208763; 508312, 4208768; 508275, 4208767; 508237, 4208774; 508216, 4208775; 508199, 4208775; 508178, 4208779; 508166, 4208782; 508150, 4208784; 508134, 4208786; 508100, 4208789; 508095, 4208789; 508065, 4208793; 508056, 4208793; 508019, 4208789; 507980, 4208798; 507948, 4208793; 507920, 4208793; 507910, 4208794; 507867, 4208789; 507821, 4208791; 507775, 4208790; 507763, 4208792; 507743, 4208793; 507736, 4208794; 507690, 4208795; 507651, 4208792; 507617, 4208793; 507611, 4208793; 507605, 4208792; 507602, 4208792; 507576, 4208790; 507547, 4208791; 507539, 4208791; 507487, 4208789; 507446, 4208791; 507393, 4208795; 507338, 4208787; 507282, 4208785; 507236, 4208792; 507235, 4208792; 507221, 4208796; 507202, 4208794; 507189, 4208799; 507180, 4208798; 507152, 4208804; 507140, 4208807; 507117, 4208812; 507104, 4208816; 507089, 4208816; 507071, 4208816; 507066, 4208818; 507040, 4208823; 507038, 4208824; 507007, 4208830; 507001, 4208833; 506975, 4208844; 506962, 4208850; 506875, 4208863; 506828, 4208855; 506821, 4208851; 506817, 4208849; 506799, 4208840; 506780, 4208829; 506759, 4208821; 506739, 4208815; 506738, 4208815; 506712, 4208815; 506711, 4208816; 506702, 4208812; 506675, 4208814; 506663, 4208811; 506659, 4208810; 506655, 4208811; 506640, 4208813; 506636, 4208814; 506624, 4208811; 506608, 4208809; 506582, 4208814; 506547, 4208824; 506518, 4208825; 506486, 4208836; 506484, 4208838; 506477, 4208840; 506457, 4208849; 506439, 4208863; 506434, 4208871; 506430, 4208877; 506423, 4208885; 506417, 4208891; 506409, 4208895; 506397, 4208910; 506367, 4208941; 506262, 4209015; 506194, 4209093; 506158, 4209192; 506115, 4209314; and returning to 506112, 4209385.

(ii) **Note:** Unit CA–9 (Map M38) follows:

Map 38. Limantour Spit (CA-9), Marin County, California.

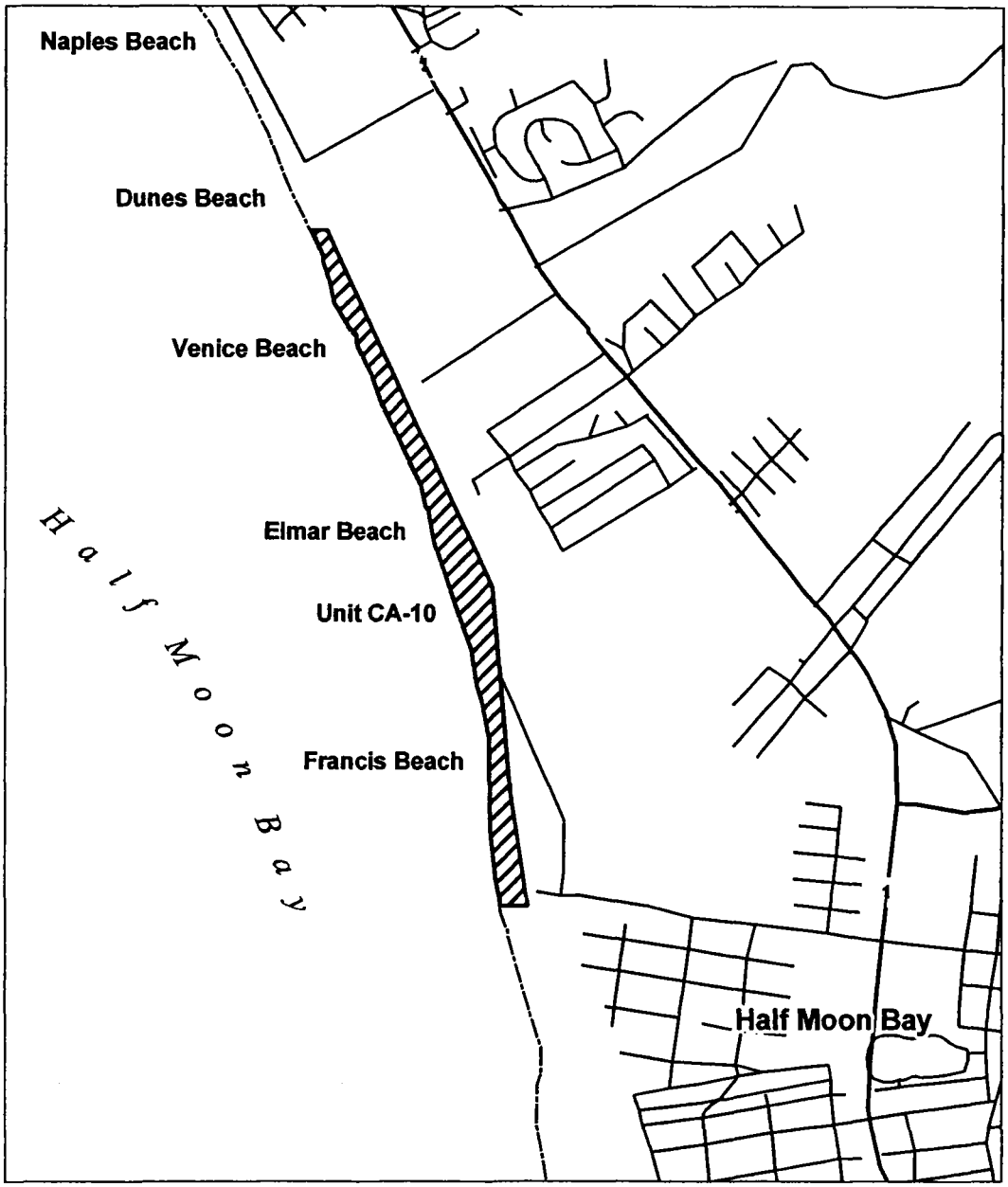


(42) Unit CA–10, San Mateo County, California.

(i) From USGS 1:24,000 quadrangle map Half Moon Bay, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 548431, 4148414; 548480, 4148414; 548972, 4147370; 549024, 4146767; 549079, 4146435; 548995, 4146435; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 548431, 4148414.

(ii) **Note:** Unit CA–10 (Map M39) follows:

Map 39. Half Moon Bay (CA-10), San Mateo County, California.

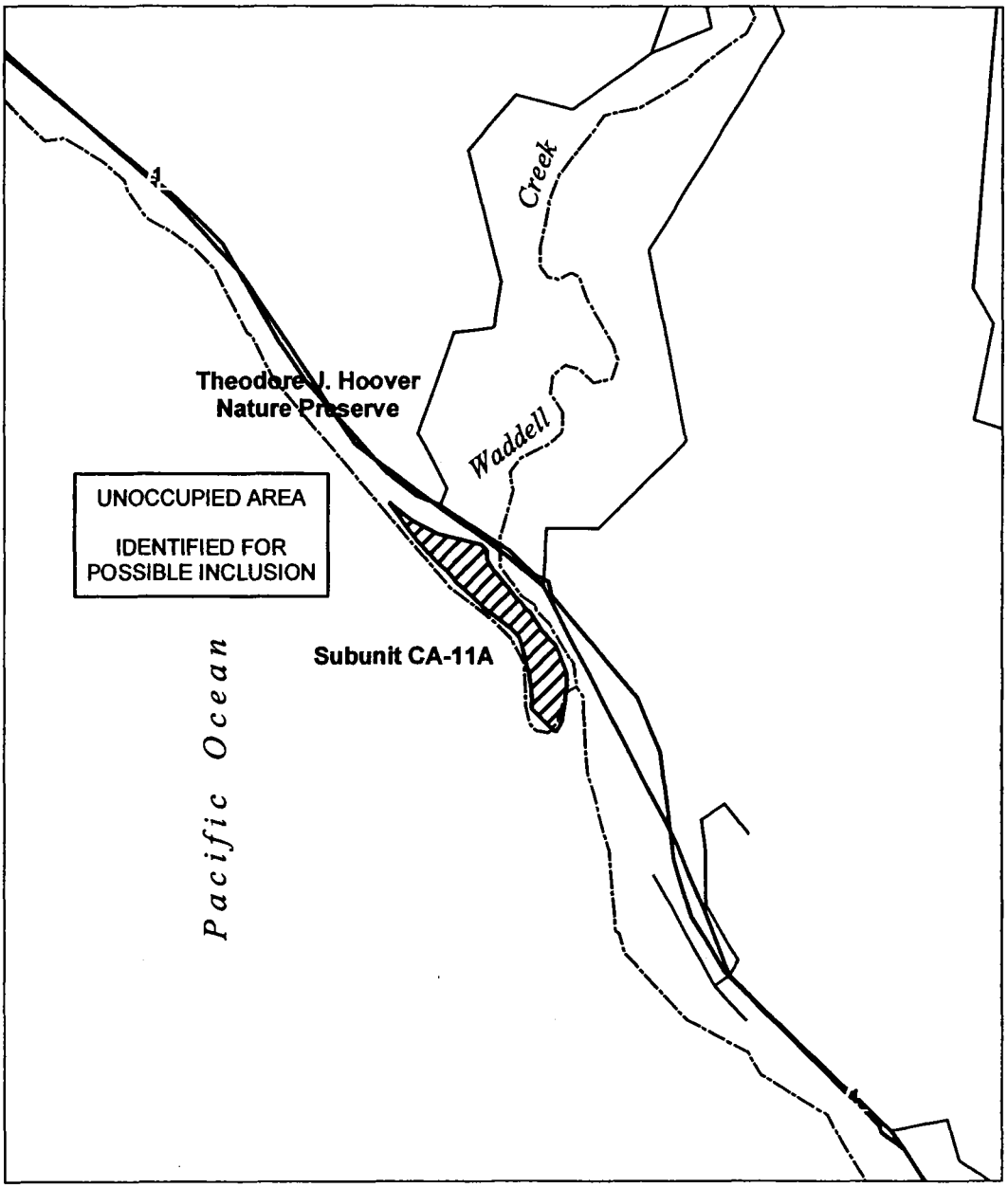


(43) Unit CA–11A, Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Ano Nuevo, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 564224, 4105591; 564223, 4105587; 564223, 4105573; 564228, 4105565; 564239, 4105548; 564250, 4105535; 564261, 4105521; 564272, 4105509; 564284, 4105491; 564300, 4105478; 564307, 4105467; 564310, 4105464; 564320, 4105457; 564333, 4105437; 564335, 4105434; 564348, 4105415; 564352, 4105411; 564363, 4105397; 564376, 4105385; 564385, 4105367; 564395, 4105341; 564401, 4105321; 564403, 4105300; 564401, 4105280; 564400, 4105273; 564397, 4105249; 564392, 4105215; 564379, 4105194; 564373, 4105195; 564326, 4105243; 564324, 4105252; 564324, 4105263; 564324, 4105285; 564319, 4105310; 564313, 4105344; 564310, 4105355; 564303, 4105380; 564295, 4105401; 564287, 4105409; 564275, 4105421; 564247, 4105442; 564236, 4105451; 564232, 4105454; 564226, 4105459; 564212, 4105471; 564207, 4105475; 564181, 4105500; 564173, 4105507; 564153, 4105525; 564145, 4105535; 564137, 4105544; 564104, 4105574; 564086, 4105594; 564072, 4105611; 564068, 4105616; 564041, 4105649; 564025, 4105671; 564013, 4105687; 564006, 4105696; 564007, 4105697; 564059, 4105657; 564114, 4105629; 564210, 4105606; returning to 564224, 4105591.

(ii) **Note:** Unit CA–11A (Map M40) follows:

Map 40. Waddell Creek Beach (CA-11A), Santa Cruz County, California.

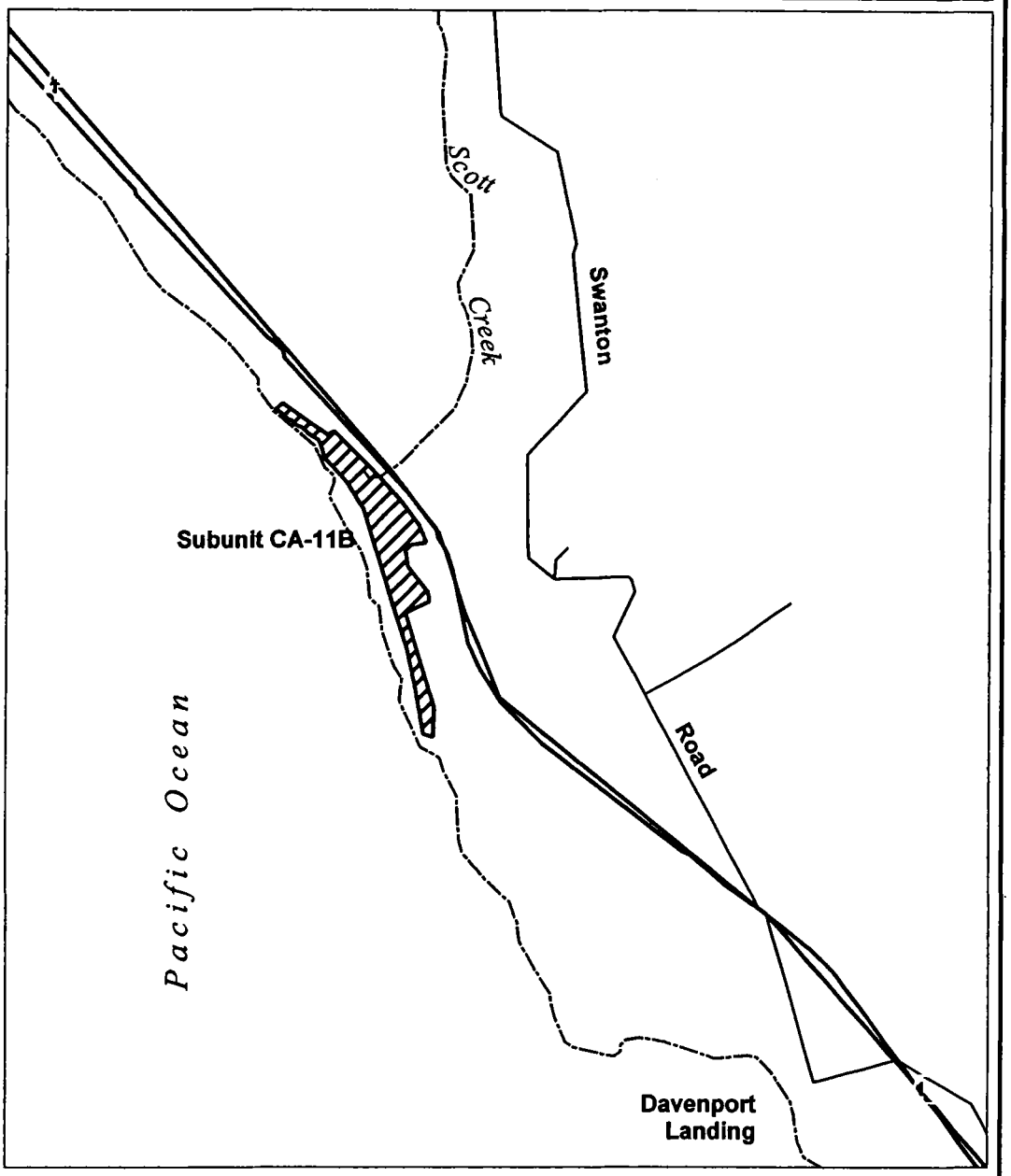


(44) Unit CA–11B, Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Davenport, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 568335, 4099623; 568357, 4099641; 568491, 4099548; 568511, 4099559; 568644, 4099426; 568705, 4099359; 568766, 4099278; 568789, 4099227; 568743, 4099219; 568725, 4099203; 568732, 4099154; 568793, 4099079; 568797, 4099050; 568724, 4099017; 568788, 4098813; 568812, 4098739; 568810, 4098648; 568780, 4098657; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 568335, 4099623.

(ii) **Note:** Unit CA–11B (Map M41) follows:

Map 41. Scott Creek Beach (CA-11B), Santa Cruz County, California.

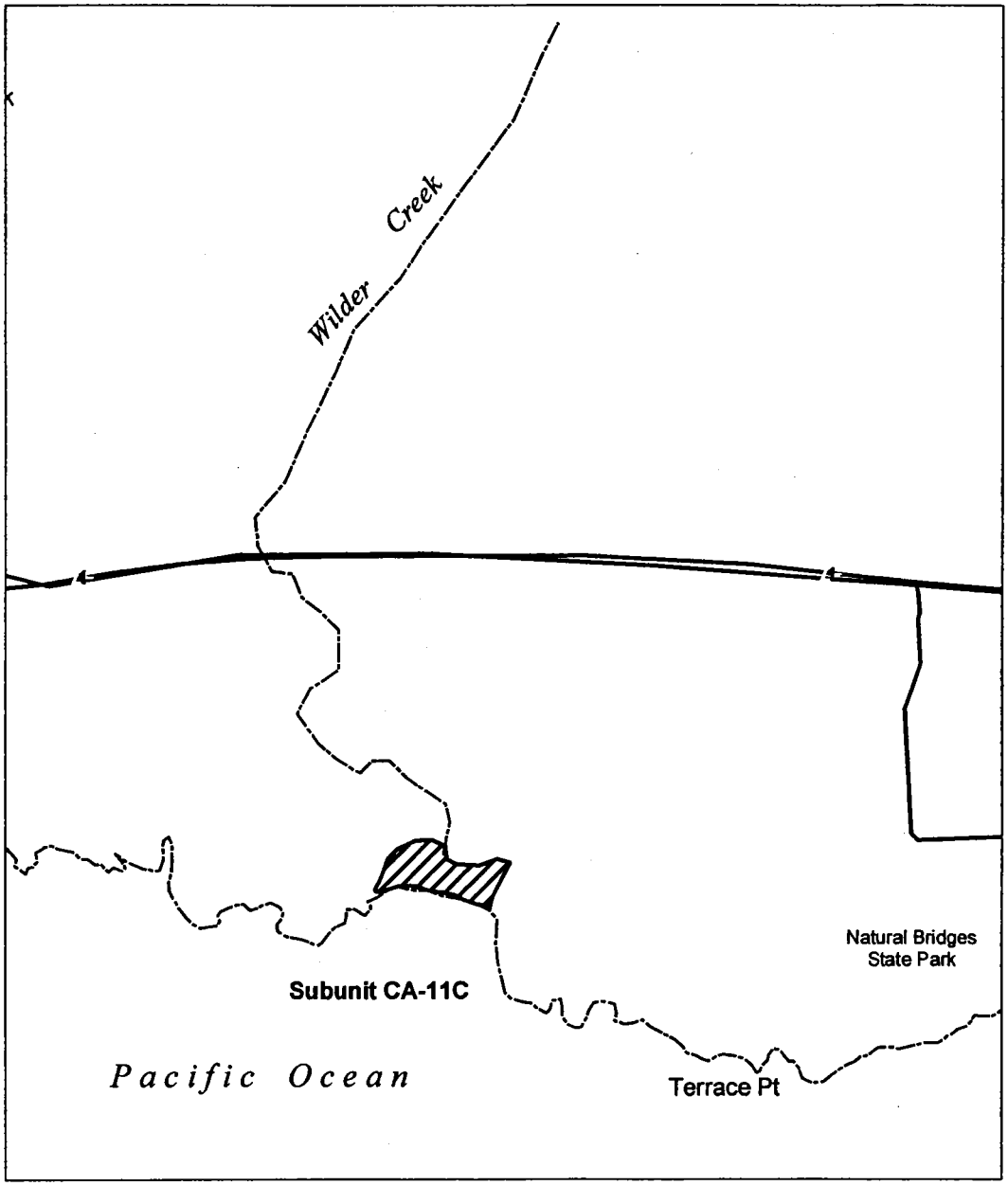


(45) Unit CA–11C, Santa Cruz County, California.

(i) From USGS 1:24,000 quadrangle map Santa Cruz, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 581976, 4089882; 581995, 4089920; 582016, 4089973; 582043, 4090004; 582099, 4090029; 582146, 4090031; 582186, 4090014; 582190, 4089975; 582220, 4089960; 582286, 4089956; 582339, 4089976; 582379, 4089965; 582325, 4089864; 582317, 4089828; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 581976, 4089882.

(ii) **Note:** Unit CA–11C (Map M42) follows:

Map 42. Wilder Creek Beach (CA-11C), Santa Cruz County, California.



(46) Unit CA–12A, Santa Cruz and Monterey County, California.

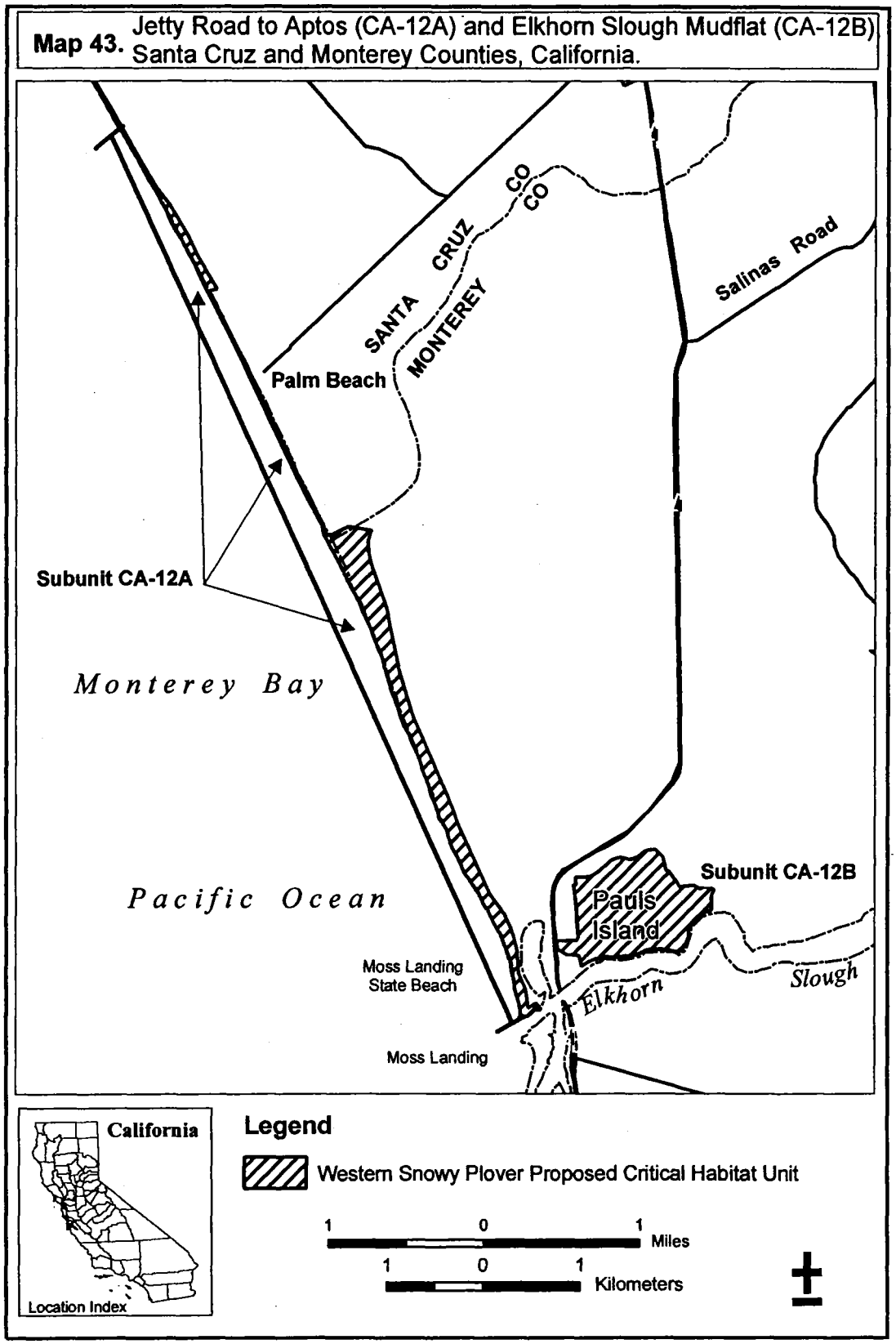
(i) From USGS 1:24,000 quadrangle Moss Landing, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 602641, 4085403; 602654, 4085404; 603028, 4084731; 603373, 4084116; 603545, 4083826; 603665, 4083604; 603870, 4083253; 604164, 4082731; 604315, 4082487; 604459, 4082290; 604619, 4082019; 604718, 4081811; 604925, 4081464; 604841, 4081450; 605257, 4080620; 605397, 4080326; 605398, 4080326; 605592, 4079919; 605832, 4079410; 606019, 4079061; 606022, 4079028; 606023, 4079009; 606050, 4078964; 606080, 4078949; 606277, 4079045; 606516, 4079006; 606477, 4078887; 606488, 4078773; 606513, 4078667; 606673, 4078216; 606805, 4077593; 606937, 4077145; 607309, 4076286; 607439, 4075964; 607746, 4075289; 607845, 4075159; 607908, 4075072; 607961, 4074957; 607990, 4074859; 608020, 4074743; 608042, 4074490; 608121, 4074315; 608143, 4074140; 608228, 4074188; 608261, 4074146; 608200, 4074106; 608183, 4074090; 608173, 4074081; 608156, 4074069; 608140, 4074057; 608122, 4074050; 608073, 4074061; 608061, 4074077; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 602641, 4085403.

(ii) **Note:** Unit CA–12A, CA–12B (Map M43) follows after description of CA–12B:

(47) Unit CA–12B, Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Moss Landing, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 608763, 4074606; 608691, 4074563; 608670, 4074673; 608584, 4074676; 608543, 4074678; 608446, 4074735; 608439, 4074818; 608641, 4074826; 608664, 4074856; 608625, 4075263; 608614, 4075389; 608635, 4075389; 608631, 4075470; 608729, 4075467; 608787, 4075475; 608845, 4075503; 608883, 4075530; 608927, 4075571; 608956, 4075595; 608997, 4075637; 609048, 4075659; 609093, 4075666; 609168, 4075653; 609218, 4075654; 609270, 4075672; 609344, 4075728; 609380, 4075742; 609451, 4075750; 609528, 4075677; 609566, 4075533; 609597, 4075526; 609642, 4075452; 609672, 4075419; 609693, 4075383; 609709, 4075374; 609746, 4075376; 609782, 4075377; 609817, 4075380; 609856, 4075384; 609882, 4075367; 609917, 4075348; 609958, 4075367; 609985, 4075364; 610013, 4075359; 610058, 4075336; 610029, 4075268; 610029, 4075128; 609963, 4075106; 609930, 4075084; 609878, 4075050; 609842, 4075010; 609817, 4074970; 609801, 4074919; 609802, 4074868; 609786, 4074834; 609768, 4074794; 609748, 4074758; 609727, 4074728; 609705, 4074713; 609656, 4074713; 609581, 4074728; 609517, 4074739; 609454, 4074739; 609391, 4074732; 609351, 4074722; 609319, 4074708; 609280, 4074688; 609244, 4074671; 609173, 4074665; 609007, 4074650; 608939, 4074661; 608892, 4074643; 608840, 4074635; returning to 608763, 4074606.

(ii) **Note:** Unit CA–12A, CA–12B (Map M43) follows:

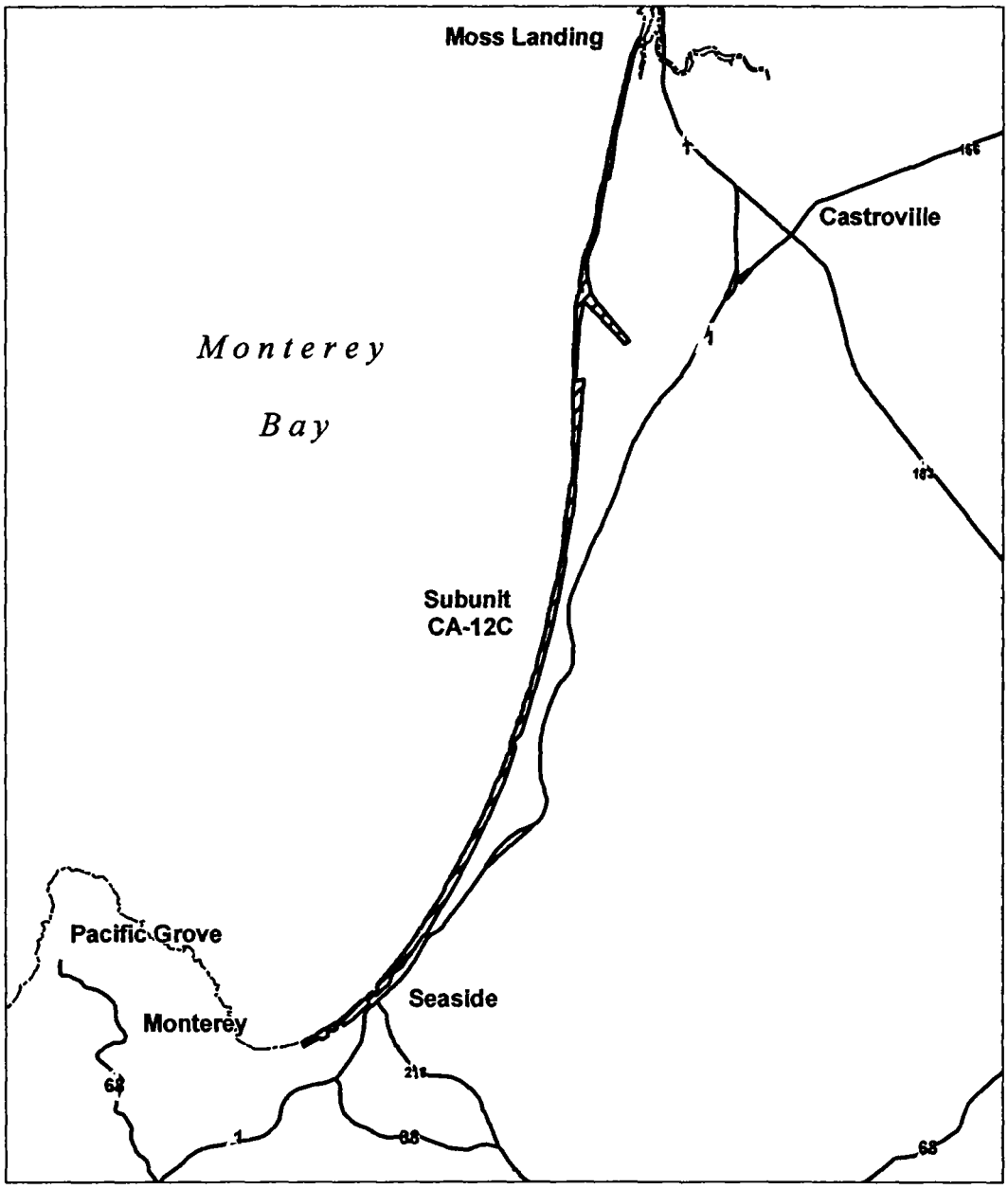

Map 43. Jetty Road to Aptos (CA-12A) and Elkhorn Slough Mudflat (CA-12B) Santa Cruz and Monterey Counties, California.
SANTA CRUZ CO
MONTEREY CO
Salinas Road
Palm Beach
Subunit CA-12A
Monterey Bay
Pacific Ocean
Subunit CA-12B
Pauls Island
Moss Landing State Beach
Elkhorn Slough
Moss Landing
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
1 0 1 Miles
1 0 1 Kilometers

(48) Unit CA–12C, Monterey County, California.

(i) From USGS 1:24,000 quadrangle maps Moss Landing, Marina, Monterey, and Seaside, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 608095, 4073244; 608133, 4073227; 607996, 4072880; 607902, 4072495; 607772, 4071909; 607694, 4071574; 607591, 4071148; 607443, 4070157; 607373, 4070160; 607245, 4069481; 607176, 4068986; 607090, 4068741; 607001, 4068525; 606953, 4068276; 606953, 4068017; 607024, 4067655; 607171, 4067424; 607894, 4066580; 607776, 4066516; 606886, 4067445; 606756, 4066852; 606732, 4066498; 606703, 4066117; 606672, 4065708; 606867, 4065749; 606673, 4063481; 606687, 4063333; 606613, 4062783; 606442, 4061895; 606471, 4061745; 606192, 4060323; 605932, 4059393; 605644, 4058444; 605471, 4057935; 605330, 4057781; 605318, 4057729; 605367, 4057641; 605122, 4056914; 604540, 4055656; 604085, 4054788; 603708, 4054149; 603392, 4053595; 603250, 4053455; 602816, 4052827; 602645, 4052695; 602573, 4052579; 602564, 4052513; 602521, 4052435; 602234, 4052184; 602192, 4052213; 602056, 4052083; 602101, 4052015; 602050, 4051954; 601738, 4051670; 601519, 4051529; 601475, 4051598; 601360, 4051525; 601378, 4051460; 601268, 4051408; 601241, 4051423; 601151, 4051378; 601176, 4051299; 601031, 4051207; 601004, 4051262; 600872, 4051184; 600651, 4051075; 600615, 4051163; 600616, 4051176; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 608095, 4073244.

(ii) **Note:** Unit CA–12C (Map M44) follows:

Map 44. Monterey to Moss Landing (CA-12C), Monterey County, California.

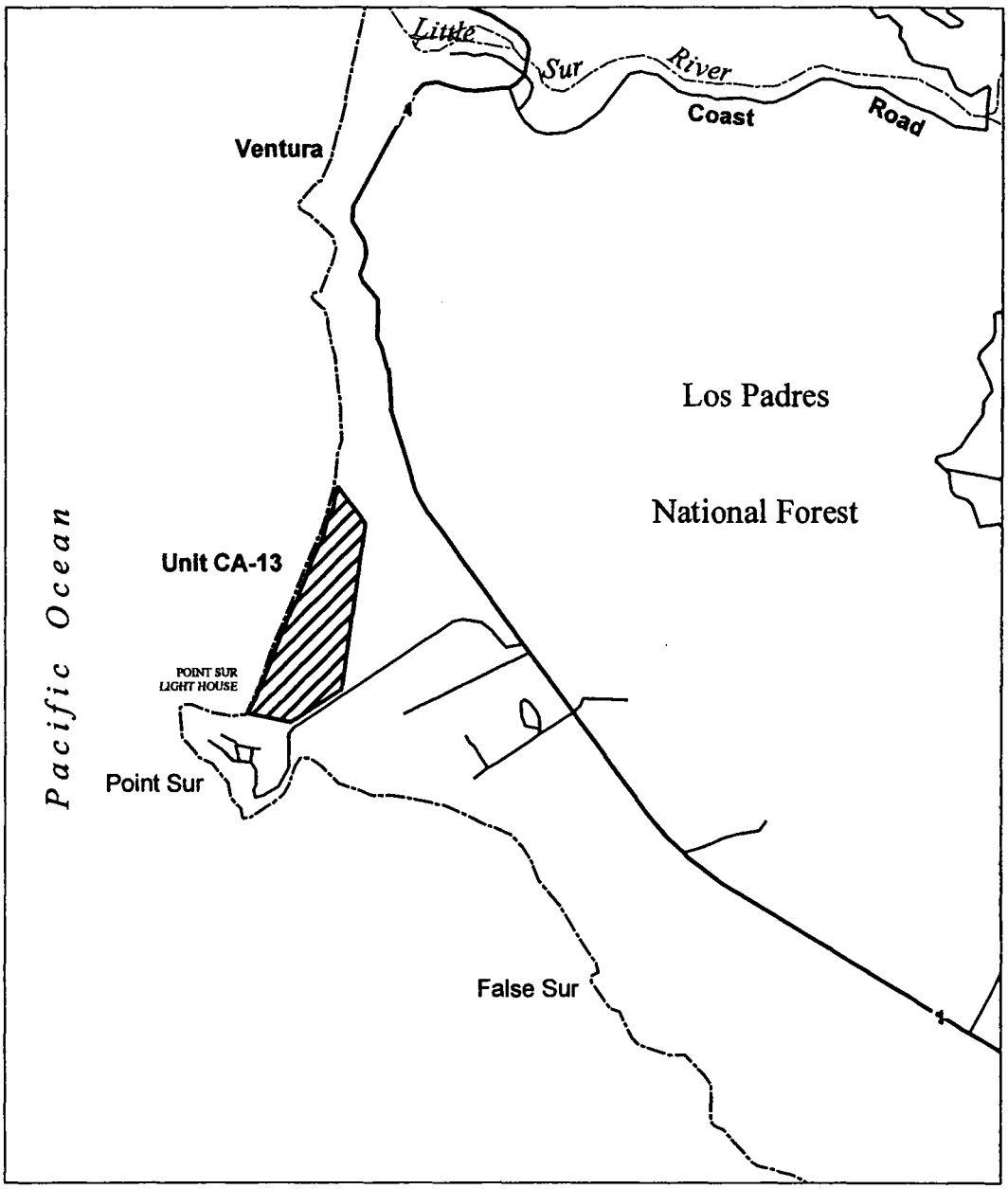


(49) Unit CA–13, Monterey County, California.

(i) From USGS 1:24,000 quadrangle map Point Sur, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 599299, 4019363; 599421, 4019200; 599320, 4018471; 599091, 4018323; 598903, 4018365; 598903, 4018365; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 599299, 4019363.

(ii) **Note:** Unit CA–13 (Map M45) follows:

Map 45. Point Sur Beach (CA-13), Monterey County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

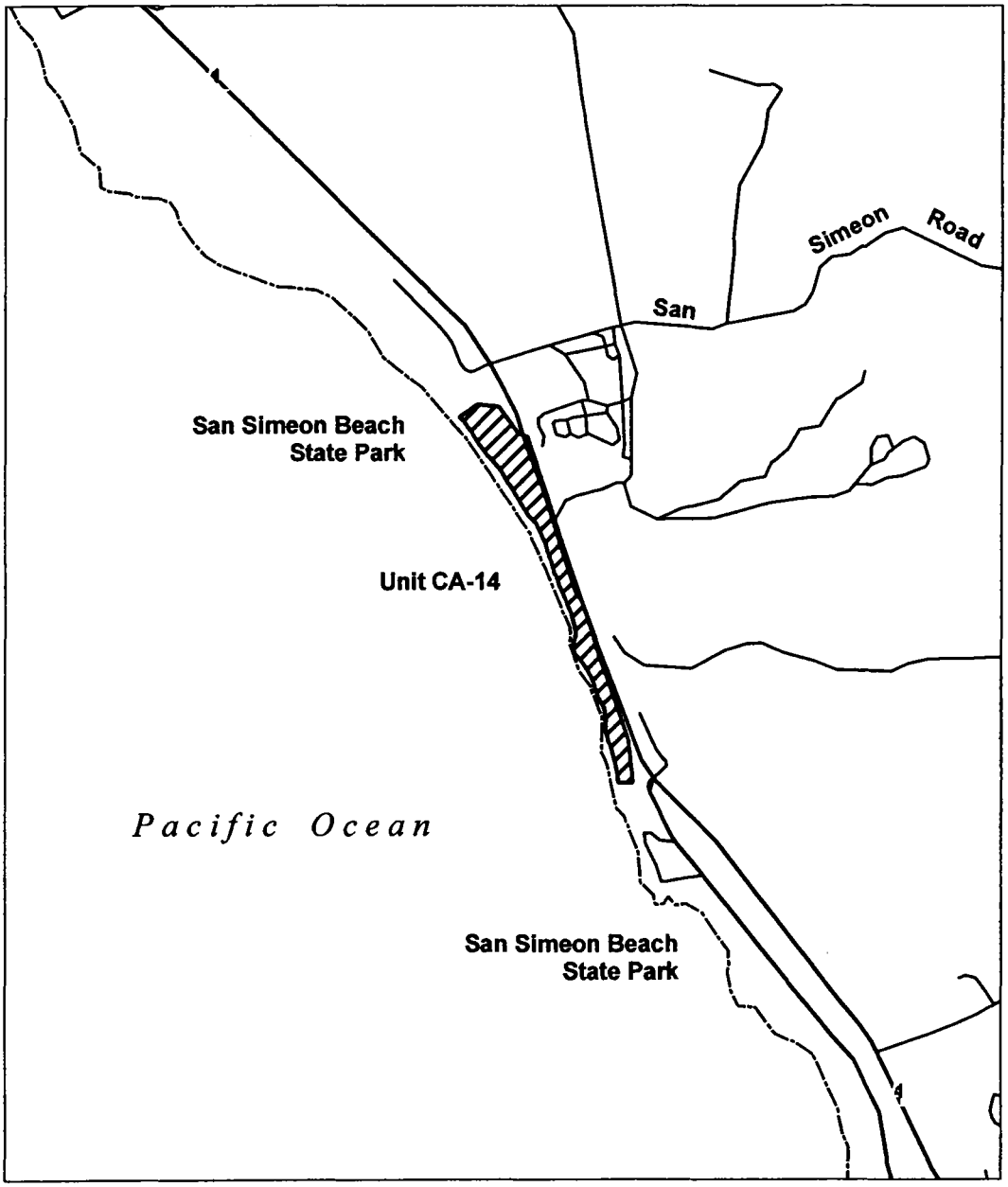
1 0 1 Kilometers

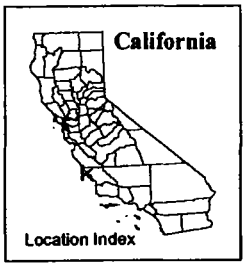
(50) Unit CA–14, San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle maps Pico Creek, and San Luis Obispo, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 669618, 3940622; 669684, 3940666; 669759, 3940658; 669823, 3940570; 669860, 3940553; 670111, 3939799; 670221, 3939478; 670238, 3939332; 670183, 3939330; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 669618, 3940622.

(ii) **Note:** Unit CA–14 (Map M46) follows:

Map 46. San Simeon Beach (CA-14), San Luis Obispo County, California.





Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.4 0 0.4 Miles

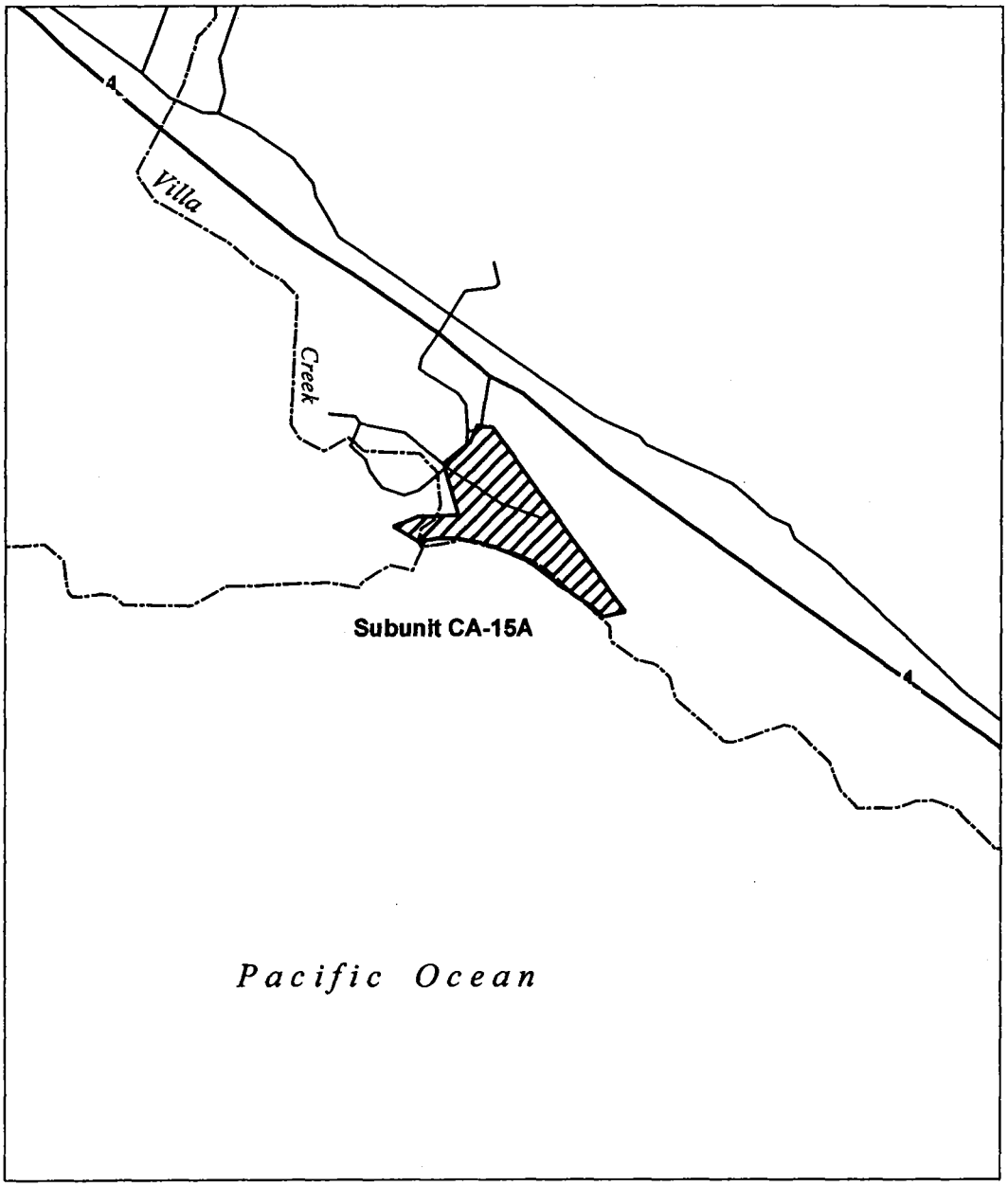
0.6 0 0.6 Kilometers

(51) Unit CA–15A, San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle map Cayucos, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 684204, 3925805; 684260, 3925827; 684349, 3925831; 684316, 3925944; 684374, 3925990; 684389, 3926027; 684425, 3926024; 684453, 3925985; 684721, 3925617; 684671, 3925608; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 684204, 3925805.

(ii) **Note:** Unit CA–15A (Map M47) follows:

Map 47. Villa Creek Beach (CA-15A), San Luis Obispo County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.25 0 0.25 Miles

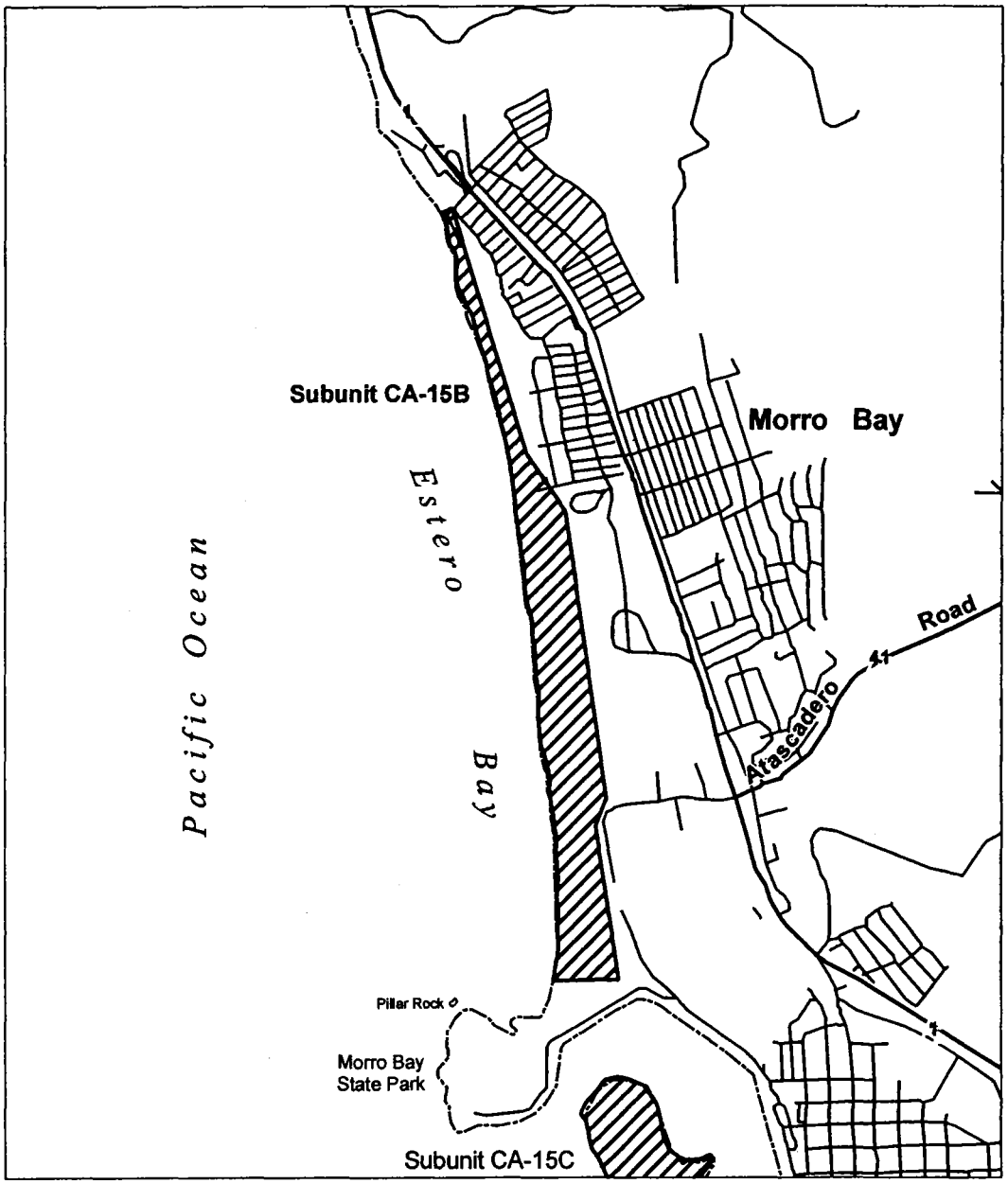
0.4 0 0.4 Kilometers

(52) Unit CA–15B, San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle maps Morro Bay North, and Morro Bay South, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 693585, 3919670; 693633, 3919693; 693966, 3918610; 694140, 3918351; 694325, 3917088; 694276, 3916964; 694380, 3916291; 694086, 3916286; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 693585, 3919670.

(ii) **Note:** Unit CA–15B (Map M48) follows:

Map 48. Atascadero Beach (CA-15B), San Luis Obispo County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

1 0 1 Kilometers

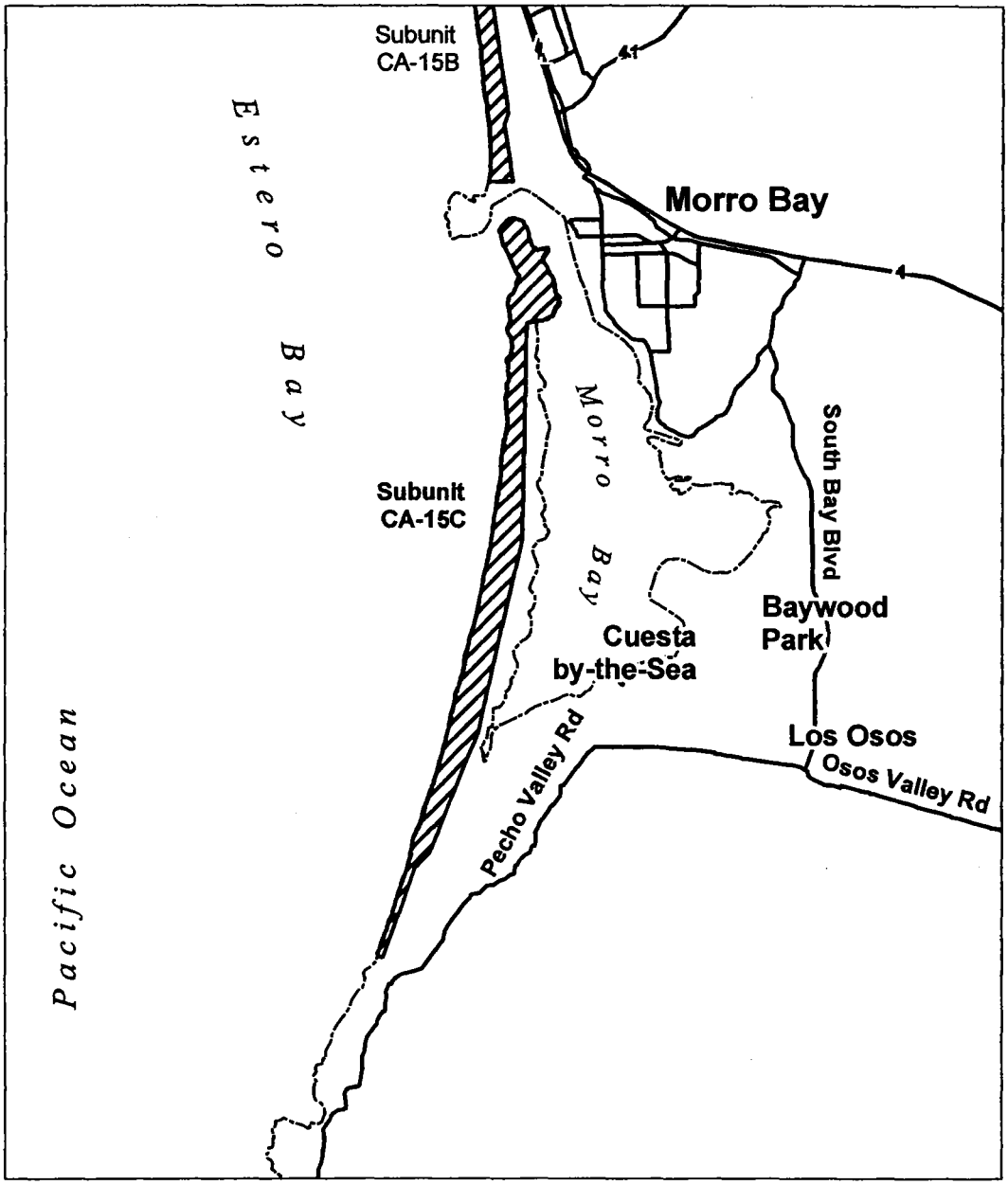
(53) Unit CA–15C, San Luis Obispo County, California.

(i) From USGS 1:24,000 quadrangle map Morro Bay South, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 692781, 3907206; 692782, 3907207; 692792, 3907235; 692798, 3907251; 692812, 3907284; 692819, 3907312; 692820, 3907313; 692820, 3907315; 692829, 3907340; 692844, 3907380; 692848, 3907388; 692857, 3907410; 692858, 3907411; 692864, 3907430; 692873, 3907456; 692873, 3907456; 692889, 3907486; 692890, 3907486; 692894, 3907490; 692898, 3907508; 692901, 3907520; 692907, 3907547; 692911, 3907567; 692911, 3907568; 692918, 3907604; 692932, 3907627; 692932, 3907628; 692933, 3907630; 692944, 3907649; 692952, 3907668; 692955, 3907675; 692962, 3907693; 692964, 3907697; 692969, 3907731; 692977, 3907755; 692979, 3907764; 692981, 3907774; 692985, 3907793; 692996, 3907835; 693008, 3907868; 693019, 3907915; 693029, 3907949; 693040, 3907978; 693053, 3908014; 693064, 3908048; 693079, 3908088; 693091, 3908112; 693099, 3908128; 693104, 3908140; 693119, 3908176; 693133, 3908214; 693143, 3908243; 693145, 3908247; 693145, 3908248; 693154, 3908280; 693158, 3908305; 693161, 3908323; 693162, 3908330; 693163, 3908346; 693164, 3908370; 693173, 3908419; 693184, 3908464; 693193, 3908521; 693203, 3908563; 693213, 3908596; 693224, 3908624; 693233, 3908641; 693249, 3908674; 693268, 3908707; 693278, 3908732; 693290, 3908756; 693304, 3908794; 693311, 3908836; 693330, 3908896; 693336, 3908918; 693343, 3908945; 693348, 3908959; 693352, 3908969; 693356, 3908983; 693359, 3908996; 693371, 3909033; 693379, 3909057; 693392, 3909093; 693410, 3909137; 693423, 3909174; 693435, 3909198; 693440, 3909208; 693452, 3909245; 693462, 3909278; 693463, 3909283; 693468, 3909307; 693480, 3909339; 693492, 3909375; 693499, 3909405; 693502, 3909429; 693503, 3909440; 693515, 3909475; 693515, 3909475; 693519, 3909484; 693527, 3909500; 693540, 3909540; 693549, 3909573; 693559, 3909611; 693571, 3909651; 693580, 3909692; 693584, 3909711; 693584, 3909714; 693588, 3909735; 693594, 3909761; 693594, 3909763; 693598, 3909775; 693603, 3909795; 693611, 3909833; 693619, 3909856; 693623, 3909880; 693629, 3909916; 693637, 3909945; 693643, 3909976; 693649, 3910014; 693657, 3910048; 693662, 3910057; 693671, 3910078; 693680, 3910113; 693691, 3910152; 693700, 3910186; 693706, 3910217; 693710, 3910248; 693714, 3910278; 693721, 3910306; 693726, 3910314; 693735, 3910333; 693745, 3910367; 693757, 3910403; 693764, 3910429; 693765, 3910430; 693769, 3910450; 693770, 3910454; 693774, 3910478; 693783, 3910496; 693788, 3910508; 693792, 3910522; 693797, 3910540; 693798, 3910563; 693799, 3910572; 693799, 3910575; 693799, 3910576; 693806, 3910615; 693810, 3910636; 693811, 3910660; 693816, 3910691; 693816, 3910695; 693816, 3910710; 693817, 3910714; 693819, 3910733; 693826, 3910750; 693827, 3910750; 693830, 3910758; 693839, 3910780; 693848, 3910803; 693857, 3910836; 693860, 3910865; 693862, 3910878; 693862, 3910880; 693866, 3910893; 693869, 3910905; 693870, 3910906; 693874, 3910932; 693884, 3910962; 693888, 3910972; 693894, 3910990; 693903, 3911023; 693912, 3911050; 693918, 3911077; 693927, 3911109; 693930, 3911127; 693934, 3911143; 693943, 3911172; 693950, 3911195; 693952, 3911204; 693957, 3911235; 693957, 3911236; 693961, 3911266; 693964, 3911276; 693970, 3911300; 693971, 3911306; 693978, 3911334; 693983, 3911357; 693985, 3911372; 693986, 3911375; 693991, 3911409; 693997, 3911433; 694003, 3911455; 694007, 3911471; 694016, 3911511; 694020, 3911533; 694026, 3911567; 694031, 3911604; 694034, 3911625; 694038, 3911660; 694048, 3911693; 694058, 3911731; 694066, 3911765; 694070, 3911794; 694071, 3911814; 694080, 3911846; 694090, 3911879; 694096, 3911910; 694103, 3911949; 694107, 3911968; 694110, 3911979; 694117, 3912018; 694124, 3912065; 694129, 3912090; 694131, 3912100; 694139, 3912152; 694142, 3912184; 694147, 3912230; 694154, 3912266; 694156, 3912276; 694157, 3912283; 694161, 3912318; 694163, 3912336; 694165, 3912364; 694166, 3912374; 694171, 3912402; 694175, 3912422; 694183, 3912472; 694188, 3912514; 694192, 3912554; 694195, 3912588; 694203, 3912629; 694206, 3912646; 694209, 3912670; 694214, 3912694; 694217, 3912707; 694227, 3912756; 694230, 3912774; 694232, 3912792; 694233, 3912795; 694237, 3912815; 694239, 3912824; 694239, 3912829; 694245, 3912880; 694245, 3912895; 694246, 3912917; 694245, 3912936; 694245, 3912939; 694244, 3912952; 694248, 3912990; 694248, 3912996; 694251, 3913031; 694255, 3913080; 694255, 3913085; 694256, 3913130; 694261, 3913174; 694266, 3913224; 694269, 3913241; 694278, 3913274; 694288, 3913309; 694291, 3913320; 694300, 3913350; 694306, 3913376; 694312, 3913393; 694317, 3913421; 694318, 3913453; 694316, 3913478; 694315, 3913495; 694314, 3913515; 694313, 3913544; 694311, 3913574; 694303, 3913640; 694301, 3913666; 694301, 3913671; 694299, 3913699; 694296, 3913717; 694291, 3913744; 694291, 3913762; 694298, 3913786; 694304, 3913806; 694308, 3913813; 694310, 3913816; 694313, 3913828; 694311, 3913840; 694310, 3913842; 694305, 3913854; 694301, 3913871; 694301, 3913886; 694305, 3913910; 694309, 3913925; 694314, 3913934; 694320, 3913945; 694328, 3913968; 694329, 3913986; 694327, 3914003; 694325, 3914025; 694323, 3914034; 694321, 3914044; 694319, 3914067; 694320, 3914093; 694321, 3914111; 694321, 3914114; 694322, 3914130; 694322, 3914135; 694317, 3914153; 694317, 3914154; 694316, 3914155; 694314, 3914158; 694309, 3914167; 694304, 3914178; 694302, 3914191; 694306, 3914199; 694310, 3914207; 694319, 3914221; 694328, 3914229; 694337, 3914241; 694350, 3914257; 694360, 3914285; 694366, 3914305; 694369, 3914329; 694370, 3914350; 694369, 3914375; 694366, 3914398; 694362, 3914423; 694357, 3914435; 694348, 3914461; 694337, 3914486; 694317, 3914518; 694310, 3914545; 694313, 3914569; 694320, 3914595; 694331, 3914620; 694340, 3914640; 694340, 3914640; 694343, 3914661; 694342, 3914682; 694340, 3914701; 694338, 3914726; 694338, 3914728; 694337, 3914733; 694336, 3914742; 694334, 3914751; 694329, 3914776; 694320, 3914821; 694313, 3914853; 694335, 3914948; 694338, 3914951; 694346, 3914955; 694360, 3914962; 694371, 3914969; 694378, 3914975; 694390, 3914998; 694393, 3915003; 694410, 3915045; 694419, 3915082; 694421, 3915109; 694421, 3915112; 694454, 3915178; 694399, 3915243; 694394, 3915254; 694384, 3915283; 694376, 3915304; 694358, 3915342; 694348, 3915362; 694335, 3915390; 694324, 3915423; 694311, 3915456; 694307, 3915466; 694298, 3915485; 694275, 3915518; 694262, 3915541; 694253, 3915569; 694248, 3915595; 694244, 3915627; 694241, 3915638; 694239, 3915646; 694234, 3915662; 694221, 3915683; 694216, 3915694; 694217, 3915714; 694226, 3915733; 694240, 3915755; 694259, 3915772; 694275, 3915793; 694291, 3915812; 694308, 3915834; 694322, 3915847; 694337, 3915852; 694350, 3915856; 694372, 3915860; 694392, 3915858; 694415, 3915855; 694438, 3915847; 694449, 3915841; 694459, 3915836; 694475, 3915830; 694489, 3915824; 694502, 3915810;

694509, 3915795; 694537, 3915758; 694545, 3915746; 694553, 3915724; 694560, 3915705; 694567, 3915678; 694570, 3915654; 694574, 3915629; 694578, 3915601; 694583, 3915586; 694591, 3915566; 694603, 3915543; 694617, 3915528; 694637, 3915515; 694640, 3915514; 694665, 3915479; 694690, 3915497; 694693, 3915496; 694708, 3915494; 694725, 3915497; 694741, 3915498; 694755, 3915503; 694771, 3915510; 694783, 3915516; 694792, 3915513; 694793, 3915512; 694796, 3915500; 694793, 3915489; 694789, 3915481; 694781, 3915469; 694769, 3915455; 694757, 3915439; 694744, 3915418; 694742, 3915412; 694727, 3915400; 694734, 3915389; 694731, 3915382; 694731, 3915360; 694736, 3915349; 694743, 3915341; 694754, 3915328; 694766, 3915315; 694772, 3915304; 694777, 3915295; 694778, 3915291; 694782, 3915276; 694787, 3915251; 694799, 3915230; 694827, 3915190; 694835, 3915175; 694842, 3915159; 694855, 3915140; 694865, 3915114; 694870, 3915082; 694872, 3915049; 694873, 3915025; 694875, 3915004; 694880, 3914984; 694888, 3914971; 694904, 3914950; 694918, 3914932; 694918, 3914930; 694906, 3914847; 694900, 3914844; 694890, 3914835; 694874, 3914818; 694870, 3914802; 694867, 3914782; 694860, 3914757; 694849, 3914734; 694835, 3914715; 694820, 3914701; 694816, 3914698; 694760, 3914672; 694750, 3914670; 694734, 3914661; 694722, 3914658; 694715, 3914657; 694701, 3914654; 694700, 3914655; 694682, 3914660; 694668, 3914662; 694653, 3914664; 694646, 3914659; 694641, 3914655; 694640, 3914644; 694640, 3914643; 694537, 3914633; 694493, 3912072; 693979, 3909827; 693393, 3908394; 693227, 3908218; 692844, 3907170; returning to 692781, 3907206.

(ii) **Note:** Unit CA–15C (Map M49) follows:

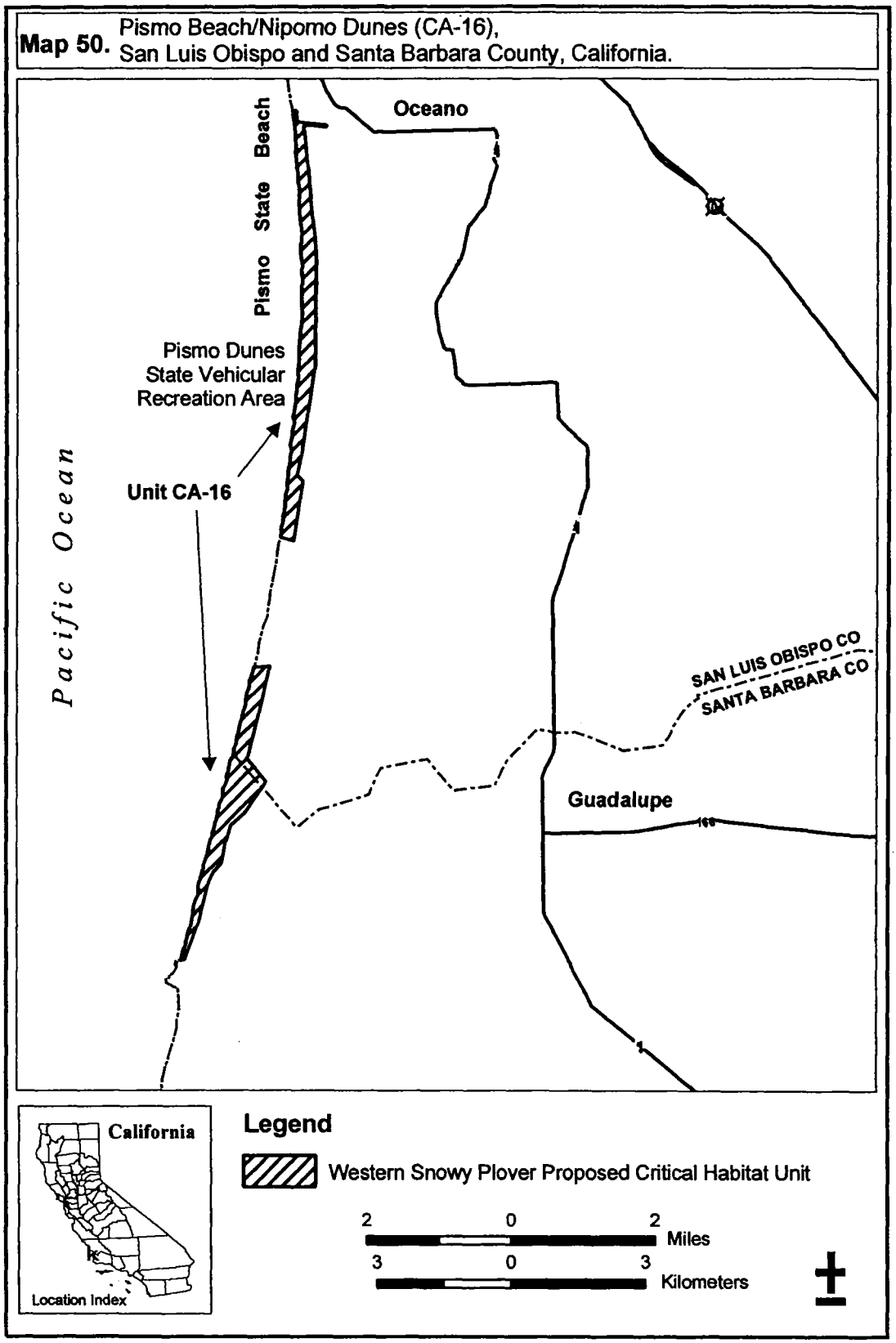
Map 49. Morro Bay Beach (CA-15C), San Luis Obispo County, California.



(54) Unit CA–16, San Luis Obispo County and Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle map Oceano, and Point Sal, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 716010, 3886811; 716094, 3886816; 716121, 3886579; 716254, 3886552; 716772, 3886498; 716766, 3886452; 716397, 3886500; 716268, 3886463; 716290, 3886355; 716320, 3885910; 716372, 3885535; 716417, 3884858; 716535, 3883709; 716521, 3881135; 716206, 3879117; 716116, 3878752; 716253, 3878614; 716040, 3877287; 715746, 3877371; proceed generally S following the mean high water mark (defined at the beginning of the section) to 715166, 3874495; 715525, 3874507; 715250, 3873350; 715030, 3872453; 715438, 3871950; 714967, 3871240; 714652, 3870983; 714534, 3870558; 714455, 3870153; 714290, 3869967; 714172, 3869737; 714111, 3869499; 713949, 3868871; 713632, 3868026; 713520, 3868000; 713519, 3868000; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 716010, 3886811.

(ii) **Note:** Unit CA–16 (Map M50) follows:

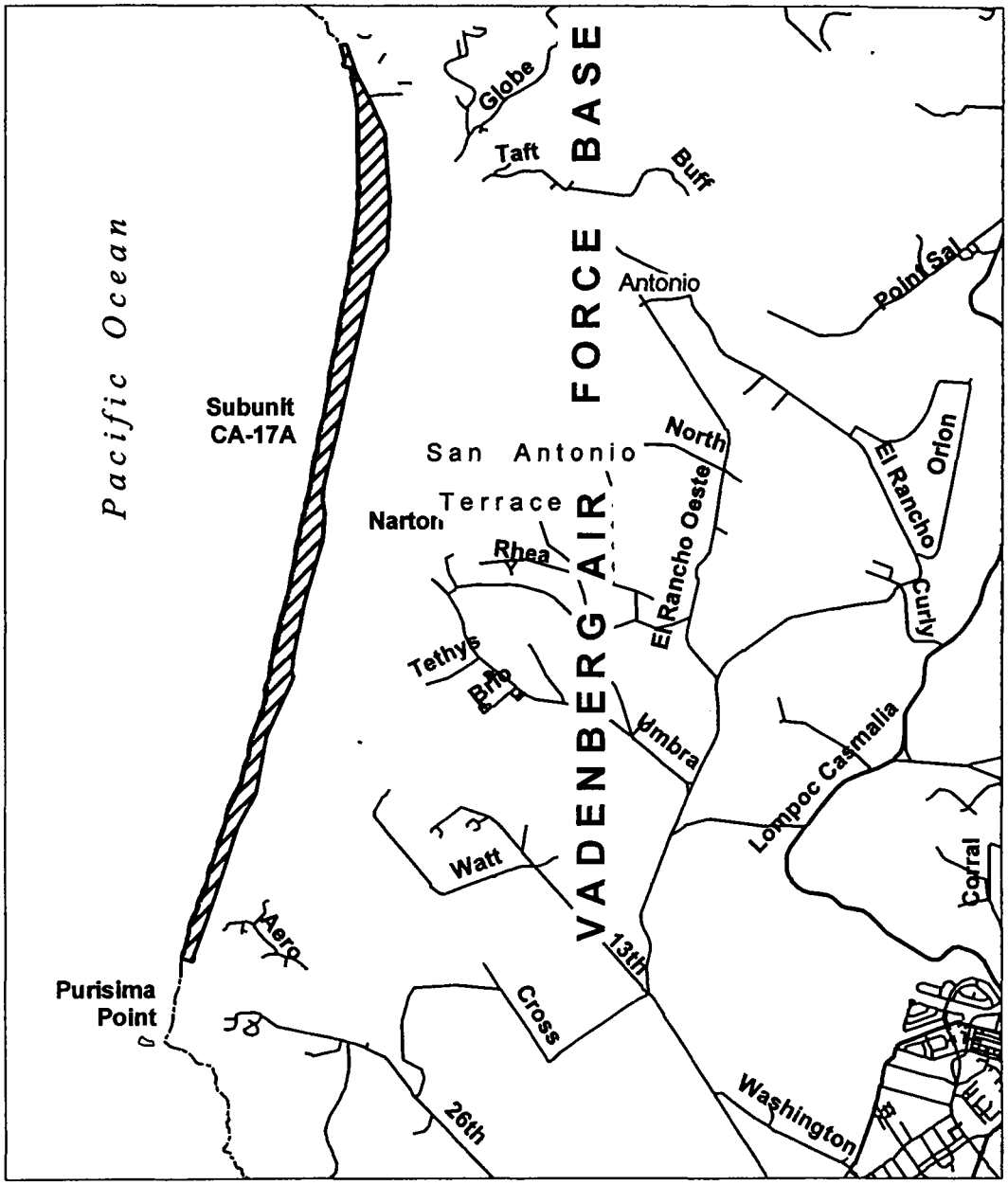

Map 50. Pismo Beach/Nipomo Dunes (CA-16), San Luis Obispo and Santa Barbara County, California.
Oceano
Pismo State Beach
Pismo Dunes State Vehicular Recreation Area
Unit CA-16
Pacific Ocean
SAN LUIS OBISPO CO
SANTA BARBARA CO
Guadalupe
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
2 0 2 Miles
3 0 3 Kilometers

(55) Unit CA–17A, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle map Casmalia, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 718417, 3860038; 718490, 3860043; 718607, 3859702; 718745, 3859447; 718961, 3858992; 718964, 3858805; 719013, 3858215; 718980, 3857623; 718843, 3857449; 718816, 3857394; 718744, 3857048; 718533, 3856131; 718400, 3855518; 718243, 3854896; 718224, 3854702; 718242, 3854537; 718219, 3854201; 718006, 3853479; 717882, 3852878; 717872, 3852758; 717856, 3852656; 717876, 3852600; 717668, 3852144; 717560, 3851901; 717428, 3851229; 717224, 3850849; 717102, 3850474; 716886, 3849862; 716695, 3849335; 716690, 3849302; 716693, 3849258; 716537, 3849301; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 718417, 3860038.

(iii) **Note:** Unit CA–17A, CA–16 (Map M51) follows:

Map 51. Vandenberg Air Force Base North (CA-17A), Santa Barbara County, California.

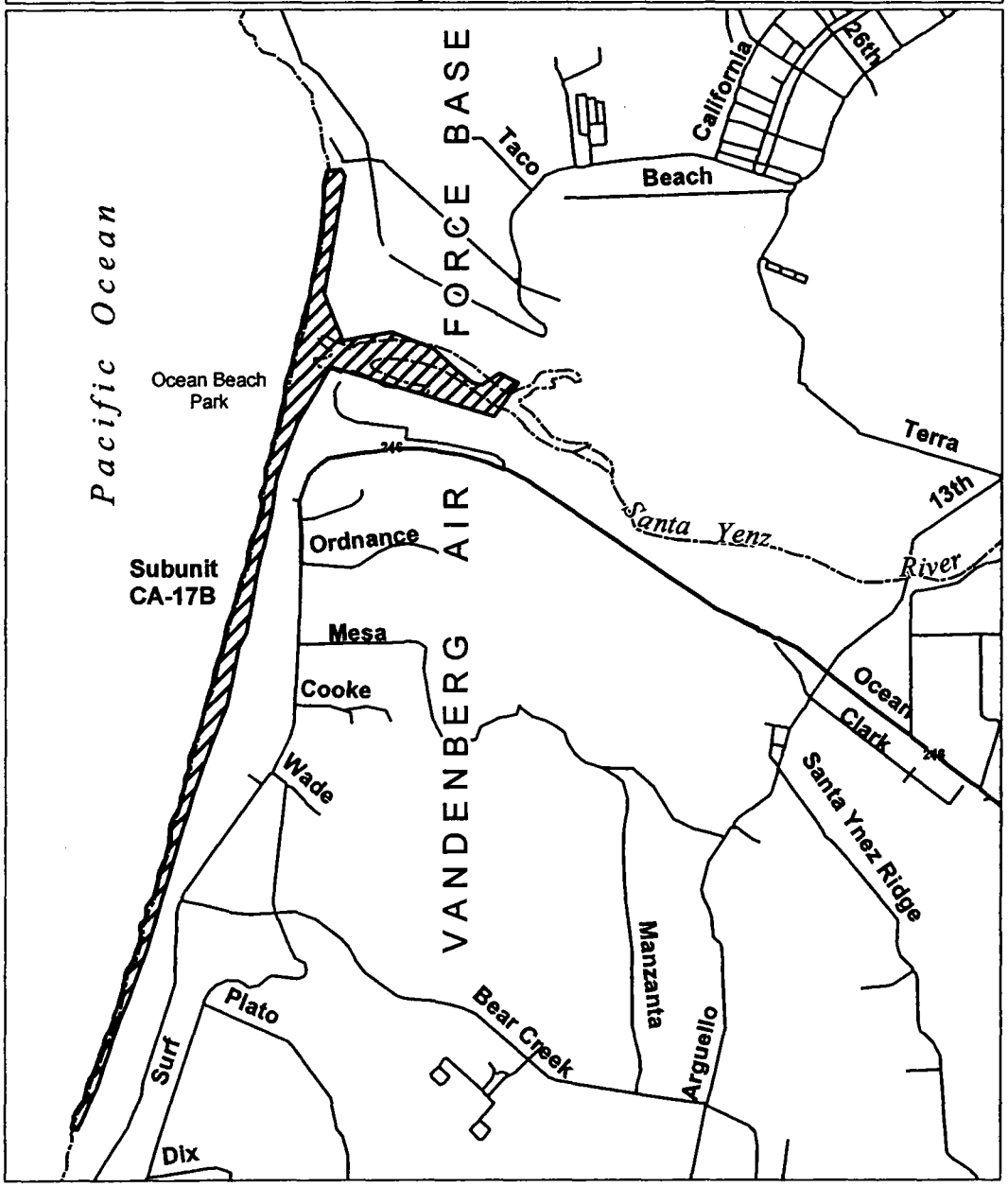


(56) Unit CA–17B, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle map Surf, California, land bounded by the following UTM 10 NAD 27 coordinates (E,N): 719851, 3842705; 719957, 3842714; 719985, 3842661; 719834, 3841798; 719969, 3841456; 720330, 3841518; 720642, 3841396; 720821, 3841242; 720936, 3841146; 721005, 3841129; 721135, 3841217; 721280, 3841146; 721095, 3840903; 719884, 3841261; 719636, 3840850; 719484, 3840448; 719472, 3840355; 719446, 3840177; 719348, 3839786; 719262, 3839306; 719203, 3839200; 719118, 3838777; 718998, 3838473; 718871, 3838118; 718643, 3837345; 718540, 3837006; 718400, 3836612; 718330, 3836450; 718271, 3836264; 718231, 3836161; 718163, 3835954; 718101, 3835825; 718020, 3835652; 717974, 3835665; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 719851, 3842705.

(ii) **Note:** Unit CA–17B (Map M52) follows:

Map 52. Vandenberg Air Force Base South (CA-17B), Santa Barbara County, California.

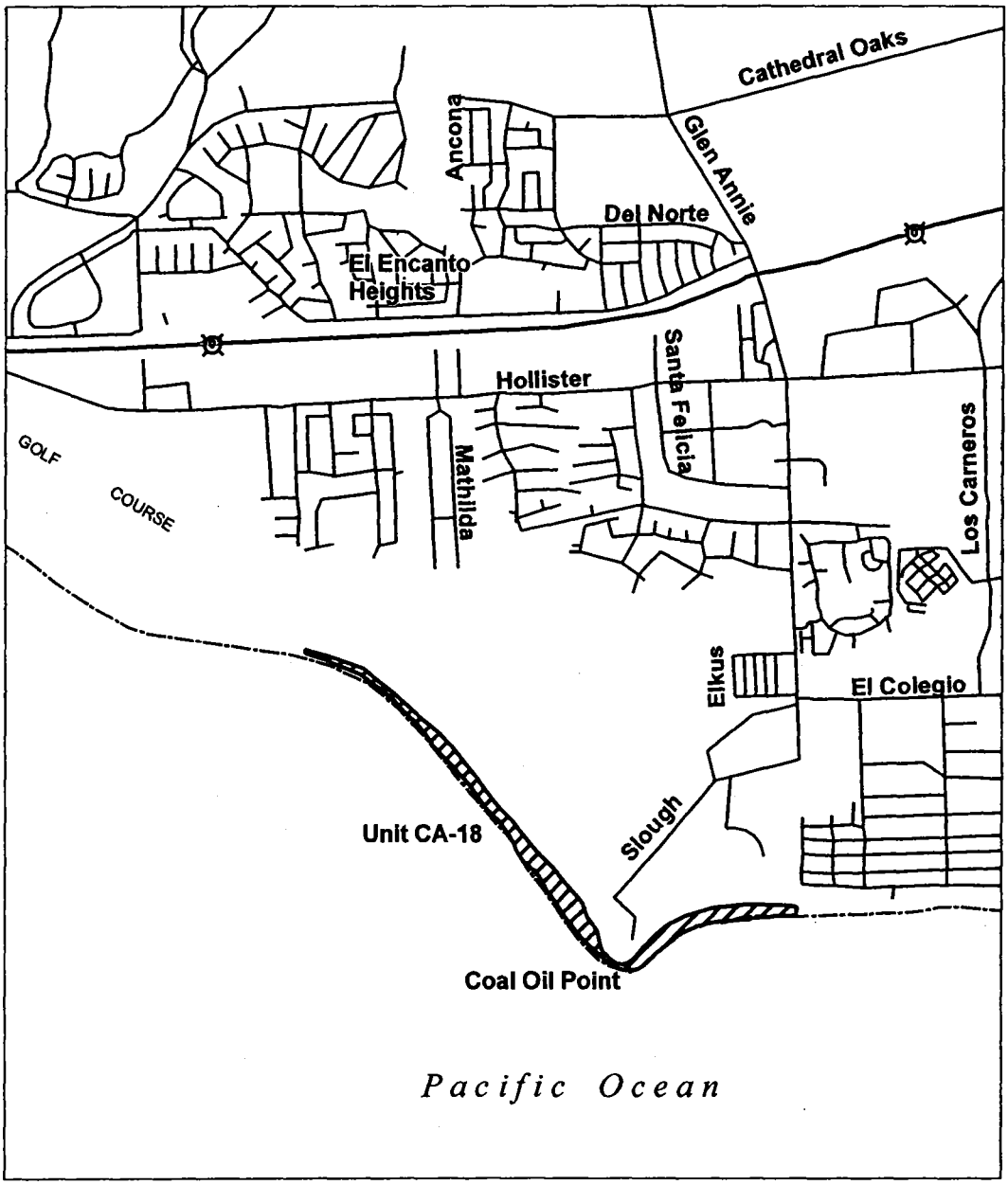


(57) Unit CA–18, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Dos Pueblos Canyon, and Goleta, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 234194, 3812313; 234195, 3812330; 234324, 3812283; 234446, 3812230; 234583, 3812107; 234686, 3812003; 234773, 3811918; 234823, 3811862; 234938, 3811694; 235005, 3811597; 235067, 3811524; 235171, 3811381; 235232, 3811310; 235359, 3811141; 235381, 3811072; 235424, 3811010; 235428, 3810963; 235437, 3810924; 235477, 3810884; 235498, 3810866; 235532, 3810858; 235570, 3810877; 235592, 3810897; 235616, 3810922; 235681, 3810981; 235729, 3811016; 235817, 3811054; 235933, 3811084; 236074, 3811089; 236175, 3811083; 236270, 3811077; 236314, 3811067; 236310, 3811029; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 234194, 3812313.

(ii) **Note:** Unit CA–18 (Map M53) follows:

Map 53. Devereaux Beach (CA-18), Santa Barbara County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

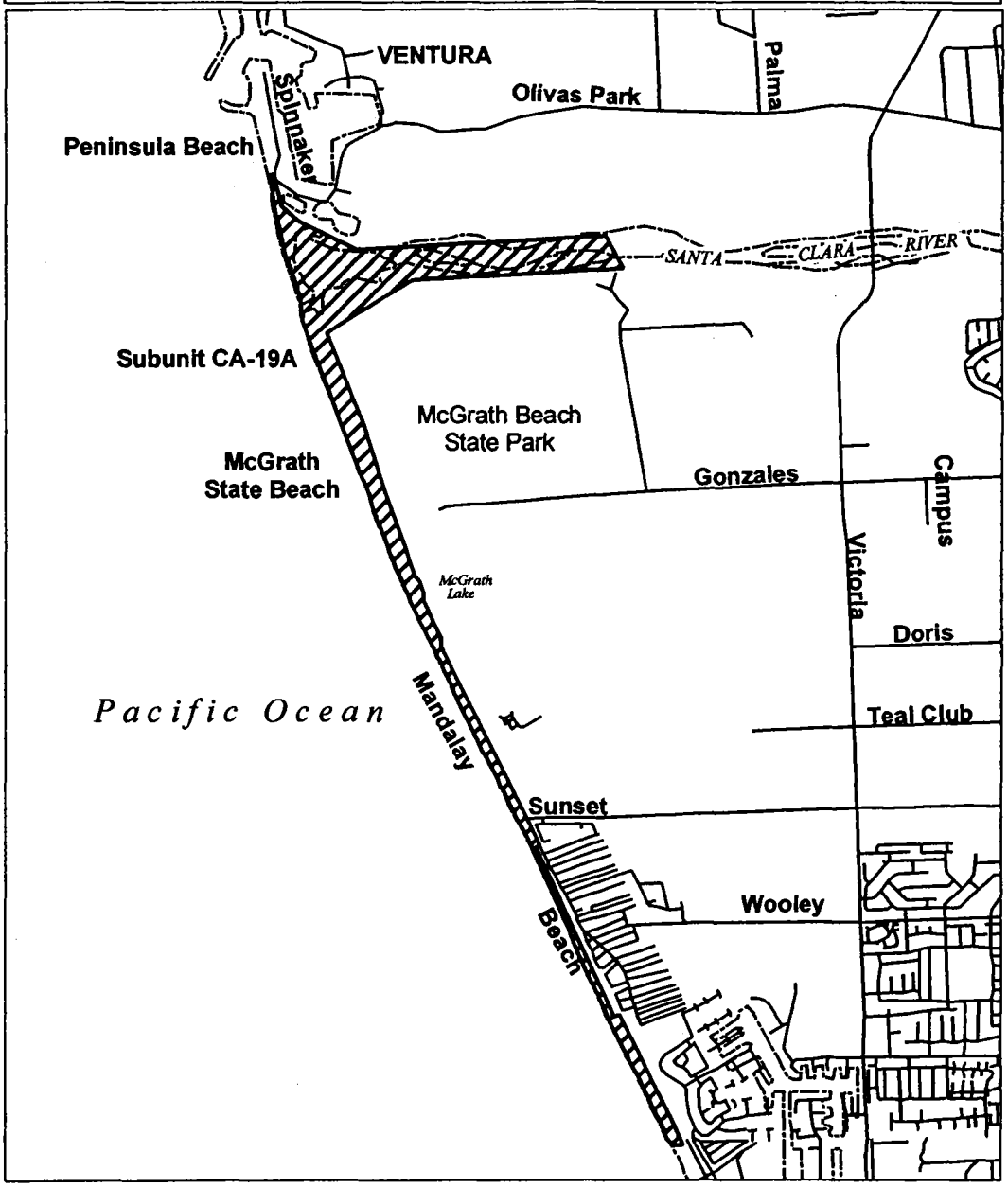
1 0 1 Kilometers

(58) Unit CA–19A, Ventura County, California.

(i) From USGS 1:24,000 quadrangle map Oxnard, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 291335, 3791012; 291362, 3791013; 291410, 3790772; 291536, 3790654; 291943, 3790429; 293789, 3790422; 293909, 3790178; 292342, 3790186; 291693, 3789833; 291920, 3789159; 292048, 3788658; 292238, 3788005; 292271, 3787968; 292297, 3787886; 292292, 3787826; 292351, 3787673; 292404, 3787548; 292400, 3787482; 292954, 3786197; 293048, 3785979; 293018, 3785959; 293526, 3784688; 293569, 3784701; 293823, 3784111; 293981, 3783717; 293908, 3783715 ; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 291335, 3791012.

(ii) **Note:** Unit CA–19A (Map M54) follows:

Map 54. Mandalay Beach to Santa Clara River Mouth (CA-19A), Ventura County, California.

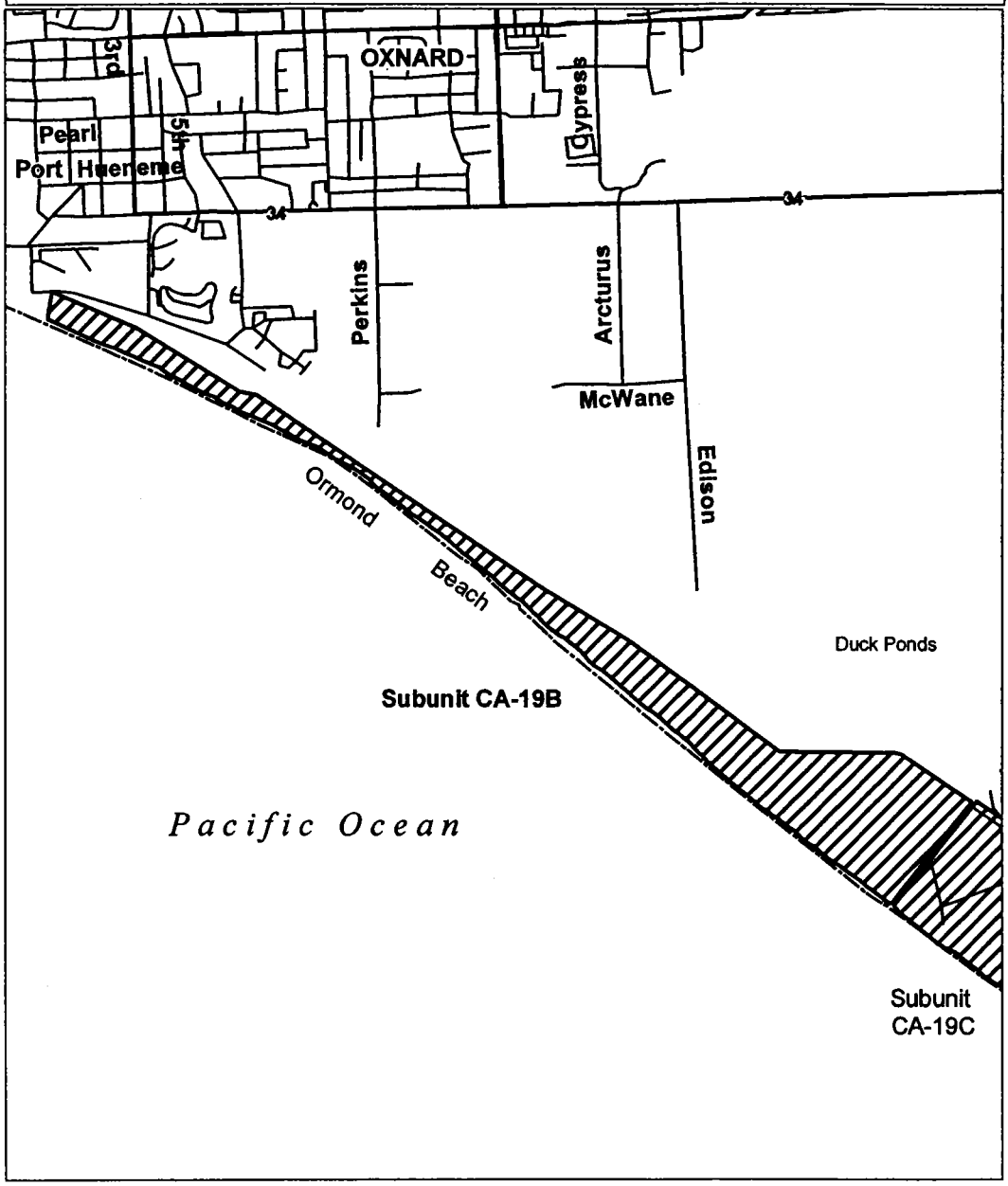


(59) Unit CA–19B, Ventura County, California.

(i) From USGS 1:24,000 quadrangle maps Oxnard, and Point Magu, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 297242, 3780065; 297270, 3780182; 297633, 3780001; 298075, 3779695; 298150, 3779675; 299371, 3778748; 299746, 3778489; 300378, 3777964; 300888, 3777929; 300911, 3777924; 300923, 3777917; 300936, 3777908; 300956, 3777892; 301219, 3777693; 300831, 3777265; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 297242, 3780065.

(ii) **Note:** Unit CA–19B (Map M55) follows:

Map 55. Ormond Beach (CA-19B), Ventura County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

1 0 1 Kilometers

(60) Unit CA–19C, Ventura County, California.

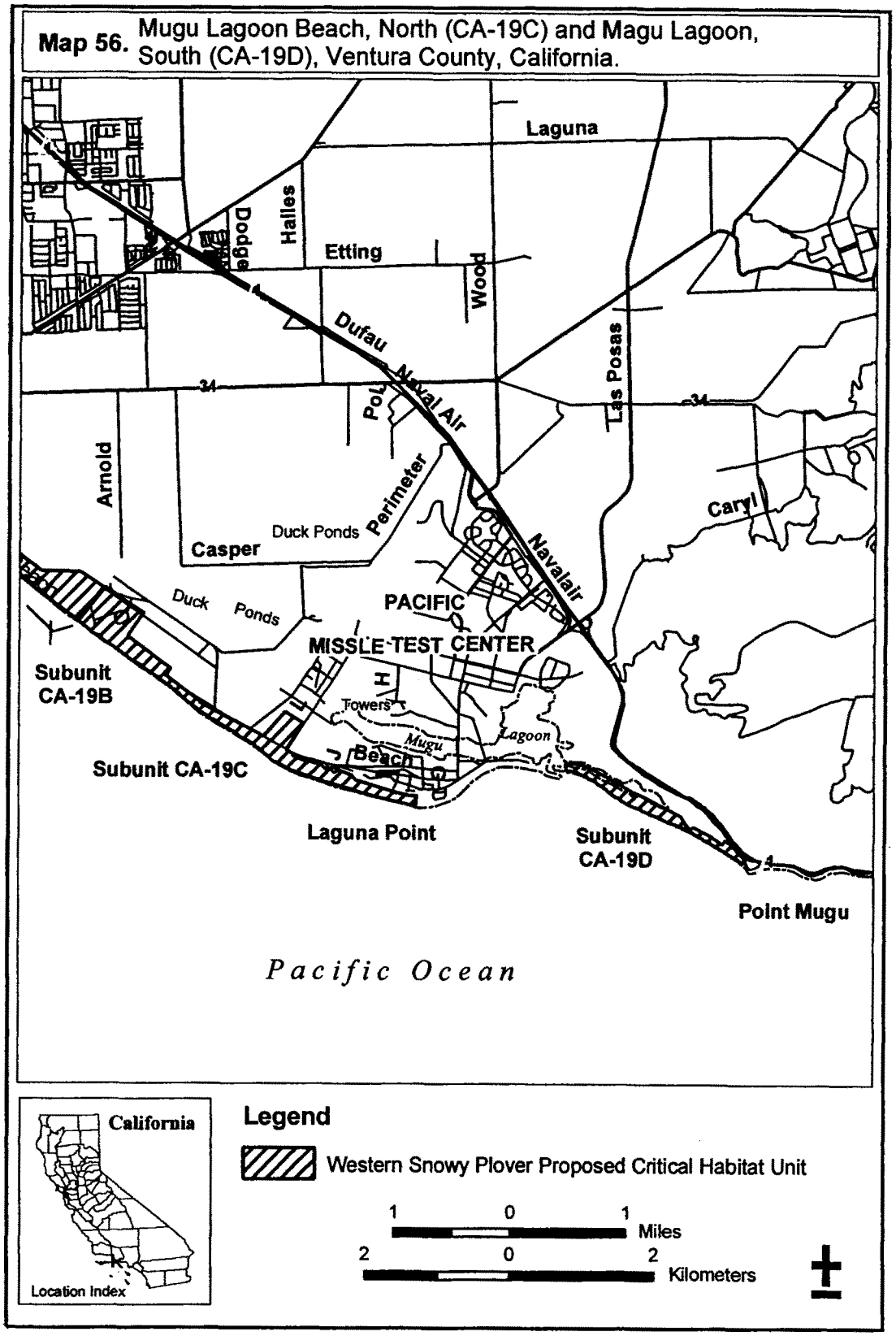
(i) From USGS 1:24,000 quadrangle map Point Magu, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 300845, 3777255; 301242, 3777694; 301744, 3777320; 301505, 3777003; 302074, 3776528; 302001, 3776440; 302073, 3776379; 302372, 3776131; 302440, 3776080; 302461, 3776035; 302653, 3775922; 303304, 3775537; 303622, 3775847; 303870, 3775681; 303608, 3775334; 303698, 3775279; 303695, 3775247; 303811, 3775189; 304080, 3775103; 304118, 3775054; 304190, 3775022; 304227, 3775060; 304493, 3774937; 304533, 3774878; 305022, 3774694; 305135, 3774657; 305287, 3774614; 305378, 3774610; 305354, 3774466; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 300845, 3777255.

(ii) **Note:** Unit CA–19C, CA–19D (Map M56) follows after description of CA–19D:

(61) Unit CA–19D, Ventura County, California.

(i) From USGS 1:24,000 quadrangle map Point Magu, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 307477, 3774839; 307464, 3774840; 307456, 3774930; 307473, 3774933; 307515, 3774930; 307592, 3774932; 307665, 3774920; 307724, 3774893; 307886, 3774797; 308323, 3774520; 308554, 3774400; 308749, 3774285; 309003, 3774129; 309066, 3774010; 309124, 3773949; 309180, 3773968; 309216, 3773942; 309406, 3773838; 309560, 3773719; 309596, 3773763; 309661, 3773726; 309714, 3773654; 309836, 3773503; 309847, 3773468; 309815, 3773441; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 307477, 3774839.

(ii) **Note:** Unit CA–19C, CA–19D (Map M56) follows:

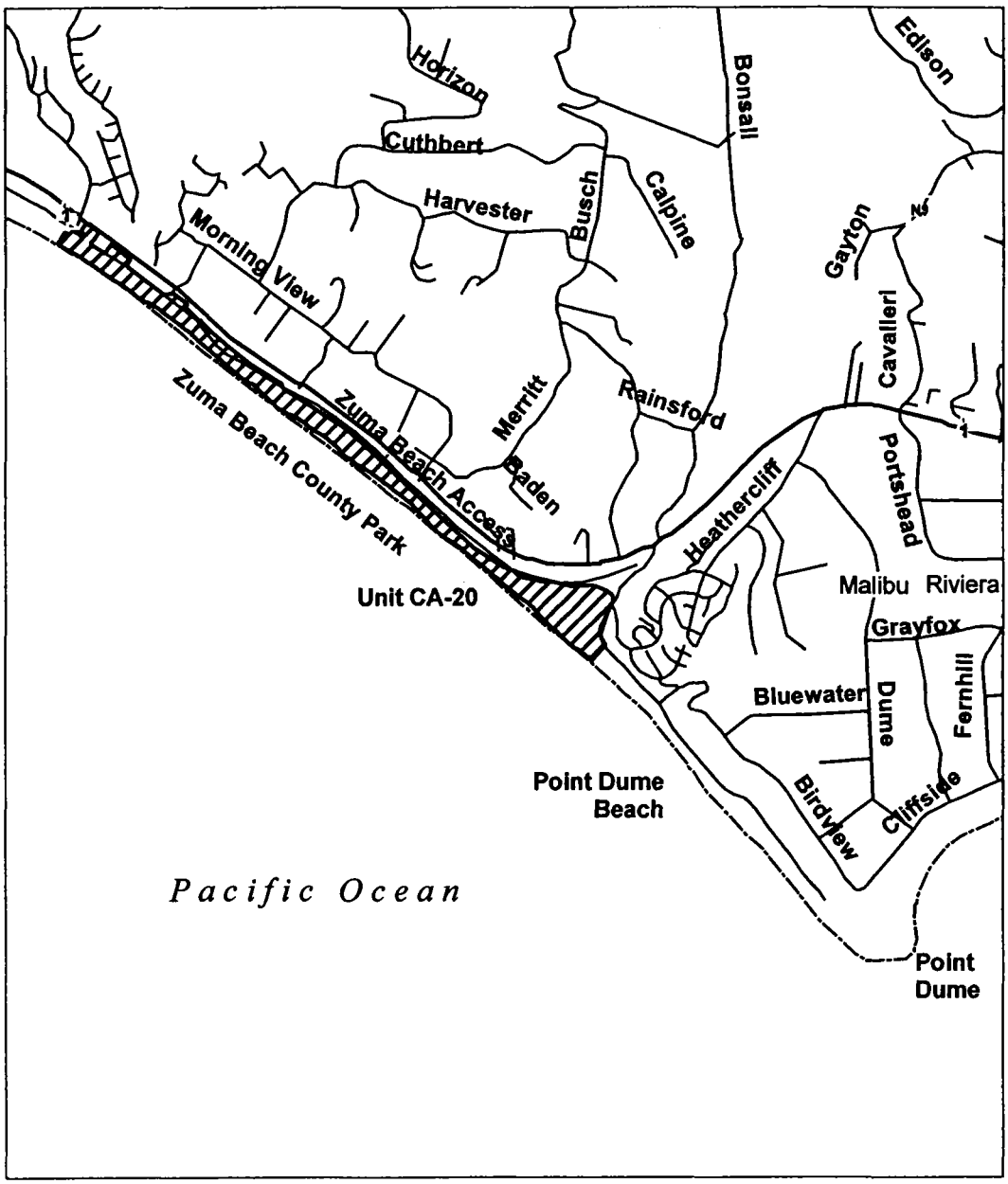

Map 56. Mugu Lagoon Beach, North (CA-19C) and Magu Lagoon, South (CA-19D), Ventura County, California.
Laguna
Halles
Dodge
Etting
Wood
Dufau
Naval Air
Pol
Las Posas
34
Arnold
Perimeter
Duck Ponds
Casper
Caryl
Navalair
Duck
Ponds
PACIFIC
MISSLE TEST CENTER
Subunit CA-19B
Towers
Mugu
Lagoon
Beach
Subunit CA-19C
Laguna Point
Subunit CA-19D
Point Mugu
Pacific Ocean
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
1 0 1 Miles
2 0 2 Kilometers

(62) Unit CA–20, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle map Point Dume, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 329781, 3766839; 329816, 3766887; 329836, 3766875; 329851, 3766892; 329890, 3766865; 329899, 3766877; 329886, 3766885; 329912, 3766923; 329924, 3766912; 329965, 3766877; 329924, 3766830; 329985, 3766786; 330017, 3766822; 330095, 3766754; 330094, 3766751; 330084, 3766734; 330081, 3766721; 330155, 3766656; 330233, 3766591; 330253, 3766588; 330272, 3766589; 330283, 3766586; 330337, 3766538; 330324, 3766526; 330377, 3766467; 330388, 3766467; 330428, 3766419; 330503, 3766346; 330597, 3766260; 330733, 3766164; 330734, 3766150; 330742, 3766140; 330970, 3765974; 331003, 3765952; 331025, 3765933; 331045, 3765912; 331281, 3765663; 331539, 3765394; 331669, 3765298; 331791, 3765248; 331956, 3765199; 331981, 3765198; 332021, 3765195; 332052, 3765196; 332076, 3765189; 332121, 3765165; 332140, 3765152; 332146, 3765142; 332147, 3765126; 332122, 3765074; 332087, 3765013; 332081, 3764993; 332081, 3764972; 332083, 3764966; 332099, 3764935; 332103, 3764929; 332037, 3764863; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 329781, 3766839.

(ii) **Note:** Unit CA–20 (Map M57) follows:

Map 57. Zuma Beach (CA-20), Los Angeles County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

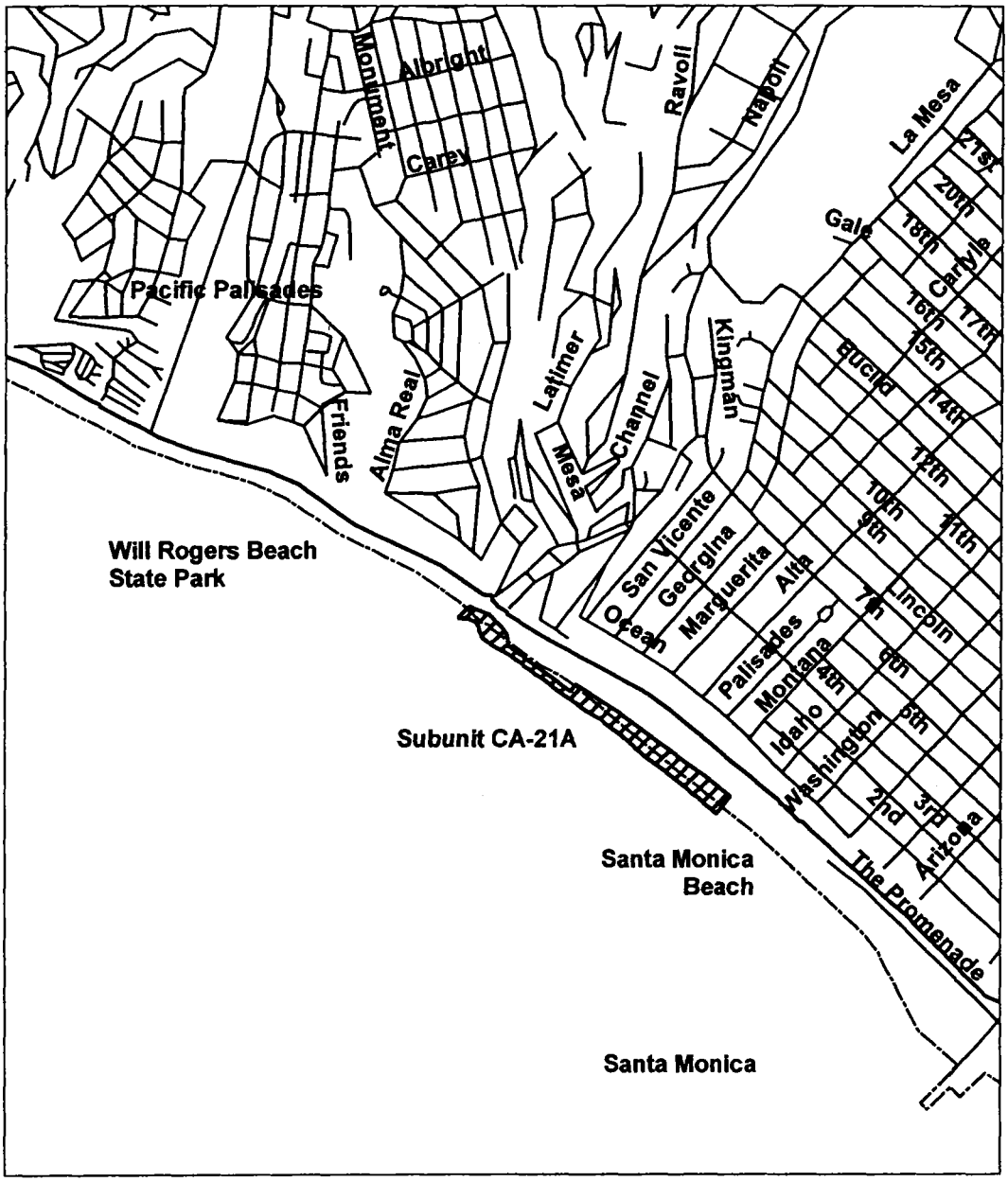
1 0 1 Kilometers

(63) Unit CA–21A, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle map Topanga, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 359653, 3766064; 359698, 3766104; 359706, 3766112; 359794, 3766072; 359841, 3766016; 359865, 3765980; 359868, 3765955; 359871, 3765928; 359981, 3765838; 360136, 3765710; 360156, 3765737; 360157, 3765740; 360346, 3765605; 360713, 3765301; 360821, 3765208; 360782, 3765167; 360750, 3765131; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 359653, 3766064.

(ii) **Note:** Unit CA–21A (M58) follows:

Map 58. Santa Monica Beach (CA-21A), Los Angeles County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.4 0 0.4 Miles

1 0 1 Kilometers

(64) Unit CA–21B, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle map Venice, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 366261, 3757311; 366467, 3757409; 366791, 3756716; 366577, 3756633; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 366261, 3757311.

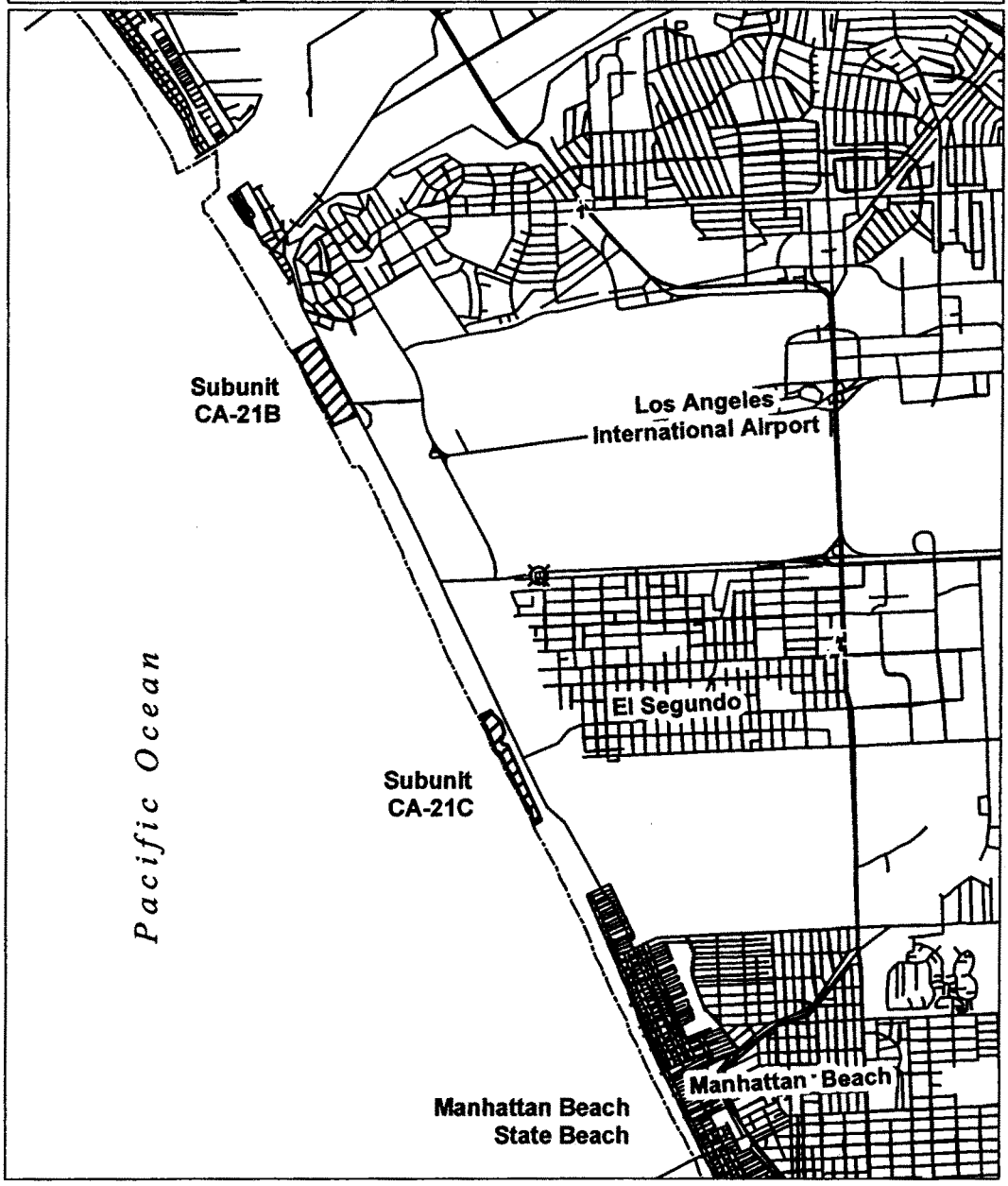
(ii) **Note:** Unit CA–21B, CA–21C (Map M59) follows after description of CA–21C:

(65) Unit CA–21C, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle map Venice, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 367740, 3753997; 367843, 3754038; 367860, 3754002; 367883, 3753980; 367924, 3753925; 367945, 3753827; 367911, 3753766; 367924, 3753739; 367968, 3753730; 368021, 3753592; 368235, 3753042; 368173, 3753011; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 367740, 3753997.

(ii) **Note:** Unit CA–21B, CA–21C (Map M59) follows:

Map 59. Dockweiler, North (CA-21B) and Dockweiler, South (CA-21C), Los Angeles County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

1 0 1 Miles

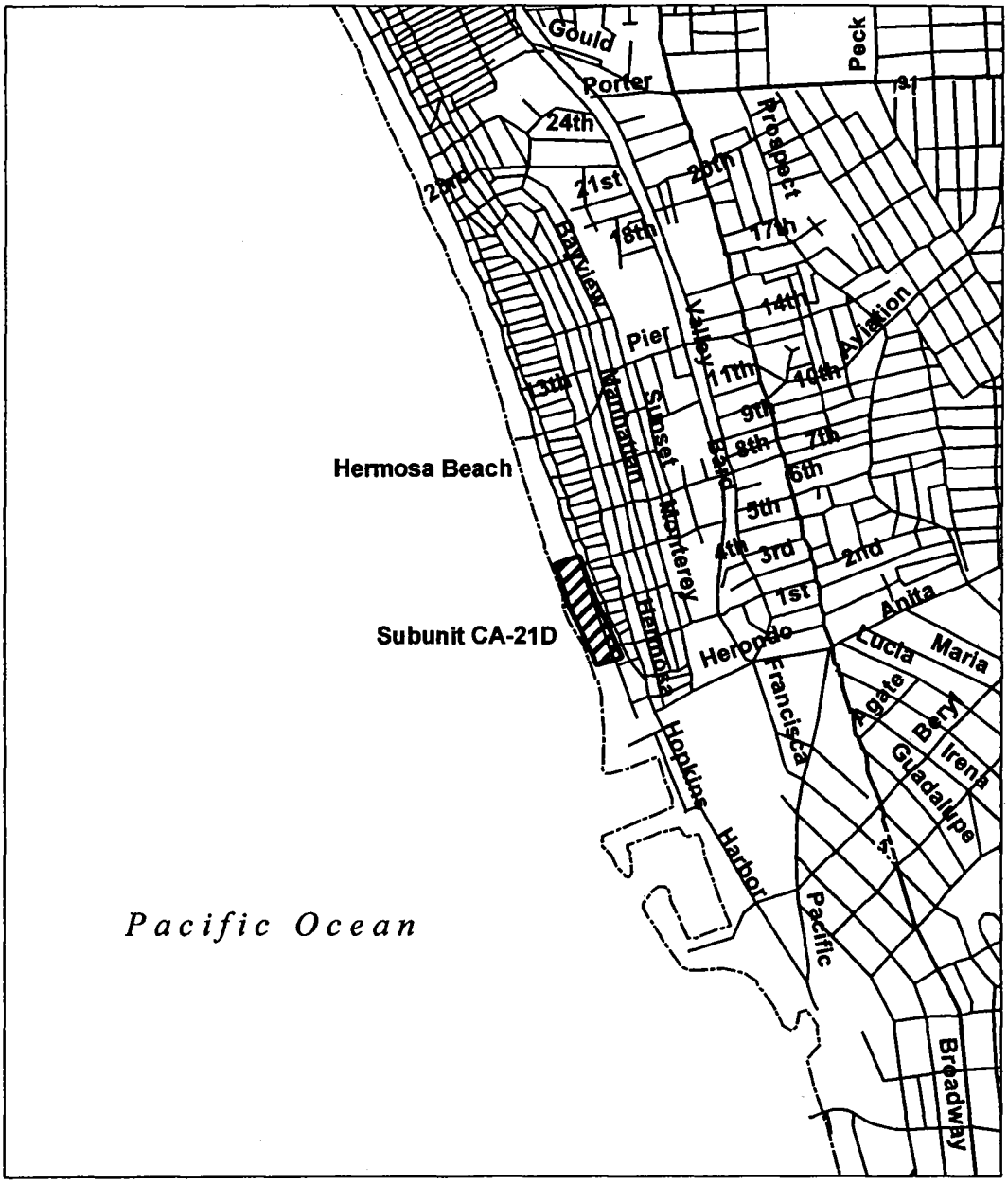
1 0 1 Kilometers

(66) Unit CA–21D, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle map Redondo Beach OE S, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 370468, 3747024; 370560, 3747050; 370594, 3746936; 370696, 3746667; 370602, 3746644; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 370468, 3747024.

(ii) **Note:** Unit CA–21D (Map M60) follows:

Map 60. Hermosa Beach (CA-21D), Los Angeles County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.3 0 0.3 Miles

0.9 0 0.9 Kilometers

(67) Unit CA–22A, Orange County, California.

(i) From USGS 1:24,000 quadrangle map Seal Beach, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 403074, 3728680; 403074, 3728681; 403267, 3728834; 403265, 3728996; 403238, 3729044; 403290, 3729077; 403342, 3729164; 403545, 3729348; 403571, 3729356; 403635, 3729419; 404409, 3729117; 404407, 3728750; 404398, 3728717; 404399, 3728532; 404464, 3728525; 404727, 3728380; 404729, 3728299; 405337, 3727975; 405370, 3727979; 405369, 3727845; 405358, 3727807; 405339, 3727778; 405295, 3727725; 405113, 3727543; 405081, 3727505; 405050, 3727457; 405006, 3727428; 404907, 3727378; 404859, 3727355; 404833, 3727349; 404801, 3727356; 404766, 3727373; 404712, 3727387; 404584, 3727405; 404557, 3727413; 404529, 3727431; 404495, 3727462; 404465, 3727486; 404426, 3727492; 404372, 3727479; 404183, 3727422; 403756, 3727974; 403749, 3727975; 403740, 3727969; 403720, 3727949; 403709, 3727950; 403697, 3727958; 403684, 3727961; 403653, 3727943; returning to 403074, 3728680.

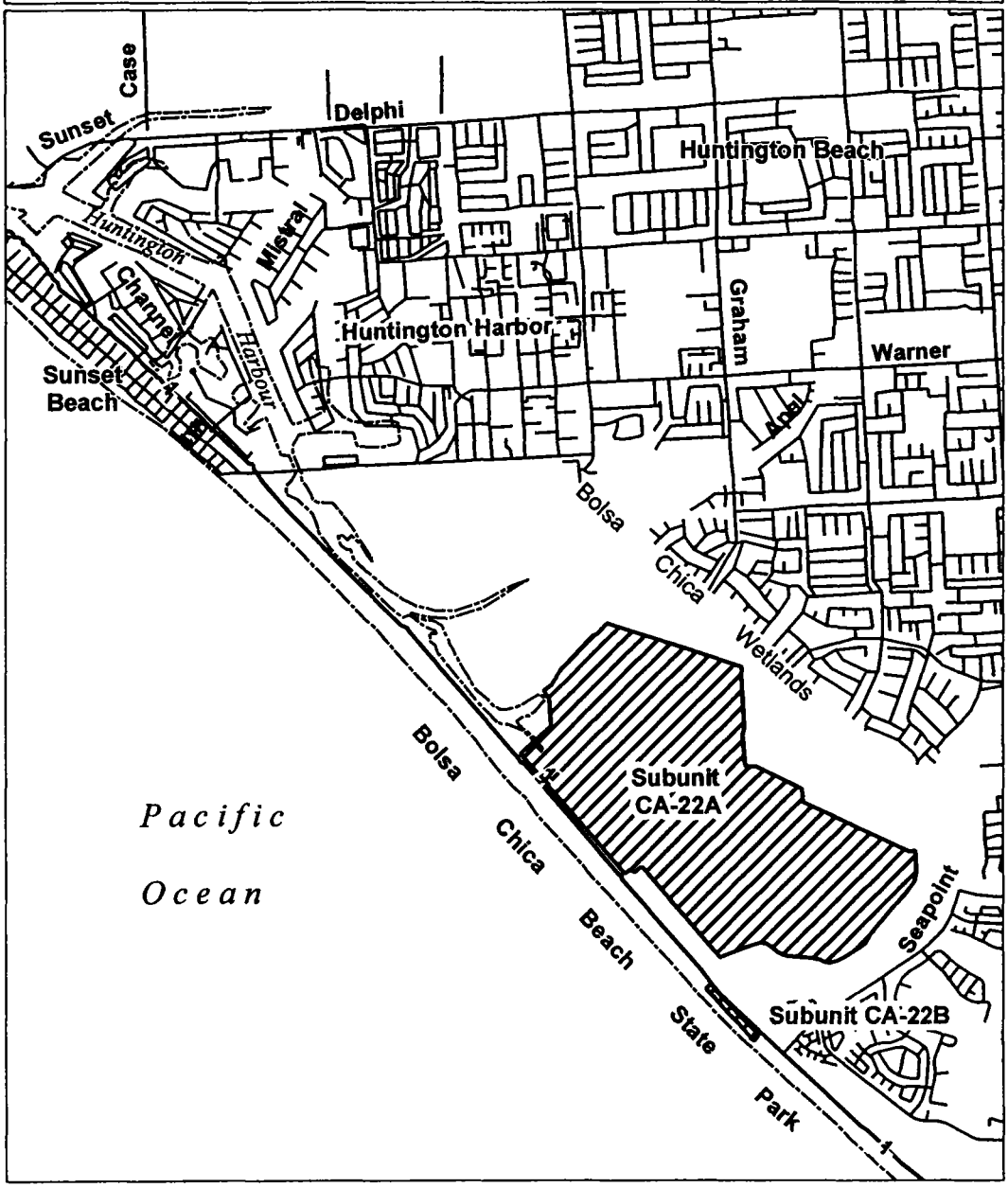
(ii) **Note:** Unit CA–22A, CA–22B follows after description of CA–22B (Map M61):

(68) Unit CA–22B, Orange County, California.

(i) From USGS 1:24,000 quadrangle map Seal Beach, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 404089, 3727241; 404122, 3727265; 404183, 3727186; 404256, 3727101; 404389, 3726951; 404360, 3726921; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 404089, 3727241.

(ii) **Note:** Unit CA–22A, CA–22B (Map M61) follows:

Map 61. Bolsa Chica Reserve (CA-22A) and Huntington St. Beach (CA-22B), Orange County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.8 0 0.8 Miles

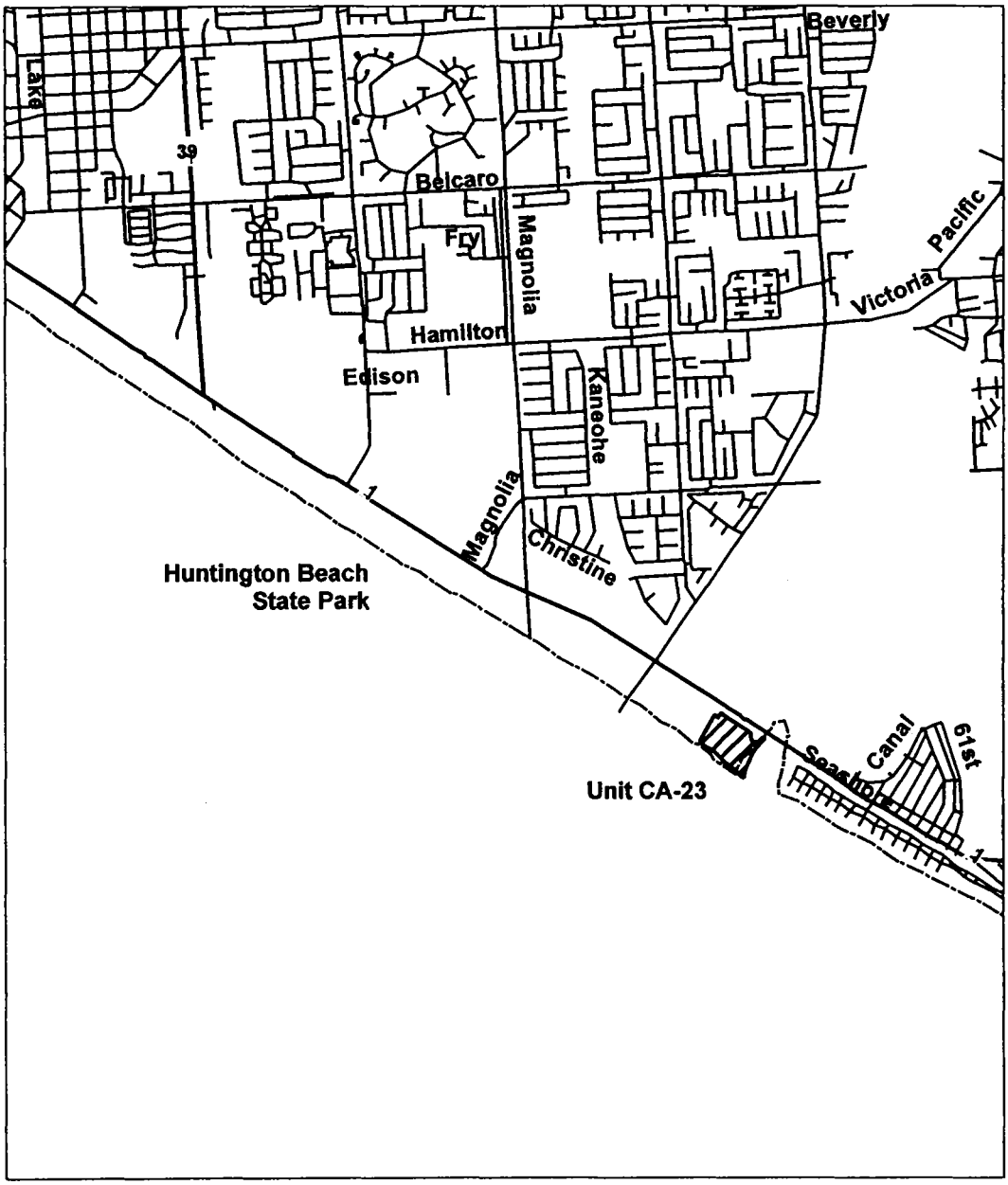
1 0 1 Kilometers

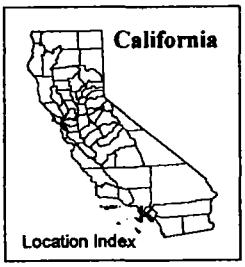
(69) Unit CA–23, Orange County, California.

(i) From USGS 1:24,000 quadrangle map Newport Beach, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 411152, 3721501; 411152, 3721498; 411154, 3721486; 411161, 3721477; 411171, 3721472; 411183, 3721471; 411189, 3721473; 411197, 3721476; 411208, 3721485; 411217, 3721493; 411224, 3721488; 411220, 3721483; 411201, 3721465; 411198, 3721462; 411173, 3721438; 411154, 3721408; 411133, 3721368; 411117, 3721336; 411106, 3721293; 411094, 3721298; 411074, 3721321; 411069, 3721327; 411061, 3721335; 411054, 3721344; 411043, 3721354; 411039, 3721358; 411018, 3721375; 411000, 3721392; 410981, 3721413; 410958, 3721437; 410939, 3721452; 410903, 3721473; 410888, 3721489; 410971, 3721619; 410978, 3721616; 410989, 3721606; 410997, 3721617; 411008, 3721631; 411140, 3721534; 411157, 3721515; returning to 411152, 3721501.

(ii) **Note:** Unit CA–23 (Map M62) follows:

Map 62. Santa Ana River Mouth (CA-23), Orange County, California.





Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.4 0 0.4 Miles

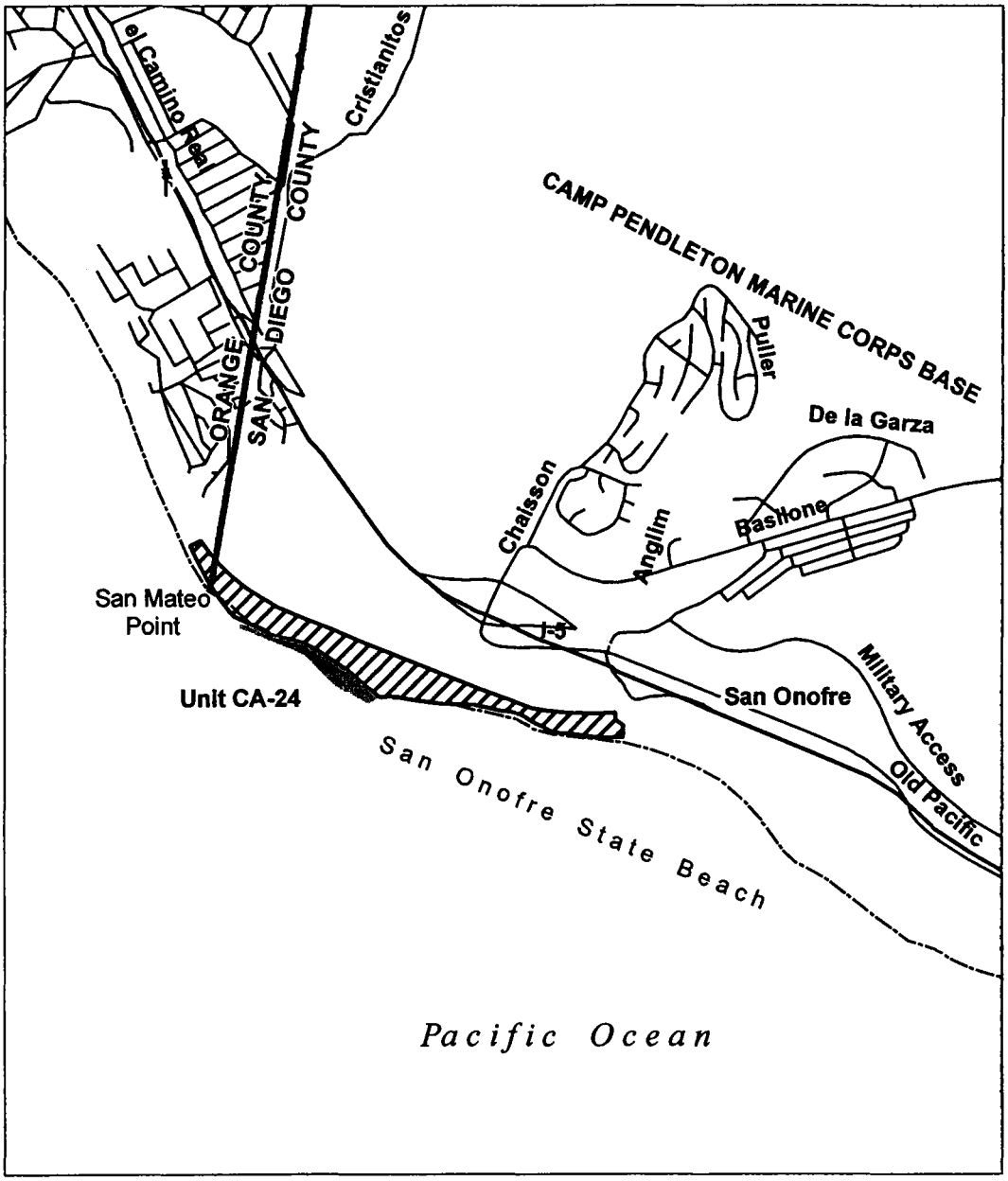
1 0 1 Kilometers

(70) Unit CA–24, Orange County and San Diego County California.

(i) From USGS 1:24,000 quadrangle map San Clemente, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 444536, 3694354; 444588, 3694374; 444627, 3694314; 444645, 3694291; 444658, 3694275; 444675, 3694251; 444717, 3694206; 444781, 3694151; 444839, 3694107; 444910, 3694061; 445036, 3694001; 445277, 3693888; 445568, 3693753; 445795, 3693645; 446006, 3693555; 446080, 3693536; 446167, 3693524; 446250, 3693516; 446261, 3693516; 446310, 3693514; 446375, 3693511; 446376, 3693489; 446377, 3693480; 446386, 3693472; 446397, 3693463; 446406, 3693458; 446402, 3693402; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 444536, 3694354.

(ii) **Note:** Unit CA–24 (Map M63) follows:

Map 63. San Onofre Beach (CA-24), Orange and San Diego County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.5 0 0.5 Miles

0.8 0 0.8 Kilometers

(71) Unit CA–25A, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Encinitas, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 470975, 3660809; 470982, 3660811; 471014, 3660802; 471058, 3660765; 471085, 3660733; 471105, 3660704; 471122, 3660645; 471129, 3660592; 471148, 3660540; 471147, 3660511; 471155, 3660493; 471153, 3660485; 471153, 3660485; 471147, 3660482; 471122, 3660510; 471112, 3660507; 471106, 3660501; 471067, 3660464; 471066, 3660464; 471081, 3660447; 471084, 3660437; 471084, 3660417; 471077, 3660393; 471077, 3660378; 471085, 3660361; 471044, 3660341; 471013, 3660349; 471002, 3660338; 470992, 3660306; 470980, 3660296; 470977, 3660316; 470969, 3660338; 470968, 3660341; 470962, 3660360; 470955, 3660391; 470949, 3660420; 470943, 3660453; 470942, 3660456; 470933, 3660489; 470925, 3660522; 470924, 3660525; 470914, 3660562; 470907, 3660588; 470906, 3660597; 470901, 3660624; 470893, 3660651; 470892, 3660654; 470884, 3660676; 470877, 3660694; 470872, 3660706; 470864, 3660726; 470861, 3660740; 470860, 3660742; 470859, 3660754; 470862, 3660764; 470866, 3660765; 470874, 3660770; 470903, 3660785; 470962, 3660804; returning to 470975, 3660809.

(ii) **Note:** Unit CA–25A (Map M64) follows description of CA–25C:

(72) Unit CA–25B, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Oceanside, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 472453, 3660939; 472518, 3660920; 472571, 3660894; 472603, 3660856; 472613, 3660817; 472614, 3660776; 472576, 3660736; 472538, 3660692; 472498, 3660666; 472478, 3660670; 472452, 3660693; 472451, 3660695; 472404, 3660732; 472373, 3660751; 472352, 3660760; 472335, 3660762; 472311, 3660758; 472296, 3660748; 472282, 3660746; 472264, 3660752; 472244, 3660769; 472209, 3660804; 472183, 3660843; 472164, 3660882; 472153, 3660903; 472145, 3660929; 472156, 3660952; 472190, 3660981; 472223, 3660990; 472288, 3660980; 472393, 3660956; returning to 472453, 3660939.

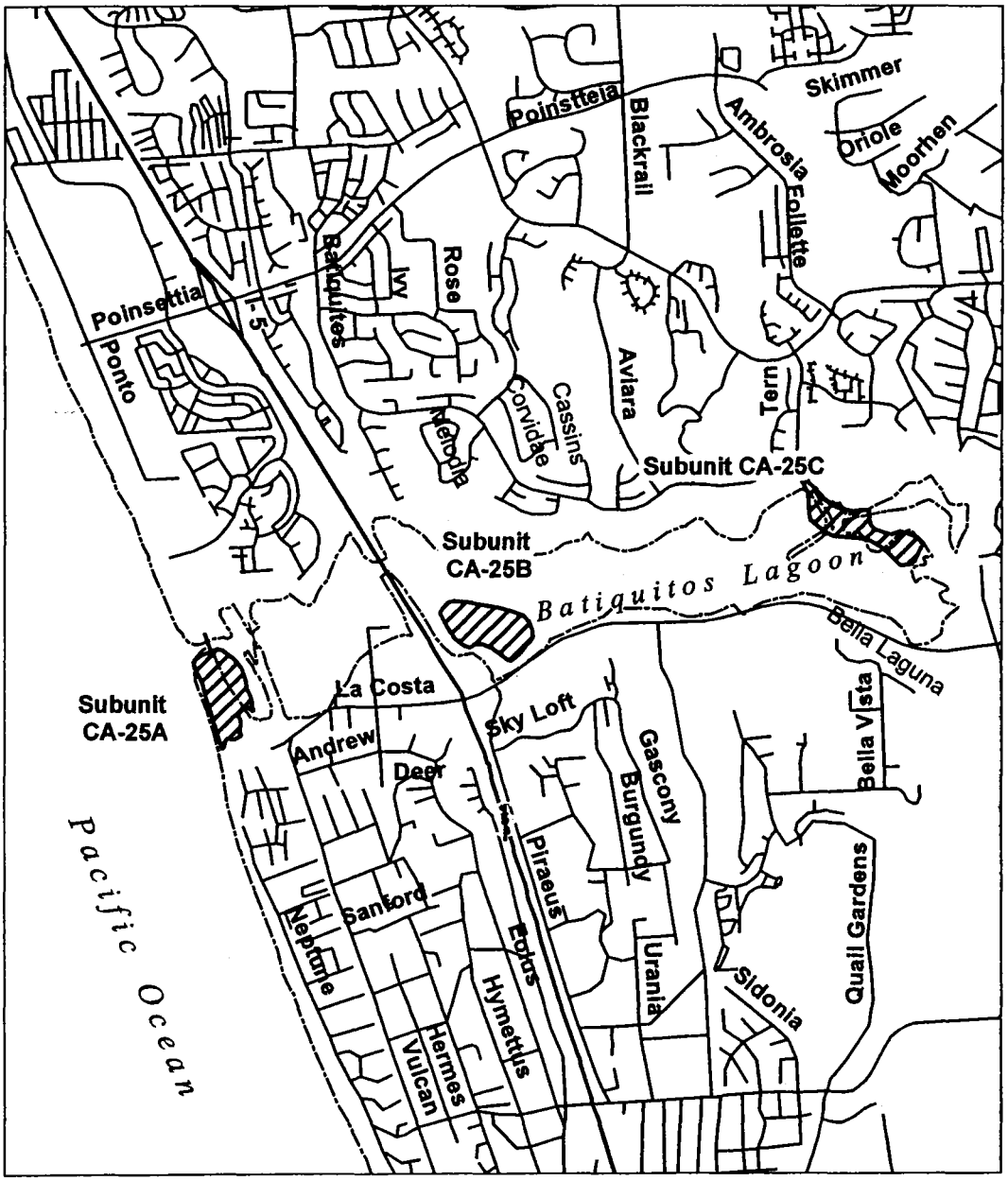
(ii) **Note:** Unit CA–25B (Map M64) follows description of CA–25C:

(73) Unit CA–25C, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Oceanside, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 474053, 3661505; 474074, 3661515; 474082, 3661492; 474109, 3661464; 474118, 3661461; 474119, 3661450; 474144, 3661424; 474169, 3661398; 474189, 3661386; 474201, 3661384; 474210, 3661378; 474228, 3661376; 474237, 3661377; 474247, 3661359; 474263, 3661344; 474302, 3661334; 474357, 3661336; 474385, 3661334; 474386, 3661294; 474393, 3661252; 474413, 3661233; 474450, 3661217; 474494, 3661203; 474539, 3661214; 474584, 3661200; 474628, 3661181; 474654, 3661143; 474615, 3661062; 474594, 3661042; 474562, 3661043; 474543, 3661039; 474530, 3661043; 474504, 3661070; 474472, 3661111; 474452, 3661130; 474380, 3661179; 474321, 3661194; 474236, 3661205; 474200, 3661211; 474166, 3661225; 474140, 3661244; 474113, 3661268; 474081, 3661304; 474075, 3661333; 474076, 3661393; 474075, 3661440; 474048, 3661501; returning to 474053, 3661505.

(ii) **Note:** Unit CA–25A, CA–25B, CA–25C (Map M64) follows:

Map 64. Batiquitos Lagoon, West (CA-25A), Batiquitos Lagoon, Middle (CA-25B), Batiquitos Lagoon, East (CA-25C), San Diego County, California.



Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.6 0 0.6 Miles

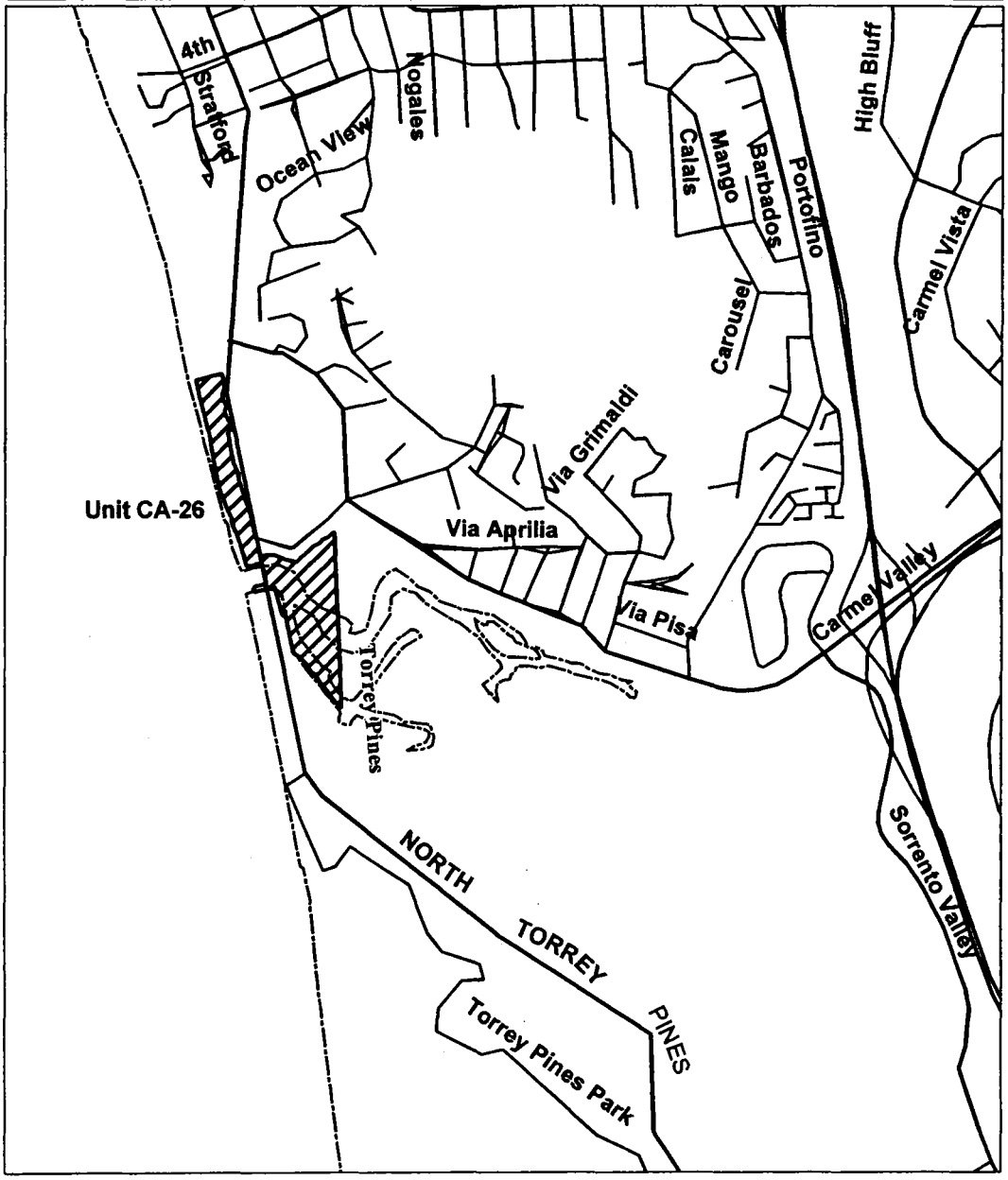
1 0 1 Kilometers

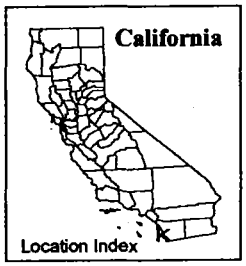
(74) Unit CA–26, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Del Mar California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 475548, 3644417; 475597, 3644428; 475626, 3644433; 475629, 3644418; 475632, 3644391; 475625, 3644370; 475626, 3644353; 475627, 3644350; 475633, 3644335; 475628, 3644322; 475637, 3644298; 475640, 3644293; 475647, 3644279; 475649, 3644271; 475641, 3644267; 475639, 3644267; 475635, 3644257; 475638, 3644237; 475642, 3644195; 475643, 3644190; 475648, 3644165; 475657, 3644139; 475658, 3644120; 475664, 3644091; 475671, 3644073; 475674, 3644054; 475683, 3644029; 475688, 3644001; 475693, 3643983; 475694, 3643965; 475701, 3643945; 475704, 3643929; 475708, 3643891; 475733, 3643895; 475749, 3643893; 475778, 3643878; 475815, 3643868; 475826, 3643878; 475869, 3643912; 475883, 3643920; 475893, 3643930; 475909, 3643935; 475919, 3643943; 475930, 3643950; 475923, 3643429; 475917, 3643436; 475902, 3643454; 475885, 3643478; 475864, 3643509; 475851, 3643533; 475838, 3643545; 475824, 3643566; 475804, 3643590; 475788, 3643603; 475774, 3643706; 475763, 3643718; 475756, 3643749; 475750, 3643781; 475748, 3643798; 475714, 3643792; 475685, 3643787; 475683, 3643797; 475689, 3643805; 475711, 3643807; 475723, 3643809; 475713, 3643871; 475701, 3643870; 475700, 3643870; 475699, 3643869; 475690, 3643866; 475667, 3643865; 475660, 3643894; 475657, 3643904; 475652, 3643926; 475647, 3643946; 475644, 3643956; 475641, 3643964; 475635, 3643986; 475630, 3644011; 475622, 3644032; 475613, 3644053; 475606, 3644077; 475599, 3644101; 475595, 3644132; 475593, 3644149; 475590, 3644179; 475586, 3644211; 475582, 3644230; 475580, 3644243; 475578, 3644258; 475573, 3644280; 475567, 3644312; 475563, 3644337; 475555, 3644376; 475550, 3644411; returning to 475548, 3644417.

(ii) **Note:** Unit CA–26 (Map M65) follows:

Map 65. Los Penasquitos Lagoon/Beach (CA-26), San Diego County, California.





Legend

Western Snowy Plover Proposed Critical Habitat Unit

0.3 0 0.3 Miles

0.5 0 0.5 Kilometers

(75) Unit CA–27A, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Point Loma, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 479126, 3615994; 479126, 3615993; 479125, 3615995; 479119, 3616121; 479161, 3616166; 479181, 3616153; 479197, 3616150; 479209, 3616148; 479227, 3616151; 479254, 3616161; 479278, 3616176; 479286, 3616192; 479300, 3616240; 479319, 3616303; 479420, 3616659; 479554, 3616619; 479506, 3616450; 479571, 3616432; 479613, 3616586; 479655, 3616576; 479717, 3616559; 479766, 3616549; 479802, 3616544; 479828, 3616545; 479842, 3616550; 479862, 3616562; 479881, 3616583; 479895, 3616613; 479907, 3616644; 479940, 3616765; 479957, 3616756; 479951, 3616729; 480004, 3616700; 480012, 3616701; 480022, 3616709; 480026, 3616723; 480028, 3616729; 480195, 3616713; 480182, 3616662; 480200, 3616648; 480276, 3616656; 480321, 3616667; 480331, 3616671; 480340, 3616680; 480351, 3616690; 480355, 3616704; 480370, 3616642; 480373, 3616631; 480380, 3616624; 480389, 3616622; 480397, 3616623; 480405, 3616627; 480410, 3616636; 480411, 3616650; 480413, 3616659; 480476, 3616651; 480477, 3616641; 480456, 3616627; 480448, 3616538; 480499, 3616545; 480501, 3616583; 480514, 3616594; 480528, 3616601; 480555, 3616606; 480554, 3616578; 480641, 3616578; 480641, 3616614; 480751, 3616615; 480766, 3616610; 480799, 3616622; 480843, 3616608; 480858, 3616639; 480911, 3616631; 480936, 3616594; 480953, 3616611; 480963, 3616612; 481116, 3616586; 481129, 3616600; 481142, 3616589; 481159, 3616582; 481172, 3616578; 481181, 3616571; 481219, 3616553; 481271, 3616530; 481345, 3616483; 481371, 3616479; 481387, 3616480; 481442, 3616468; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 479126, 3615994.

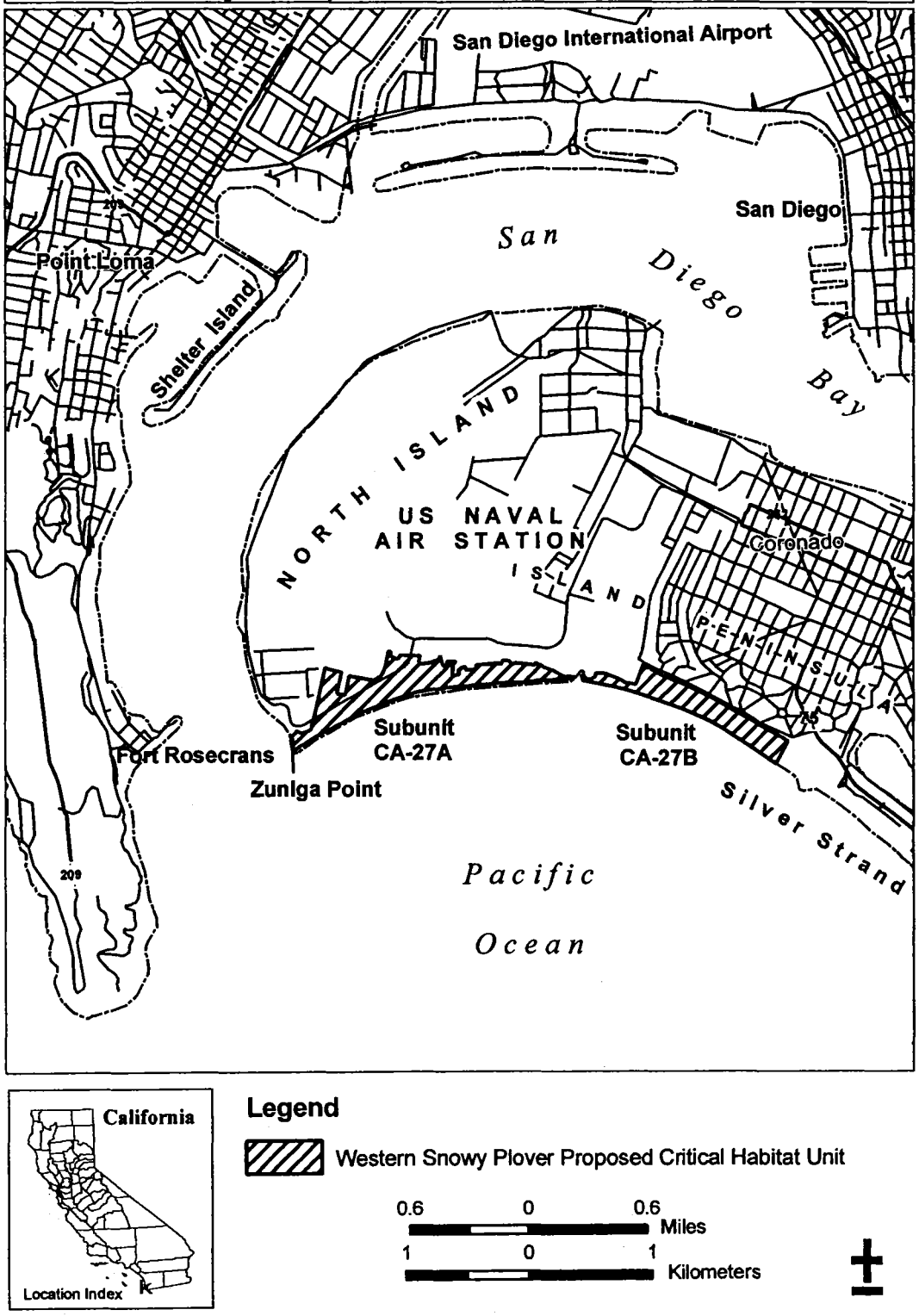
(ii) **Note:** Unit CA–27A (Map M66) follows after description of CA–27B:

(76) Unit CA–27B, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Point Loma, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 481501, 3616480; 481510, 3616481; 481524, 3616453; 481540, 3616447; 481565, 3616444; 481580, 3616449; 481601, 3616462; 481613, 3616490; 481630, 3616491; 481669, 3616488; 481690, 3616481; 481734, 3616460; 481794, 3616435; 481826, 3616413; 481836, 3616401; 481893, 3616389; 481928, 3616379; 481996, 3616538; 481998, 3616537; 482008, 3616531; 482011, 3616518; 482024, 3616510; 482038, 3616511; 482160, 3616439; 482347, 3616345; 482534, 3616238; 482693, 3616137; 482984, 3615950; 483137, 3615853; 483030, 3615679; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 481501, 3616480.

(ii) **Note:** Unit CA–27A, CA–27B (Map M66) follows:

Map 66. North Island, North (CA-27A) and North Island, South (CA-27B), San Diego County, California.



(77) Unit CA–27C, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Point Loma, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 486529, 3610849; 486590, 3610876; 486697, 3610598; 486721, 3610571; 486806, 3610351; 486791, 3610346; 486791, 3610346; 486810, 3610292; 486828, 3610297; 486915, 3610068; 486968, 3609885; 487000, 3609790; 487047, 3609793; 487051, 3609721; 487041, 3609693; 487041, 3609670; 487050, 3609648; 487058, 3609626; 487065, 3609546; 487103, 3609482; 487170, 3609371; 487175, 3609357; 487222, 3609239; 487251, 3609137; 487298, 3608920; 487335, 3608746; 487384, 3608522; 487446, 3608167; 487470, 3608089; 487507, 3607994; 487566, 3607901; 487610, 3607822; 487614, 3607815; 487621, 3607803; 487627, 3607794; 487620, 3607787; 487595, 3607786; 487596, 3607778; 487639, 3607312; 487656, 3607070; 487682, 3606753; 487704, 3606480; 487715, 3606311; 487726, 3606117; 487734, 3606015; 487729, 3605961; 487727, 3605928; 487729, 3605912; 487732, 3605901; 487730, 3605891; 487718, 3605882; 487719, 3605861; 487725, 3605845; 487724, 3605828; 487730, 3605815; 487730, 3605792; 487724, 3605671; 487723, 3605629; 487728, 3605617; 487723, 3605556; 487723, 3605531; 487723, 3605514; 487711, 3605502; 487720, 3605431; 487714, 3605403; 487696, 3605404; 487683, 3605384; 487610, 3605382; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 486529, 3610849.

(ii) **Note:** Unit CA–27C (Map M67) follows description of CA–27E:

(78) Unit CA–27D, San Diego County California.

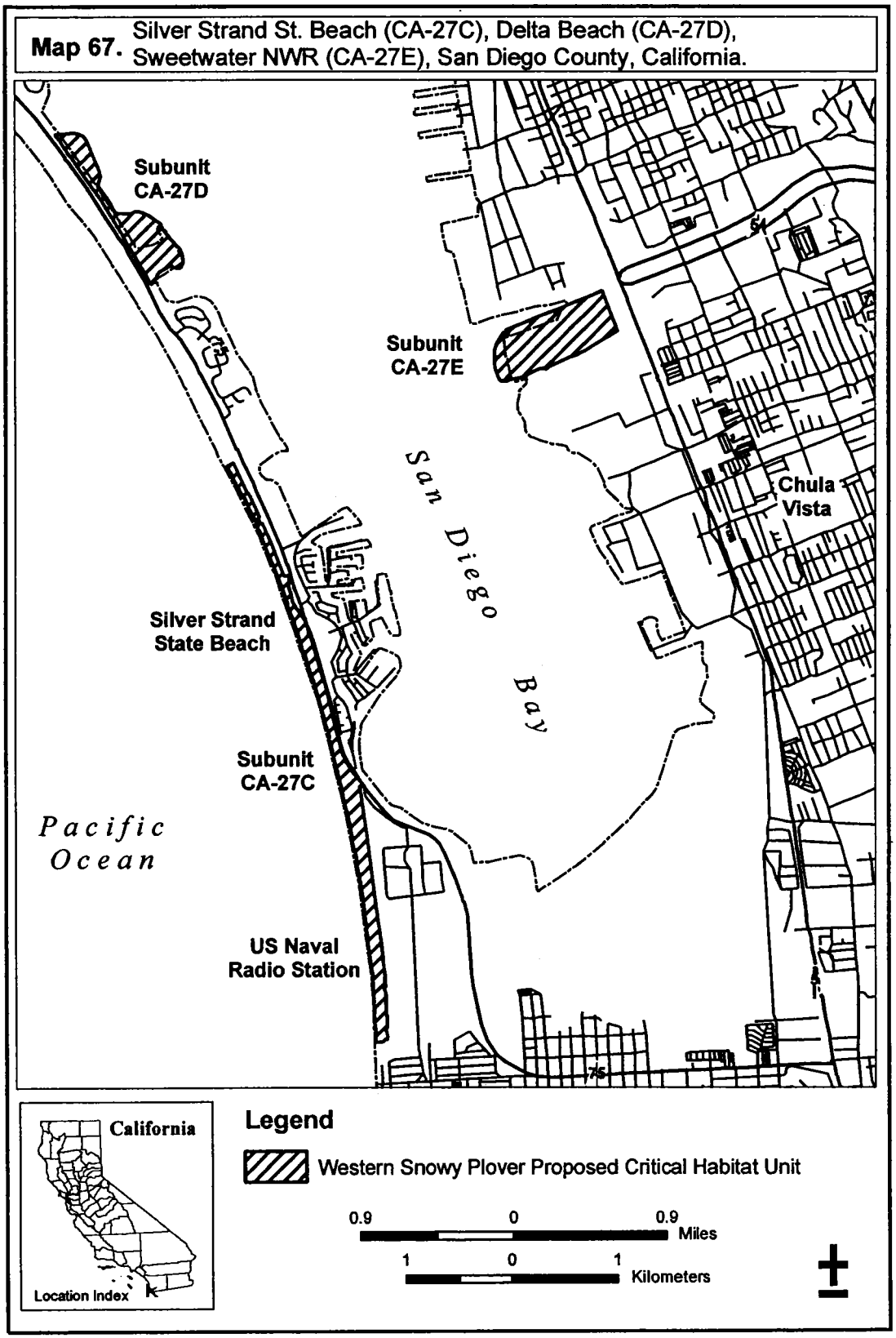
(i) From USGS 1:24,000 quadrangle map Point Loma, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 485114, 3614041; 485128, 3614042; 485141, 3614041; 485160, 3614042; 485222, 3614046; 485267, 3614045; 485305, 3614039; 485352, 3614014; 485373, 3613993; 485394, 3613957; 485445, 3613804; 485477, 3613712; 485497, 3613654; 485500, 3613623; 485497, 3613609; 485480, 3613566; 485477, 3613534; 485488, 3613511; 485545, 3613421; 485577, 3613363; 485592, 3613321; 485608, 3613292; 485626, 3613274; 485668, 3613265; 485769, 3613259; 485804, 3613275; 485834, 3613276; 485877, 3613258; 485934, 3613227; 485996, 3613178; 486024, 3613158; 486037, 3613138; 486039, 3613136; 486052, 3613096; 486092, 3613034; 486141, 3612974; 486161, 3612948; 486175, 3612932; 486201, 3612904; 486208, 3612886; 486216, 3612864; 486217, 3612860; 486222, 3612823; 486224, 3612808; 486225, 3612805; 486226, 3612799; 486226, 3612798; 486225, 3612795; 486219, 3612760; 486208, 3612735; 486188, 3612721; 486171, 3612720; 486147, 3612726; 486134, 3612736; 486130, 3612739; 486118, 3612748; 486106, 3612747; 486093, 3612745; 486071, 3612729; 486053, 3612723; 486016, 3612707; 485992, 3612690; 485990, 3612687; 485977, 3612673; 485968, 3612643; 485967, 3612640; 485965, 3612636; 485957, 3612632; 485956, 3612632; 485945, 3612623; 485944, 3612615; 485940, 3612604; 485909, 3612588; 485873, 3612670; 485831, 3612750; 485761, 3612890; 485715, 3612978; 485654, 3613095; 485491, 3613400; 485412, 3613528; 485324, 3613668; 485259, 3613777; 485199, 3613873; 485147, 3613959; 485129, 3613989; 485093, 3614039; returning to 485114, 3614041.

(ii) **Note:** Unit CA–27D (Map M67) follows description of CA–27E:

(79) Unit CA–27E, San Diego County California.

(i) From USGS 1:24,000 quadrangle map National City, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 489220, 3611973; 489501, 3612069; 489791, 3612166; 490070, 3612259; 490144, 3612287; 490269, 3611906; 490231, 3611887; 490217, 3611878; 490174, 3611856; 490047, 3611789; 490028, 3611784; 489947, 3611738; 489878, 3611704; 489865, 3611701; 489834, 3611692; 489806, 3611682; 489792, 3611676; 489727, 3611655; 489611, 3611609; 489580, 3611587; 489555, 3611597; 489521, 3611593; 489412, 3611550; 489384, 3611531; 489366, 3611519; 489331, 3611518; 489282, 3611513; 489259, 3611508; 489253, 3611511; 489253, 3611512; 489237, 3611505; 489229, 3611501; 489208, 3611497; 489161, 3611496; 489138, 3611503; 489122, 3611535; 489097, 3611608; 489093, 3611675; 489094, 3611724; 489101, 3611774; 489123, 3611843; 489166, 3611914; 489200, 3611955; 489201, 3611954; 489200, 3611942; 489199, 3611931; 489204, 3611920; 489210, 3611918; 489219, 3611920; 489228, 3611922; 489240, 3611929; 489246, 3611938; 489245, 3611947; 489237, 3611952; 489225, 3611959; 489219, 3611969; returning to 489220, 3611973.

(ii) **Note:** Unit CA–27C, CA–27D, CA–27E (Map M67) follows:

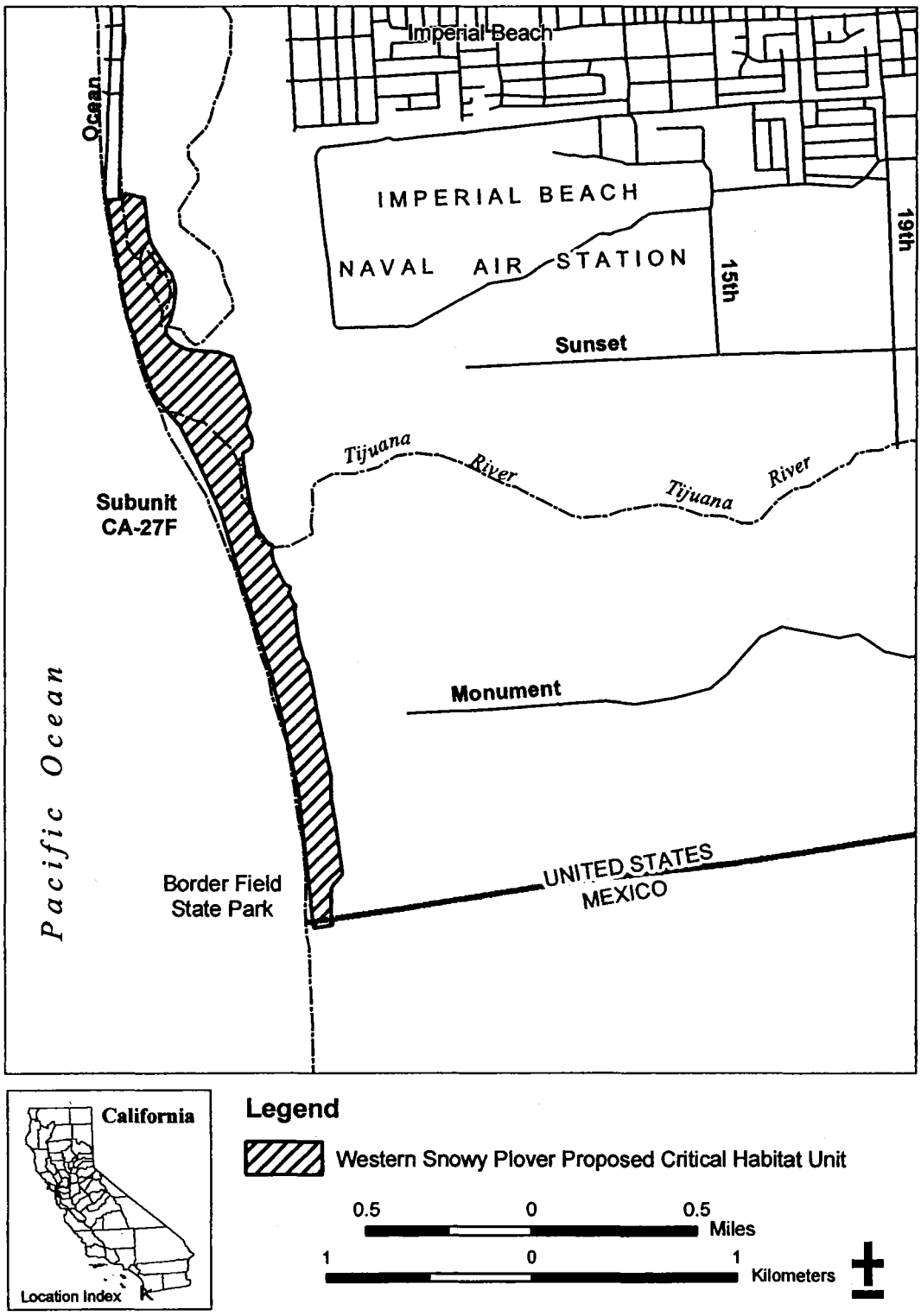

Map 67. Silver Strand St. Beach (CA-27C), Delta Beach (CA-27D), Sweetwater NWR (CA-27E), San Diego County, California.
Subunit CA-27D
Subunit CA-27E
San Diego Bay
Chula Vista
Silver Strand State Beach
Subunit CA-27C
Pacific Ocean
US Naval Radio Station
California
Location Index
Legend
Western Snowy Plover Proposed Critical Habitat Unit
0.9 0 0.9 Miles
1 0 1 Kilometers

(80) Unit CA–27F, San Diego County California.

(i) From USGS 1:24,000 quadrangle map Imperial Beach, California, land bounded by the following UTM 11 NAD 27 coordinates (E,N): 487590, 3603045; 487669, 3603044; 487679, 3603053; 487681, 3603072; 487696, 3603063; 487704, 3603062; 487746, 3603052; 487774, 3603045; 487774, 3602997; 487776, 3602973; 487782, 3602889; 487784, 3602854; 487795, 3602816; 487852, 3602713; 487854, 3602707; 487856, 3602705; 487883, 3602673; 487895, 3602624; 487899, 3602575; 487887, 3602515; 487865, 3602450; 487840, 3602415; 487840, 3602398; 487845, 3602382; 487865, 3602353; 487885, 3602334; 487934, 3602307; 487986, 3602298; 488089, 3602283; 488127, 3602267; 488150, 3602257; 488190, 3602119; 488214, 3602039; 488220, 3602020; 488218, 3601977; 488214, 3601966; 488209, 3601953; 488198, 3601927; 488220, 3601871; 488226, 3601840; 488221, 3601817; 488206, 3601801; 488178, 3601790; 488176, 3601765; 488182, 3601680; 488201, 3601523; 488202, 3601513; 488218, 3601457; 488234, 3601397; 488267, 3601351; 488292, 3601336; 488296, 3601327; 488297, 3601324; 488289, 3601310; 488288, 3601309; 488293, 3601261; 488307, 3601227; 488337, 3601155; 488349, 3601138; 488372, 3601125; 488369, 3601108; 488363, 3601101; 488380, 3601046; 488392, 3601034; 488388, 3601016; 488385, 3601005; 488397, 3600864; 488413, 3600789; 488430, 3600752; 488441, 3600706; 488455, 3600622; 488459, 3600571; 488461, 3600541; 488515, 3600211; 488512, 3600098; 488524, 3599982; 488542, 3599731; 488519, 3599700; 488496, 3599678; 488484, 3599657; 488480, 3599606; 488479, 3599545; 488485, 3599487; 488390, 3599478; proceed generally N following the mean low water mark (defined at the beginning of the section) and returning to 487590, 3603045.

(ii) **Note:** Unit CA–27F (Map M68) follows:

Map 68. Tijuana River Beach (CA-27F), San Diego County, California.



* * * * *

Dated: December 1, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26877 Filed 12–16–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
December 17, 2004

Part III

Securities and Exchange Commission

17 CFR Parts 228, 229 et al.

Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 240 and 242

[Release Nos. 33–8511; 34–50831; IC–26691; File No. S7–41–04]

RIN 3235–AF54

Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is proposing amendments to Regulation M under the Securities Exchange Act of 1934 (Exchange Act), which governs the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities. The proposed amendments are intended to prohibit certain activities by underwriters and other distribution participants that can undermine the integrity and fairness of the offering process, particularly with respect to allocations of offered securities. The proposal also seeks to enhance the transparency of syndicate covering bids, which may affect the aftermarket price and trading of an offered security, and prohibit the use of penalty bids. The amendments also are intended to update certain definitional and operational provisions in light of market developments since Regulation M's adoption. As a consequence of these proposed amendments to Regulation M, we are also recommending corresponding changes to disclosure rules under the Securities Act of 1933 (''Securities Act'') as well as changes to certain recordkeeping rules under the Exchange Act.

DATES: Comments should be received on or before February 15, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–41–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–41–04. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Assistant Director, Joan Collopy, Special Counsel, Elizabeth Sandoe, Special Counsel, Liza Orr, Special Counsel, Elizabeth Marino, Attorney, or Denise Landers, Attorney Fellow, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 942–0772, at the Securities Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Regulation M [17 CFR 242.100, 242.101, 242.102, and 242.104], proposed rule 106 to the Regulation and Rule 17a–2 [17 CFR 240.17a–2] under the Exchange Act.

I. Introduction

Manipulation interferes with the securities markets' fundamental function as an independent pricing mechanism and undermines the markets' integrity and fairness. Under the securities laws, Congress granted the Commission broad authority to combat manipulative conduct. The Commission, in turn, has recognized that special opportunities and incentives for manipulation arise in securities offerings and has determined that certain offerings require specific regulation.[1] Consequently, the Commission has focused its regulation on market activities that could artificially facilitate an offering.

Because price integrity is essential during a securities offering, the Commission adopted rules to proscribe and regulate activities that offering participants could use to manipulate the price of the offered security. The anti-manipulation rules were first codified in 1955,[2] and today, Regulation M incorporates these provisions.[3] Regulation M, among other things, prohibits issuers, selling security holders, underwriters, broker-dealers, and other distribution participants[4] from directly or indirectly bidding for, purchasing, or attempting to induce any person to bid for or purchase any security that is the subject of the distribution during the applicable restricted period.[5] Regulation M proscribes activities that may increase a security's offering price, and so increase the offering proceeds; or may stabilize the market price of an offered security in order to avoid a price decline during the sales period or in the immediate aftermarket, or to induce or attempt to induce prospective investors to buy in the aftermarket.

Although the general antifraud and anti-manipulation provisions of the federal securities laws (*e.g.*, Section 17(a) of the Securities Act, and Sections 9(a), 10(b), and 15(c) of the Exchange Act[6] and Rule 10b–5 under the

[1] The primary focus of Regulation M, and its predecessor Rule 10b–6, is (1) offerings that raise manipulative concerns, defined as distributions; (2) persons who are likely to engage in manipulative activity; and (3) the activities that likely could raise or support the security's price. Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681, 21684 (''Regulation M Concept Release'') (stating that a person contemplating or making a distribution has an obvious incentive to artificially influence the price of the securities in order to facilitate the distribution or increase its profitability and *citing Bruns, Nordeman & Co.,* 40 SEC 652, 660 n.11 (1961)); Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997) (''Regulation M Adopting Release'').

[2] Securities Exchange Act Release No. 5194 (July 5, 1955), 20 FR 5075.

[3] Regulation M replaced former Rules 10b–6, 10b–6A, 10b–7, 10b–8, and 10b–21. *See* Regulation M Adopting Release, 62 FR at 520. Rules 101, 102, and 103 of Regulation M apply to distributions of securities, defined as an offering of securities, whether or not subject to registration under the Securities Act that are distinguished from ordinary trading by the magnitude of the offering and the presence of special selling efforts and selling methods. Rule 104 of Regulation M applies to offerings of securities, which generally encompasses all methods of offering and selling securities to investors. Regulation M Adopting Release, 62 FR at 535, n. 116. Rule 105 applies to offerings registered under the Securities Act, except offerings that are not firm commitment underwritings. 17 CFR 242.100 through 105.

[4] Under Regulation M, ''distribution participant'' is defined as an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution. 17 CFR 242.100(b).

[5] *See supra* note 3 for the definition of distribution. 17 CFR 242.100(b).

[6] 15 U.S.C. 77q(a); 15 U.S.C. 78i(a), 78j(b), and 78(o)(c).

Exchange Act [7]) apply to all securities transactions, Regulation M takes a prophylactic approach and is focused on particular activities in connection with securities offerings.[8] Rather than addressing manipulation after the fact, Regulation M seeks to prevent it by generally precluding certain persons from engaging in specified market activities. Also, unlike the more general anti-manipulation provisions, Regulation M does not require the Commission to prove in an enforcement action that distribution participants have a manipulative intent or purpose. As a prophylactic, anti-manipulation measure, Regulation M is designed to prohibit activities that could artificially influence the market for the offered security, including, for example, supporting the offering price by creating the exaggerated perception of scarcity of the offered security or creating the misleading appearance of active trading in the market for the security.

Regulation M consists of six rules. Rule 100 contains definitions of terms under Regulation M. Rule 101 governs the activities of underwriters and other persons participating in a distribution of securities and their affiliated purchasers.[9] Rule 102 governs the activities of the issuer, selling security holders and their affiliated purchasers. Rule 103 describes the conditions for permissible ''passive'' market making during the restricted period for a distribution of a Nasdaq security. Rule 104 governs stabilization, syndicate short covering activity, and penalty bids. Rule 105 prohibits covering short sales with offered securities purchased from an underwriter, broker, or dealer participating in an offering. Since Regulation M's adoption in 1996, the Commission has examined underwriting practices and aftermarket activities. In recent years, anti-manipulation regulation has been extensively and intensively scrutinized, with a particular focus on initial public offerings (''IPOs'').[10] Recent Commission [11] and SRO [12] actions and private litigation [13] have addressed certain misconduct in connection with IPOs.

On the basis of these developments, today we are proposing revisions to Regulation M and the addition of a new rule.[14] Our proposals would:

- Amend Rule 100's definition of ''restricted period'' with respect to IPOs and to expressly reflect the Commission's long-standing application of the definition in the context of mergers, acquisitions, and exchange offers;
- Amend Rule 101's ''*de minimis* exception'' to require recordkeeping;
- Amend Rules 100, 101, and 102 to update the average daily trading volume (ADTV) value and public float value qualifying thresholds for purposes of the ''restricted period'' definition and the ''actively-traded'' securities and ''actively-traded'' reference securities exceptions;
- Amend Rule 104 to require disclosure of syndicate covering bids and to prohibit penalty bids;
- Amend Rule 104(j)(2) to include reference securities in the exception for transactions in securities eligible for resale under Rule 144A; and
- Adopt new Rule 106 to expressly prohibit conditioning the award of allocations of offered securities on the receipt of consideration in addition to the stated offering consideration.

As a consequence of these proposals, we are also recommending amendments to Rule 481 and Item 508 of Regulations S–K and S–B under the Securities Act concerning disclosure, and Rules 17a–2 and 17a–4 with respect to recordkeeping. We solicit specific comment on our approach and the specific proposals. We encourage commenters to present data on our proposals and any suggested alternative approaches.

II. Discussion of Proposed Amendments to Regulation M

A. Rule 100(b)

1. ''Restricted Period'' for IPOs

The Commission is proposing to amend the definition of ''restricted period'' in Rule 100(b) with respect to IPOs.[15] Specifically, the Commission is

[7] 17 CFR 240.10b–5.

[8] *See* Regulation M Concept Release, 59 FR at 21687 (noting purpose of the anti-manipulation rules is to limit the scope of market activity during securities offerings in order to prophylactically prevent manipulation).

[9] 17 CFR 242.101. An affiliated purchaser generally means a person acting, directly or indirectly, in concert with a distribution participant, issuer or selling security holder in connection with the acquisition or distribution of any covered security or an affiliate of a distribution participant, issuer or selling security holder, that directly or indirectly, controls the purchases of any covered security by a distribution participant, issuer, or selling security holder, whose purchases are controlled by or under common control with any such person. *See* 17 CFR 242.100(b).

[10] *See, e.g.*, NYSE/NASD IPO Advisory Committee, Report and Recommendations (*http://www.nyse.com/pdfs/iporeport.pdf*) (May 2003) (IPO Blue Ribbon Report); NASD Notice to Members 03–79 (December 2003) (adopting NASD Rule 2790 to prohibit sales of new issues to any account in which a restricted member has a beneficial interest); NASD Notice to Members 03–72 (November 2003) (proposing additional amendments to NASD Rule 2712 Governing Allocations and Distributions of Shares in IPOs (SR–NASD–2003–140)); NASD Notice to Members 97–34 (June 1997) (launching initial public offering tracking system by The Depository Trust Company to monitor flipping).

[11] *See, e.g.*, *SEC* v. *J.P. Morgan Securities, Inc.*, No. 03 Civ. 02028 (D.D.C. 2003), Complaint, (alleging violations of Regulation M); *SEC* v. *Robertson Stephens, Inc.*, Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C. 2003), Complaint ¶¶ 1, 5 (alleging violations of NASD Conduct Rules 2110 and 2330 and Section 17(a) of the Exchange Act and Rule 17a–3(a)(6) thereunder for improperly sharing customer profits by allocating ''hot'' IPO shares to customers and receiving in return shares of customer profits via excessive commissions or markdowns); *SEC* v. *Credit Suisse First Boston Corp.*, No. 1:02 CV 00090, 2002 WL 479836 (D.D.C. 2002), Complaint, ¶¶ 1, 6 (alleging violations of NASD Conduct Rules 2110 and 2330 and Section 17(a) under the Exchange Act and Rule 17a–3(a)(6) thereunder, for encouraging customers to channel profits from hot IPOs via excessive brokerage commissions); *In the Matter of Michael J. Markowski*, Securities Exchange Act Release No. 44086 (March 20, 2001) (finding a Rule 10b–6 violation when a broker-dealer firm instructed its brokers to solicit aftermarket orders during the distribution).

[12] *See* NASD Notice to Members 4–50 (July 2004) (announcing Bear Stearns & Co., Inc., Deutsche Bank Securities Inc., and Morgan Stanley & Co., Inc. were censured for engaging in improper IPO allocation practices and profit-sharing with customers by charging excessive commissions on listed agency trades within one day of allocating IPO shares to those customers). *See also supra* note 10, and accompanying text (detailing recent NASD actions to address the IPO allocation process).

[13] *See In re Initial Public Offering Securities Litigation*, 241 F. Supp. 2d 281 (S.D.N.Y. 2003) (denying defendant underwriters' motion to dismiss in case involving multiple allocating underwriters charged with market manipulation for requiring customers to engage in tie-in agreements and to pay undisclosed excessive compensation in order to receive allocations of IPO stock). *See also In re Initial Public Offering Antitrust Litigation*, 287 F. Supp. 2d 497 (S.D.N.Y. 2003) (finding that investors could not pursue antitrust claims against underwriters whom they alleged conspired to inflate aftermarket prices under doctrine of implied immunity); *Friedman* v. *Salomon Smith Barney, Inc.*, 313 F.3d 796, 801 (2nd Cir. 2002) (finding that underwriters and brokers are immune from antitrust liability for price stabilization practices in the aftermarket since it is the exclusive jurisdiction of the Securities and Exchange Commission).

[14] The Commission staff previously addressed manipulative conduct related to tie-in arrangements and solicitations for aftermarket purchases of an offered security in violation of Regulation M. *See* Division of Market Regulation: Staff Legal Bulletin No. 10 ''Prohibited Solicitations and 'Tie-in' Agreements for Aftermarket Purchases'' (August 25, 2000) (Staff Legal Bulletin 10). Although the aforementioned conduct would violate Regulation M or other provisions of the federal securities laws, or both, proposed Rule 106 would expressly prohibit the full array of fraudulent and manipulative conduct related to allocations of offered shares.

[15] 17 CFR 242.100(b) states that restricted period means: (1) For any security with an ADTV value of $100,000 or more of an issuer whose common equity securities have a public float value of $25 million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution; and (2) For all other securities, the

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proposing new paragraph (4) to the definition to provide that the restricted period for an IPO would extend from the earlier of: (1) The period beginning at the time an issuer reaches an understanding with a broker-dealer that is to act as an underwriter, or such time that a person becomes a distribution participant; or (2) if there is no underwriter, the period beginning at the time the registration statement is filed with the Commission or other offering document is first circulated to potential investors, or such time that a person becomes a distribution participant, and would conclude when the distribution is completed.[16]

As defined in Rule 100(b), ''restricted period'' is the time period during which covered persons must refrain from directly or indirectly bidding for, purchasing, or attempting to induce any person from bidding for, or purchasing a covered security.[17] The length of the restricted period is based on the liquidity of a security's trading market, specifically the value of the average daily trading volume (''ADTV'')[18] of the security and the value of the public float[19] of the issuer.[20] If a covered security has an ADTV value of $100,000 or more and a public float value of $25 million or more, then the restricted period begins on the later of one business day prior to the determination of the offering price, or such time that a person becomes a distribution participant (''one-day security'').[21] If a covered security's ADTV and public float values are less than $100,000 and $25 million respectively, then the restricted period commences on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant (''five-day security'').[22] The restricted period generally ends, for all securities, upon such person's completion of participation in the distribution.[23] However, distribution participants and their affiliated purchasers are not subject to a restricted period for a covered security that has an ADTV value of at least $1 million and a public float value of at least $150 million (''actively-traded securities'').[24] Issuers, selling security holders, and their affiliated purchasers are not subject to a restricted period with respect to reference securities that have an ADTV value of at least $1 million and a public float value of at least $150 million.[25]

The restricted period provides a defined period of time during which the effects of a distribution participant's bids, purchases, or attempts to induce bids or purchases on the market price for a security may dissipate. It therefore allows other market participants to observe trading in the offered security unaffected by the activity of persons with an incentive to facilitate the distribution. With a one or five-day restricted period, investors and market participants should observe prices in the offered security that result from the natural forces of supply and demand.

A recent enforcement case alleged that a broker-dealer, prior to the pricing of IPOs, induced and attempted to induce investors to make aftermarket bids or purchases.[26] Inducements and attempts to induce aftermarket bids or purchases by distribution participants in order to facilitate a securities distribution interfere with the securities markets' function as an independent pricing mechanism and undermine the integrity of the capital raising process.[27] The activity often creates the exaggerated perception to investors of scarcity of IPO stock and can affect the pricing of the offering.

The restricted period definition references trading market information, *i.e.*, ADTV and public float, and provides two restricted periods based on these thresholds. Paragraph (2) of the definition provides that ''for all other securities'' that do not satisfy the ADTV and public float levels in paragraph (1) of the definition, the restricted period is five days. Currently, the absence of a trading market for IPOs has meant that the five-day restricted period applies to IPOs.

In the case of IPOs, however, the market influences underlying the one and five-day restricted periods do not apply. There is no trading market that would provide an independent pricing mechanism for prospective investors to evaluate the IPO price set by underwriters. Therefore, any inducement activity by underwriters and other distribution participants can have long-lasting effects.

Attempts to induce aftermarket bids or purchases that occur earlier than five days before IPO pricing can affect the pricing of an offering. Thus, the Commission believes that current Rule 100's application to IPOs that results in a restricted period that commences five

period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution. (3) In the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution.

[16] A distribution is generally considered completed when the securities in the distribution have been distributed or acquired for investment, *e.g.*, when an underwriter's participation has been distributed and any stabilization arrangements and trading restrictions in connection with the distribution have been terminated. 17 CFR 242.100(b). Provided, however, that an underwriter's participation will not be deemed to have been completed if a syndicate overallotment option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise. *Id.* For a selling group member that is not part of the underwriting syndicate, its participation is completed when the selling group member has sold its entire allotment.

[17] A covered security is defined as ''any security that is the subject of the distribution, or any reference security.'' A reference security is defined as a ''security into which a security that is the subject of a distribution ('subject security') may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security. 17 CFR 242.100(b).

[18] ADTV is defined as the worldwide average daily trading volume during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to 230.415 of this chapter, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price. 17 CFR 242.100(b).

[19] Rule100(b) provides that ''public float value shall be determined in the manner set forth on the front page of Form 10–K even if the issuer of such securities is not required to file Form 10–K * * *.'' 17 CFR 242.100(b).

[20] However, if the distribution involves a corporate action, current subparagraph (3) of the restricted period governs the commencement of the restricted period. This is the day that proxy solicitation or offering materials are mailed. Additionally, current paragraphs (1) and (2) of the restricted period definition would apply to any valuation or election period in connection with the corporate action.

[21] 17 CFR 242.100(b) definition of restricted period, subparagraph (1).

[22] 17 CFR 242.100(b) definition of restricted period, subparagraph (2).

[23] *See supra* note 15.

[24] 17 CFR 242.101(c)(1) (providing an exception for actively-traded covered securities if the distribution participant or its affiliated purchasers did not issue the security). We note, however, that there is no actively-traded securities exception for IPOs because they have no trading market.

[25] 17 CFR 242.102(d)(1) (providing an exception for actively-traded reference securities if the issuer or its affiliated purchasers did not issue the reference security). Rule 102 did not except all actively-traded reference securities, because the Commission determined that issuers and selling security holders have a high stake in the proceeds of an offering (and thus, an incentive to manipulate), and so, should not be able to trade in their securities, whether or not they are actively-traded. Regulation M Adopting Release, 62 FR at 531.

[26] *See SEC* v. *J.P. Morgan Securities, Inc., supra* note 11.

[27] Regulation M's proscription of attempts to induce bids and purchases are not intended to interfere with legitimate book-building. The determination as to whether an activity or communication constitutes legitimate book-building or an attempt to induce a bid or purchase in violation of Regulation M depends on the particular facts and circumstances surrounding such activity or communication.

days prior to pricing an IPO is inadequate to address potentially manipulative conduct because attempts to induce aftermarket bids and purchases are inappropriate at any time prior to the pricing and distribution of an IPO.

In order to combat manipulative abuses in connection with IPOs, the Commission is proposing new paragraph (4) to the definition of restricted period to specify that in the case of an IPO, the restricted period generally begins the earlier of: when the issuer reaches an understanding with the broker-dealer that is to act as its underwriter, or such time that a person becomes a distribution participant; or if there is no underwriter, when the registration statement is filed with the Commission or other offering document is first circulated to potential investors, or such time that a person becomes a distribution participant.[28] Additionally, the Commission is proposing to define IPO in Rule 100(b) to mean an issuer's first offering of a security to the public in the United States, and if prior to the offering the issuer's equity securities do not have a public float value, and the IPO would be an issuer's first offering of an equity security to the public in the United States. We propose to use this definition of IPO so that if an issuer's first offering of a security in the United States is debt, then both that debt offering and the issuer's first offering of an equity security in the United States would fall within this proposed definition of IPO. However, if an offered equity security already has a trading market either domestically or abroad for which ADTV and public float values may be calculated, then the equity offering would not be an IPO, and either a one or five-day restricted period would apply based on the ADTV and public float values. We also note that the actively-traded security or reference security exception would not apply to IPOs.

Q. Is there a different restricted period that should apply to IPOs that would more appropriately restrict potentially manipulative activity? Should the restricted period for IPOs begin earlier than proposed? Should the restricted period begin with the filing of the registration statement (or with the first circulation of an offering document to potential investors) for all IPOs, including IPOs that have an underwriter? Please provide specific reasons and information to support an alternative recommendation. Please provide empirical data, when possible, and cite to economic studies, if any, to support any alternative approaches.

2. Amendments to Rule 100(b)—''Restricted Period'' for Corporate Actions [29]

The Commission has a long-standing interpretation under both Regulation M and its predecessor, Rule 10b–6, that the restricted period for mergers, acquisitions, and exchange offers includes valuation and election periods.[30] Valuation periods refer to time periods when the offered security's market price is a factor in determining the consideration paid in a corporate action.[31] Election periods refer to time periods when shareholders have the right to elect among various forms of consideration.[32] These periods have been considered by the Commission to be included in the restricted period because they are deemed part of the distribution, and valuation and election periods are price-sensitive times during which the incentive for interested persons to manipulate is high. Currently, the Rule 100(b) definition of restricted period for mergers, acquisitions, and exchange offers refers to ''the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders * * *'' but the rule text itself does not explicitly refer to valuation and election periods.[33]

Notwithstanding the long-standing interpretation, the staff occasionally receives inquiries about restricted periods concerning valuation and election periods in corporate actions. Therefore, we believe that expressly stating this interpretation in the rule would be beneficial. Accordingly, we propose to amend the definition of the restricted period in Rule 100(b) to include valuation and election periods and to add definitions for these terms.

Q. We seek specific comment concerning the proposal to incorporate the interpretation concerning election and valuation periods into the text of the restricted period definition.

B. Rule 100 Restricted Period Definition and Rules 101 and 102 Actively-Traded Security Exception: ADTV and Public Float Value Thresholds

As discussed earlier, Rules 101 and 102 of Regulation M prohibit certain persons from making bids or purchases during restricted periods, as defined in Rule 100(b). The applicable restricted period begins either one or five days before determining the offering price (or other applicable event) and is determined on the security's ADTV value and the issuer's public float value.[34] Securities that have an ADTV value of at least $100,000 of an issuer whose common equity securities have a public float value of at least $25 million have a restricted period that commences one day prior to the day of the pricing of the offering and for securities falling below those thresholds a five-day restricted period applies.[35] The Commission additionally determined to except actively-traded securities from the provisions of Rule 101, when such securities are not issued by the distribution participant or an affiliate thereof.[36] Similarly, actively-traded reference securities are excepted from the provisions of Rule 102 when such securities are not issued by the issuer, or any affiliate of the issuer, of the security in distribution.[37] Actively-

[28] An underwriter is defined as a person who has agreed with an issuer or selling security holder: (1) To purchase securities for distribution; or (2) to distribute securities for or on behalf of such issuer or selling security holder; or (3) to manage or supervise a distribution of securities for or on behalf of such issuer or selling security holder. 17 CFR 242.100(b).

[29] Restricted period means in the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution. 17 CFR 242.100(b).

[30] *See* Regulation M Adopting Release, 62 FR at 527 (stating that consistent with interpretations under Rule 10b–6, a restricted period under Regulation M would commence one or five days before the commencement of a valuation period, *i.e.*, a period where the market price of the offered security would be a factor for determining the consideration paid in a merger, acquisition or exchange offer, and continue for the duration of such period), *citing* Securities Exchange Act Release No. 19565 (March 14, 1983), 48 FR 10628, 10638 (stating that ''any period during which the market price of the offered security was a factor in determining the consideration to be paid pursuant to the merger ('valuation period') * * * the issuer was required to cease bidding for or purchasing the security five business days prior to and for the duration of the valuation period. A similar restriction was applied to any period during which the target company shareholders had the right to elect among various forms of consideration offered in connection with [a] merger ('election period').''). *See also* Division of Market Regulation Staff Legal Bulletin No. 9: Frequently Asked Questions About Regulation M (revised April 12, 2002) available at *http://www.sec.gov/interps/legal/mrslb9.htm* (stating ''the restricted period includes the valuation period as well. For instance, if the valuation period occurs outside of the proxy solicitation period, an additional restricted period would commence one or five business days prior to the commencement of the valuation period and continue until the valuation period ends.'').

[31] *See supra* note 30.

[32] *See supra* note 30.

[33] 17 CFR 242.100(b).

[34] *See supra* Section II.A. for a discussion of restricted periods and corresponding ADTV and public float value thresholds.

[35] 17 CFR 242.100(b).

[36] 17 CFR 242.101(c)(1). *Cf.*, Rule 100(b) definition of restricted period. 17 CFR 242.100(b). *See also supra* note 24.

[37] 17 CFR 242.102(d)(1). A reference security is a security into which a security that is the subject of

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traded securities and reference securities are those with an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million.[38] In effect, these actively-traded securities and reference securities have no restricted period.[39] As discussed below, we now propose to increase the thresholds for the applicable restricted periods for the actively-traded securities and actively-traded reference securities exceptions in order to adjust for inflation since the time of Regulation M's adoption in 1996.

In excepting actively-traded securities from Rule 101 and actively-traded reference securities from Rule 102, the Commission believed that it was reasonable to rely on market mechanisms to curb the manipulative activity addressed by Regulation M.[40] In particular, the Commission reasoned that as the value of trading volume increased, it became less likely that a person could, cost-effectively, manipulate the price of the security.[41] Also, the Commission considered that actively-traded securities are followed widely by the investment community, and any aberrations in the price of an actively-traded stock would be observed by the investment community and corrected.[42] In addition, actively-traded securities are listed and traded on exchanges or other organized markets, and so are relatively transparent and subject to surveillance.[43]

The restricted period threshold levels were intended to apply only to those securities where the potential for manipulation was relatively limited and which would allow the effects of the market activities of distribution participants and issuers to dissipate.[44] Similarly, the Commission believed that the threshold values for the actively-traded security exception from Rule 101 and actively-traded reference security exception from Rule 102 would except securities as to which the potential for a successful manipulation is relatively limited.[45] The Commission is proposing to increase these threshold levels for the restricted period and actively-traded security and reference security exceptions to adjust for the effect of inflation. Since Regulation M was adopted in 1996, the value of the dollar has decreased due to inflation and has resulted in the ADTV and public float value thresholds becoming less restrictive than when Regulation M was initially adopted. As a result, more issuers' securities would now qualify for the restricted periods and for the actively-traded security exceptions and the lower thresholds may except from Regulation M's prohibitions securities that may be more susceptible to manipulation than we contemplated at adoption.[46] Part of this increase in the number of actively-traded securities and securities qualifying for a one- or five-day restricted period, is due to inflation's effect on the value of the dollar.

Because ADTV and public float value are measured in dollars, the general change in the value of the dollar since Regulation M's adoption has eroded the restrictiveness of the Regulation's threshold values. We believe that the level of restrictiveness we employed in 1996 for actively-traded securities remains an appropriate threshold, and therefore, in order to make the thresholds for the restricted period and actively-traded securities and reference securities current, the Commission is proposing to increase the ADTV and public float value thresholds to account for the decline in the value of the dollar that has occurred since 1996 (*i.e.*, adjust the values by the change in the Consumer Price Index (''CPI'')). Between 1996 and 2004, the CPI, a general measure for the change in the value of the dollar, rose approximately 20 percent.[47] The adjustment of the thresholds to reflect the current dollar value should simply reset the thresholds to the level of restrictiveness intended when Regulation M was adopted. As such, the adjusted thresholds should capture approximately the same type of issuers, with similar market liquidity and investment community following, as originally contemplated to be excepted when Regulation M was adopted.[48] Thus adjusting the thresholds would express in today's dollar value terms the same type of issuer meant to be excepted in 1996.

We propose to amend the Rule 100(b) definition of restricted period, the Rule 101(c)(1) exception for actively-traded securities, and the Rule 102(d)(1) exception for actively-traded reference securities to reflect an adjustment to the ADTV and public float values for the change in CPI. Specifically we propose to adjust the one-day restricted period to require at least $120,000 for ADTV value and $30 million for public float value, and to adjust the actively-traded security and reference security thresholds to require at least $1.2 million for ADTV value and $180 million for public float value, which reflects the change in the CPI Index from 1996 to 2004.

Q. Should the current thresholds for actively-traded securities, as well as the thresholds for one and five-day restricted periods, be adjusted by a factor other than CPI? If so, what factor should be used? Should the Commission consider adjusting these threshold values for this rise in the value of the market since Regulation M was adopted in 1996, for example, by the change in the S&P 500 or Dow Jones Industrial Average? Commenters should provide specific reasons and data in support of their statements and any

a distribution (''subject security'') may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security. 17 CFR 242.100(b). See *also supra* note 25.

[38] 17 CFR 242.100(b). When Regulation M was adopted, the Commission believed the two-part ADTV and public float standard appropriately distinguished which securities were more difficult to manipulate. The Commission reasoned that the use of a trading volume standard alone would permit securities experiencing an unusual short-term volume increase in trading to be excepted from the restrictions of Rules 101 and 102. To avoid this result, the Commission added a public float component to the test, so that securities with an unusual increase in trading volume, but with a relatively small public float value, would be subject to the restricted periods under Rules 101 and 102. Regulation M Adopting Release, 62 FR at 527.

[39] It should be noted, however, that actively-traded securities and reference securities are not excepted from Rule 104 of Regulation M. 17 CFR 242.104.

[40] Regulation M Adopting Release, 62 FR at 527.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *See* discussion *supra* Section II.A.

[45] Regulation M Adopting Release, 62 FR at 527. The Commission observed that the exception would not compromise investor protection because the general antifraud and anti-manipulation provisions would continue to apply to offerings of actively-traded securities. Thus, distribution participants (and their affiliated purchasers) would continue to be prohibited from influencing the price of such securities to facilitate the distribution. Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108, 17112 (April 18, 1996) (''Regulation M Proposing Release'').

[46] When we adopted Regulation M, the Commission estimated (based on 1995 data) a total of 4,255 securities would either have a one- or five-day restricted period, with 2,693 one-day securities and 1,562 five-day securities respectively. Additionally, 1,901 securities would qualify for the actively-traded security exception. Regulation M Adopting Release, 62 FR at 525, n. 37 (based on an analysis of NYSE, Amex and Nasdaq-listed securities). Today, based on 2003 data, approximately 4,667 securities would either have a one- or five-day restricted period, with 2,035 securities one-day securities and 2,632 securities five-day securities and 2,352 securities would qualify for the actively-traded security exception. These estimates are based on computations performed by the Office of Economic Analysis (''OEA''), July 8, 2004, using the CRSP database.

[47] The change in CPI is the percentage change in Urban CPI measured from July 1996 to July 2004, based on calculations performed by OEA.

[48] Adjusting the ADTV and public float value thresholds upwards for actively-traded securities by 20% would yield 2,353 issuers, or approximately 31% of all issuers would qualify as actively-traded securities. Based on calculations performed by OEA, in 1996 approximately 2,338 issuers were deemed actively-traded securities, which represented 27% of all issuers.

alternative measure for adjusting the ADTV and public float values suggested.

Q. Do ADTV and public float values provide an appropriate measure on which to base the actively-traded exception? That is, do these trading volume and public float criteria adequately identify a security's liquidity and depth? Are these criteria sufficient to identify securities that are more difficult to manipulate? Should other criteria in addition to, or in lieu of, ADTV and public float value be used? If so, please provide specific comment on other criteria and reasons to support your recommendation.

Q. Are the current actively-traded securities exception and one and five-day restricted periods under Regulation M set at appropriate threshold levels? That is, do the current ADTV value and public float value thresholds for actively-traded securities and for one and five-day restricted periods adequately balance the goal of maintaining market liquidity with the mandate to protect investors from manipulation? If not, what threshold levels would? Commenters should provide specific reasons and data in support of their statements and any alternative thresholds suggested.

C. Rule 101(b)(7)—De Minimis Exception

The *de minimis* exception in Rule 101(b)(7) is intended to excuse from Rule 101's trading prohibitions small, inadvertent transactions that would not impact the market.[49] It excepts purchases and unaccepted bids during the restricted period that total less than 2% of the distributed security's ADTV only if the person making the bid or purchase maintains and enforces written policies and procedures reasonably designed to achieve compliance with Regulation M. Moreover, a firm is expected to ''review its policies and procedures and modify them as appropriate'' in order to qualify for the exception.[50] Repeated reliance on this exception by distribution participants or their affiliated persons raises concerns about whether the transactions were ''inadvertent'' and the adequacy and effectiveness of a firm's compliance policies and procedures.[51]

From time to time, firms relying on this exception have informed the Commission's staff of an inadvertent bid or purchase that occurred during the restricted period. However, other firms similarly relying upon the exception may not inform the Commission's staff of that activity. Consequently, the Commission cannot know with a high degree of certainty how often the exception is used, whether certain firms repeatedly rely on it, or whether firms have adequate and effective procedures qualifying them for the exception.

Thus, the Commission is proposing to modify Rule 101(b)(7) to require firms to create a separate record of each bid or purchase that is made in reliance on the *de minimis* exception, including among other things, that brokers and dealers specify the subject security, the day the restricted period commenced, the ADTV, and the bids or purchases that otherwise would violate Regulation M, including time, price, quantity, and market. Brokers and dealers would be required to maintain these records pursuant to proposed Exchange Act Rule 17a-4(b)(13). We believe this requirement would more easily allow Commission and SRO examiners to uncover patterns of abuse or policies and procedures that are not reasonably designed to achieve compliance with the rule.

Q. Is the proposed amendment an effective and efficient manner in which to guard against repeated reliance on the exception and promote effective compliance policies and procedures? Please provide any alternatives.

Q. Are there other aspects of the *de minimis* exception that the Commission should consider changing? For example, is the 2% ADTV threshold appropriate or should it be raised or lowered? Please provide data supporting your comment.

D. Rule 104—Syndicate Covering and Penalty Bids

We propose to amend Rule 104 of Regulation M to require any person communicating a bid that is for the purpose of effecting a syndicate covering transaction (''syndicate covering bids'') to identify or designate the bid as such wherever it is communicated and to prohibit the use of penalty bids.[52] ''Congress granted the Commission broad rulemaking authority to combat manipulative abuses in whatever form they might take.''[53] Congress also delegated to the Commission exclusive regulatory authority over price stabilization practices (*i.e.*, syndicate covering transactions and penalty bids) in Section 9(a)(6) of the Exchange Act.[54] ''In exercising its authority, the Commission [through Regulation M and its predecessor Rule 10b-6] has focused on the market activities of persons participating in a securities offering, and determined that securities offerings present special opportunities and incentives for manipulation that require specific regulatory attention.''[55] The objective of Regulation M is to preclude manipulative conduct by persons with an interest in the outcome of an offering and activity that undermines the integrity of the markets by interfering with the market's function as an independent pricing mechanism. Security offerings are particularly susceptible to manipulative abuse because persons, such as underwriters, who stand to profit from such offerings have special incentives to manipulate in order to facilitate the offerings.

Syndicate covering transactions occur when the managing underwriter places a bid or effects a purchase on behalf of the underwriting syndicate in order to reduce a syndicate short position created in connection with the offering.[56] Penalty bids are a means by which the managing underwriter may impose a financial penalty on syndicate members whose customers sell offering shares in the immediate aftermarket.[57] Syndicate covering transactions and penalty bids may have the effect of stabilizing the market price in connection with an offering, by preventing or retarding a decline in the market price of the offered security once aftermarket trading commences.[58]

[49] 17 CFR 242.101(b)(7).

[50] Regulation M Adopting Release, 62 FR at 530.

[51] Regulation M Adopting Release, 62 FR at 530 (stating that ''[t]he Commission notes that repeated reliance on the exception would raise questions about the adequacy and effectiveness of a firm's procedures'').

[52] 17 CFR 242.104. Rule 104 permits underwriters and syndicate members, in order to facilitate an offering, to conduct stabilizing and other aftermarket activities in compliance with the Rule's conditions. Unlike Rules 101 and 102, which apply only to distributions, Rule 104 is broader in that it applies to security offerings. *See* Regulation M Adopting Release, 62 FR at 535, n. 116 and supra note 3.

[53] *See* Regulation M Adopting Release, 62 FR at 520.

[54] *See Friedman* v. *Salomon Smith Barney, Inc.*, 2000 U.S. Dist. LEXIS 17785 (S.D.N.Y. 2000), aff'd 313 F.3d 796 (2d Cir. N.Y. 2002) (dismissing plaintiffs' claims on the basis that the defendants' use of penalty bids and other price stabilization practices used to combat flipping were subject to regulation by the Commission under Section 9(a)(6) of the Exchange Act and, therefore, immune from anti-trust attack).

[55] Regulation M Adopting Release, 62 FR at 520.

[56] A syndicate covering transaction is the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a short position created in connection with the offering. 17 CFR 242.100(b).

[57] A penalty bid is an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions. 17 CFR 242.100(b).

[58] ''Stabilizing'' means ''the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security.'' 17 CFR 242.100(b). When adopting Regulation M, the Commission noted that ''syndicate short covering transactions and the

Continued

To enhance the transparency of syndicate covering transactions, we are proposing to amend paragraph (h)(2) of Rule 104 to require identification or designation of syndicate covering bids, analagous to the identification of stabilizing bids.[59] Specifically, the proposal would require a managing underwriter or other person communicating a bid that is for the purpose of effecting a syndicate covering transaction to identify or designate the bid as such wherever it is communicated.[60] The proposal also would prohibit the use of penalty bids, as discussed below.

1. Overview of the Current Rule 104

Rule 104 governs stabilization,[61] syndicate covering transactions,[62] and penalty bids.[63] For stabilizing bids, the rule currently requires prior notification to the market on which such bids are effected and to the person with whom the bid is entered, but for syndicate covering transactions and penalty bids, only requires prior notification to the relevant SRO.[64] In the typical offering, the syndicate agreement allows the managing underwriter to ''oversell'' the offering, *i.e.*, establish a short position beyond the number of shares to which the underwriting commitment relates. The underwriting agreement with the issuer often provides for an ''overallotment option'' whereby the syndicate can purchase additional shares from the issuer or selling shareholders in order to cover its short position.[65] To the extent that the syndicate short position is in excess of the overallotment option, the syndicate is said to have taken an ''uncovered'' short position.[66] The syndicate short position, up to the amount of the overallotment option, may be covered by exercising the option or by purchasing shares in the market once secondary trading begins. Shares purchased in the market by or on behalf of the syndicate must be used to reduce the size of the syndicate short position. Therefore, the overallotment option may be exercised only to the extent required to cover the ''net'' short position.[67] Shares needed to cover the uncovered short position must be purchased in the market.[68]

Currently, issuers are required to inform investors that the syndicate may effect stabilizing and syndicate covering transactions, or impose penalty bids, in connection with the securities offering by providing a general description of possible stabilization, syndicate covering transactions and penalty bids in the Plan of Distribution or Underwriting section of the prospectus, if an underwriter intends to engage in any of these activities.[69] Generally, this disclosure is included in prospectuses for firm commitment offerings, regardless of whether the underwriters intend to or, in fact, stabilize the offering.[70]

2. Current Syndicate Practices

Underwriters assume a large measure of the risk that an offering may not be successful, and so have manipulative incentives to varying degrees throughout the offering process. The point in time when underwriters no longer have manipulative incentive or purpose to facilitate an offering cannot be identified with precision.[71] But the Commission has recognized that these incentives can continue into the aftermarket when syndicate covering transactions and penalty bids occur.[72]

The creation of a syndicate short position and the subsequent purchasing activity to cover the position can impact the offering and the aftermarket price. The potential ''buying power'' of the short position can allow the syndicate to price the offering more aggressively because its syndicate short covering can support the aftermarket at prices around or above the offering price, thereby validating the offering price. Purchasers in the offering also may conclude that the trading activity in the aftermarket validates the offering price, and therefore may be more inclined to retain the shares purchased in the offering

imposition of penalty bids by underwriters are activities that can facilitate an offering in a manner similar to stabilization.'' Regulation M Adopting Release, 62 FR at 537. Before Rules 10b-6 and 10b-7 were adopted, the Commission considered syndicate covering transactions to be a means of facilitating the distribution by supporting the market price of an offered security. Exchange Act Release No. 3506 (November 16, 1943), 11 FR 10965 (describing the conditions under which syndicate covering transactions may facilitate an offering). Stabilization, and syndicate covering transactions, are permitted only to prevent or retard a decline in the market price, and may not be used to raise the market price, or create a false or misleading appearance of either active trading in a security or with respect to the trading market for the offered security. *Id. See also* Proposed Rules: Stabilizing to Facilitate a Distribution, Securities Exchange Act Release No. 28732 (January 3, 1991), 56 FR 814.

[59] 17 CFR 242.104(h)(1). Consistent with the current disclosure requirement for stabilizing bids, the NASD requires market makers intending to initiate stabilizing bids to provide it with prior notice. *See* NASD Rule 4614. Stabilizing bids are then identified by a symbol on the Nasdaq quotation display. *Id.* In this way, the person engaged in stabilization satisfies the requirement to inform the market and the person to whom the bid is made of the stabilizing purpose of the bid by notifying the NASD. *See* Regulation M Adopting Release, 62 FR at 537. On the exchanges, underwriters must notify the exchange and provide disclosure to the recipient of the bid, *i.e.*, the specialist. *See* NYSE Rule 392; Regulation M Adopting Release, 62 FR at 537.

[60] Rule 104(h)(2) would continue to require prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected. 17 CFR 242.104(h)(2).

[61] *See supra* note 58.

[62] *See supra* note 56.

[63] *See supra* note 57.

[64] 17 CFR 242.104(h)(1)–(2). For a discussion of Regulation M's notice requirement for stabilizing bids, *see* Regulation M Adopting Release, 62 FR at 537.

[65] ''Underwriters frequently receive an overallotment option (''Green Shoe''), which is the right, but not the obligation, to purchase securities from the issuer in addition to those initially underwritten by the syndicate, which may constitute up to 15% of the initial underwritten amount. Because the overallotment option may be insufficient to cover the entire syndicate short position, that portion in excess of the overallotment option must be covered through purchases in the secondary market.'' Regulation M Proposing Release, 61 FR at 17124, n. 86.

[66] The creation of an uncovered short position in connection with an offering is permissible activity that facilitates the offering, and is different from the delivery obligations related to ''uncovered short selling'' of securities in the secondary market that is discussed in the Regulation SHO Adopting Release. *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[67] If an underwriter were to exercise the Overallotment Option in an amount exceeding the net syndicate short position, under Regulation M and former Rule 10b–6, an underwriter's participation in the distribution would not be deemed completed and purchases made prior to the exercise of the option may violate Regulation M. *See* Regulation M Adopting Release, 62 FR at 522–23; Securities Exchange Act Release No. 19565 (March 4, 1983), 48 FR 10628, 10640. Underwriters and issuers also would have to consider any prospectus disclosure issues this may raise. *See infra* note 69.

[68] *See generally,* Loss, L and Seligman, J., *Securities Regulation,* 3d Section 2–A–2 (2004).

[69] Items 508(*l*) and 508(j) of Regulations S–K and S–B [17 CFR 229.508(*l*) and 228.508(j)]. Securities Act Rule 481(d) [17 CFR 230.481(d)] requires this disclosure in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in a Securities Act registration statement for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act [15 U.S.C. 80a–54—80a–64].

[70] The Division of Corporation Finance has issued interpretive guidance indicating that the Staff will issue comments if the disclosure regarding applicable short sale transaction does not address the following material points: (1) The potential for underwriter short sales in connection with the offering; (2) a description of short sales and uncovered short sales; (3) an explanation of when an uncovered short sale position will be created; (4) how underwriters close out covered short sales and uncovered short sale positions; (5) how underwriters determine the method for closing out covered short sale positions; and (6) the potential effects of underwriters' short sales and transactions to cover those short sales. *See* ''Current Issues and Rulemaking Projects,'' Nov. 14, 2000, Section VIII.A.3.c, at *http://www.sec.gov.* The guidance includes examples of language that issuers may use to provide the required disclosure.

[71] *See* Regulation M Proposing Release, 61 FR at 17124.

[72] *Id.* at 17124–17125.

rather than sell the shares to realize a gain or avoid a loss.

When we adopted Regulation M, we specifically recognized that underwriters frequently engage in syndicate covering transactions, and noted that these transactions can facilitate an offering in a manner similar to stabilization.[73] Currently, Rule 104 addresses the risk that stabilization will create a false or misleading appearance with respect to the trading market for the offered security by imposing pricing, disclosure, and other conditions on this activity.[74] Among other things, the Commission considered the contemporaneous disclosure that stabilization is occurring to be beneficial to market participants, because this information is important to their decisions to buy or sell the security.

Syndicate covering transactions are regulated quite differently under Rule 104, in large measure because the Commission had insufficient information about syndicate covering transactions when Regulation M was adopted.[75] We stated, however, that we could reconsider whether additional regulation was warranted.[76] Since that time, our staff has been reviewing syndicate covering transactions and other aftermarket practices. The staff has learned that in the U.S. syndicate covering transactions have replaced (in terms of frequency of use) stabilization as a means to support post-offering market prices.[77] Syndicate covering transactions may be preferred by managing underwriters primarily because they are not subject to the price and other conditions that apply to stabilization under Rule 104, and in particular the contemporaneous market disclosure of the bidding and purchasing activity.[78] However, the lack of transparency of syndicate covering transactions has the potential to create a false or misleading appearance with respect to the trading market for the offered security. Because syndicate covering transactions are not required to be disclosed to the market, investors (*i.e.*, those who purchased in the offering, as well as those who purchased in the aftermarket) are not informed about when the syndicate is actually making syndicate covering purchases in the market. As a result, investors have no way of knowing whether, and to what extent, the market price of the offered security may be supported by syndicate covering activity. Of note, once the managing underwriter has covered the syndicate's short position and ceases such purchasing in the aftermarket, there is often a significant decline in the security's price.[79] As a result, syndicate covering transactions can, and studies show that they do, enable underwriters to support the aftermarket price of the offered security at levels that they may not obtain in the absence of their activity, thereby interfering with free market forces.[80] Finally, the investing public who buy the offered shares in the aftermarket at syndicate-influenced prices unknowingly bear the risk of a significant subsequent decline in the security's price.[81]

3. Proposal for Syndicate Covering Transactions

As discussed above, stabilization and syndicate covering transactions can both be used to facilitate an offering by supporting the market price of the offered security, Rule 104 currently regulates these activities differently. While both stabilization and syndicate covering transactions support the price in the aftermarket of an offered security, they do operate differently. Stabilizing bids and purchases are conducted only by the managing underwriter who places bids at prices prescribed by Rule 104 to peg, fix, or stabilize the market price for the security. In contrast, the managing underwriter places syndicate short covering bids in the market, typically when the security is trading below the offering price, in order to deliver securities sold short in the offering, *i.e.*, cover the syndicate short position. This bidding and purchasing activity can also support the market price for the securities. Therefore, to address the disparate treatment of activities that similarly impact the aftermarket trading of an offered security, the Commission is proposing that Rule 104 be amended to require disclosure of syndicate covering bids. In particular, we propose to amend Rule 104(h)(2) to require any person communicating a bid for the purpose of effecting a syndicate covering transaction to identify or designate the bid as such wherever it is communicated.[82]

We believe that requiring syndicate covering bids to be identified or designated in this way would help protect investors by providing contemporaneous information about the potential market impact of syndicate

[73] *See* Regulation M Adopting Release, 62 FR at 537.

[74] Regulation M Adopting Release, 62 FR at 535. While Rules 101 and 102 primarily protect investors in the offering, the disclosure of the stabilizing bid's purpose under Rule 104 and the proposal regarding syndicate covering bids will benefit investors in the aftermarket of an offered security, as well as investors in the offering itself.

[75] *See* Regulation M Adopting Release, 62 FR at 537. Instead, the Commission required SRO notification and recordkeeping of syndicate covering transactions. In so doing, the Commission believed that SRO notification of syndicate covering transactions would serve to apprise regulators of their possible market effects, while the new recordkeeping requirements would assist the Commission in assessing whether further regulation was warranted. *Id.* at 537–538; Regulation M Proposing Release, 61 FR at 17125.

[76] Regulation M Proposing Release, 61 FR at 17125.

[77] *See, e.g.*, Ekkehart Boehmer and Raymond P.H. Fishe, ''Underwriter Short Covering in the IPO Aftermarket: A Clinical Study,'' 10 *Journal of Corporate Finance,* at 575–594 (September 2004) (finding that short covering trades are often used as a substitute for Rule 104 stabilization in that they serve the same purpose without the disclosure obligation associated with Rule 104 trades); Reena Aggarwal, ''Stabilization Activities by Underwriters After Initial Public Offerings,'' 55 *Journal of Finance* 1075, 1079 (June 2000) (finding that underwriters do not stabilize through stabilizing bids, but by overselling the issue and covering this short position by purchasing shares in the aftermarket).

[78] *Id.*

[79] *See, e.g.*, Reena Aggarwal, ''Stabilization Activities by Underwriters After Initial Public Offerings,'' 55 *Journal of Finance* 1075–1103 (June 2000) (noting that price levels decrease immediately after the underwriters' ''stabilizing'' activities cease); Kathleen Weiss Hanley, A. Arun Kumar, and Paul J. Seguin, ''Price Stabilization in the Market for New Issues,'' 34 *Journal of Financial Economics,* 177–197 (October 1993).

[80] *See, e.g.*, Ekkehart Boehmer and Raymond P.H. Fishe, *Who Ends up Short From Underwriter Short Covering? A Detailed Case Analysis of Underwriter Stabilization in a Large IPO,* at 32–34 (March 28, 2001) (finding that short covering trades can slow down price declines and that short covering reduces the price impact of a sell by more than 70%).

[81] *See, e.g., supra* note 79. Underwriters have an incentive to artificially influence aftermarket activity because they have underwritten the risk of the offering, and a poor aftermarket performance could result in reputational harm and subsequent financial loss.

[82] Rule 104(h)(2) would continue to require prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected. 17 CFR 242.104(h)(2). Because Rule 104 already requires underwriters to make disclosures with respect to stabilizing bids, we believe it will not require significant effort or technical changes (to internal systems and procedures) on the part of underwriters or other syndicate members in order to comply with the proposed disclosure for syndicate covering bids. *See* text accompanying *supra* note 60. Moreover, while the burden would be on the underwriter or other person displaying or transmitting a syndicate covering bid to satisfy the proposed disclosure requirements, we anticipate that the SROs will make changes to their existing rules and procedures to assist their members in complying with these requirements. For example, a special symbol or identifier could be used to identify the bid as a syndicate covering bid. The Commission staff will coordinate with the SROs to develop procedures to provide wide notice of such bids to the markets. Moreover, we are soliciting comment from the industry as to whether the Commission should require broader dissemination of the fact that an underwriter is engaged in syndicate covering transactions (*e.g.*, by requiring the underwriter to publish a press release or issue some notice to the market), especially in cases where syndicate covering bids are not currently displayed to the market.

bidding and purchasing activity.[83] The proposal also would regulate consistently activities that are similar in terms of their market impact. While the Commission recognizes that stabilization and syndicate covering transactions both have the effect of supporting the market price of a security, these activities do operate differently, and so we are not, at this time, proposing to apply to syndicate covering bids the type of specific price, counter-party disclosure, or other limitations that now apply to stabilizing. Instead, the Commission will continue to monitor such transactions, and consider whether any additional regulation of syndicate covering transactions in the future is appropriate.

Q. Does the manner in which a managing underwriter effects syndicate short covering bids and purchases present issues for complying with the above notification and disclosure proposals? That is, would compliance with the proposal be complicated by the fact that managing underwriters may be purchasing for accounts other than the syndicate concurrently with making syndicate short covering bids and purchases? Please provide specific details of underwriter practices in this regard and suggest what modifications, if any, should be made to the proposal to address these concerns.

Q. What, if any, burdens would be imposed by the proposed disclosure? For example, would there be any difficulty in identifying or designating a bid as a syndicate covering bid (*i.e.*, by attaching a symbol or modifier to the bid) wherever it is communicated?

Q. Should the Commission consider, in addition to the proposed disclosure, revising Rule 104 to require a general notification to the market (*e.g.*, through a press release, a website posting, or an administrative message sent over the Tape) that syndicate covering activity has commenced (and another notification when syndicate covering activity has ceased)?

Q. Should the Commission consider revising Rule 104 to require disclosure, such as disclosure in a press release, of either or both of the following information: (1) That the underwriting syndicate has an uncovered short position in the offered security; and (2) the size of the syndicate uncovered short position. We seek specific comment concerning this alternative, or any other alternatives, the Commission should consider in regulating syndicate covering transactions. We also seek specific comment and empirical data regarding the current use of syndicate covering transactions and other aftermarket activities by underwriters in connection with securities offerings.

Q. Should the Commission require SROs to develop a mechanism for their members to comply with the Rule 104 proposal? Should the Commission consider using a different mechanism other than identifying or designating the bid itself, such as a press release or other notification mechanism? Should the SROs develop a mechanism on their own?

Q. Should the Commission impose specific price or other conditions on syndicate short covering bids or purchases in the aftermarket? If so, please provide specific comment on what conditions would be appropriate to apply and provide reasons for your recommendations.

Q. Should the Commission consider making the disclosure requirements for stabilization bids the same as the proposed requirements for syndicate covering bids? That is, should we also amend Rule 104(h)(1) to require that any person communicating a bid that is for the purpose of stabilizing identify or designate the bid as a stabilizing bid wherever it is communicated?

Q. Are there differences between stabilization and syndicate covering that would require different kinds of disclosure or other regulation for syndicate short covering? If so, please identify these differences and make recommendations about the way in which the proposed disclosure requirement should be modified?

4. Penalty Bids

Penalty bids are a contractual term in underwriting agreements that allow the lead underwriter to reclaim a selling concession paid to a syndicate member if that member's customers sell their allocated shares in the immediate aftermarket.[84] Penalty bid provisions are assessed at the election of the managing underwriter, and are not assessed in all offerings. We understand that penalty bids are rarely assessed, and are assessed most often in connection with offerings for which there is relatively low demand to help prevent triggering or exacerbating a market price decline through investor sales of IPO shares.[85] Based on discussions between the staff and securities industry representatives, we also understand that syndicate managers justify the use of penalty bids by claiming that if the securities are sold within a short period of time, *i.e.*, flipped, the syndicate member has not earned its commission (*i.e.*, for selling shares to long-term investors) and the syndicate is entitled to reclaim the associated selling concessions via the penalty bid provision.

Penalty bids raise three troublesome issues. First, because Rule 104 does not require the assessment of a penalty bid to be disclosed to the market, penalty bids can function as an undisclosed form of stabilization by discouraging immediate sales of IPO securities that would otherwise lower a stock's market price. Second, we understand that some sales representatives may fear losing a sales commission if their customers sell their IPO shares.[86] The salesperson's concern may result in improper interference with a customer's right to sell securities when the customer chooses to do so. Third, there is evidence that the assessment of penalty bids at the syndicate level results in discriminatory effects on the syndicate member's customers. In particular, we understand that institutional salespersons are not penalized when their institutional customers flip their shares, but retail salespersons often are penalized.[87] While internal compensation matters are not the focus of our proposed rule amendment, we are mindful that the pressure of a penalty bid assessment by a managing underwriter can result in discriminatory and improper conduct by a firm and its salespeople towards its customers.[88]

Because we believe the likelihood of harm through the use of penalty bids is

[83] Regulation M Adopting Release, 62 FR at 537.

[84] 17 CFR 242.100(b). The immediate sale by an IPO purchaser is often referred to as ''flipping.'' *See, e.g.*, Raymond P.H. Fishe, ''How Stock Flippers Affect IPO Pricing and Stabilization,'' *Journal of Financial* and *Quantitative Analysis,* Vol. 37, No. 2 (June 2002).

[85] *See, e.g.*, Reena Aggarwal, ''Allocation of IPOs and Flipping Activity,'' 68 *Journal of Financial Economics* 111–135 (April 2003) (finding that penalty bids are assessed in only 13% of offerings and amount to a small percentage of the total spread).

[86] *See, e.g.*, M. Siconolfi and P. McGeehan, ''Flip Side: Wall Street Brokers Press Small Investors To Hold IPO Shares—Big Institutions Can Cash Out Quickly; the 'Little Guy' Can't Without Penalties—Rife With Double Standards?'', *The Wall Street Journal,* at A.1 (June 26, 1998).

[87] *Id. See also* W. Wilhelm, Jr., ''Secondary Market Price Stabilization in Initial Public Offerings,'' 12 *Journal of Applied Corporate Finance,* 78–85 (January 1999) (finding that the suppression of small-quantity orders by penalty bids, particularly during the first few days of trading, bears most heavily on retail investors receiving IPO allocations).

[88] We also are aware that, even where penalty bids are not imposed, some firms pressure their sales representatives to discourage customers from selling when a stock's price declines, unrelated to the recovery of any selling concessions. We understand that the NASD and the NYSE are currently in the process of rulemaking designed to address this specific concern. *See* File Nos. SR–NASD–2003–140 and SR–NYSE–2004–12 (publication pending).

significant, we propose that Rule 104 be amended to prohibit the use of such bids. In particular, we propose to add a new subparagraph under the Rule, which would state, ''it shall be unlawful to impose or assess any penalty bid in connection with an offering,'' and to eliminate the existing references to penalty bids in subparagraph (2) of the Rule. We also propose that Rule 17a–2(c) of the Exchange Act (which imposes certain record keeping and notification requirements) and Rule 481(d) (which requires certain information be included in a prospectus) and Item 508(l) of Regulations S–K and S–B (which imposes certain disclosure requirements for the ''plan of distribution'' section of a prospectus) be amended to eliminate all references pertaining to penalty bids. While we considered requiring disclosure of penalty bids by sales representatives to customers, we do not believe that such disclosure would address the conflicts that arise with respect to their use. We also believe that such direct disclosure could be confusing or intimidating, and ultimately have an even greater chilling effect on those investors who wish to sell their shares in the aftermarket. We also understand that penalty bids are rarely assessed, so our proposal to eliminate their use should not have a great effect on the practices of most broker-dealers.

Q. Should the Commission consider, as an alternative, requiring syndicate members to disclose to their customers who seek to sell their IPO shares that the firm or sales representatives could have its selling concession reclaimed if the customer sells its IPO shares and that this raises a conflict of interest for the firm and its salespersons? Should we require disclosure of any other anti-flipping policies that the firm has in place that may affect an investor's decision to purchase or sell IPO shares? [89]

Q. Are there other aftermarket practices or policies that create conflicts of interest that should be prohibited or subject to increased disclosure? There may be other practices that investors should be made aware of, or other conduct that raises the same type of concerns as discussed above. For example, should the Commission prohibit firms from imposing anti-flipping policies that discriminate against retail investors, such as rescinding sales commissions for retail sales, or excluding retail customers (but not institutional customers) from future IPO allocations for quickly selling their IPO shares, or require disclosure of their policies? If so, please provide specific details regarding such practices or policies and suggest approaches to regulate such practices.

5. Rule 104—Exception for Transactions in Rule 144A Securities

Rule 104(j)(2) generally excepts from Rule 104 transactions in Rule 144A securities offered and sold in the U.S., provided they are sold either to qualified institutional buyers in a transaction exempt from registration under the Securities Act or to non U.S. persons in Regulation S offerings that are made concurrently with a Rule 144A offering.[90] When we adopted Regulation M, the exception under Rule 104 was intended to be identical to the exception for Rule 144A securities under Rules 101 and 102.[91] We therefore propose to add the words ''or any reference security'' to Rule 104(j)(2) in order to make this subparagraph consistent with the same exception under Rules 101 (b)(10) and 102(b)(7) for transactions in Rule 144A securities.

Q. The Commission seeks specific comment concerning the proposal to add the omitted language ''or any reference security'' to Rule 104(j)(2).

E. New Rule 106

The Commission is proposing new Rule 106 of Regulation M to expressly prohibit distribution participants, issuers, and their affiliated purchasers, directly or indirectly, from demanding, soliciting, attempting to induce, or accepting from their customers any consideration in addition to the stated offering price of the security.[92] This new rule would expressly prohibit certain abuses that occurred in connection with IPOs, particularly those in the late 1990's and in other ''hot issue'' periods, such as conditioning or ''tying'' an allocation of shares in a ''hot issue'' on an understanding that the customer would buy shares in another, usually ''cold,'' offering,[93] or on paying excessive commissions to the underwriter.[94] This proposal would also prohibit issuers, underwriters, broker-dealers, and other distribution participants from accepting an offer from a prospective purchaser to pay additional consideration in order to obtain an allocation of offered shares.

1. Background

The Commission has long considered tying the award of allocations of offered shares to additional consideration to be fraudulent and manipulative, and such practices have always been actionable under Section 17(a) of the Securities Act and Section 10(b) and Rule 10b–5 of the Exchange Act.[95] In addition, some forms of tie-ins are already prohibited by Regulation M [96] and SRO rules.[97]

[89] For example, a firm may have a policy or practice of excluding clients from future IPOs if they flip shares, irrespective of whether a penalty bid is assessed.

[90] 17 CFR 242.104(j)(2). *See also* Regulation M Adopting Release, 62 FR at 536.

[91] Regulation M Adopting Release, 62 FR at 536, n. 119.

[92] This proposal would apply to any distribution of securities, *i.e.*, a public offering or private placement, and would apply equally to initial and secondary offerings.

[93] An IPO is considered to be a ''cold'' offering when there is weak investor interest in the IPO shares. An IPO is considered to be a ''hot'' offering when investor demand significantly exceeds the supply of securities in the offering. Shares in hot offerings often trade at substantial premiums to the offering price.

[94] The Commission has stated that such activity involves possible violations of the antifraud and anti-manipulation provisions of the federal securities laws. *See* Securities Exchange Act Release No. 9824 (October 16, 1972), 37 FR 22796 (October 25, 1972) (1972 Interpretive Release). *SEC* v. *Credit Suisse First Boston Corp.,* No. 1:02 CV 00090, 2002 WL 479836 (D.D.C. 2002), Complaint ¶¶ 1, 6 (alleging violations of NASD Conduct Rules 2110 and 2330 and Section 17(a) under the Exchange Act and Rule 17a–3(a)(6) thereunder, for encouraging customers to channel profits from hot IPOs via excessive brokerage commissions in order to receive such hot shares).

[95] *See supra* notes 6–7 and accompanying text. *See also C. James Padgett,* 52 SEC 1257 (1997), *aff'd sub. nom, Sullivan* v. *SEC,* 159 F.3d 637 (D.C. Cir. 1998) (finding underwriters violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder by requiring that IPO purchasers sell their shares back to the firm at the beginning of aftermarket trading). *See also* 15 U.S.C. 77q (making unlawful fraudulent conduct in the offer or sale of any security or security-based swap agreement by means of interstate commerce); 15 U.S.C. 78(j)(b) and 17 CFR.240.10b–5 (making it unlawful for any person to ''employ any device, scheme, or artifice to defraud'' or to ''engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person''). A ''tie-in agreement'' in the securities offering context generally refers to requiring either implicitly or explicitly that customers give consideration in addition to the stated offering price of any security in order to obtain an allocation of the offered shares. Securities Exchange Act Release No. 10636 (February 11, 1974), 39 FR 7806 (February 28, 1974) (''1974 Rule 10b–20 Proposing Release''); Securities Exchange Act Release No. 11328 (April 2, 1975), 40 FR 16090 (April 9, 1975) (''1975 Rule 10b–20 Proposing Release''). These arrangements can also violate other provisions of the securities laws and SRO rules. *SEC* v. *Credit Suisse First Boston Corp.,* No. 1:02 CV 00090, 2002 WL 479836 (D.D.C. 2002).

[96] Securities Exchange Act Release No. 6536 (April 24, 1961) (reminding dealers that requiring customers to make purchases in the aftermarket for the offered security in exchange for allocations of that security violates the anti-manipulation rules including Rule 10b–6, the predecessor to Regulation M); Staff Legal Bulletin No. 10 (August 25, 2000), available at *http://www.sec.gov/interps/legal/slbmr10.htm.*

[97] *See* NASD Conduct Rule 2710 (2004) (requiring disclosure to the NASD of all relevant aspects of the offering including accurate disclosure of underwriting compensation); NASD Conduct Rule 2330 (2003) (prohibiting member firms from sharing

Continued

Underwriters' or issuer's demands for consideration in addition to the stated offering price have several pernicious effects. These activities can contribute to a false impression of scarcity in the offered shares. This, in turn, can stimulate and distort the offering and aftermarket prices by creating the impression that any unfulfilled demand for the offered shares may only be satisfied in the aftermarket.[98] Moreover, such activities create the impression that the underwriters have ''rigged the game'' and only the market participants who know they are expected, and are willing, to pay the additional consideration are able to participate in IPOs.

In 1974 and 1975, in order to broadly and explicitly address such manipulative conduct, the Commission proposed Rule 10b–20 to prohibit broker-dealers and others from (explicitly or implicitly) demanding from their customers any payment or consideration, including a requirement to purchase other securities, in addition to the security's disclosed offering price.[99] This proposal would have prohibited, for example, conditioning or ''tying'' an allocation of shares in a hot issue on an agreement to buy shares in another offering or in the aftermarket of another offering, for which there may be a lack of investor demand (*i.e.*, cold offerings).[100] When underwriters allocate shares in ''hot offerings'' to customers who agree to make aftermarket purchases in ''cold offerings,'' the purchasers in the cold offerings are deceived as to the true demand for that offering.[101] Proposed Rule 10b–20 also would have prohibited underwriters from requiring customers to pay excessive commissions or agreeing to profit sharing arrangements with distribution participants in order to receive allocations of IPO shares. The proposal also broadly prohibited any kind of arrangement where the customer would be required to perform any act, or refrain from any conduct, effect another transaction or refrain therefrom, other than what was disclosed in the registration statement or offering circular in order to receive an allocation.[102] The Commission withdrew the proposal in 1988, in part due to the passage of time since its proposal, and because the Commission believed that such agreements already could be reached under the existing antifraud and anti-manipulation provisions of the federal securities laws.[103]

During periods of high demand for new IPOs, such as occurred in the late 1990s, some underwriters induced or required customers who wished to receive ''hot'' IPO allocations to provide additional consideration to obtain an allocation of IPO shares. For example, the Commission has alleged that underwriters required or induced customers to pay excessive commissions[104] on transactions in other securities, to purchase ''cold'' IPO shares,[105] and to make purchases in the aftermarket[106] of the offered security.

Given the widespread nature of these abuses concerning underwriters inducing or accepting additional compensation from customers for allocations,[107] as demonstrated by enforcement actions and studies, we believe that an express Commission rule that complements the current provisions of Regulation M would be beneficial. Although this conduct may be actionable, for example, under current Regulation M, the general antifraud and anti-manipulation provisions of the federal securities laws, as well as SRO rules, we believe that a prophylactic rule specifically addressing the full range of misconduct that we observed in this context is necessary to preserve the integrity of the securities offering process and to protect investors.

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profits with customer accounts); NASD Conduct Rule 2120 (2003) (prohibiting members from using manipulation, deception or fraud to induce or effect transactions in offered securities); NASD Conduct Rule 2310–2 (2002) (requiring fair dealing in all relationships with customers); 15 U.S.C. 78q(a) (requiring broker dealers to make and keep records of terms and conditions of all purchases and sales of securities); NASD Conduct Rule 2210 (2001) (establishing professional standard of conduct required of NASD members); NASD Conduct Rule 2110 (1996) (requiring that members observe ''high standards of commercial honor and just and equitable principles of trade''); 17 CFR 240.10b–5.

[98] *See* 1974 Rule 10b–20 Proposing Release, 39 FR at 7806 (describing how broker inducements for allocating offered shares: (1) encourages participation in cold offerings by investors with a view toward immediate resale of the security; (2) obscures actual demand for the offering making an assessment by investors of true demand difficult thus artificially affecting the offering price; and (3) stimulates demand for the offering and forces investors who could not participate to buy in the aftermarket).

[99] As proposed in 1975, Rule 10b–20 would have applied to offerings registered under the Securities Act or on Form 1–A. 1975 Rule 10b–20 Proposing Release, 40 FR 16090. As originally proposed in 1974, Rule 10b–20 would have applied to any securities offering utilizing jurisdictional means. 1974 Rule 10b–20 Proposing Release, 39 FR at 7806.

[100] *See* 1974 Rule 10b–20 Proposing Release (*citing* Securities Exchange Act Release No. 9824 (October 16, 1972), 37 FR 22796 (October 25, 1972) (''1972 Interpretive Release'') (noting that allocating customers shares of hot IPOs in exchange for customer purchases of cold IPOs violates the antifraud and anti-manipulation provisions of the Exchange Act).

[101] *See* 1974 Rule 10b–20 Proposing Release, 39 FR at 7806.

[102] 1975 Rule 10b–20 Proposing Release, 40 FR at 16091–16092.

[103] *See* Securities Exchange Act Release No. 26182 (October 14, 1988), 53 FR 41206. *See also C. James Padgett,* 52 SEC 1257 (1997), *aff'd sub. nom, Sullivan* v. *SEC,* 159 F.3d 637 (DC Cir. 1998) (finding underwriters violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder by requiring that IPO purchasers sell their shares back to the firm at the beginning of aftermarket trading). Of note, the Commission determined that these tie-in agreements created a materially false impression of the extent of aftermarket activity. As such, the arrangement operated as a fraud upon the market and defrauded aftermarket purchasers. *Id.* at n. 53.

[104] *See SEC* v. *Credit Suisse First Boston Corp.,* No. 1:02 CV 00090, 2002 WL 479836 (D.D.C. 2002), Complaint ¶¶ 1, 6 (alleging violations of NASD Conduct Rules 2110 and 2330 and Section 17(a) under the Exchange Act and Rule 17a–3(a)(6) thereunder, for encouraging customers to channel profits from hot IPOs via excessive brokerage commissions). CSFB encouraged its retail customers to pay excessive commissions in correlation to the profit (sometimes up to 65%) they made in flipping their IPO shares through the purchases of off-setting trades in order to receive IPO allocations. *Id.* at ¶¶ 17–25, 42–43. *See also SEC* v. *Robertson Stephens, Inc.,* Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C. 2003), Complaint ¶¶ 1, 5 (alleging violations of NASD Conduct Rules 2110 and 2330 and Section 17(a) of the Exchange Act and Rule 17a–3(a)(6) thereunder for improperly sharing customer profits by allocating ''hot'' IPO shares to customers and receiving in return shares of customer profits via excessive commissions or markdowns). Robertson Stephens is alleged to have ranked customers according to customers' total commission dollars and used that ranking system to encourage customers to increase their commissions in order to receive IPO allocations. *Id.* at ¶¶ 14–26 . It was expected that a portion of the profits a customer made on an allocation would be filtered back to the firm by way of excessive commission business. *Id.* at ¶¶ 29–33. The NASD has also taken related actions involving payments of excessive commissions in exchange for IPO allocations. *See* NASD Notice to Members 4–50 (July 2004) (announcing that Bear Stearns & Co., Inc., Deutsche Bank Securities, Inc., and Morgan Stanley & Co., Inc. were censured for engaging in improper profit sharing with customers through the use of excessive commissions).

[105] *See SEC* v. *J.P. Morgan Securities, Inc.* at *supra* note 26 and accompanying text.

[106] *Id.*

[107] *See* Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95, pt. 1 at 555–56 (1 Sess. 1963) (noting that underwriters used manipulative tactics in order to increase issues to the level of ''hot'' offerings and create a ''pop'' in the offering price); Report of the Securities and Exchange Commission Concerning the Hot Issues Markets (August 1984) at 37–38 (noting existence of manipulative tie-in agreements during the hot issues market between 1980 and 1983); *SEC* v. *Credit Suisse First Boston Corp.,* No. 1:02 CV 00090, 2002 WL 479836 (D.D.C. 2002), Complaint ¶¶ 29–45 (noting that violative conduct was not isolated but rather business as usual and pervasive). Brokers expected customers to pay CSFB for having granted them ''hot'' IPO allocations, considering such allocations quick profits on which they (the underwriters) deserved something in return. *Id.* at ¶ 36. *See also SEC* v. *Robertson Stephens, Inc.,* Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C. 2003), Complaint ¶¶ 23–28 (pressuring customers to increase their commissions in order to receive allocations by use of their ''ranking system'').

2. Proposal

Proposed new Rule 106 of Regulation M would explicitly prohibit distribution participants, including underwriters, and issuers and their affiliates, directly or indirectly, from demanding, soliciting, or attempting to induce, or accepting an offer from their customers of any payment or other consideration in addition to the security's stated consideration. For example, this rule would prohibit distribution participants, issuers and their affiliated persons, in connection with allocating an offered security, from inducing, soliciting, requiring or otherwise accepting an offer from a potential purchaser to purchase any other security to be sold or proposed to be offered or sold by such person. Similarly, Rule 106 would also prohibit distribution participants, issuers and their affiliated persons, in connection with allocating an offered security, from inducing, soliciting, requiring (or accepting an offer from) prospective customers to effect any other transaction or refrain from any of the foregoing, other than as stated in the registration statement or applicable offering document for the offer and sale of such offered security. Rule 106 would apply to any distribution of securities, whether a public offering or private placement of securities, and would apply to initial as well as secondary offerings.[108]

Rule 106 would complement the current provisions of Regulation M. Like Regulation M, the proposed rule is intended to protect the integrity of the offering process. Presently, the focus of Regulation M is on the protection of the integrity of the pricing of an offering by prohibiting distribution participants and issuers from bidding for, or purchasing, the offered securities in the market, or attempting to induce others to do so. Rule 106 would address a broad range of conduct by distribution participants and issuers that can stimulate the market for the offered shares (thereby distorting the offering price and the aftermarket). It also would address conduct that can operate as a fraud on prospective purchasers of IPOs, who are unaware of the underwriters' additional requirement for receiving an allocation.

We note, however, that the proposed rule is not intended to interfere with legitimate customer relationships. For example, this provision is not intended to prohibit a firm from allocating IPO shares to a customer because the customer has separately retained the firm for other services, when the customer has not paid excessive compensation in relation to those services. On balance, we believe a comprehensive rule specifically directed at the types of impermissible conduct discussed herein is warranted. Such conduct, which often recurs during ''hot issues'' periods, undermines the fundamental function of the securities markets as an independent pricing mechanism and erodes investor confidence in the securities offering process generally. Having a prophylactic rule that expressly addresses the conduct discussed above would therefore prevent potential misconduct in the future as well as enhance the Commission's enforcement capabilities.

Q. Is the language of the rule sufficient to address the full scope of manipulative conduct involved in the offering process, including the conduct discussed above? If it does not, how should the language be changed? What types of conduct should or should not be included within the rule? Please provide specific examples and any suggested alternative language.

Q. Commenters are asked to discuss whether the proposed language adequately protects legitimate customer relationships or might potentially interfere with these relationships. If the language does interfere with such relationships, please explain how and provide specific examples and recommendations.

Q. Although firms are required to create and maintain records of customer orders, should firms also be required to create and maintain records of indications of interest and the basis for IPO allocations? To what extent do firms already create and maintain records indicating that information? How burdensome would such a recordkeeping requirement be?

Q. Should the Commission consider prohibiting allocations of initial public offering shares to persons based solely on their status? For example, should a person be prohibited from receiving initial public offering shares because of his or her status as CEO of a public or nonpublic company?[109]

III. General Request for Comment

Any interested person wishing to submit written comments on any aspect of the proposed rules discussed in this release, as well as on other matters that may have an impact on the proposals contained herein, is requested to do so. Commenters should provide empirical data to support their views. The Commission also requests general comment on the following:

Rule 103 of Regulation M describes the conditions for permissible passive market making during the restricted period for a distribution of a Nasdaq security.[110] Passive market making was included in Regulation M to alleviate special liquidity problems that could exist for a Nasdaq security in distribution, if distribution participants or their affiliates who are Nasdaq market makers were required to withdraw from making a market during the restricted period.[111] The Commission is not proposing to amend Rule 103 at this time. However, as part our effort to comprehensively monitor the operation of Regulation M, we seek comment about Rule 103.

Q. Have the structural changes to the Nasdaq market since Regulation M's adoption affected the operation of Rule 103? Does Rule 103 continue to be necessary? If so, why? If not, why not?

Q. Does the existence of multiple sources of liquidity for Nasdaq securities, such as electronic communications networks (ECNs), alleviate the liquidity concerns Rule 103 was meant to address? If so, how? If not, why not?

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to Regulation M contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA);[112] the Commission has submitted information to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission is revising the currently approved collection of information titled ''Regulation M'' under OMB control number 3235–0465. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collections of Information

1. Proposed Amendments to Rule 101(b)(7)[113]

The proposed amendments to Rule 101(b)(7) of Regulation M would require

[108] *See supra* note 3 for the definition of distribution. 17 CFR 242.100(b).

[109] *See* IPO Blue Ribbon Report, Recommendation 9.

[110] 17 CFR 242.103.

[111] *See* Regulation M Adopting Release, 62 FR at 534.

[112] 44 U.S.C. 3501 *et seq.*

[113] We have also proposed conforming changes to Rule 17a–4(b)(13) but the paperwork burden derives from the substance of the proposed amendments to Rule 101(b)(7) discussed herein.

distribution participants and their affiliated purchasers to maintain records of their reliance on the *de minimis* transactions exception from Rule 101 of Regulation M. Currently, Rule 101(b)(7) excepts from the rule's prohibitions purchases and unaccepted bids made by distribution participants and their affiliates during the restricted period that total less than 2% of the distributed security's ADTV only if the person making the bid or purchase maintains and enforces written policies and procedures reasonably designed to achieve compliance with Regulation M. When Regulation M was adopted, the Commission stated a firm is expected to ''review its policies and procedures and modify them as appropriate'' in order to qualify for the exception.[114] While broker-dealers are currently required under Rule 17a–3 under the Exchange Act to make and keep records of the terms of each brokerage order and each purchase and sale of a security for a period of three years, the proposed amendments to Rule 101(b)(7) would be a new collection of information because it would require firms to maintain a separate written record of information about each bid or purchase that is made in reliance on the *de minimis* exception. Like Rule 17a–3, the proposed amendment to Rule 101(b)(7) would require these records be maintained for a period of three years.

2. Proposed Amendments to Rule 104

The proposed amendments to Rule 104 of Regulation M would require any person communicating a bid for the purpose of effecting a syndicate covering transaction to identify or designate the syndicate covering bid as such wherever it is communicated. Rule 104 currently requires that any person effecting a syndicate covering transaction shall provide prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected. We believe the identifying or designating the bid as a syndicate covering bid, would be an additional collection of information because the proposal would require entities to disclose syndicate covering bids.

B. Need for and Proposed Use of the Collection of Information

The information that would be required to be collected under the proposed amendments to Rules 101(b)(7) and 104 of Regulation M is necessary to prevent fraudulent, manipulative and deceptive acts by issuers, broker-dealers and others. The purpose of the proposed amendment to Rule 101(b)(7) is to have a record that would allow Commission and SRO examiners to review distribution participants' compliance with Rule 101 and to provide a basis for potentially uncovering patterns of abuse or policies and procedures that are not reasonably designed to achieve compliance with the regulation. The purpose of the proposed amendments to Rule 104 is to improve the transparency of syndicate covering bids through contemporaneous identification of the bid to the market where it is communicated in order to: (1) Protect the integrity of the trading market by providing investors, both in the offering and in the aftermarket, with contemporaneous information about actual syndicate purchasing activity, (2) preclude the manipulative effects of such bids, and (3) prevent the investing public from unknowingly bearing the cost of undisclosed syndicate covering activities.

C. Respondents

1. Proposed Amendments to Rule 101(b)(7)

The proposed amendments to Rules 101(b)(7) would require those distribution participants, and their affiliated purchasers who rely on the Rule 101 exception for *de minimis* transactions to make and keep records of the bids or purchases made in reliance on the *de minimis* exception. Therefore, the proposed amendments would apply to all distribution participants and their affiliated purchasers who rely on the exception in connection with follow-on, *i.e.*, secondary, distributions of securities other than those qualifying for the actively-traded securities exception under Rule 101 (*i.e.*, securities that have at least $1 million ADTV value and $150 million public float value). The Commission's Office of Economic Analysis (''OEA'') estimates that there are approximately 6,562 active broker-dealers registered with the Commission, of which 614 engage in underwriting.[115] Based on OEA's review of offerings in 2003, we estimate there are approximately 64 offerings annually of securities other than actively-traded securities.[116] Based on the staff's discussions with broker-dealers concerning their practices and experience with the *de minimis* transaction exception, we estimate that of the 614 brokers who engage in underwriting would utilize the *de minimis* transaction exception once every two years.

2. Proposed Amendments to Rule 104

Proposed amendments to Rule 104 will require distribution participants, such as managing underwriters, who are communicating a syndicate covering bid, to identify or designate the bid as a syndicate covering bid wherever it is communicated. Syndicate covering transactions typically are effected by a managing underwriter on behalf of the syndicate. Managing underwriters do not utilize syndicate covering transactions in all offerings. Rather, syndicate covering transactions generally occur in connection with IPOs. Further, only a fraction of all IPOs, typically those IPOs where supply exceeds investor demand for the offered security, are facilitated by the managing underwriter by means of syndicate covering transactions. The number of IPOs conducted per year is also dependent on general economic conditions, *e.g.*, the business cycle. As noted above, OEA estimates that approximately 614 active broker-dealers registered with the Commission engage in underwriting. The staff estimates that there were 88 equity IPOs in 2003, and that all such IPOs involved a managing underwriter.[117] Based on the staff's review of syndicate covering practices in a sample of offerings in one year, the staff believes that approximately 53% (or 47 offerings) of such IPOs were facilitated by syndicate covering transactions.

D. Total Annual Reporting and Recordkeeping Burden

1. Proposed Amendments to Rule 101(b)(7)

The proposed amendments to Rule 101(b)(7) of Regulation M would require all distribution participants and affiliated purchasers who rely on the *de minimis* exception to maintain a record of each bid or purchase made in reliance of the exception. We believe that distribution participants already make records of the type of information required in the proposed amendment to Rule 101(b)(7) since broker-dealers must record the terms of bids and transactions they effect under Rule 17a–3 and keep such records for 3 years. However, the proposal would require

[114] Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520, 530.

[115] This number is based on OEA's review of 2003 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[116] This number is based on information provided by the SEC's Office of Economic Analysis.

[117] This number is based on information provided to the Commission staff by OEA.

that a record of the *de minimis* bids and purchases be kept separately. Thus, we believe the proposed amendments would impose an additional collection of information by requiring distribution participants to maintain the records separately.

Based on the staff's review of broker practices with respect to record keeping and their reliance on the *de minimis* transaction exception, we understand that the *de minimis* exception is rarely utilized by distribution participants and that it would take each broker approximately 20 minutes to create and maintain files for all *de minimis* bids and purchases made per offering. Based on the staff's review of broker-dealer experiences, we assume that one syndicate member per offering would rely on the *de minimis* exception once every 2 years (or 0.5 times per year). We estimate that the total estimated annual hour burden per year is 10.7 burden hours (the product of one syndicate member per offering, 64 offerings involving non-actively traded securities, 0.5 reliances per year, and 20 minutes recordkeeping per offering). We also estimate the paperwork compliance for the proposed amendments for each distribution participant per offering is approximately 10 minutes per year (the product of one syndicate member per offering, 0.5 reliances per year, and 20 minutes recordkeeping per offering). With respect to the proposed amendments to Rule 101(b)(7), we estimate that the broker-dealers bear 100% of the burden of preparation internally since the broker-dealers relayed to the staff that they would create and maintain such files internally.

2. Proposed Amendments to Rule 104

The proposed amendments to Rule 104 of Regulation M would require managing underwriters to identify or designate syndicate covering bids as such wherever communicated and to provide notice of its intention to engage in short covering to the SRO with direct authority over the principal market in the United States for the security for which the syndicate covering bid was made.

Managing underwriters do not utilize syndicate covering transactions in all offerings. Rather, syndicate covering transactions generally occur in connection with IPOs. Further, only a fraction of all IPOs, typically those IPOs where supply exceeds demand for the security, are facilitated by the managing underwriter by means of syndicate covering transactions. The number of IPOs conducted per year is also dependent on general economic conditions, *e.g.*, the business cycle. We estimate that approximately 614 active broker-dealers registered with the Commission engage in underwriting. In 2003, we estimate that there were 88 equity IPOs of which approximately 53% (or 47 offerings) involved a managing underwriting effecting syndicate covering transactions. We assume for purposes of this analysis that each offering had one managing underwriter. The staff reviewed the number of syndicate covering transactions made in a sample of offerings in a particular year and based upon that data, the staff believes that on average approximately 22 syndicate covering bids occur for each IPO that involves syndicate short covering.

It was determined at the time of Regulation M's adoption that in instances where such disclosure was required for stabilizing bids that it would require 15 minutes per bid.[118] We are requiring only identification of the syndicate covering bids in addition to that which is already required under Rule 104 and we believe this will impose only nominal costs and time upon the syndicate manager or other person communicating the syndicate covering bid.

Based on the number of IPOs in 2003 that involved syndicate short covering and the average number of short covering bids per offering, the annual number of syndicate short covering bids was 1034 (the product of 47 offerings, and 22 syndicate covering bids per offering). We estimate that identifying or designating each syndicate bid would take approximately 15 minutes. Thus, the total estimated annual hour burden per year is 258.5 burden hours (the product of 1034 syndicate covering bids and 15 minutes per bid). As stated above, typically the managing underwriter communicates the syndicate covering bid. Therefore, we also estimate that the paperwork compliance for the proposed rules for each managing underwriter is approximately 5.5 annual burden hours per offering (258.5 burden hours/47 offerings). With respect to the proposed Rule 104 amendments, we estimate that the syndicate member bears 100% of the burden of preparation internally because the managing underwriter communicates the syndicate covering bids on behalf of the syndicate.

[118] 62 FR at 542.

E. Collection of Information Is Mandatory

1. Proposed Amendments to Rule 101(b)(7)

The collection of information is mandatory if a distribution participant or its affiliated purchasers wish to rely on the *de minimis* transactions exception from Rule 101 of Regulation M.

2. Proposed Amendments to Rule 104

The collection of information is mandatory for all persons communicating a bid that is for the purpose of effecting a syndicate covering transaction.

F. Confidentiality

1. Proposed Amendments to Rule 101(b)(7)

The collection of information under the proposed amendments to Rule 101(b)(7) would be provided to Commission and SRO examiners, but not subject to public availability.

2. Proposed Amendments to Rule 104

The collection of information under the proposed amendments to Rule 104 would be communicated and displayed publicly.

G. Record Retention Period

1. Proposed Amendments to Rule 101(b)(7)

The proposed amendments to Rule 101(b)(7) would require a broker or dealer to preserve the records required under the rule in accordance with proposed Rule 17a–4(b)(13). Rule 17a–4(b)(13) would require distribution participants and their affiliated purchasers to create and maintain separate written records of each bid or purchase made in reliance on the *de minimis* exception for a period of three years, the first two years in an accessible place.

2. Proposed Amendments to Rule 104

The proposed amendments to Rule 104 do not contain any recordkeeping requirements.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether

there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–41–04. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–41–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Consideration of Proposed Amendments to Regulation M's Costs and Benefits [119]

The Commission is considering the costs and benefits of the proposed amendments to Regulation M and new Rule 106 thereunder. The Commission is sensitive to these costs and benefits, and requests data to quantify the costs and the value of the benefits provided, and encourages commenters to discuss any additional costs or benefits beyond those discussed here. In particular, the Commission requests comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential costs or benefits resulting from the proposals for registrants, issuers, investors, broker-dealers, other securities industry professionals, regulators and others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments.

A. Proposed Amendments to Rule 100: Definition of Restricted Period and IPO

1. Benefits

We believe that the proposed amendments to Rule 100 of Regulation M would clarify what is considered to be an IPO under the regulation and when a restricted period under Rule 101 and 102 begins for IPOs, thereby facilitating compliance by distribution participants, issuers, their affiliates and others. By explicitly defining IPO we are helping to ensure that the extended restricted period will apply to an issuer's initial offerings of debt and equity, as well as clarifying when the extended restricted period would be applicable to issuers whose securities already trade on foreign markets. Similarly, we propose to amend the definition of restricted period to incorporate a long-standing interpretation under Regulation M, that is, to expressly describe the applicable restricted period for corporate actions such as valuation and election periods. We also propose to define these terms in Rule 100. By amending the definition of the restricted period to explicitly define the applicable restricted period for IPOs and for election and valuation periods, we would provide certainty to the issuers, distribution participants, their affiliates and others, as to when exactly the restricted period begins and ends. In addition, a defined restricted period for IPOs and explicitly defining the restricted period for valuation and election periods would help to combat manipulative abuses that may occur prior to an IPO and during price sensitive valuation and election periods and that have been the subject of recent enforcement actions. By prohibiting inducements, bids or purchases well in advance of IPO pricing the proposed amendment would allow the securities markets to function as independent pricing mechanisms by reflecting true demand for the security and improve the integrity of the capital raising process. Prohibiting such activity would also reduce the investors' perception of scarcity of IPO stock, which affects the pricing of and aftermarket trading in the IPO security.

2. Costs

The proposed amendment would expand the restricted period for an IPO so that such period would generally commence from earlier of (i) the time that an issuer reaches an understanding with the broker-dealer that the broker-dealer is to act as its underwriter or (ii) the time a registration statement is filed with the Commission or other offering document is first circulated to potential investors. This proposed expansion of the IPO restricted period, were it adopted, would capture in a prophylactic rule, conduct that is already actionable under the antifraud and anti-manipulation provisions of the federal securities laws. We note that the amendment applies only to IPOs which are a small portion of all offerings. Similarly, we propose to expressly describe the applicable restricted period for valuation and election periods. This proposal is an application of a long-standing, broadly published, interpretation regarding the application of Regulation M in the context of valuation and election periods.

We understand that distribution participants already have policies and procedures in place to monitor for compliance with the restricted periods under current Regulation M. The only incremental costs of the proposed restricted period for IPOs would be associated with monitoring for Regulation M compliance during that portion of the restricted period which is new—the period beginning when an issuer and broker dealer reach an understanding that the broker-dealer is to act an underwriter or when a registration statement is filed or offering document is circulated to potential investors until 5 days prior to pricing. Because there is no trading market for an IPO offered security prior to the pricing of offering, distribution participants should not incur any costs associated with monitoring for open market purchases during the new portion of the restricted period. However, there may be costs associated with training employees of distribution participants to understand the application of the proposed restricted period. However, as stated above, we believe such activity prior to an IPO is already prohibited by the general antifraud and anti-manipulation provisions of the securities laws and distribution participants and their employees should not engage in such conduct at any time prior to the distribution of the IPO. Similarly, distribution participants, issuers, their affiliates and others are already prohibited under Regulation M during election and valuation periods. As such, they should already have undertaken training, compliance procedures and monitoring to comply with the Regulation. Nonetheless, the proposals may require one-time changes by certain

[119] The Commission is also proposing certain conforming changes to Rules 17a–2, 17a–4, 104(j)(2) under the Exchange Act, and Rule 481 and Item 508 under the Securities Act. The costs and benefits, however, arise from the substance of the proposed amendments in the rule changes discussed herein.

distribution participants, issuers, affiliated purchasers and others. Thus, costs, if any, associated with training, modifying, revising policies and behavior and monitoring for compliance should be minimal.

Of note, we believe that costs, if any, associated with the proposed amendment concerning IPOs would only be borne by distribution participants. Our experience indicates that distribution participants, rather than issuers, have engaged in inducing or attempting to induce persons to bid for or purchase a covered security prior to the 5-day IPO restricted period. The Commission believes that even if there are some costs generated by this proposal, such costs are minimal and are justified by the facilitation of investment and enhancement of investor confidence in the IPO capital raising process that we believe will result from this proposal. We are however sensitive to potential costs borne by industry participants and generally solicit comment on any costs this proposed amendment could generate and whether the proposed amendments impose greater costs than presently exist under the federal securities laws.

B. Proposed Amendments to Rules 100, 101 and 102: ADTV and Public Float Value Thresholds

1. Benefits

The Commission believes the proposed adjustments to ADTV and public float values will reset the thresholds to their original restrictiveness and thereby appropriately apply the one- and five-day restricted period or actively-traded exception to the appropriate securities, thus minimizing the potential for manipulation during offerings. In order to make the thresholds for the restricted period and actively-traded securities and reference securities current, the Commission is proposing to increase the ADTV and public float value thresholds to account for the decline in the value of the dollar that has occurred since 1996 (*i.e.*, adjust the values by the Consumer Price Index (''CPI''). Between 1996 and 2004, the CPI, a general measure for the change in the value of the dollar rose approximately 20 percent.[120] The adjustment of the thresholds to reflect the current dollar value should simply reset the thresholds to the level of restrictiveness intended when Regulation M was adopted. By resetting the ADTV and public float thresholds, the proposal would apply the actively-traded security exception and one- or five-day restricted period to the type of issuers and securities the Commission had considered appropriate at Regulation M's adoption, *i.e.*, those with a relatively limited potential for manipulation.

2. Costs

The Commission believes that the adjustment to ADTV and public float value would not impose costs in addition to those considered when Regulation M was adopted since the amendments will reinstate the level of restrictiveness in effect at the time of Regulation M's adoption. As a practical matter, should the ADTV and public float values be adjusted as proposed, certain issuers or securities will no longer be exempt from Rules 101 and 102 or will be subject to a longer restricted period, and so issuers, distribution participants, their affiliates and others must modify their activities to comply with the applicable restricted period. This adjustment to a different restricted period (either one- or five-day, or none) may impose some initial costs upon issuers, distribution participants, their affiliates and others. The one- and five-day restricted periods, however, have been in place since 1997 so issuers, distribution participants, their affiliates and others should already have the capabilities and policies and procedures in place in order to be able to impose such restrictions on issuers and their securities. At this time, the Commission believes this one-time modification by issuers, distribution participants and their affiliates, should be minimal. The Commission has no data on these costs and solicits comments as to whether the proposed amendments impose greater costs on issuers than the current rule.

C. Proposed Amendments to Rule 101(b)(7): De Minimis Exception

1. Benefits

We believe the proposed amendments to Rule 101(b)(7) of Regulation M would enhance compliance with Regulation M and assist the Commission and SRO examiners in identifying patterns of abuse or policies and procedures that are not reasonably designed to achieve compliance with the rule.

2. Costs

As discussed in the PRA, the proposed amendments to Rules 101(b)(7) would involve a collection of information since those distribution participants, and their affiliated purchasers who rely on the Rule 101 exception for *de minimis* transacations would be required to make and keep records of the bids or purchases made in reliance on the *de minimis* exception. As discussed below, the staff estimates this annual burden to be 10.7 burden hours.

Currently under Regulation M, distribution participants, their affiliates and others are expected to ''review [their] policies and procedures and modify them as appropriate'' in order to qualify for the *de minimis* exception and no additional requirement concerning policies and procedures is proposed at this time. Additionally, broker-dealers are already required under Rule 17a–3 of the Exchange Act to make and keep records of the terms of each brokerage order and each purchase and sale of a security for a period of three years. The proposed amendments would only require firms to maintain a separate written record of the terms of the bids and purchases made in reliance upon the exception from Rule 101 for a period of 3 years. Based on discussions with distribution participants about their experience with the *de minimis* exception, the Commission believes these would be infrequent violations requiring infrequent recordkeeping. Further, the review of the policies and procedures is already required under Regulation M. For purposes of the PRA, the staff estimates an annual burden of 10 minutes per distribution participant to keep separate records of their reliance on the exception. Therefore, the staff believes the proposed amendments regarding recordkeeping of *de minimis* violations of Regulation M would impose minimal costs.

D. Proposed Amendments to Rule 104: Syndicate Covering and Penalty Bids

1. Benefits

Identification or designation of syndicate covering transactions would help to protect investors by providing contemporaneous information about the actual occurrences of syndicate purchasing activity. The proposal obligates managing underwriters and others communicating a syndicate covering bid to identify it as such wherever the bid is communicated. The staff believes such identification is an essential first step to market-wide identification of syndicate covering bids. Contemporaneous disclosure of the fact that stabilization-like activity is occurring is beneficial to the market and its participants, because it would allow market participants, *i.e.*, both holders of offered shares and potential investors in the secondary market, to base their

[120] The change in CPI is the percentage change in Urban CPI measured from July 1996 to July 2004, based on calculations performed by OEA.

investment decisions and the resulting transactions on all available information. This proposed amendment also would inhibit underwriters from pricing offerings at higher levels than otherwise may be obtainable in the absence of their syndicate covering activity in the subsequent trading market.

The proposal to prohibit penalty bids would greatly reduce the pressure of a penalty bid assessment by a managing underwriter on a syndicate that, in turn may result in discriminatory and improper conduct by the syndicate member and its salespeople toward its customers who may wish to sell a security purchased in an offering.

2. Costs

Proposed amendments to Rule 104 would require managing underwriters to identify or designate syndicate covering bids as such wherever communicated. For purposes of the PRA we estimated an annual burden of 5.5 hours per year for managing underwriters to comply. The Commission recognizes that SROs and markets receiving designation of a syndicate bid from managing underwriters could incur some costs to communicate this information to the market. The required disclosure and designation of a syndicate bid, however, is similar to what is already required for stabilizing transactions, so the Commission anticipates that the means of communicating such information is already in place and operational. Issuers may also incur one-time costs related to modifying the disclosure language in the Plan of Distribution.

Although penalty bids are infrequently used, due to their elimination managing underwriters and issuers will no longer have the option of using them and may impose minimal costs upon them. Overall, the staff believes the costs of complying with the Rule 104 proposals would be minimal and the benefits from improved transparency and removal of penalty bids would outweigh these costs.

E. Rule 104—Exception for Transactions in Rule 144A Securities

1. Benefits

We believe that the proposed amendment to Rule 104(j)(2) to include ''reference securities'' will make the subparagraph consistent with the same exception under Rules 101(b)(10) and 102(b)(7) for transactions in Rule 144A securities, as was intended when Regulation M was adopted and will clarify the application of the exception.

2. Costs

The Commission preliminarily believes that including reference securities in the 144A exception of Rule 104 would impose minimal costs since it clarifies what securities are excepted and may require a one-time adjustment by training and modifying procedures by distribution participants and others.

F. Proposed Rule 106: Unlawful Practices in Connection With Allocations of Offered Securities

1. Benefits

We believe that proposed Rule 106 would help prevent abuses in awarding allocations of offered securities, particularly IPOs, that were common in the late 1990's and other ''hot issue'' periods. Underwriters'' or issuer's solicitations, inducements, demands for, or acceptance of, consideration in addition to the stated offering price have several pernicious effects. These activities by distribution participants can contribute to a false impression of scarcity in the offered shares. This, in turn, can stimulate and distort the offering and aftermarket price of the offered security by creating the impression among investors that any unfulfilled demand for the offered shares may only be satisfied in the aftermarket.[121] Moreover, such activities create the impression that the underwriters have ''rigged the game'' and only the market participants who know they are expected, and are willing, to pay the additional consideration are able to participate in IPOs. Additionally, when underwriters allocate shares in ''hot offerings'' to customers who agree to make aftermarket purchases in ''cold offerings,'' the purchasers in the cold offerings are deceived as to the true demand for that offering. The proposed rule would expressly preclude conduct that can operate as a fraud on prospective and actual purchasers of an offered security, particularly in IPOs. Such conduct can undermine the fundamental function of the securities markets as an independent pricing mechanism and erode investor confidence in the securities offering process generally. Having an express prophylactic rule that prohibits the conduct would emphasize to distribution participants that engaging in such activity is prohibited and would assist the Commission in its enforcement of the federal securities laws.

2. Costs

The Commission notes that the conduct the proposed rule prohibits is already prohibited by Regulation M or is illegal under the antifraud and anti-manipulation provisions of the federal securities laws, as well as under SRO rules, and so the new Rule 106 does not add any additional requirements. Rather, it expressly prohibits such conduct. A few distribution participants, their affiliates and others who did not already have adequate policies and procedures may need to make a one-time revision and undertake corresponding training of employees. The Commission therefore believes that the proposed rule would impose minimal costs, if any, on distribution participants, issuers and their affiliated purchasers and would support investor protection.

VI. Consideration on Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[122] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[123] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that the proposed amendments to Regulation M are intended to improve market efficiency by providing greater clarity to all issuers, distribution participants and their affiliated purchasers as to the scope of permissible activity for offerings; helping to ensure that those securities excepted from the rules have no potential for manipulation; requiring companies to maintain records of inadvertent violations of Regulation M and to revise policies and procedures in order to prevent violating rules; and

[121] *See* 1974 Rule 10b–20 Proposing Release (describing how broker inducements for allocating offered shares: (1) Encourages participation in cold offerings by investors with a view toward immediate resale of the security; (2) obscures actual demand for the offering making an assessment by investors of true demand difficult thus artificially affecting the offering price; and (3) stimulates demand for the offering and forces investors who could not participate to buy in the aftermarket). 1974 Rule 10b–20 Proposing Release, 39 FR at 7806.

[122] 15 U.S.C. 78c(f).

[123] 15 U.S.C 78w(a)(2).

providing greater transparency to the market of actual syndicate covering transactions. The proposed amendments are intended to promote transparency and prevent manipulative activity in the offering process and aftermarket.

The Commission preliminarily believes that the proposed amendments would promote capital formation since they seek to eliminate the abuses in the offering process and would promote a more even playing field for potential investors and issuers alike. These proposed amendments would promote investor confidence in the offering process as well as in the market as a whole, which would foster capital formation.

The Commission has considered the proposed amendments in light of the standards cited in Section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Specifically, the proposed amendments if adopted, would require maintenance of separate records under Rule 101(b)(7) and identification or designation of syndicate covering bids under Rule 104. As discussed above, distribution participants under Rule 17a–3 already make and keep records of all orders and purchases and sales, including *de minimis* bids and purchases, so the Commission believes the additional burden of keeping records separately and for three years would be minimal. With regard to Rule 104, the Commission recognizes that SROs and markets receiving the identification or designation of a syndicate bid from managing underwriters may incur some costs to communicate this information. The required designation of a syndicate bid, would be analogous to what is already required for stabilizing transactions, so the Commission anticipates that the means of communicating such information is already in place and operational and would require minimal costs to extend such designation to include syndicate covering bids. Additionally, in regard to the proposed definition of IPO and expansion of the restricted period for IPOs we would be expressly prohibiting conduct which can create an exaggerated perception to investors of scarcity of IPO stock and affect the pricing of the offering, both of which undermine the market's function as an independent pricing mechanism. The proposed amendments to Rules 100, 101, and 102 concerning ADTV and public float values will restore the restricted period and actively-traded thresholds to the level originally contemplated at Regulation M's adoption. By expressly providing for valuation and election periods within the definition of the restricted period the Commission would codify a long-standing interpretation and eliminate any confusion in these contexts. The new Rule 106 would expressly prohibit in a prophylactic rule conduct related to offerings that has been the subject of recent enforcement actions. Since the conduct covered by proposed Rule 106 is already prohibited under either Regulation M or antifraud and anti-manipulation provisions of the federal securities laws, the staff codifying the illegality of such conduct within a prophylactic rule imposes minimal additional costs and would not impose a burden on competition.

We preliminarily believe that the proposed amendments would promote competition among distribution participants as the amendments would level the playing field by applying clear and uniform regulation concerning conduct during an offering, and by improving the transparency of syndicate covering bids in the aftermarket.

The Commission requests comment on whether the proposed amendments are expected to promote efficiency, competition, and capital formation.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or (SBREFA),[124] we must advise the Office of Management and Budget as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment, or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

[124] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and as a note to 5 U.S.C. 601).

VIII. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the Regulatory Flexibility Act (RFA)[125] regarding the proposed amendments to Regulation M.

A. Reasons for the Proposed Action

Based on our experience with the operation of Regulation M, and to reflect market developments since the Regulation's adoption, we propose to revise Regulation M's provisions. The proposed amendments, including amending the definition of ''restricted period,'' requiring recordkeeping for reliance on the *de minimis* transaction exception, updating the restricted period and ''actively-traded'' qualifying thresholds, requiring identification of syndicate covering bids, prohibiting penalty bids, and adopting a new rule to prevent conditioning the award of allocations of offered securities on the receipt of consideration in addition to the stated offering consideration, are designed to modernize Regulation M in light of recent developments while providing clear guidelines to prevent manipulation of the markets.

If the proposed amendments were not adopted, the Regulation may not appropriately address the manipulative abuses that may occur prior to an IPO and that interfere with the securities markets' function as an independent pricing mechanism. Without adjusting the qualifying thresholds for the restricted periods and actively-traded exceptions we could be exempting from the regulations restrictions securities that may be subject to manipulation. Additionally, if the proposed amendments to Rule 101(b)(7) were not adopted, Commission and SRO examiners would be unable to identify possible patterns of abuse or improper policies and procedures that may be in place. As a result of not adopting the proposals contained in rules 104 and 106, investors may be precluded from receiving allocations, paying too high a price for a security or otherwise invest in an offered security (or trade in the aftermarket) with incomplete information as to the true demand for the security and the level or amount of actual syndicate covering activity. Similarly, if distribution participants were not required to disclose to the market and identify or designate when a syndicate short covering bid is made, prospective investors in, and holders of, offered shares will not know the extent

[125] 5 U.S.C. 603.

of syndicate covering activity at the time it occurs and may make investment decisions without all the necessary information about the offered security. Additionally, if distribution participants were not prohibited from demanding additional consideration from investors in order to obtain IPO allocations, we would be unable to prophylactically prevent such fraudulent activity from occurring and only reach such activities through the antifraud and anti-manipulation provisions of the federal securities laws. Moreover, if we did not explicitly define IPOs and the restricted period for valuation and election periods, we would not be able to provide certainty to the issuers, distribution participants and others as to the exact application of the rules.

B. Objectives

The proposed amendments to Regulation M are designed to fulfill several objectives. First, the proposed amendments seek to prevent manipulation from occurring by precluding certain activities by underwriters and other distribution participants that can undermine the integrity and fairness of the offering process, particularly with respect to allocations of offered securities. Second, the proposal seeks to enhance the notice and disclosure of certain practices by distribution participants, such as syndicate covering that may affect the market price and trading of an offered security and to prohibit penalty bids. Third, the proposed amendments are designed to prohibit activities that could artificially influence the market for the offered security, including, supporting the offering price by creating the exaggerated perception of scarcity of the offered security or creating the misleading appearance of active trading in the market for the security. The amendments are also intended to update certain definitional and operational provisions in light of market developments since the Regulation's adoption in 1996.

C. Legal Basis

The amendments to Regulation M are proposed pursuant to the authority set forth under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Section 7, 17(a), 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd–1; and the Investment Company Act, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37.

D. Small Entities Subject to the Rule

Paragraph (a) of Rule 0–10 [126] states that the term ''small business'' or ''small organization,'' when referring to issuers or affiliated purchasers, are those who on the last day of its most recent fiscal year had total assets of $5,000,000 or less. As of 2003, the Commission estimates that there were approximately 3489 issuers that qualified as small entities as defined above, and were subject to Regulation M.[127] Paragraph (c)(1) of Rule 0–10 [128] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. As of 2003, the Commission estimates that there were approximately 905 broker dealers, 33 of which engaged in underwriting, that qualified as small entities as defined above, and were subject to Regulation M.[129] The Commission seeks comment on the number of issuers and broker-dealers that were subject to Regulation M and the number of such issuers, broker-dealers and syndicate members that are small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Regulation M would impose certain reporting, recordkeeping and other compliance requirements on broker-dealers and issuers who are small entities and engage in securities offerings. Those distribution participants that are small entities who rely on the *de minimis* transactions exception of Regulation M will now be subject to recordkeeping requirements. Also, if any broker-dealers that are small entities undertake syndicate covering transactions they will be subject to the new identification and designation requirements. We do not believe, at this time, that any additional or specialized professional skills will be necessary to achieve these new requirements.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap or conflict with, the proposed amendments.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. Pursuant to Section 3(a) of the RFA,[130] the Commission considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities.

With respect to the proposed amendments to Regulation M, the Commission believes that in order to prevent manipulation and fraud in the offering process and trading markets, uniform rules applicable to all market participants (regardless of size) is necessary. The Commission believes that the majority of entities to whom Regulation M applies and the majority of syndicate members who would be affected by the proposed amendments are not small entities. Therefore, the establishment of different requirements for small entities is not practicable, nor in the public interest and for the protection of investors to do so. In addition, the proposed amendments impose minimal additional costs or burdens so establishing different compliance requirements or clarifying, consolidating, or simplifying compliance or reporting requirements for small entities would not be justified in this context. With regard to the proposed amendments to Regulation M, and clarification of the application of the regulation, small entities would not be specifically exempted, since all securities may be the subject of manipulation or other abuse the amendments seek to prevent. Regulation M imposes performance standards rather than design standards and would require all entities to comply with the

[126] 17 CFR 240.0–10(a).

[127] This number is based on the total number of issuers' 10–KSB filings for the fiscal year ending 9/30/04.

[128] 17 CFR 240.0–10(c)(1).

[129] These numbers are based on OEA's review of 2003 FOCUS Report filings reflecting registered broker dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[130] 5 U.S.C. 603(c).

rule in order to ensure a proper application of the rule.

H. Solicitation of Comments

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on (1) the number of issuers and broker-dealers that were subject to Regulation M and the number of such issuers, broker-dealers and syndicate members that are small entities; (2) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact (commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact); and (3) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. As discussed above, for purposes of SBREFA, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

IX. Statutory Basis

The proposed amendments to Rule 17a–2 would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 10(a), 10(b), 13(e), 15(c), 17(a), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78m(e), 78o(c), 78q(a), and 78w(a). The proposed amendments to Item 508(*l*)(1) of Regulation S–K and Item 508(j)(1) of Regulation S–B and Rule 481 would be adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 6, 7, 8, 10, and 19(a), 15 U.S.C. 77f, 77g, 77h, 77j. and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 3, 4, 10, 12, 13, 14, 15, 16 and 23; 15 U.S.C. 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78p, and 78w; and the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 8 and 38(a), 15 U.S.C. 80a–8 and 80a–37(a). Rules 100, 101, 102, 104, and 106 of Regulation M would be adopted under the Securities Act, 15 U.S.C. 77a *et seq.*, particularly Sections 7, 17(a), 19(a), 15 U.S.C. 77g, 77q(a), and 77s(a); the Exchange Act, 15 U.S.C. 78a *et seq.*, particularly Sections 2, 3, 9(a), 10, 11A(c), 12, 13, 14, 15(c), 15(g), 17(a), 23(a), and 30, 15 U.S.C. 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78w(a), and 78dd–1; and the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, particularly Sections 23, 30, and 38, 15 U.S.C. 80a–23, 80a–29, and 80a–37.

Text of Proposed Rule

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, and 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

§ 228.508 [Amended]

2. Section 228.508, paragraph (j)(1), second sentence, is amended by removing the phrase ''penalty bids,''.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 229.508 [Amended]

4. Section 229.508, paragraph (l)(1), second sentence, is amended by removing the phrase ''penalty bids,''.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.481 [Amended]

6. Section 230.481, paragraph (d)(1), third sentence, is amended by removing the phrase ''penalty bids,''.

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

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

8. Amend § 240.17a–2 by:

a. Removing the authority citation following the section;

b. Removing the phrase ''or imposes a 'penalty bid,' as defined in § 240.100 of this chapter'' in the introductory text of paragraph (a);

c. Revising the introductory text of paragraph (c);

d. Removing the phrase ''or a penalty bid has been imposed'' in paragraph (c)(1)(i);

e. Removing the phrase '', and whether any penalties were assessed'' in paragraph (c)(1)(ii);

f. Adding the word ''and'' at the end of paragraph (c)(i)(iii);

g. Removing the ''; and'' and in its place adding a period at the end of paragraph (c)(1)(iv); and

h. Removing paragraph (c)(i)(v).

The revision reads as follows:

§ 240.17a–2 Recordkeeping requirements relating to stabilizing activities.

* * * * *

(c) *Records relating to stabilizing and syndicate covering transactions required to be maintained by manager.* Any person subject to this section who acts as a manager and stabilizes or effects syndicate covering transactions shall:

* * * * *

9. Section 240.17a–4 is amended by adding paragraph (b)(13) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, broker and dealers.

* * * * *

(b) * * *

(13) The record(s) required to be made pursuant to § 242.101(b)(7) of this chapter.

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AND AC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

10. The authority citation for Part 242 is revised to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

11. Section 242.100 is amended by:

a. Revising the phrase ''(§§ 242.100—242.105 of this chapter)'' to read ''(§§ 242.100 through 242.106)'' in paragraph (a);

b. Revising the phrase ''(§§ 242.100 through 242.105 of this chapter)'' to read ''(§§ 242.100 through 242.106)'' in paragraph (b);

c. Adding the following definitions in alphabetical order: Election period; Initial public offering; and Valuation period; and

d. Revising the definition of *Restricted period.*

The revision and additions read as follows.

§ 242.100 Preliminary note; definitions.

* * * * *

Election period means any period during which shareholders have the right to elect among various forms of consideration offered in a distribution.

* * * * *

Initial public offering (IPO) means:

(1) An issuer's first offering of a security to the public in the United States, and

(2) If prior thereto the issuer's equity securities do not have a public float value, an issuer's first offering of an equity security to the public in the United States.

* * * * *

Restricted period means the period beginning:

(1) For any security with an ADTV value of $120,000 or more of an issuer whose common equity securities have a public float value of $30 million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution.

(2) For any security with an ADTV value of less than $120,000 of an issuer whose common equity securities have a public float value of less than $30 million, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution.

(3) In the case of a distribution involving a merger, acquisition, or exchange offer:

(i) The day proxy solicitation or offering materials are first disseminated to security holders and ending upon the completion of the distribution;

(ii) The period one or five business days prior to the commencement of any valuation period and for the duration of such period (refer to paragraphs (1) and (2) of this definition to determine if one or five business days is applicable); and

(iii) The period one or five business days prior to the commencement of any election period and for the duration of such period (refer to paragraphs (1) and (2) of this definition to determine if one or five business days is applicable).

(4) In the case of a distribution involving an IPO, the earlier of:

(i) The period beginning at the time when the issuer reaches an understanding with the broker-dealer that is to act as an underwriter, or such time that a person becomes a distribution participant, and ending upon the issuer's or distribution participant's completion of participation in the distribution; or

(ii) The period beginning at the time the registration statement is filed with the Commission or other offering document is first circulated to potential investors, or such time that a person becomes a distribution participant, and ending upon the issuer's or distribution participant's completion of participation in the distribution.

* * * * *

Valuation period means any period during which the market price of the offered security is a factor in determining the consideration to be paid in the distribution.

12. Amend § 242.101 by revising paragraph (b)(7) and in paragraph (c)(1) by revising the phrases ''$1 million'' and ''$150 million'' to read ''$1.2 million'' and ''$180 million'' respectively.

§ 242.101 Activities by distribution participants.

* * * * *

(b)(7) *De minimis transactions.* Purchases during the restricted period, other than by a passive market maker, that total less than 2% of the ADTV of the security being purchased, or unaccepted bids: *Provided, however,* that the person making such bid or purchase has maintained and enforces written policies and procedures designed to achieve compliance with other provisions of this section. Any person relying on this exception shall create a separate record specifying:

(i) The security that is the subject of the relevant distribution;

(ii) The day the restricted period commenced;

(iii) The ADTV;

(iv) The bid or purchase that occurred during the restricted period, including time, price, quantity, and market;

(v) The individual who made such bid or purchase and the system used to make such bid or purchase;

(vi) How and when such bid or purchase was discovered;

(vii) The policies and procedures designed to achieve compliance with this section in effect at the time of such bid or purchase;

(viii) The review of the policies and procedures performed following the discovery of such bid or purchase; and

(ix) Any modifications made to those policies and procedures. A broker or dealer shall preserve the record specified in this paragraph in accordance with § 240.17a–4(b)(13) of this chapter; or

* * * * *

13. Amend § 242.102, paragraph (d)(1), by revising the phrases ''$1 million'' and ''$150 million'' to read ''$1.2 million'' and ''$180 million'' respectively.

14. Amend § 242.103, paragraph (b)(7), by revising the phrase ''§§ 228.502, 228.508, 229.502, and 229.508'' to read ''§§ 228.508 and 229.508''.

15. Amend § 242.104 by:

a. Revising paragraphs (a), (h)(2), and the introductory text of paragraph (j)(2); and

b. In paragraph (h)(3) revise the phrase ''Item 502(d) of Regulation S–B (§ 228.502(d) of this chapter) or Item 502(d) of Regulation S–K (§ 229.502(d) of this chapter)'' to read ''§ 230.481(d) of this chapter''.

The revisions read as follows.

§ 242.104 Stabilizing and other activities in connection with an offering.

(a) *Unlawful activity.* It shall be unlawful for any person, directly or

indirectly, to stabilize or to effect any syndicate covering transaction in connection with an offering of any security, in contravention of the provisions of this section. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder. It shall be unlawful for any person to impose or assess a penalty bid in connection with an offering.

* * * * *

(h) * * *

(2) Any person communicating a bid that is for the purpose of effecting a syndicate covering transaction shall:

(i) Identify or designate the bid as such wherever it is communicated; and

(ii) Provide prior notice to the self-regulatory organization with direct authority over the principal market in the United Sates for the security for which the syndicate covering transaction is effected.

* * * * *

(j) * * *

(2) *Transactions of Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if such securities are offered or sold in the United States solely to:

* * * * *

16. Add § 242.106 to read as follows:

§ 242.106 Allocating offered securities.

(a) *Unlawful activity.* It shall be unlawful for a distribution participant, issuer or their affiliated purchasers, directly or indirectly, acting either alone or in concert with another person, to attempt to induce, induce, solicit, require, or accept from a potential purchaser of an offered security in connection with an allocation of the offered security, any consideration for such offered security in addition to that stated in the registration statement filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or applicable offering document for the offer and sale of such offered security.

(b) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

Dated: December 9, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–27434 Filed 12–16–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
December 17, 2004

Part IV

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590
Mental Health Parity; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA62

Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act (MHPA) to be consistent with legislation passed during the 108th Congress.

DATES: *Effective date.* The interim final amendment is effective December 31, 2004.

Applicability dates. The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning December 31, 2004. The MHPA interim final amendment extends the sunset date from December 31, 2004, to December 31, 2005. Pursuant to the extended sunset date, MHPA requirements apply to benefits for services furnished before December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335.

Customer Service Information: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272), or access the publications on-line at *http://www.dol.gov/ebsa,* the Department of Labor's Web site. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's interactive Web pages, Health Elaws (*http://www.dol.gov/elaws/ebsa/health*).

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA, as originally enacted, are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under state law.

B. Overview of MHPA

The MHPA provisions set forth in section 712 of ERISA apply to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions applied to benefits for services furnished before September 30, 2001. On December 22, 1997, the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education. This legislation extended MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extended MHPA's original sunset date under the Code to December 31, 2003.

On September 27, 2002, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (67 FR 60859). The interim final amendment included the new statutory sunset date under H.R. 3061, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002. The Department made the effective date of this interim final amendment to the regulations September 30, 2001.

On December 2, 2002, President Bush signed H.R. 5716, the Mental Health Parity Reauthorization Act of 2002 (Pub. L. 107–313, 116 Stat. 2457), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extended MHPA's original sunset date under ERISA and the PHS Act to December 31, 2003. On April 14, 2003, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (68 FR 18048). The interim final amendment included the new statutory sunset date under H.R. 5716, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2003.

On December 19, 2003, President Bush signed S. 1929, the Mental Health Parity Reauthorization Act of 2003 (Pub. L. 108–197, 117 Stat. 2998), an amendment to section 712 of ERISA and Section 2705 of the PHS Act. This legislation further extended MHPA's original sunset date under ERISA and the PHS Act to December 31, 2004. On January 26, 2004, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (69 FR 3815). The final rule included the new statutory sunset date under S. 1929, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2004.

On October 4, 2004, President Bush signed H.R. 1308, the Working Families Tax Relief Act of 2004 (Pub. L. 108–311, 118 Stat. 1166), an amendment to section 712 of ERISA, Section 9812 of the Code, and Section 2705 of the PHS Act. This legislation further extends MHPA's original sunset date under ERISA, the Code, and the PHS Act to December 31, 2005. Like MHPA, this amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical

[1] Part 7 of Subtitle of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191.

benefits and mental health benefits.[2] As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date.

Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to Section 734 of ERISA. This interim final amendment is also promulgated pursuant to Section 553(d)(3) of the Administrative Procedure Act, allowing for regulations to become effective immediately for good cause.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a ''significant regulatory action'' within the meaning of the Executive Order. This action is an amendment to the interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by H.R. 1308.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption), and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). Because this action does not change the approved information collection provisions, no submission for OMB approval is being made in connection with this interim final amendment. However, because OMB's approval for the information collection requests approved under control numbers 1210–0105 and 1210–0106 were scheduled to expire on November 30, 2004 and October 31, 2004, respectively, the Department requested public comment on their proposed renewal, and has submitted requests to OMB for continuing approval. OMB is currently reviewing those requests.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any federal mandate that may result in expenditures by state, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the states, the relationship between the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by H.R. 1308.

List of Subjects in 29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Employee Benefits Security Administration

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 1. The authority for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101(g), Pub. L. 104–191, 101 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

§ 2590.712 [Amended]

■ 2. Amend § 2590.712(f)(1), (g)(2), and (i) by removing the date ''December 31, 2004'' and add in its place the date ''December 31, 2005'' wherever it appears in these paragraphs.

Signed in Washington, DC this 10th day of December, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–27531 Filed 12–16–04; 8:45 am]

BILLING CODE 4510–29–P

[2] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term ''small employer'' is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

Federal Register

Friday,
December 17, 2004

Part V

Department of Housing and Urban Development

24 CFR Part 202
Revisions to FHA Credit Watch Termination Initiative; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR–4625–I–02; HUD–2004–0014]

RIN 2502–AH60

Revisions to FHA Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: On April 1, 2003, HUD published a proposed rule to amend the regulations for the Federal Housing Administration (FHA) Credit Watch Termination Initiative. Specifically, HUD proposed to provide for a fully computerized Credit Watch status notification process through use of the FHA Neighborhood Watch Early Warning System; remove the regulatory ''cap'' on the default and claim rates for placing a mortgagee on Credit Watch status; prohibit a mortgagee that has received a notice of proposed termination from establishing a new branch in the lending area covered by the proposed termination; provide that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees; codify the definition of ''underserved area'' that is currently used under the Credit Watch Termination Initiative; provide that the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance; specify the timeframes for the informal conference that may be requested by a mortgagee prior to termination; and describe the procedures a terminated mortgagee must follow to have its origination approval agreement reinstated.This interim rule follows publication of the April 1, 2003, proposed rule, and takes into consideration the public comments on the proposed rule. In addition, this rule further clarifies the applicability of the Credit Watch Termination Initiative to underwriting mortgagees, and requests comments on the regulatory provisions regarding underwriting mortgagees.

DATES: Effective Date: January 18, 2005.

Comments Due Date: February 15, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Electronic comments may be submitted through either:

- The Federal eRulemaking Portal at *http://www.regulations.gov;* or
- The HUD electronic Web site at *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, DC 20410–8000; telephone (202) 708–1515 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's April 1, 2003, Proposed Rule

On April 1, 2003 (68 FR 15906), HUD published a proposed rule to amend the regulations for the Federal Housing Administration (FHA) Credit Watch Termination Initiative. Through the Credit Watch Termination Initiative, FHA systematically reviews the early default and claim rates of mortgagees that have been approved to participate in the FHA single family mortgage insurance programs. Mortgagees with excessive default and claim rates are considered to be on Credit Watch status and, in cases of more severe performance deficiencies, HUD may terminate the mortgagee's loan origination approval authority. Credit Watch status constitutes a warning to a mortgagee that its default and claim rates are in excess of permissible levels, and that failure to achieve improvement may lead to the termination of its origination approval agreement. The termination of a mortgagee's origination approval agreement is separate and apart from any action taken by HUD's Mortgagee Review Board for violations of FHA requirements under 24 CFR part 25. The regulations for the Credit Watch Termination Initiative are contained in 24 CFR 202.3.

The April 1, 2003, rule proposed to make various amendments to the regulations for the Credit Watch Termination Initiative. Specifically, the April 1, 2003, rule proposed to: (1) Establish a fully computerized Credit Watch status notification process through use of the FHA Neighborhood Watch Early Warning System; (2) remove the regulatory ''cap'' on the default and claim rate for placing a mortgagee on Credit Watch status; (3) prohibit a mortgagee that has received a notice of proposed termination from establishing a new branch in the lending area covered by the proposed termination; (4) provide that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees; (5) codify the definition of ''underserved area'' that is currently used under the Credit Watch Termination Initiative; (6) provide that the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance; (7) specify the timeframes for the informal conference that may be requested by a mortgagee prior to termination; and (8) describe the procedures a terminated mortgagee must follow to have its origination approval agreement reinstated.

The proposed regulatory changes were designed to improve the Credit Watch Termination Initiative, thereby strengthening HUD's capacity to safeguard the FHA mortgage insurance fund. The preamble to the April 1, 2003, proposed rule provides additional details regarding the proposed regulatory changes to 24 CFR 202.3.

II. Significant Differences Between this Interim Rule and the April 1, 2003, Proposed Rule

This interim rule follows publication of the April 1, 2003, proposed rule, and takes into consideration the public comments received on the proposed rule. The changes made to the April 1, 2003, proposed rule in response to public comment are as follows:

1. *Clarification of applicability to underwriting mortgagees.* In response to several comments, this interim rule clarifies the applicability of the Credit Watch Termination Initiative to underwriting mortgagees. The April 1, 2003, proposed rule made clear that underwriting mortgagees would be included within the scope of the Credit Watch Termination Initiative. However,

HUD agrees that additional clarification would be helpful regarding the effects of Credit Watch Termination evaluations on the ability of mortgagees with direct endorsement approval to underwrite FHA-insured mortgage loans. Accordingly, HUD has revised the rule to provide for separate regulatory language that specifically addresses underwriting mortgagees. For example, the rule now clarifies that the Secretary may terminate an underwriting mortgagee's direct endorsement approval under 24 CFR part 203 to underwrite FHA-insured mortgages if the mortgagee has a rate of defaults and claims on insured mortgages underwritten in an area that exceeds the established Credit Watch Termination thresholds. The termination of a mortgagee's direct endorsement approval under the Credit Watch Termination Initiative is separate and apart from the termination of a mortagee's direct endorsement approval under 24 CFR part 203.

The new regulatory language does not alter the substance of the proposals contained in the April 1, 2003, proposed rule but, rather, provides greater clarity on how the performance of underwriting mortgagees would be subject to evaluation under the Credit Watch Termination Initiative. Although the language of the proposed rule did not explicitly reference termination of a mortgagee's direct endorsement approval, the preamble to the proposed rule made clear that the regulatory amendments were designed to ''emphasize HUD's authority to terminate the ability of a mortgagee to originate or underwrite FHA-insured single family mortgages where the mortgagee has demonstrated an unacceptably high default and claim rate'' (see 68 FR 15906, at 15907, third column). The ability of a mortgagee to underwrite FHA-insured mortgages is provided by its direct endorsement approval and, therefore, the termination of a mortgagee's direct endorsement approval was contemplated by the proposed rule.

Because the new regulatory language was not part of the April 1, 2003, proposed rule, HUD is issuing these changes on an interim basis and soliciting public comment for a period of 60 days. HUD will issue a follow-up final rule addressing the significant issues raised by the public commenters on the new language concerning the applicability of the Credit Watch Termination Initiative to underwriting mortgagees. HUD will not consider public comments submitted in response to other provisions of this interim rule. These provisions were contained in the April 1, 2003, proposed rule and, therefore, have already been the subject of public comments. A discussion of the significant issues raised by the public commenters on the April 1, 2003, proposed rule and HUD's responses to these comments is located in section III of this preamble.

2. *Removal of last sentence of proposed § 202.3(c)(2)(ii).* For purposes of clarity, and at the request of a public commenter, HUD has removed the last sentence of proposed § 202.3(c)(2)(ii), which provided that a ''poor performing mortgagee on Credit Watch status is in danger of having its origination approval agreement terminated by HUD.''

3. *Other clarifying changes.* HUD has also taken the opportunity afforded by this interim rule to make several non-substantive changes to enhance the clarity of the Credit Watch regulations (for example, revising the headings of certain paragraphs).

III. Discussion of the Public Comments on the April 1, 2003, Proposed Rule

The public comment period for the proposed rule closed on June 1, 2003. HUD received four public comments on the proposed rule. Comments were received from a city, a national association representing mortgage bankers, a mortgage lender, and a national community development organization. The comments were generally supportive of the proposed rule, but also requested clarification of some of the proposed regulatory changes and offered suggestions for improving the rule. This section of the preamble presents a summary of the significant issues raised by the public commenters on the April 1, 2003, proposed rule, and HUD's responses to these issues.

A. Comments Regarding Use of the FHA Neighborhood Watch Early Warning System

Comment: Support for electronic notification of Credit Watch status. The commenter wrote that ''[h]aving the Credit Watch notification information available online would enhance [the commenter's] ability to monitor its own and its FHA correspondents' production on an ongoing, live basis.''

HUD response. HUD appreciates the commenter's support. The interim rule adopts these provisions of the proposed rule without change. HUD agrees that a fully computerized Credit Watch notification system provides a streamlined and more effective method of monitoring mortgagee performance.

B. Comments Regarding Removal of the Regulatory ''Cap'' on the Credit Watch Default and Claim Rate

Comment: Support for removal of regulatory cap. Two commenters wrote that HUD's clarification that a lender will be considered to be on Credit Watch status if its rate of defaults and claims exceeds 150 percent of the normal rate will strengthen the Credit Watch Termination Initiative.

HUD response. HUD appreciates the support expressed by the commenters. HUD has adopted the proposed regulatory amendment without change. The amendment will strengthen the Credit Watch Termination Initiative by eliminating the need for regulatory waivers to authorize placement of mortgagees with default and claims rates greater than 200 percent on Credit Watch status.

Comment: HUD should clarify the threshold for termination of a mortgagee's origination approval agreement. One commenter requested that the rule provide clarification regarding the threshold claim and default rate that may trigger termination of a mortgagee's origination approval agreement. The commenter was uncertain about the impact of the last sentence of proposed § 202.3(c)(2)(ii), which provides that a ''poor performing mortgagee on Credit Watch status is in danger of having its origination approval agreement terminated by HUD.'' The commenter wrote that this sentence implies that the default and claim ratio required for placement on Credit Watch status (150%) would suffice to terminate a mortgagee's origination approval agreement. The commenter wrote that this would contradict both the language of § 202.3(c)(2)(iii) and the policy stated in Mortgagee Letter 2002–20 that a mortgagee's origination approval agreement may be terminated only if its rate of default and claims exceeds 200% of the normal rate and the national default and claim rate for insured mortgages. The commenter wrote that ''the current 200% termination threshold is sufficient for FHA to monitor lenders with excessive claim and default rates,'' and suggested that HUD remove the last sentence of proposed § 202.3(c)(2)(ii).

HUD response. For purposes of clarity, HUD has adopted the commenter's suggestion and removed the last sentence of proposed § 202.3(c)(2)(ii). The proposed regulatory language was not intended to imply that a mortgagee placed on Credit Watch status with a default and claim rate of less than 200% of the normal rate

is subject to termination. As the commenter notes, the regulations are clear that a mortgagee is subject to termination only if its rate of defaults and claims exceeds 200 percent of the normal rate and also exceeds the national default and claim rate for insured mortgages. The language of the proposed rule was designed to remind a poor performing mortgagee that placement on Credit Watch status is a warning that its default and claim rate is unacceptable and, that unless corrective action is taken, the rate may soon rise to a level triggering possible termination of its origination approval agreement.

Comment: HUD should not establish a firm threshold for placement on Credit Watch status. One commenter made this suggestion. The commenter wrote that, over time, as mortgagees manage their portfolio, the ''normal rate'' band will narrow, and make it more difficult for mortgagees to operate below this threshold on an ongoing basis.

HUD response. HUD adopted the proposed regulatory amendment without change. However, HUD will periodically review the normal rate to determine whether the thresholds should be adjusted to reflect overall improvement in the FHA portfolio.

Comment: HUD should conduct national Credit Watch evaluations for mortgagees that operate on a national basis. One commenter expressed concerns over HUD's conducting Credit Watch evaluations on a regional basis. The commenter suggested that for mortgagees operating on a national basis, HUD's review should consider the mortgagee's national default and claim rate, not just defaults and claims in one region.

HUD response. HUD's evaluation of mortgagees on the basis of HUD field office jurisdiction coincides with the manner in which FHA approves mortgagees to operate. This method of evaluation recognizes that local market conditions and events may contribute to higher defaults and claims.

C. Comments on Limitations on the Establishment of New Branches

Comment: Support for limitation on the establishment of new branch offices. Two commenters wrote that elimination of this loophole in the current regulations would strengthen the Credit Watch Termination Initiative and promote access to affordable loans for underserved communities.

HUD response. HUD appreciates the support expressed by the commenters. This interim rule adopts the proposed regulatory amendment without change.

Comment: Objection to the mandatory prohibition of new branch offices in the lending area covered by a proposed termination. One commenter wrote that before imposing such a prohibition, HUD should consider the mortgagee's national rate of defaults and claims, and the risk management process and internal controls that the mortgagee has implemented to manage the rate of defaults and claims at the local level.

HUD response. HUD's review analyzes the performance of every FHA approved mortgagee branch in each geographic area served by a HUD field office. HUD's regulations permit HUD to terminate the origination approval agreement with any mortgagee having a default and claim rate that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. Since HUD's Credit Watch Termination Initiative is based on statistics, a mortgagee's risk management processes and internal controls would not be considered prior to prohibiting a mortgagee from establishing new branches. Further, a mortgagee with significant risk management processes and internal controls will be less likely to receive a termination letter from HUD.

D. Comments on Inclusion of Underwriting Mortgagees

Comment: Support for inclusion of underwriting mortgagees. Two commenters wrote that the inclusion of underwriting mortgagees would promote increased access to affordable loans for underserved communities and strengthen the Credit Watch Termination Initiative.

HUD response. HUD appreciates the support expressed by the commenters. The inclusion of underwriting mortgagees will help to ensure that the performance of all mortgagees involved in FHA-insured mortgage transactions is properly evaluated. As noted above in this preamble, HUD has revised the rule to provide for separate regulatory language that specifically addresses underwriting mortgagees. HUD is issuing these changes on an interim basis and soliciting public comment for a period of 60 days. HUD will issue a follow-up final rule addressing the significant issues raised by the public commenters on the new language regarding underwriting mortgagees.

Comment: HUD should ''phase-in'' the Credit Watch termination thresholds for underwriting mortgagees. One commenter wrote that this would provide underwriting sponsors with time to implement the necessary changes to internal procedures and to educate their FHA correspondents of the pending changes. The commenter suggested that the thresholds be ''phased-in'' in a manner similar to that used by HUD for loan originators under Mortgagee Letter 99–15.

HUD response. HUD has not adopted the change requested by the commenter. However, HUD has revised the rule to clarify the requirements applicable to underwriting mortgagees and is requesting public comments on the new regulatory language. Further, prior to implementation of the regulatory changes made by this interim rule, HUD will issue guidance (such as a Mortgagee Letter) that will provide additional information to assist underwriting mortgagees in their compliance efforts.

Comment: HUD should take into consideration proactive measures taken by sponsors against unscrupulous loan correspondents. Two commenters wrote that underwriting sponsor mortgagees are removed from the mortgage origination process, and sometimes the victims of fraud perpetuated by unscrupulous loan correspondents. Accordingly, the commenters suggested that the rule should exclude default and claim performance numbers from the Credit Watch evaluation of sponsor mortgagees where the sponsor discovers and reports fraud committed by a correspondent, or where the sponsor has terminated the correspondent.

HUD response. Since HUD's Credit Watch Termination Initiative is based on statistical data, it would not be possible to exclude the default and claim numbers of sponsoring mortgagees where the sponsor discovers and reports fraud. However, HUD would consider these issues if the mortgagee received a termination letter and presented those issues to HUD.

Comment: HUD should provide guidance to sponsors on the evaluation and the performance of their loan correspondents using the Neighborhood Watch Early Warning System. One commenter made this recommendation. The commenter wrote that HUD should provide sponsors with formal descriptions of the factors taken into consideration when evaluating the performance of FHA correspondents, in order to assist the sponsors in proactively managing the performance of their correspondents. Further, the commenter recommended that HUD develop a system to notify sponsors of audit results, Credit Watch actions, and other actions taken against FHA correspondents. The commenter wrote that HUD could provide a web-link where actions against FHA

correspondents are outlined and updated monthly.

HUD response. As noted above, HUD has revised the rule to clarify the new requirements applicable to underwriting mortgagees and is requesting public comments on this new regulatory language. Further, HUD will issue guidance to assist mortgagees in the implementation of the new requirements established by this interim rule. In addition, HUD's Internet site at: *http://www.hud.gov/offices/hsg/sfh/lender/lendterm.cfm* includes a list of all lenders whose origination approval agreements have been terminated as a result of the Credit Watch Termination Initiative. HUD also notes that the causes and descriptions of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees are regularly published in the **Federal Register**. HUD suggests that sponsors also require that loan correspondents provide them with audit reports or other actions taken by HUD.

Comment: The rule should permit FHA to look at mitigating factors underlying the default and claim rates of an underwriting mortgagee. One commenter made this suggestion. The commenter wrote that a mortgagee operating in an urban area, or primarily serving first-time homebuyers, might experience a higher default and claim rate than a mortgagee operating in a suburban area or primarily working on refinances.

HUD response. HUD regulations permit a mortgagee to request an informal conference with the Deputy Assistant Secretary for Single Family Housing, or that official's designee, prior to the termination of its origination approval agreement. During the informal conference, the mortgagee has the opportunity to present HUD with explanations for its high default and claim rate. However, the mortgagee must be able to explain how the issues presented caused it to have a default and claim rate higher than the average for the area.

Comment: The rule should clarify how the Credit Watch Termination Initiative will apply to sponsoring mortgagees. One commenter made this suggestion. The commenter was unsure how the placement on Credit Watch status would affect an underwriting sponsor mortgagee. For example, the commenter asked whether a sponsor mortgagee terminated in a given HUD office area would be prohibited from underwriting loans in that area.

HUD response. HUD agrees with the commenters. As noted above, this rule clarifies the applicability of the new regulatory requirements to underwriting mortgagees. Specifically, HUD has revised the rule to provide for separate regulatory language to specifically address the applicability of the Credit Watch Termination Initiative to underwriting mortgagees. Because the new regulatory language was not part of the April 1, 2003, proposed rule, HUD is issuing these changes on an interim basis and is requesting public comments for a period of 60 days. HUD will issue a follow-up final rule addressing the significant issues raised by the commenters on the new language concerning underwriting mortgagees.

E. Comments Regarding Mortgage Origination Date

Comment: The Credit Watch Termination Initiative should continue to use the FHA endorsement date as the mortgage origination date. One commenter made this suggestion. The commenter wrote that since the primary purpose of the Credit Watch Termination Initiative is to mitigate risk to the FHA mortgage insurance fund, the date of FHA endorsement should be the starting point for evaluation of a mortgagee's performance. The commenter wrote that until a loan is endorsed, there is no risk to the FHA mortgage insurance fund and the mortgagee bears all of the risk.

HUD response. HUD has not adopted the suggestion made by the commenter. HUD currently evaluates performance based on loans that have been endorsed. HUD's regulations at § 203.255(b) require that lenders submit loans to HUD for endorsement within 60 days from loan closing. However, there may be a gap in time from the origination date (beginning amortization date) and the endorsement date based on the period of time after closing in which a mortgagee submits a loan for insurance to HUD. Additional time may elapse if the mortgagee has failed to provide HUD with all of the required documents. These time gaps have resulted in inconsistencies among the starting dates used by HUD to evaluate mortgagee loan performance. Using the beginning amortization date instead of the endorsement date provides a uniform starting date for HUD's analysis. Further, since the beginning amortization date is now used throughout HUD for loan performance analysis, this interim rule has the added benefit of conforming the Credit Watch procedures to other HUD loan performance evaluation procedures.

Comment: Support for use of the amortization date as the mortgage origination date. In contrast to the preceding comment, one commenter supported the use of the amortization date to determine the date of mortgage origination under the Credit Watch Termination Initiative. The commenter wrote that the amortization date is easier to track and would be a more consistent starting date between loans.

HUD response. Use of the amortization date provides a more uniform starting date for Credit Watch evaluations, and improve the accuracy of these evaluations. Accordingly, this interim rule adopts the proposed regulatory amendment without change.

F. Comments Regarding Informal Conference Prior to Termination

Comment: HUD should establish a more detailed process for reviewing mortgagee performance prior to termination. One commenter made this suggestion. The commenter suggested that a mortgagee should be permitted to initiate the formal review and present mitigating information, such as the number of loans in underserved areas and the number of loans that were streamlined refinances involving minimal underwriting. The commenter wrote that the mortgagee should also have the opportunity to present a risk-management plan pertaining to the branch, and that HUD should terminate the mortgagee only if the improvement plan is not met.

HUD response. HUD has decided not to revise the rule in response to this comment. HUD undertakes a comprehensive review of mortgagee performance prior to sending a proposed termination notice. For example, HUD analyzes a mortgagee's portfolio by insurance fund (*i.e.*, Mutual Mortgage, General, and Special Risk), and by census tract designation (*i.e.*, served, underserved and undesignated). HUD also evaluates the impact of streamline-refinanced loans for each mortgagee prior to issuing a proposed termination notice. HUD also notes that each mortgagee is required to have a quality control plan and to perform regular quality control reviews that will bring potential problems to its attention. In addition, mortgagees should use HUD's Neighborhood Watch Early Warning System to monitor the performance of their branches and take prompt corrective action before receipt of a proposed termination letter from HUD.

Comment: HUD should establish a process to allow the public to comment on the FHA lending performance of questionable mortgagees. One commenter made this suggestion, writing that community groups and neighborhood residents have first-hand knowledge of mortgagee operations that

the mortgagee will not volunteer in a process only involving HUD and the mortgagee. The commenter wrote that HUD should publicize any requests for an informal conference on HUD's Web site and invite community groups to comment during the conference. Further, the commenter advocated that HUD also solicit public comments as part of the reinstatement process for a mortgagee that has been terminated. The commenter suggested that HUD provide the public with the mortgagee's corrective action plan and require that the mortgagee meet with the public to discuss their comments on the plan.

HUD response. HUD's Credit Watch Termination Initiative is based on statistical data, rather than fact-finding. Soliciting the involvement of community groups in the informal conference process and in the reinstatement process would change the essence of Credit Watch Termination to more of a fact-finding initiative. However, if community groups are aware of concerns regarding FHA approved mortgagees, they should notify the quality assurance division directors in FHA's four Homeownership Centers (HOCs). HUD publishes a list of mortgagees that have had their origination approval agreements terminated in the **Federal Register** and on HUD's Internet site.

G. Comments Regarding the Definition of Underserved Area

Comment: Concerns about the definition of ''underserved area.'' One commenter wrote that defining the term ''underserved area'' through the use of census tracts would perpetuate abuses. The commenter wrote that a mortgagee that is the predominant lender in a census tract would never be penalized if the benchmark default rate used for determining possible termination is the default rate of the census tract in question.

HUD response. HUD has not revised the rule in response to this comment. HUD's data analysis of a mortgagee's performance by census tract involves aggregating the loans for all census tracts that are identified as being underserved, served, or undesignated within the jurisdiction of a HUD office. Mortgagee performance within specific census tracts is not analyzed.

Comment: HUD should not consider the servicing of underserved areas in evaluating a mortgagee's performance. One commenter wrote that under the current regulations, it is permissible for a mortgagee to have a default and claim rate higher than 200% of the normal rate, if the mortgagee primarily serves lower-income underserved areas. The commenter wrote that HUD's apparent tolerance of higher defaults rates for mortgagees doing business in underserved areas might perpetuate property flipping and other FHA program abuses leading to higher rates of default in these areas. To avoid this adverse outcome, the commenter recommended that HUD either: (1) Apply its default rates uniformly regardless of the neighborhoods served by the mortgagee; or (2) perform the Credit Watch analysis at a geographical level smaller than the HUD Field Office level. Under the second option, if a mortgagee primarily focused on the inner city, the default rate analysis would be performed on the level of the city, instead of the HUD Field Office level. The commenter wrote that since a HUD Field Office encompasses a number of metropolitan areas and rural parts of a state, a smaller geographical unit, such as a metropolitan area, a county and/or a city, may be a more appropriate comparison.

HUD response. HUD considers a mortgagee's default and claim rate by census tract designation (*i.e.*, underserved, served, and undesignated). Mortgagee Letter 99–15 further clarifies that if a mortgagee's rate of defaults and claims does not exceed 200% of the HUD field office's rate of defaults and claims in underserved census tracts, then the mortgagee's performance is acceptable in underserved tracts. Therefore, HUD does apply its default rates uniformly regardless of the census tract designation served by the mortgagee.

HUD's evaluation of mortgagee branch performance by HUD field office designation is consistent with the method used by FHA to approve mortgagees to operate. However, HUD will consider the issue of a lender's business being concentrated in a smaller area if presented by the mortgagee in response to a proposed termination notice.

IV. Small Business Concerns Related to Credit Watch Termination Initiative

With respect to termination of the mortgagee's origination approval agreement, or taking other appropriate enforcement action against a mortgagee, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small business concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], you will find the necessary comment forms at *http://www.sba.gov.ombudsman* or call 1–888–REG–FAIR (1–888–734–3247).

In accordance with its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD will work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. This rule makes several amendments to HUD's regulations for the FHA Credit Watch Termination Initiative. First, consistent with the goals of the Administration regarding the increased use of technology in government, the interim rule provides for a fully computerized Credit Watch notification process through use of the FHA Neighborhood Watch Early Warning System. This change will provide for a streamlined and more effective method of monitoring mortgagee performance and for notifying poor performing mortgagees that are in danger of having their origination approval agreements terminated by HUD. The change will not impose an undue burden on small entities, since it merely codifies existing HUD policy previously announced through a Mortgagee Letter. Further, the majority of mortgagees (small and large) participating in the FHA mortgage insurance programs currently have access to the FHA Internet Connection that is used to provide such notification.

The rule also removes the regulatory cap on the Credit Watch default and claim rates, and provides that a mortgagee will be considered to be on Credit Watch Status if it has a default and claim rate on insured mortgages that exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated. This revision will not impose a significant economic impact on small entities, since the entities that will be affected by this change are poorly performing mortgagees that are already subject to termination of their origination approval agreements.

The rule also prohibits a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch in the lending area covered by the proposed termination. The mortgagees to which this change will be applicable are those that already have been notified by HUD that their default and claim rates exceed an acceptable standard in specified geographic areas and they are at risk of having their FHA mortgage origination approvals terminated. The intent of this rulemaking is to close a loophole used by mortgagees to evade HUD's existing procedure for reviewing losses to the FHA mortgage insurance fund.

The interim rule also provides that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees. This amendment will ensure that the performance of all mortgagees involved in FHA-insured mortgage transactions is evaluated. To the extent that the change will have an economic impact on small underwriting mortgagees who are presently not covered by Credit Watch Termination, it will be as a result of actions taken by the mortgagees themselves—that is, failure to undertake the sound business practices necessary to maintain default and claim rates at an acceptable level.

The interim rule also provides that, for purposes of the Credit Watch Termination evaluation, the date of mortgage origination will be considered to be the date the loan transaction commences amortization, rather than the date of endorsement for FHA mortgage insurance. This change will not impose any economic burden on small mortgagees. Rather, the change will improve the accuracy of Credit Watch Termination evaluations by conforming HUD's definition of the mortgage origination date to the beginning amortization date used to report defaults. Finally, the interim rule will codify the existing definition of the term ''underserved area'' for purposes of Credit Watch Termination determinations. This amendment will merely codify existing policy and will, therefore, not impose any new economic burden on mortgagees.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

This interim rule will not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this interim rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number applicable to 24 CFR part 202 is 14.20.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 1. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 2. In § 202.3, revise paragraph (c)(2) and add paragraph (e) to read as follows:

§ 202.3 Approval status for lenders and mortgagees.

* * * * *

(c) * * *

(2) *Credit Watch Termination.* (i) *Scope and frequency of review.* The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office. HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Mortgagee Letter.

For this purpose, and for all purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same federal fiscal year in which its amortization commences. The Secretary may also review the insured mortgage performance of a mortgagee's branch offices individually and may terminate the authority of the branch or the authority of the mortgagee's overall operation.

(ii) *Credit Watch Status.* Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on insured mortgages originated, underwritten, or both, in an area which exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated.

(iii) *Notice of termination.* (A) *Notice of termination of origination approval agreement.* The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages.

(B) *Notice of termination of direct endorsement approval.* The Secretary may notify a mortgagee that its direct endorsement approval under 24 CFR part 203 will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages underwritten in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages. The termination of a mortgagee's direct endorsement approval pursuant to this section is separate and apart from the termination of a mortgagee's direct endorsement approval under 24 CFR part 203.

(C) *No need for prior action by Mortgagee Review Board.* The termination notices described in paragraphs (c)(2)(ii)(A) and (B) of this section may be given without prior action by the Mortgagee Review Board.

(D) *Underserved areas.* Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, as defined in 24 CFR 81.2, the Secretary may determine not to terminate the mortgagee's origination approval agreement and/or direct endorsement approval.

(iv) *Request for informal conference.* Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice.

(v) *Limitation on the establishment of new branches.* Upon receipt of a proposed termination notice of its origination approval agreement, the mortgagee shall not establish a new branch or new branches for the origination of FHA-insured mortgages in the area or areas that are covered by the proposed termination notice. As of January 18, 2005, a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either:

(A) The proposed termination notice is withdrawn or

(B) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with paragraph (e) of this section.

(vi) *Effects of termination.* (A) *Termination of origination approval agreement.* If a mortgagee's origination approval agreement is terminated, it may not originate single family insured mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(B) *Termination of direct endorsement approval.* If a mortgagee's direct endorsement approval is terminated, it may not underwrite single family insured mortgages for the area(s) identified in the termination notice, unless the direct endorsement approval is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(vii) *Rights and obligations in the event of termination.* Termination of the origination approval agreement and/or direct endorsement approval shall not affect:

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated or underwritten after the date of termination by the mortgagee shall be insured unless the mortgagee's origination approval agreement and/or direct endorsement approval is reinstated by the Secretary;

(B) The right of a mortgagee whose direct endorsement approval has been terminated to transfer cases to another mortgagee with direct endorsement approval for the area covered by the termination.

(C) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations, including servicing, associated with insured mortgages;

(D) A mortgagee's right to apply for reinstatement of the origination approval agreement and/or direct endorsement approval in accordance with paragraph (e) of this section; or

(E) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

* * * * *

(e) *Reinstatement.* (1) *General.* A mortgagee whose origination approval agreement and/or direct endorsement approval has been terminated under paragraph (c) of this section may apply for reinstatement if:

(i) The origination approval agreement and/or direct endorsement approval for the affected branch or branches has been terminated for at least six months; and

(ii) The mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

(2) *Application for reinstatement.* The mortgagee's application for reinstatement must:

(i) Be in a format prescribed by the Secretary and signed by the mortgagee;

(ii) Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and

(iii) Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in paragraph (e)(2)(ii) of this section, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

(3) *HUD action on reinstatement application.* The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

Dated: October 28, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 04–27536 Filed 12–16–04; 8:45 am]

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Friday,
December 17, 2004

Part VI

Department of Housing and Urban Development

24 CFR Part 200

Multifamily Accelerated Processing (MAP): MAP Lender Quality Assurance Enforcement; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4836–P–01; HUD–2004–0015]

RIN 2502–AI01

Multifamily Accelerated Processing (MAP): MAP Lender Quality Assurance Enforcement

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is publishing for comment the basis for, and procedures applicable to, enforcement actions under Multifamily Accelerated Processing (MAP), a form of ''fast-track processing'' that gives qualified lenders the option of preparing the applicable Federal Housing Administration (FHA) forms and doing preliminary underwriting for certain loan applications.

DATES: *Comment Due Date:* February 15, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov*; or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket*. Follow the link entitled View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Office of Housing, Room 6138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–1142 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

MAP Lender Quality Assurance Enforcement. Multifamily lenders that are approved MAP lenders and that process a multifamily mortgage loan using MAP procedures do so with the understanding and agreement that their loan processing actions and decisions are subject to HUD review. By allowing a MAP lender to prepare much of the documentation for a loan submission for FHA multifamily mortgage insurance, HUD places confidence in the lender's integrity and competence. If, in the process of performing this function, the lender should place the FHA multifamily mortgage insurance portfolio at risk, HUD must have (1) an accelerated process for review of the lender's actions, and (2) the means to act expeditiously to correct violations. This accelerated review process and mechanism for HUD action is referred to as ''MAP Lender Quality Assurance Enforcement.'' The proposed rule establishes in 24 CFR part 200, a new subpart Y, consisting of §§ 200.1500 through 200.1545, which presents the requirements and procedures that constitute MAP Lender Quality Assurance Enforcement.

To accomplish quality assurance of a lender's MAP loan processing actions, the Directors of HUD field offices (Hub/Program Centers) and the Director of the Office of Multifamily Development initiate discussions with MAP lenders regarding concerns with respect to a MAP lender's actions. These discussions may lead to the imposition of a sanction by HUD, including a warning letter, a Limited Denial of Participation (LDP) action against the lender or an employee or contract person of the MAP lender, referral to the Office of the Inspector General, referral to the MAP Lender Review Board, or referral to the Mortgagee Review Board. Sanctions involving MAP probation, suspension or termination will generally be the result of a recommendation by the Director of the Office of Multifamily Development, HUD Headquarters, or Hub Director to the MAP Lender Review Board.

The identification of the specific HUD staff and officials who may initiate and participate in the procedures provided in this rule is a matter of HUD's organization and HUD's own internal practices or procedures, and may change from time to time. Therefore, although this preamble may discuss actions taken by specific HUD officials, the proposed rule text more generally refers to actions taken by ''HUD'' to avoid the necessity of amending the rule whenever there is a change in an official's title.

MAP Lender Review Board. The MAP Lender Review Board (Board) is to consist of three HUD Multifamily Housing officials designated by the Assistant Secretary for Housing or his designee. The Board is authorized to take action against any MAP lender for reasons provided in § 200.1530 of this proposed rule entitled, ''Bases for sanctioning a MAP lender.'' Actions include: warning letters, probation, suspension or termination of MAP lender privileges. Decisions will be by majority vote. Board members are expected to possess a sound knowledge of multifamily housing origination, underwriting and construction loan procedures. HUD's Office of Inspector General (OIG) and Office of General Counsel (OGC) will each designate a non-voting advisor to the Board. Further, the Board is authorized to refer MAP lenders to OIG and may refer the staff, or the contractors of the MAP lender, to the Deputy Assistant Secretary (DAS) for Multifamily Housing for imposition of an LDP, as defined in 24 CFR 24.105. The general procedures governing the Board are provided in § 200.1535 of this rule.

MAP Warning Letters. HUD Multifamily Hub and Program Center Directors, the Director of Multifamily Development, and the Board may issue MAP warning letters for minor offenses as well as for more serious offenses. Warning letters must specify the MAP violations and may direct the taking of corrective actions. In addition, these HUD officials will issue MAP warning letters to MAP lenders for violations by a MAP lender's third party contractor. A MAP warning letter does not suspend or terminate a lender's MAP privileges, but it may be used as evidence in a subsequent action which results in the imposition of probation, suspension, or termination. The issuance of a MAP warning letter is not, however, a prerequisite for these more serious actions. Section 200.1505 of this rule addresses HUD's use of warning letters.

MAP Probation. The Board may place a lender on MAP probation after following procedures that give notice and a pre-deprivation conference to the MAP lender. MAP probation is limited to the time to make the corrective changes and/or improvements required by the Board. When the MAP lender has taken all corrective actions or completed the improvements directed by the Board, the MAP lender shall notify the Board. Once the Board is satisfied that the corrective actions have occurred, the

probation period shall end. Failure on the part of the MAP lender to take responsible corrective action in a timely manner to satisfy the charges that resulted in the probation creates the potential for a recommendation to the Board of either MAP suspension or termination. In such instances, and to the extent practical, the Board members who served on the original Board bringing the original charges should comprise the Board that hears the subsequent charges.

MAP probation covers all MAP lender activity regardless of geographic location. HUD shall issue the notice of MAP probation in writing. During MAP probation, the MAP lender's corporate name shall be removed from the HUD Web site listing approved MAP lenders, but the corporate name shall be returned to the Web site once MAP probation has been lifted. During MAP probation, a MAP lender may not submit, and the HUD field office may not accept, materials for a new MAP pre-application or firm commitment application after the close of business on the date of the probation letter. However, a MAP lender placed on probation may continue to process applications submitted to the HUD Hub/Program Center prior to the close of business on the date of the probation letter. Placing a MAP lender on MAP probation does not impact the authority of the subject lender from receiving, or continuing to process, non-MAP mortgage loans. MAP probation is covered by § 200.1510 of this rule.

Suspension of MAP Privileges. The Board may suspend a MAP lender from MAP activity for serious offenses after following procedures that give notice and a pre-deprivation conference to the MAP lender. Suspension is time limited to no more than one year, except where conditions are imposed. Any conditions that may be imposed by MAP probation may also be applied to MAP suspension. If both a time limit and corrective conditions are imposed, MAP suspension shall terminate following (1) the expiration of the time limit, (2) the MAP lender's submission to the Board of a certification of compliance with any conditions imposed, and (3) the Board's notification to the MAP lender that it has received the certification of compliance and is satisfied that the corrective actions have occurred. Suspension of MAP privileges carries the same lender processing restrictions as MAP probation, cited above. Suspension is nationwide in effect. Section 200.1515 of this rule addresses MAP suspension.

Termination of MAP Privileges. The Board may terminate a lender's eligibility for MAP for poor performance, among other reasons after following procedures that give notice and a pre-deprivation conference to the MAP lender. An application for reinstatement of MAP authority following notification of termination may not be submitted until 12 months have passed from the date of termination. Requirements for reinstatement shall be similar to the initial qualification for MAP lender approval stated in Chapter 2 of the MAP Guide with the additional proof that the conditions that resulted in the termination have been resolved to the satisfaction of HUD. MAP termination affects all MAP processing by the lender nationwide. HUD will not endorse any MAP loan processed by the terminated lender unless a firm commitment was issued prior to the date of termination. MAP applications and pre-applications in process should be transferred either to the traditional application processing (TAP) procedure or to another MAP lender. In either case, the loan must be reprocessed in its entirety.

In certain circumstances, termination of MAP lender status may also occur without action by the Board. Failure by a MAP lender to maintain its status as an FHA approved Lender results in immediate removal as an approved MAP lender. In addition, MAP lenders must maintain a minimum level of MAP lender activity. This rule would require all MAP lenders to submit either a pre-application package or firm commitment application at least once every 12 months. Failure to maintain this minimum level of MAP activity will subject the lender to removal from the MAP program by the Office of Multifamily Development. Notification will be given to the MAP lender prior to termination for violation of this minimum level of activity requirement. When a MAP lender loses its MAP lender status as a result of failure to meet and maintain the minimum level of MAP activity, the lenders' status to process using TAP is unaffected. MAP lenders who have their MAP status rescinded for inactivity may reapply for MAP lender approval to commence one year from the effective date of having their approved MAP lender status terminated. Termination of MAP lenders is addressed in § 200.1520 of the rule.

Settlement Agreements. The Director of HUD's Office of Multifamily Development may enter into discussions with a MAP lender leading to a negotiated settlement agreement between HUD and the MAP lender before or after the issuance of a warning letter or referral to the Board. For example, discussions may result in a settlement agreement under which the MAP lender agrees to implement or revise a quality control plan, in lieu of being referred to the Board. When these discussions occur following a referral to the Board for possible disciplinary action, any settlement agreement reached is subject to approval by the Board. The provisions for settlement agreements appear at § 200.1525 of the rule.

Lender Notification. Prior to the MAP Board reviewing any matter for consideration of a sanction against a MAP lender, the Board Chairperson shall notify the subject MAP lender. This notification shall be in writing stating the specific alleged violation(s) along with the citation of the HUD requirements that are the subject of the charge. The MAP lender shall be provided an opportunity to meet informally with the Board, through a conference call, in person, or by teleconference video, using HUD facilities and/or to present in writing any relevant information. The MAP lender shall also be provided an opportunity to respond in writing to the Board regarding the alleged violation prior to any meeting. The MAP Lender Review Board procedures are included in § 200.1535.

The Review Board shall have the power, however, to issue a notice of action to terminate a MAP lender, or to place a MAP lender on probation or suspension without advance notice to the MAP lender in those instances where the Board believes there exists a need to protect the financial interest of the government from imminent harm. In all such instances, the Board shall notify the lender of the Board's decision promptly giving the reasons for the decision. The lender shall have the right to submit materials to the Board and to appear before the Board to seek prompt reconsideration of the Board's decision. These imminent harm provisions appear at § 200.1540.

Appeals. When the Board imposes a sanction of probation, suspension or termination against a MAP lender, the lender shall have the option of requesting an informal conference with a designated appeals official designated by the Assistant Secretary for Housing. The designated appeals official will not be a member of the Board involved in the original sanction decision. If the appeals official overturns the Board's decision, on probation, suspension or termination, the lender shall return immediately to active status as a MAP lender. Participation in the appeals process is not a prerequisite for the filing of an action for judicial review

under the Administrative Procedures Act. The appeals procedures are located in § 200.1545 of this rule.

II. Issues Highlighted for Public Comment

HUD is specifically seeking comment on whether quantitative measures, such as a lender's frequency or severity of claims, exist which may serve as a basis for sanctioning MAP lenders, and if so, what those quantitative measures may be. In the current proposed rule, HUD lists numerous qualitative measures that may serve as the basis of sanctions, but does not include quantitative measures. HUD is also particularly interested in obtaining public comment on additional qualitative measures that might serve as the basis for sanctions and whether the MAP Lender Quality Assurance Enforcement process may be made less burdensome, while still providing MAP lenders the opportunity to respond adequately to a notice of violation and to participate in the resolution of problems.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the executive order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule provides clear, uniform, expeditious, and equitable requirements and procedures to permit HUD to take enforcement actions, correct MAP violations, and protect the financial interests of the government. As such, the rule results in an industrywide and governmental benefit in that it clarifies the terms of the relationship between HUD and MAP lenders.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

With respect to taking appropriate enforcement action against a MAP lender, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (referred to as ''SBREFA'') requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its notice describing HUD's actions on the implementation of SBREFA, which was published on May 21, 1998 (63 FR 28214), HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.134.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. A new subpart Y is added to read as follows:

Subpart Y—Multifamily Accelerated Processing (MAP): MAP Lender Quality Assurance Enforcement

Sec.
200.1500 Sanctions against a MAP lender.
200.1505 Warning letter.
200.1510 Probation.
200.1515 Suspension of MAP privileges.
200.1520 Termination of MAP privileges.
200.1525 Settlement agreements.
200.1530 Bases for sanctioning a MAP lender.
200.1535 MAP Lender Review Board.
200.1540 Imminent harm notice of action.
200.1545 Appeals of MAP Lender Review Board decisions.

§ 200.1500 Sanctions against a MAP lender.

(a) In addition to any other legal remedy available to HUD, HUD may take the following actions with respect to a MAP lender:

(1) Warning letter;

(2) Probation;

(3) Suspension;

(4) Termination;

(5) Limited Denial of Participation (LDP);

(6) Referral to the Mortgagee Review Board; and

(7) Referral to the Office of Inspector General.

(b) The actions listed in paragraphs (a)(1) through (a)(4) of this section are carried out in accordance with the requirements of this subpart. An LDP is a sanction applied in accordance with subpart G of 24 CFR part 24 to participants in loan transactions other than FHA-insured lenders. The Mortgagee Review Board procedures are found at 24 CFR part 25.

§ 200.1505 Warning letter.

(a) *In general.* HUD may issue a warning letter, which specifies problems or violations identified by HUD, to a MAP lender.

(b) *Effect of warning letter.* The warning letter:

(1) Does not suspend a lender's MAP privileges;

(2) May impose a higher level of review of the lender's underwriting by HUD;

(3) May direct the taking of a corrective action; and

(4) May require a meeting in a designated HUD office with the principal owners or officers, or both, of the MAP lender to discuss the specified problems and violations, and possible corrective actions.

(c) *Relationship to other sanctions.* The issuance of a warning letter is not subject to the MAP Lender Review Board procedures in accordance with § 200.1535, and is not a prerequisite to the probation, or suspension, or termination of MAP privileges.

§ 200.1510 Probation.

(a) *In general.* Only the MAP Lender Review Board (or Board) may place a lender on probation, in accordance with the procedures of § 200.1535.

(b) *Effect of probation.* (1) Probation is intended to be corrective in nature and not punitive. As a result, release from probation is conditioned upon the lender meeting a specific requirement or requirements, such as replacement of a staff member. A lender's failure to take prompt corrective action after being placed on probation may be the basis for a recommendation of either suspension or termination. Any such recommendation shall, when possible, go to a MAP Lender Review Board composed of the same members who issued the original probation.

(2) During the probation period, a MAP lender:

(i) Shall be removed from the MAP-Approved Lender list posted on HUD's Web site;

(ii) May not submit, and HUD may not accept, materials after the close of business of the date of the probation letter for a new application under MAP for multifamily mortgage insurance from HUD; and

(iii) May continue to process any existing application for multifamily mortgage insurance submitted to a Multifamily Hub or Program Center before the date of the probation letter.

(3) The MAP Lender Review Board may impose a higher level of review of the lender's underwriting by HUD;

(4) Probation is nationwide in effect.

(c) *Duration of probation.* (1) Probation continues until all specific corrective actions required by the MAP Lender Review Board (for example, exclusion of a specific staff member from work on MAP loans) are taken by the MAP lender. When all corrective actions have been taken, the MAP lender shall notify the Board. Once the Board is satisfied that the corrective actions have occurred, the probation period shall end.

(2) A false statement that corrective action has been taken constitutes a false certification and may constitute a violation of 18 U.S.C. 1001.

(3) When probation is lifted, the lender's name shall be promptly reinstated on the MAP-Approved Lender list posted on HUD's Web site.

§ 200.1515 Suspension of MAP privileges.

(a) *In general.* Only the MAP Lender Review Board may suspend a lender's eligibility for MAP, in accordance with the procedures of § 200.1535.

(b) *Effect of suspension.* (1) A suspension may impose any conditions that may be imposed by probation.

(2) During the suspension period a MAP lender:

(i) Shall be removed from the MAP-approved lender list posted on HUD's Web site;

(ii) May not submit, and the HUD field office may not accept, materials after the close of business of the date of the suspension letter for a new application for multifamily mortgage insurance from HUD; and

(iii) May continue to process any existing application for multifamily mortgage insurance submitted to a Multifamily Hub or Program Center before the date of the suspension letter.

(3) The MAP Lender Review Board may impose a higher level of review of the lender's underwriting by HUD;

(4) Suspension is nationwide in effect.

(c) *Duration of suspension.* (1) Suspension may not exceed 12 months, except where conditions are imposed. If both a time period and conditions are imposed, a suspension shall terminate only when:

(i) The time period of the suspension has expired;

(ii) The MAP lender has submitted a certification of compliance with those conditions to the Board; and

(iii) The Board has notified the MAP lender it has received the certification of compliance and is satisfied that the corrective actions have occurred.

(2) When suspension is lifted, the lender's name shall be promptly reinstated on the MAP-Approved Lender list posted on HUD's Web site.

§ 200.1520 Termination of MAP privileges.

(a) *In general.* Except as provided in paragraph (b) of this section, only the MAP Lender Review Board may terminate a lender's MAP privileges, in accordance with the procedures of § 200.1535.

(b) *Administrative termination.* HUD will notify a lender of immediate termination of MAP privileges when either of the following circumstances is present:

(1) Failure by the MAP lender to maintain its status as an FHA-approved lender; or

(2) Failure by the MAP lender to maintain a minimum level of MAP lender activity, as evidenced by failure to submit either a pre-application package or firm commitment application at least once every 12 months.

(c) *Effect of termination.* (1) The terminated lender shall be removed

from the MAP-Approved Lender list on HUD's Web site.

(2) A terminated lender may not submit, and the HUD field office may not accept, materials after the close of business of the date of the termination letter for new multifamily mortgage insurance from HUD.

(3) Any MAP pre-application or MAP application in process may no longer be processed under MAP by the terminated Lender. The lender will either:

(i) Immediately transfer the transaction to the traditional application processing (TAP) procedure. HUD will completely reprocess all stages of the transaction; or

(ii) Immediately transfer the project to a new MAP lender. The new MAP lender must completely reprocess all stages of the transaction. At no time can the new MAP lender assign the pre-application, the firm application, the mortgage insurance commitment, or the insured construction loan back to the original MAP lender.

(4) HUD will not endorse any MAP loan processed by the terminated lender unless a firm commitment was issued before the date of termination.

(i) Firm commitments involving new construction or substantial rehabilitation must be immediately transferred to a new MAP lender. At no time can the new MAP lender assign the firm mortgage insurance commitment, or the insured construction loan, back to the original MAP lender.

(ii) Firm commitments issued for Section 223(f) projects may be transferred before final endorsement to any approved FHA lender or kept in the lender's portfolio.

(iii) For those construction loans that have been initially endorsed, the MAP lender will lose its MAP privileges for construction loan administration. HUD will assume all the construction loan administration duties it normally performs for TAP processing.

(iv) The original lender may service a transferred loan once it is finally endorsed.

(5) Termination is nationwide in effect.

(6) When a MAP lender loses its MAP lender status as a result of termination, the Lender's status to process transactions using TAP is unaffected, provided that the Lender has maintained its status as an FHA-approved multifamily lender.

(d) *Reinstatement.* An application for reinstatement of MAP authority may not be made until at least 12 months after the date of termination. The requirements for reinstatement shall be the same as for initial qualification, and the applicant must show that the problems that led to termination have been resolved.

§ 200.1525 Settlement agreements.

(a) HUD staff, as authorized, may negotiate a settlement agreement with a MAP lender before or after the issuance of a warning letter or referral to the MAP Lender Review Board. Once a matter has been referred to the MAP Lender Review Board, only the Board may approve a settlement agreement.

(b) Settlement agreements may provide for:

(1) Cessation of any violation;

(2) Correction or mitigation of the effects of any violation;

(3) Removal of lender staff from positions involving origination, underwriting and/or construction loan administration;

(4) Actions to collect sums of money wrongfully or incorrectly paid by the MAP lender to a third party;

(5) Implementation or revision of a quality control plan or other corrective measure acceptable to HUD; and

(6) Modification of the duration or provisions of any administrative sanction deemed to be appropriate by HUD.

(c) A MAP lender's compliance with a settlement agreement is evidenced by the lender certifying its compliance with the conditions of the agreement, and HUD's determination that the lender is in compliance with the conditions of the agreement.

(d) Failure by a MAP lender to comply with a settlement agreement may result in a probation, or suspension, or termination of MAP privileges, or referral to the Mortgagee Review Board.

§ 200.1530 Bases for sanctioning a MAP lender.

It is HUD policy that approved MAP lenders are expected to comply at all times with HUD's underwriting and construction loan administration requirements and not to take any action that presents a risk to HUD's insurance funds. A MAP lender's improper underwriting and construction loan administration activities may lead to a warning letter or other sanction from HUD. Examples of such activities include, but are not limited to, the following:

(a) *Minor offenses that may be the basis for a warning letter include:*

(1) Failure to provide required exhibits or the submission of incomplete or inaccurate exhibits. Although the MAP lender will be permitted to correct minor errors or provide additional information, substantial inaccuracies or lack of significant information will result in a return of the application and retention of any fee collected;

(2) Repeated failure to complete processing to firm commitment unrelated to an underwriting analysis that demonstrates that the process should not proceed to firm commitment;

(3) Preparation of an underwriting summary that is not supported by the appropriate documentation and analysis;

(4) Failure to notify the HUD processing office promptly of changes in the mortgage loan application for a firm commitment submitted, such as changes in rents, numbers of units, or gross project area;

(5) Failure to meet MAP closing requirements or construction loan administration requirements;

(6) Business practices that do not conform to those generally accepted by prudent lenders or that show irresponsibility; and

(7) Failure to cooperate with a Lender Qualifications and Monitoring Division review by HUD.

(b) *Serious offenses that might be a basis for a warning letter or probation, suspension, or termination include:*

(1) Receipt of multiple warning letters over any one-year period. In determining which sanction to pursue as a result of prior warning letters, HUD will consider the facts and circumstances surrounding those warning letters and the corrective actions, if any, undertaken by the lender;

(2) Fraud or material misrepresentation in the lender's participation in FHA multifamily programs;

(3) Lender collusion with, or influence upon, third party contractors to modify reports affecting the contractor's independent evaluation;

(4) A violation of MAP procedures by a third party contractor, which the MAP lender knew, or should have known, was occurring and which, if performed by the MAP lender itself, would constitute a ground for a sanction under this chapter;

(5) Evidence that a lender's inadequate or inaccurate underwriting was a cause for assignment of an FHA-insured mortgage and claim for insurance benefits to HUD;

(6) Identity-of-interest violations as defined by Chapter 2 of the MAP Guide;

(7) Payment by, or receipt of a payment by, a MAP lender of any kickback or other consideration, directly or indirectly, which would affect the lender's independent evaluation, or represent a conflict of interest, in

connection with any FHA-insured mortgage transaction;

(8) Failure to comply with any agreement, certification, undertaking, or condition of approval listed in a MAP lender's application for approval;

(9) Noncompliance with any requirement or directive of the MAP Lender Review Board;

(10) Violation of the requirements of any contract with HUD, or violation of the requirements in any statute or regulation;

(11) Submission of false information, or a false certification, to HUD in connection with any MAP mortgage transaction;

(12) Failure of a MAP lender to respond in a timely manner to inquiries from the MAP Lender Review Board in accordance with this subpart;

(13) Indictment or conviction of a MAP lender or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity, or ability of the lender to participate in the MAP initiative;

(14) Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to an LDP under 24 CFR part 24, or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(15) Employing or retaining an employee who is not an officer, partner, director or principal, and who is or will be working on HUD–FHA program matters, at a time when that person was suspended, debarred, ineligible, or subject to an LDP under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

(16) Failure to cooperate with an audit or investigation by the HUD Office of Inspector General or an inquiry by HUD into the conduct of the MAP lender's FHA-insured loans; and

(17) Failure to fund MAP mortgage loans or any misuse of mortgage loan proceeds.

§ 200.1535 MAP Lender Review Board.

(a) *Authority.* (1) *Sanctions.* The MAP Lender Review Board (or Board) is authorized to impose appropriate sanctions on a MAP lender after:

(i) Conducting an impartial review of all information and documentation submitted to the Board; and

(ii) Making factual determinations that there has been a violation of MAP requirements.

(2) *Settlement agreements.* The Board is authorized to approve settlement agreements in accordance with § 200.1525 of any matter pending before the Board.

(3) *Extensions.* The Board is authorized to extend, on its own initiative or for good cause at the written request of a MAP lender, any time limit otherwise applicable under this section. Notice of any such extension shall be timely provided to a MAP lender.

(b) *Notice of violation.* Before the Board reviews a matter for consideration of a sanction, the Board's Chairman will issue written notice of violation to the MAP lender's contact person as listed on the Multifamily MAP Web site. The notice is sent by overnight delivery and must be signed for by an employee of the MAP lender upon receipt. The notice:

(1) Informs the lender that the Board is considering a specific violation;

(2) States the specific facts alleged concerning the violation, with citation to the HUD requirements that have been violated;

(3) Includes as attachments copies of all documents evidencing the violation and upon which the Board will rely in reaching a decision;

(4) Provides the lender with the opportunity to request in writing, within 15 business days after the date of the issuance of the notice, to:

(i) Meet for an informal conference with the Board in person or by video conference using HUD facilities at Headquarters or one of HUD's field offices; and

(ii) Present written evidence and any other relevant information at the conference;

(5) Requires a written response to be submitted to the Board by a date specified within the notice;

(6) Provides the street address, e-mail address, or facsimile (fax) number for purposes of receiving the lender's request for an informal conference and written response; and

(7) Is made part of the administrative record of the Board's decision of the matter.

(c) *Response to notice.* (1) The MAP lender's written response required by the notice of violation may not exceed 15 double-spaced typewritten pages and must include an executive summary, a statement of the facts, an argument and a conclusion. The response and supporting documentation must be submitted in triplicate.

(2) Failure to respond by the dates specified within the notice may result in a determination by the Board without conducting an informal conference with the MAP lender and without consideration of any written response submitted by the MAP lender.

(d) *Informal conference.* (1) The Board will schedule an informal conference and notify the lender of the time and place of the conference, if one is requested.

(2) At the conference, the Board will meet with the lender or its designees and HUD staff to review documentary evidence and presentations by both sides.

(3) Oral statements made at the informal meeting will not be considered as part of the administrative record of the Board's determination, except:

(i) The Board may note for the record and consider voluntary admissions, made by the lender or a representative of the lender, of any element of the violation charged;

(ii) Statements substantiated by any additional documents or evidence submitted in accordance with paragraphs (e)(1) or (e)(3) of this section; and

(iii) Transcripts prepared and submitted in accordance with paragraph (e)(2) of this section.

(e) *Post-conference submissions.* (1) Any additional documents, evidence, or written arguments relevant to the notice of violation and the informal conference that the lender or HUD staff wish to present to the Board, must be presented within five business days after date of the informal conference.

(2) No transcript of the informal conference will be made, unless the lender elects to have a transcript made by a certified court reporter at its own expense. If the lender elects to have a transcript made, the lender must provide three copies of the transcript to HUD within five business days after the date of the informal conference. The transcript will not become a part of the administrative record of the Board's decision unless it is submitted within the required five-day period frame.

(3) Following the receipt of any post-conference submissions, the Board may request or permit additional documents or evidence to be submitted within a period set by the Board for inclusion in the administrative record.

(f) *Board action.* (1) The Board will confer to consider the evidence included in the administrative record and make a final decision concerning the matter. Any record of confidential communications between and among Board members at this stage of the proceedings is privileged from disclosure and will not be regarded as a part of the administrative record of any matter.

(2) In determining what action is appropriate concerning the matter, the Board considers, among other factors:

(i) The seriousness and the extent of the violation;

(ii) Any history of prior offenses;

(iii) Deterrence of future violations;

(iv) Any inappropriate benefits received by the MAP lender;

(v) Potential inappropriate benefit to other persons; and

(vi) Any mitigating factors.

(3) Board decisions will be determined by majority vote.

(g) *Notice of action.* (1) The Board will issue its final decision within 10 business days after the date of the informal conference or the expiration of any period allowed for the submission of documents and evidence, whichever is later.

(2) The Board will notify the MAP lender of its final decision by overnight delivery of a written notice of the final decision to the MAP lender's contact person as listed on the Multifamily MAP Web site. The Board will also notify HUD field offices of its final decision.

(3) The final decision finds that a violation either does, or does not, exist. If a violation is found to exist, the final decision:

(i) States the violation and any factual findings of the Board;

(ii) States the nature and duration of the sanction;

(iii) Informs the MAP lender of its right to an appeal conference and identifies the appeals official to be contacted; and

(iv) May add to or modify the violation as stated in the initial notice of violation.

§ 200.1540 Imminent harm notice of action.

The Board may issue an imminent harm notice of action to terminate a MAP lender, or to place a MAP lender on probation or suspension without advance notice to the MAP lender in those instances where the Board determines there exists a need to protect the financial interest of HUD from imminent harm. In all such instances, the Board shall notify the lender of the Board's decision promptly and give the reasons for the decision in accordance with § 200.1535(g)(2) and (3). The lender shall have the right to submit materials to the Board and to appear before the Board to seek prompt reconsideration of the Board's decision in accordance with the procedures of § 200.1535.

§ 200.1545 Appeals of MAP Lender Review Board decisions.

(a) *Request for appeal.* Whenever the Board imposes a sanction of probation, suspension or termination against a MAP lender, the lender may request, in writing, an appeal conference before the appeals official. The MAP lender must deliver the written request for an appeal to the appeals official within 10 business days after the date noted on the notice of action or the right to an appeal is deemed waived. Participation in the appeal process under this section is not a prerequisite to filing an action for judicial review under the Administrative Procedure Act.

(b) *Appeals Official.* The appeals official must be an individual who has not been previously involved with the proceedings or settlement discussions at issue.

(c) *Notice of action in effect.* The notice of action issued by the Board remains in effect while the appeal is pending.

(d) *Scheduling of appeal.* (1) Upon receipt of the request for an appeal, the appeals official will promptly notify the MAP lender of the time and place of the appeal conference. The appeal conference will be held within 10 business days after receipt of the MAP lender's appeal request, except as provided in paragraph (d)(2) of this section.

(2) A MAP lender may request, and the appeals official may agree, to have an appeal conference held more than 10, but not more than 30 business days after the date the lender requests an appeal.

(e) *Scope of appeal.* The appeals official may consider information included in the administrative record and any new information presented at the appeal conference that is substantiated in accordance with paragraph (f) of this section. In addition, the appeals official may consider voluntary admissions by the lender or a representative of the lender of any element of the violation charged.

(f) *Additional documents.* (1) *Transcript.* No transcript of the appeal conference will be made, unless the MAP lender elects to have a transcript made by a certified court reporter at its own expense. If the lender elects to have a transcript made, it must provide three copies of the transcript to the appeals official within five business days after the date of the appeal conference.

(2) *Other documents.* Any additional, relevant documents or written arguments that the MAP lender wishes to present to the appeals official must be presented within five business days after the date of the appeal conference.

(g) *Determination of appeal.* Within 10 business days after the date of the appeal conference or the expiration of the period allowed for the submission of documents and written arguments, whichever is later, the appeals official will make a written determination to confirm, modify, or overturn the Board's decision and notice of action. If the appeals official overturns the Board's decision, the lender shall immediately return to an active status as a MAP lender and the written determination to overturn will be posted on HUD's MAP Web site.

Dated: November 23, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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S. 2486/P.L. 108–454

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To extend the authority of the United States District Court for the Southern District of Iowa to hold court in Rock Island, Illinois. (Dec. 10, 2004; 118 Stat. 3628)

S. 3014/P.L. 108–456

To reauthorize the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, and for other purposes. (Dec. 10, 2004; 118 Stat. 3630)

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