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

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. FV01–930–3 IFR]**

## Tart Cherries Grown in the States of Michigan, et al.; Modifications to the Rules and Regulations Under the Tart Cherry Marketing Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule increases the Cherry Industry Administrative Board (Board) membership, and establishes procedures under the rules and regulations of the Federal tart cherry marketing order (order) for handlers who want to post surety bonds to temporarily defer maintaining an inventory reserve for tart cherries. The Board recommended these actions to improve order administration, provide handlers more marketing flexibility, and change Board representation as required. The order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin and is administered locally by the Board.

**DATES:** Effective July 11, 2001; comments received by September 10, 2001 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax (202) 720–8938 or E-mail: *moabdocket.clerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department or USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the Board's membership, and establishes procedures under the order's rules and regulations for handlers to post surety bonds to temporarily defer maintaining an inventory reserve for tart cherries.

The Board recommended that its membership be increased by one member for District 8, the State of Washington. Currently, § 930.20(e) provides that if Districts 5, 6, 8, or 9 become subject to volume regulation under § 930.52(a), the Board shall be reestablished by the Secretary to provide such District(s) with at least one grower and one handler seat on the Board. At the September 8, 2000, meeting it was determined that the State of Washington's annual average production of cherries over the prior three years has exceeded the 15 million pound threshold required for districts to become regulated. As such, if volume regulation is implemented for the 2001–2002 crop year, handlers handling tart cherries grown in Washington will be subject to volume regulation. Therefore, the Board should be increased from 18 to 19 members which would allow two members instead of one to represent District 8—Washington. The new member and alternate would be nominated and selected in the same manner as other Board members and alternates. With the change for District 8, Washington, District representation on the Board will be as follows:

| District | Grower members | Handler members |
|---|---|---|
| 1 | 2 | 2 |
| 2 | 1 | 2 |
| 3 | 1 | 1 |
| 4 | 1 | 1 |
| 5 | 1 | or 1 |
| 6 | 1 | or 1 |
| 7 | 1 | 1 |
| 8 | 1 | 1 |

| District | Grower members | Handler members |
|---|---|---|
| 9 ..... | 1 | or 1 |

The Board also recommended that procedures be established for handlers to post surety bonds to temporarily defer maintaining inventory reserves. Section 930.63 provides in part that handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by a handler as long as it is not later than 60 days prior to the end of the crop year. Pursuant to the Board's recommendation, handlers would be required to post surety bonds at two times the market value of the quantity of cherries for which the holding obligation is being deferred. For example, if the inventory reserve product to be marketed is tart cherry juice concentrate and the market value for the concentrate is $20,000, the handler has to post a surety bond of $40,000 in order to temporarily defer his/her inventory reserve obligation.

The deferment would be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the acceptable deferred date that handler will have fully satisfied the restricted percentage amount required by § 930.51. If a handler fails to satisfy that obligation with cherries in reserve by the date requested by the handler, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill the handler's obligation. Handlers not posting surety bonds to temporarily defer maintaining an inventory reserve shall keep inventory reserves in compliance with applicable order regulations.

**The Regulatory Flexibility Act and Effects on Small Businesses**

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers are small entities.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin.

Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 from 28,400.

The impact of this rule would be beneficial to growers and handlers. The recommendation to add another member and alternate is consistent with the order requirements and will provide greater participation on the Board by the industry. Adding procedures for handlers to temporarily defer their inventory reserve holding obligations through written undertakings secured by surety bonds is also consistent with order provisions and will provide handlers with flexibility in their day-to-day processing, packing, and marketing operations.

One alternative to these actions would be to continue the status quo. However, the order requires a change in Board membership, following established nomination procedures, upon a district meeting the volume regulation threshold and becoming regulated. The order also provides handlers the authority to post surety bonds. Recommending procedures for handlers to implement this authority is another tool the Board hopes to use to facilitate the orderly marketing of tart cherries.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this action have been previously approved by OMB and assigned OMB Number 0581–0177. Handlers taking advantage of the bonding option would execute an application which would take about an hour to complete. The total burden hours approved, 4,649 hours, will be adequate to cover this added burden.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were

invited to attend them and participate in Board deliberations. Like all Board meetings, the September 2000 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of these actions on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT SECTION.**

This rule invites comments on increasing the Board membership and adding rules and regulations to implement the use of surety bonds to temporarily defer maintaining an inventory reserve for tart cherries. All comments received will be considered in finalizing this interim final rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The increase in Board membership is required by the order and needs to be implemented on a timely basis; (2) the Board needs this rule to be in place this season so handlers can take advantage of the bonding option; (3) the Board recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 930.120 is added to read as follows:

### § 930.120 Board membership.

Pursuant to § 930.20(e), membership of the Cherry Industry Administrative Board is increased from 18 to 19 members and alternates. There will be one grower and one handler member from District 8.

3. A new § 930.163 is added to read as follows:

### § 930.163 Deferment of restricted obligation.

A handler may obtain a surety bond on restricted percentage cherries to be posted to temporarily defer the date that inventory reserves must be held. The surety bond must be posted at two times the market value of the quantity of cherries for which the holding obligation is being deferred. The Board can temporarily defer the date inventory reserve cherries must be held to any date requested by the handler. However, this date shall not be later than 60 days prior to the end of the crop year. The deferment shall be conditioned on the execution and delivery by the handler to the Board of a written undertaking within 30 days after the Secretary announces the final restricted percentage under § 930.51. The written undertaking (required to be secured by a bond or bonds with a surety or sureties acceptable to the Board) must guarantee that on or prior to the deferment date requested by the handler the handler will have fully satisfied the restricted percentage obligation. On or prior to the deferment date requested by the handler, the handler will have to fully satisfy the restricted percentage obligation. In the event, a handler has posted the surety bond, reached the deferment date deadline and does not have cherries in the inventory reserve to cover his/her inventory reserve obligation, the bond will be forfeited to the Board. The Board will then buy cherries to fulfill that handler's obligation.

Dated: July 3, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–17126 Filed 7–9–01; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 930

**[Docket Nos. AO–370–A6; FV98–930–2]**

## Tart Cherries Grown in the States of Michigan, et al.; Order Amending Marketing Agreement and Order No. 930

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the marketing agreement and order (order) for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The amendments were submitted by the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order. One change clarifies the current limitation on the number of Board members that may be from, or affiliated with, a single ''sales constituency'' by amending the definition of that term. Another change simplifies the method used to establish volume regulations for tart cherries. These changes were favored by tart cherry growers in a mail referendum and will improve the operation and functioning of the tart cherry marketing order program.

**EFFECTIVE DATE:** August 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suit 2A04, Riverdale Maryland 20737; telephone (301) 734–5243, or Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491; or Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456;

telephone (202) 720–2491; Fax (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on November 12, 1998, and published in the November 17, 1998, issue of the **Federal Register** (63 FR 63803). Recommended Decision and Opportunity to File Written Exceptions issued on December 29, 1999, and published in the **Federal Register** on January 5, 2000 (65 FR 672). Secretary's Decision and Referendum Order issued December 5, 2000, and published in the **Federal Register** on December 11, 2000 (65 FR 77323).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

**Preliminary Statement**

This final rule was formulated on the record of a public hearing held in Grand Rapids, Michigan, on December 1, 1998, and in Salt Lake City, Utah, on December 3, 1998, to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the Board and the U.S. Department of Agriculture.

The Board's proposals pertained to clarifying the current limitation on the number of Board members that may be from, or affiliated with, a single ''sales constituency'' by amending the definition of that term, and simplifying the method used to establish volume regulations for tart cherries.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the AMS on December 29, 1999, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 4, 2000. Five exceptions were filed.

A Secretary's Decision and Referendum Order was issued on December 5, 2000, directing that a referendum be conducted during the period January 15 through January 26, 2001, among growers of tart cherries to determine whether they favored the proposed amendments to the order. In the referendum, both amendments were favored by more than two-thirds of the growers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all sweet cherry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of tart cherries handled by all handlers during the representative period of June 1, 1999, through May 31, 2000.

**Small Business Considerations**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

The record indicates that during the 1998–99 crop year, approximately 41 handlers were regulated under Marketing Order No. 930. In addition, there were about 896 producers of tart cherries in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The 1998–99 tart cherry crop was about 340 million pounds. The record indicates that of the 41 tart cherry handlers, 12 had processed tonnage of more than 10 million pounds (or 29 percent of all handlers); 4 had between 5 and 10 million pounds (10 percent); 15 had between 1 and 5 million pounds (37 percent); and the remaining 10 had less than 1 million pounds of processed tonnage (24 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities. The majority of tart cherry processors are located in Michigan. Many handle cherries grown in more than one district. Michigan accounted for 76.4 percent of the production, followed by Utah with 9.6 percent, Wisconsin with 4.3 percent, Washington with 4.0 percent, New York with 3.9 percent, Pennsylvania with 1.2 percent, and Oregon with 0.6 percent. By State, about 72.5 percent of the growers are in Michigan, 9.9 percent in New York, 5.3 percent in Utah, 4.5 percent in Wisconsin, 3.6 percent in Pennsylvania, 2.5 percent in Oregon, and 1.7 percent in Washington.

Dividing total production by the number of growers, the average grower produces about 380,000 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $76,000. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition. No record evidence was provided to indicate how many tart cherry growers produce 2.5 million pounds or more. One witness testified, however, that an estimated 150 growers (about 17 percent of the total number of growers) produce in excess of 1 million pounds, with the remainder producing less than that. With a majority of growers producing less than 1 million pounds, it follows that a majority of growers produce less than 2.5 million pounds. This supports the conclusion that the majority of tart cherry growers are small businesses. By State, however, average grower size varies considerably. The average grower in Washington accounts for roughly 910,000 pounds of cherries. Next in size is Utah with 680,000 pounds, followed by Michigan (400,000 pounds), Wisconsin (370,000 pounds), New York (150,000 pounds), Pennsylvania (130,000 pounds) and Oregon (100,000 pounds).

The two amendments to the tart cherry marketing order clarify the current limitation on the number of Board members that may represent a

single ''sales constituency'' and simplify the method used to establish volume regulations for tart cherries. Both amendments will be beneficial to business entities, both large and small.

**Definition of Sales Constituency**

Section 930.20 of the tart cherry marketing order provides for an 18-member Cherry Industry Administrative Board to assist the Department in administering the program. That section also divides the production area into nine districts for purposes of representation on the Board and allocates membership among those districts. Five of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each are Oregon, Pennsylvania, Washington, and Wisconsin. (The eighteenth Board member is selected to represent the general public, and need not be from any specific area.)

Section 930.20 further provides that for those districts allocated more than one member, only one of those members can be affiliated with a single sales constituency. Section 930.16 currently defines a sales constituency to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

The amendment to § 930.16 provides that an organization that receives consignments of cherries but does not direct where those cherries are sold would not be considered a sales constituency. The growers and handlers affiliated with such an organization will not be limited in their representation on the Board.

The record shows that one of the Board's primary responsibilities is to recommend regulations to implement the marketing order's authorities relating to supply management, or volume regulation. Volume regulations benefit all industry members, both large and small, by matching demand in primary markets with available supplies of tart cherries. These regulations also serve to expand sales in secondary markets. The result is improved grower and processor returns.

The record shows that approximately 11 of the current 18 members of the Board are affiliated in some way with CherrCo, the organization which raised the question of the intended meaning of the term sales constituency. Applying the current order limitation on the number of members representing a single sales constituency to CherrCo would result in five of the current Board members being declared ineligible to serve on the Board. All of these members represent regulated districts—four in Michigan and one in New York.

The record shows that CherrCo is a federated grower cooperative. It is comprised of 24 member cooperatives. CherrCo's members account for 75–80 percent of Michigan's tart cherry production, and a significant portion of the production, and a significant portion of the production in New York, Utah, Washington, and Wisconsin. CherrCo currently has no members in Oregon or Pennsylvania. The record indicates that the primary function of CherrCo is to establish minimum prices for certain tart cherry products. The record indicates that CherrCo is not directly involved in the actual sales of its members' products. There is intense competition among its members (as well as between its members and non-members) to sell tart cherries. The competition for sales is on the basis of individual handlers' reputations, on the quality and mix of the products they offer, on any special services they provide to their customers, and on whether or not their processing plants are certified to conform with certain sanitation standards.

The purpose of the sales constituency limitation is explained in § 930.20(f) of the order where it is stated that in order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. The genesis of this limitation can be traced to the order promulgation record where it was stated that the limitation was designed to prevent the recurrence of a problem that existed under the previous tart cherry order which was in effect from 1971 through 1987. Under that order, there was no such limitation, and actions of the Board only required a simple majority vote, allowing representatives from a single sales organization to pass Board actions without support from other industry members. As was explained in the recommended decision published on January 5, 2000, concerning the amendments in this rulemaking, the tart cherry industry is comprised of many different organizations. Some were clearly meant be covered by the sales constituency limitation, while others were not. It was clearly intended that an organization such as Cherry Central, Inc. (a cooperative) be covered. Its main purpose is to sell its members' cherries and other products. The recommended decision further explains that an organization such as the Cherry Marketing Institute was not intended to be subject to the sales constituency limitation. The formation of CherrCo, a federated grower cooperative which was not in existence when the present order was promulgated, has caused the Department and the industry to reopen this question and to consider an amendment to the definition of sales constituency. This is because an organization such as CherrCo lies somewhere between Cherry Central, Inc. and the Cherry Marketing Institute which has a primary function of conducting generic promotion activities to expand overall sales of cherries and funding and conducting research in processing techniques and product development.

Some of the exceptions and briefs filed in connection with the Recommended Decision raised issues and concerns in connection with Material Issue No. 1, definition of a sales constituency, and small business considerations. The Board was of the view that this proposed amendment would not have any negative impact on small businesses and that it would in fact help small entities by allowing them to send a representative of their choice to the Board. The Board noted that the regulatory requirements of the proposed amendment were properly tailored to the size and nature of small businesses.

Two exceptions were filed that raised small business concerns. One exception from Terry Dorsing, President, Washington Tart Cherries Products, Inc., presented an overview of the functioning of the tart cherry marketing order since its inception. Mr. Dorsing stated that since the initial hearing to establish the order, it was his and his company's position that the Northwest and other small production areas would be dominated by the large production in Michigan and the impact of various provisions of the order would be detrimental to small entities. The exception also stated that a marketing order was not good for the small producer and for the tart cherry industry as a whole. While acknowledging the inclusion in the provisions of the order of a variety of safeguards to protect small producers and production areas, the exception concluded that the Board itself, in recommending further changes to the order (currently subject to a separate rulemaking action) was preparing to tear down the safeguards to the detriment of small entities.

Another exception from Lee Schrepel, Chair, Oregon Tart Cherry Association, raised concern about the size of CherrCo affiliates, noting that perhaps most of the large handlers in the industry were CherrCo affiliates. The exception argued that the proposal had the appearance of giving a greater proportion of Board control to larger handlers, as defined under the Regulatory Flexibility Act. The exception questioned whether the Department failed to make a thorough examination of all relevant small business considerations, as required by that Act. The exception also noted that there are several examples of how boards administering Federal marketing orders for other commodities have protected the small, the remote and the independent, with each of the orders limiting the degree of domination by a particular constituency in the governed industry. Finally, the exception stated the proposed amendment should be rejected, that the Department should refer the matter back to the Board for further study to craft a more suitable amendment, or that the Department should develop a compromise amendment itself taking into account the alternative proposals presented in the rulemaking proceedings. Alternatively, the exception stated that there should be an allowance for permanent exclusion of all producers and handlers in the Oregon district, an issue that has not been proposed in the proceeding.

Alternative proposals discussed at the hearing were considered and discussed in the Recommended Decision. It was determined that those proposals failed to properly address some of the fundamental issues faced by the tart cherry industry. One of these issues is that some districts are subject to volume control, while others are not. Another deals with the varying marketing and growing conditions. Probably the most important issue which alternative proposals failed to address was fair representation. Restrictions on an organization such as CherrCo could prevent growers in some of the highest volume producing areas from being adequately represented on the Board.

Material Issue Number 1 concerns an amendment that clarifies the current limitation on the number of Board members that may be from, or affiliated with, a single sales constituency. This amendment is intended to be inclusive rather than exclusive. The issue presented by the amendment is whether an organization or entity, such as CherrCo, should be limited in terms of membership on the Board. The Department has fully reviewed this amendment consistent with the provisions of the Regulatory Flexibility Act as well as the statutory authority for this program. In doing so, it has concluded that this amendment will be favorable to both large and small entities. The two exceptions received raising small business considerations are not in agreement with this conclusion.

The exceptions raised a variety of issues and concerns regarding the proposed amendment as well as the marketing order itself. The nature and structure of a board under a marketing order program reflects the industry that is regulated. Accordingly, a marketing order may provide for one or more provisions concerning board memberships. Such provisions would be tailored to reflect the attributes of a particular industry, as appropriate. In the case of the tart cherry marketing order, a provision was crafted to prevent any single sales constituency from having control of Board decision making. The proposed amendment would clarify the application of that provision, taking into account the current state of the industry as well as the present membership on the Board. As such, the original intent of the provisions would not be changed by the clarification. Looking at this amendment in terms of its impact, we continue to conclude that the proposed amendment should be favorable to both large and small entities.

With regard to the assertion that certain safeguards in the order could be eliminated to the detriment of smaller production areas, this cannot be done by Board action alone. Any such proposed changes would be subject to a formal rulemaking process, including public hearings and a referendum, as well as an analysis and review by the Department.

**Revision of the Optimum Supply Formula**

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Authority for such regulations appears in § 930.51 of the marketing order.

Volume regulations are implemented through the establishment of free and restricted percentages. Such percentages are recommended by the Board in accordance with § 930.50 of the order, and, if deemed appropriate, implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. They may be diverted in the orchard or at the processing plant; placed into a reserve pool; or sold in secondary markets. These secondary markets include exports (except to North America), and new products. Sales of restricted percentage cherries to these specified exempt markets receive diversion credits which handlers use to fulfill their restricted obligation.

The record indicates that the primary objective of tart cherry volume regulations is to balance supplies with market demand, thereby stabilizing the market and improving grower and processor returns. A second objective is to encourage market growth by allowing restricted cherries to be sold in secondary markets (for example, most export markets). Witnesses attributed much of the improvement in recent cherry market conditions to the use of regulation in the 1997/98 and 1998/99 seasons.

The order currently sets forth in § 930.50, an ''Optimum Supply Formula'' (OSF) which the Board must follow in its consideration of annual free and restricted percentages. The optimum supply is currently defined as 100 percent of the average sales of the prior 3 years, to which is added a desirable carryout inventory.

The record indicates that using 100 percent of prior years' sales results in an overstatement of the optimum supply. The record shows that including the sales of restricted cherries in the optimum supply understates the projected surplus and results in a higher free percentage than supply and market conditions warrant. This is because those total sales include not only sales to the primary market, but to secondary markets as well.

In the years that tart cherry volume regulations have been used, this issue has been addressed through use of an adjustment in order to achieve an optimum supply of cherries in the marketplace. Once a surplus has been computed (deducting the optimum from the available supply), the sales to secondary markets are added back to the surplus as an economic adjustment. The Board's recommended amendment would revise the procedures currently used in calculating the optimum supply. Under its proposal, the optimum supply would be equal to the 3-year average sales in primary markets (total sales less sales to markets eligible for diversion credit) plus the target carryout. This would simplify the method of arriving at an optimum supply figure and would be easier for tart cherry growers and processors to understand. Therefore, any regulatory impact on growers or handlers would be minimal or non-existent.

The record evidence supports the conclusion that this amendment will result in no extra costs to growers or processors in that any resulting level of volume regulation would be similar to what is currently in effect and its economic effect on the industry would be similarly analyzed in each instance. It would benefit industry members both large and small, however, because the process relating to the establishment of volume regulations would be less confusing and more readily understood by industry members. This process is used by growers and handlers in making seasonal decisions (including those relating to harvesting cherries). To the extent that this process is more readily understood, all in the industry should benefit.

Further, in its brief filed with regard to the Recommended Decision, the Board noted that the Department considered the impact of Material Issue Number 2 on small businesses and concluded that there will be no negative impact. The Board stated that it considered several other approaches concerning the optimum supply formula and was of the view that the amendment was the best alternative available.

The collection of information under the marketing order will not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these amendments as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

**Civil Justice Reform**

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they represent an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

**Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin**

*Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as hereby amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping tart cherries covered by the order as hereby amended) who, during the period June 1, 1999, through May 31, 2000, handled 50 percent or more of the volume of such cherries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period June 1, 1999, through May 31, 2000 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cherries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

**Order Relative to Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin**

*It is therefore ordered,* That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amendments contained in the Secretary's Decision issued by the Administrator on December 5, 2000, and published in the **Federal Register** on December 11, 2000, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In part 930, § 930.16 is revised to read as follows:

**§ 930.16 Sales constituency.**

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers and growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

3. In § 930.50, paragraph (a) is revised to read as follows:

**§ 930.50 Marketing policy.**

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of restricted percentage cherries, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

Dated: July 3, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–17125 Filed 7–9–01; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–07–AD; Amendment 39–12310; AD 2001–13–28]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbofan engines. This action requires replacement of the low-oil pressure (LOP) switch. This amendment is prompted by a report of the failure of the low pressure (LP) and high pressure (HP) rotor thrust bearings due to oil starvation that was caused by the loss of the LOP switch function and resulted in a delayed engine shutdown. The actions specified in this AD are intended to prevent the failure of the LOP switch to indicate an LOP event, which could contribute to uncontained engine failure due to oil starvation in the thrust bearings.

**DATES:** Effective August 9, 2001. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 9, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 10, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–07–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; FAX 011 7979 7234. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on RR Olympus 593 Mk. 610–14–28 turbofan engines. The CAA advises that the failure of a low-oil pressure (LOP) switch cable at the LOP switch connector resulted in increased secondary damage after an LP compressor blade failure. The failed blade caused a rotor imbalance, which caused cracking of the oil tank and loss of engine oil. Because the LOP switch cable had failed, no LOP warning was received in the cockpit. Since no LOP warning was received, the engine was not immediately shut down and the LP and HP rotor thrust bearings failed from oil starvation. The failure of the LP and HP compressor rotor bearings caused an increase in secondary damage to the engine.

**Manufacturer's Service Information**

RR has issued Olympus 593 Service Bulletin (SB) No OL.593–71–9056–33, Revision 2, dated December 7, 2000, that specifies procedures for reworking the plug of existing electrical harness for the LOP switch. The CAA classified this service bulletin as mandatory and

issued AD 002–10–98 in order to ensure the airworthiness of these RR engines in the UK.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in the UK, and is type certificated for operation in the United States under the provisions of § 21.29 of the Code of Federal Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Requirements of This AD**

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Because an unsafe condition has been identified that is likely to exist or develop on other Olympus 593 Mk.610–14–28 engines of the same type design, this AD requires reworking the plug of the existing electrical harness for the LOP switch. The actions must be done in accordance with the service bulletin described previously.

**Immediate Adoption**

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety, and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–07–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

This final rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation may be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Code of Federal Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2001–13–28 Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A.:** Amendment 39–12310. Docket 2000–NE–07–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbofan engines. These engines are installed on, but not limited to, Concorde airplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

Compliance with this AD is required as indicated below, unless already done.

To prevent the failure of the LOP switch to indicate an LOP event, which could contribute to uncontained engine failure due to oil starvation in the thrust bearings, do the following:

(a) Install a revised LOP switch incorporating an extended support bush in combination with an angled backshell and additional cable slack in accordance with the accomplishment instructions of RR Service Bulletin OL.593–71–9056–33, Revision 2, dated December 7, 2000.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Incorporation by Reference Material**

(c) The actions specified in this AD must be done in accordance with the following Rolls-Royce Olympus service bulletin:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| OL.593–71–9056–33 | 1 | 2 | Dec. 7, 2000. |
| | 2–3 | Original | Oct. 5, 1998. |
| | 4 | 2 | Dec. 7, 2000. |
| | 5 | 1 | Feb. 19, 1999. |
| | 6 | Original | Oct. 5, 1998. |
| | 7 | 2 | Dec. 7, 2000. |
| | 8 | 1 | Feb. 19, 1999. |
| Total pages: 8 | | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 44 7979 6060; FAX 011 44 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in CAA airworthiness directive 002–10–98.

**Effective Date of This AD**

(d) This amendment becomes effective on August 9, 2001.

Issued in Burlington, Massachusetts, on June 28, 2001.

**Francis A. Favara,**

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

[FR Doc. 01–16926 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 520

## Oral Dosage Form New Animal Drugs; Chlortetracycline Powder

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for oral use of chlortetracycline soluble powder in solutions administered to cattle, swine, chickens, and turkeys for the control and treatment of various bacterial diseases. Technical amendments are also being made.

**DATES:** This rule is effective July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137, filed ANADA 200–295 for Pennchlor™ 64 (chlortetracycline) Soluble Powder. The application provides for oral use of chlortetracycline soluble powder administered in drinking water or in solutions dosed by mouth in cattle, swine, chickens, and turkeys for the control and treatment of various diseases caused by bacteria susceptible to chlortetracycline. Pennfield Oil Co.'s Pennchlor™ 64 is approved as a generic copy of American Cyanamid's Aureomycin® (chlortetracycline) Soluble Powder Concentrate, approved under NADA 65–440. The ANADA is approved as of April 27, 2001, and the regulations are amended in 21 CFR 520.445b to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 520.445b is further amended in paragraph (d)(4)(iii)(C) by removing the Pennfield Oil Co. drug labeler code (DLC #053389) which was added in error (59 FR 39438, August 3, 1994) and by correcting the drug labeler code for ADM Animal Health & Nutrition Division (DLC #017519) which in error was not changed in this paragraph when the drug labeler code was changed elsewhere in this section (62 FR 27691, May 21, 1997). Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

**§ 520.445b [Amended]**

2. Section 520.445b *Chlortetracycline powder* (*chlortetracycline hydrochloride or chlortetracycline bisulfate*) is amended in paragraph (b) by removing ''as in paragraphs (d)(1)(i)(A) and (d)(2)(i)(A)'' and adding in its place ''as in paragraph (d)''; and in paragraph (d)(4)(iii)(C) by removing '', 012286, and 053389'' and adding in its place ''and 017519''.

Dated: June 27, 2001.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 01–17104 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF STATE

### Bureau of Political-Military Affairs

### 22 CFR Parts 124, 125, and 126

**[Public Notice 3710]**

### Amendment to the International Traffic in Arms Regulation: Sweden

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the International Traffic In ArmsRegulations to extend a recent reform of the U.S. defense trade export control system, originally intended to benefitNATO, Australia and Japan, to Sweden. The recent reforms were intended to streamline the U.S. defense export control licensing process and forge closer industrial linkage between the U.S. and allied defense suppliers. Part 124 of the International Traffic In Arms Regulations is now being amended to permit U.S. companies to perform, using an exemption, certain maintenance and maintenance training for US-origin defense articles in the inventory of Sweden. Part 125 is amended to provide authorization, without a license, to transfer certain technical data to support procurement of defense articles from defense firms in Sweden for use by the Department of Defense. In addition, under Part 126, the four comprehensive export authorizations for use in circumstances where the full parameters of a commercial export endeavor, including the needed defense exports, can be well anticipated and described in advance, is now available for Sweden.

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** William J. Lowell,Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, ATTN: Regulatory Change Sweden at (202) 663–2861 or FAX (202) 261–8264.

**SUPPLEMENTARY INFORMATION:** On July 21, 2000, the Department published regulations to implement, effective September 1, 2000, the U.S. Defense Trade Security Initiative (DTSI) announced at the NATO Ministerial in Florence, Italy on May 24, 2000 (65 FR 45282). Those reforms of the U.S. defense trade export control system were made available to NATO Allies, Japan and Australia. Those initiatives were intended to improve the efficiency and competition in defense markets with NATO allies, Japan and Australia. This particular amendment to the International Traffic in Arms Regulations would make those reforms available with respect to Sweden. These reforms are intended to streamline the U.S. defense export control licensing process and forge closer industrial linkage between the U.S. and allied defense suppliers.

Section 124.2(c) is amended to add Sweden. Paragraph (c) permits U.S. companies to provide, without a license, defense services necessary to perform maintenance on and maintenance training for US-origin equipment in the inventory of NATO, NATO countries, Australia, Japan, and Sweden, provided the maintenance and maintenance training does not result in any modification, enhancement, upgrade or other form of alteration or improvement that enhances the performance or capability of the defense article. Also, the export must not include the transfer of certain technologies; such as, design methodology, engineering analysis, and manufacturing know-how. Section 125.4(c) is amended to add Sweden. Paragraph (c) permits the transfer to NATO countries, Australia, Japan, and Sweden, of technical data necessary to support offshore procurement of defense articles for use by the Department of Defense. In addition, section 126.14 is amended to include Sweden in the four comprehensive export authorizations developed to limit the number of individual export approvals necessary to authorize the export of defense articles to NATO countries, Australia, Japan, and Sweden, which will encourage government-to-government cooperative research and development, support joint ventures and teaming arrangements and facilitate a U.S. company's role in a cooperative project when covered by a government-to-government Memorandum of Understanding (MOU).

In implementing these initiatives, parts 124, 125, and 126 are being amended.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. However, interested parties are invited to submit written comments to the Department of State, Office of Defense Trade Controls, ATTN: Regulatory Change, Sweden, 13th Floor, H1304, 2401 E Street, NW., Washington, DC20037. Such persons must be so registered with the Department of State's Office of Defense Trade Controls (DTC) pursuant to the registration requirements of section 38 of the Arms Export Control Act.

**List of Subjects**

*22 CFR Part 124*

Arms and munitions, Exports, Technical assistance.

*22 CFR Part 125*

Arms and munitions, Classified information, Exports.

*22 CFR Part 126*

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 124, 125 and 126, are amended as follows:

## PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 continues to read as follows:

**Authority:** Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub L. 105–261.

2. Section 124.2 is amended by revising paragraphs (c) introductory text, (c)(1), and (c)(6) to read as follows:

**§ 124.2 Exemptions for training and military service.**

* * * * *

(c) NATO countries, Australia, Japan, and Sweden, in addition to the basic maintenance training exemption provided in § 124.2(a) and basic maintenance information exemption in § 125.4(b)(5) of this subchapter, no technical assistance agreement is required for maintenance training or the performance of maintenance, including

the export of supporting technical data, when the following criteria can be met:

(1) Defense services are for unclassified U.S.-origin defense articles lawfully exported or authorized for export and owned or operated by and in the inventory of NATO or the Federal Governments of NATO countries, Australia, Japan or Sweden.

* * * * *

(6) *Eligibility criteria for foreign persons.* Foreign persons eligible to receive technical data or maintenance training under this exemption are limited to nationals of the NATO countries, Australia, Japan, or Sweden.

## PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

3. The authority citation for part 125 continues to read as follows:

**Authority:** Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

4. Section 125.4 is amended by revising paragraph (c) introductory text to read as follows:

### § 125.4 Exemptions of general applicability.

* * * * *

(c) Defense services and related unclassified technical data are exempt from the licensing requirements of this subchapter, to nationals of NATO countries, Australia, Japan, and Sweden, for the purposes of responding to a written request from the Department of Defense for a quote or bid proposal. Such exports must be pursuant to an official written request or directive from an authorized official of the U.S. Department of Defense. The defense services and technical data are limited to paragraphs (c)(1), (c)(2), and (c)(3) of this section and must not include paragraphs (c)(4), (c)(5), and (c)(6) of this section which follow:

* * * * *

## PART 126—GENERAL POLICIES AND PROVISIONS

5. The authority citation for part 126 continues to reads as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR 1994 Comp., p 899.

6. Section 126.14 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3)(i), and (a)(4) to read as follows:

### § 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.

(a) With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide the comprehensive authorizations described in paragraphs (a) and (b) of this section for circumstances where the full parameters of a commercial export endeavor including the needed defense exports can be well anticipated and described in advance, thereby making use of such comprehensive authorizations appropriate.

(1) *Major Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed ''major projects'', where a principal registered U.S. exporter/prime contractor identifies in advance the broad parameters of a commercial project including defense exports needed, other participants (e.g., exporters with whom they have ''teamed up'', subcontractors), and foreign government end users. Projects eligible for such authorization may include a commercial export of a major weapons system for a foreign government involving, for example, multiple U.S. suppliers under a commercial teaming agreement to design, develop and manufacture defense articles to meet a foreign government's requirements. U.S. exporters seeking such authorization must provide detailed information concerning the scope of the project, including other exporters, U.S. subcontractors, and planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(2) *Major Program Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide comprehensive authorizations for well circumscribed commercially developed ''major program''. This variant would be available where a single registered U.S. exporter defines in advance the parameters of a broad commercial program for which the registrant will be providing all phases of the necessary support (including the needed hardware, tech data, defense services, development, manufacturing, and logistic support). U.S. exporters seeking such authorization must provide detailed information concerning the scope of the program, including planned exports (including re-exports) of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

(3)(i) *Global Project Authorization.* With respect to NATO members, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide a comprehensive ''Global Project Authorization'' to registered U.S. exporters for exports of defense articles, technical data or defense services in support of government to government cooperative projects (covering research and development or production) with one of these countries undertaken pursuant to an agreement between the USG and the government of such country, or a memorandum of understanding between the Department of Defense and the country's Ministry of Defense.

* * * * *

(4) *Technical Data Supporting an Acquisition, Teaming Arrangement, Merger, Joint Venture Authorization.* With respect to NATO member countries, Australia, Japan, and Sweden, the Office of Defense Trade Controls may provide a registered U.S. defense company a comprehensive authorization to export technical data in support of the U.S. exporter's consideration of entering into a teaming arrangement, joint venture, merger, acquisition, or similar arrangement with prospective foreign partners. Specifically the authorization is designed to permit the export of a broadly defined set of technical data to qualifying well established foreign defense firms in NATO countries, Australia, Japan, or Sweden in order to better facilitate a sufficiently in depth assessment of the benefits, opportunities and other relevant considerations presented by such prospective arrangements. U.S exporters seeking such authorization must provide detailed information concerning the arrangement, joint venture, merger or acquisition, including any planned exports of defense articles, defense services, and technical data, and meet the other requirements set forth in paragraph (b) of this section.

* * * * *

Dated: June 12, 2001.

**John R. Bolton,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 01–16011 Filed 7–9–01; 8:45 am]

BILLING CODE 4710–25–U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD13–01–001]**

**RIN 2115–AE47**

## Drawbridge Operations Regulations; Lake Washington Ship Canal, Seattle, WA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the operating regulations for the Ballard Bridge across the Lake Washington Ship Canal, mile 1.1, at Seattle, Washington. This change limits double-leaf opening of the bascule draw daily with notice requirements. These special operations are to accommodate a major refurbishment project to the operating and drive systems of the bridge by the City of Seattle.

**DATES:** This temporary final rule is effective from 5 a.m. on September 4, 2001, until 8 p.m. on September 30, 2002.

**ADDRESSES:** The public docket and all documents referred to in this document are available for inspection at the Thirteenth Coast Guard District, Aids to Navigation and Waterways Management Branch, 915 Second Avenue, Seattle, Washington 98174–1067, between 7:45 a.m. and 4:15 p.m. Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Austin Pratt, Project Officer, Thirteenth Coast Guard District, (206) 220–7282.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On February 12, 2001, a notice of proposed rulemaking was published in the **Federal Register** entitled Drawbridge Operation Regulations; Lake Washington Ship Canal (66 FR 9779). Two objections to the proposed temporary rule were received. One objection concerned commercial vessels and the other objection pertained to a research vessel. Their concerns have been accommodated in this temporary final rule.

### Background and Purpose

The City of Seattle proposed to replace the aged operating and drive systems of the bascule drawspan. To minimize interference with navigation, only one leaf will be temporarily disabled at a time. The disabled draw leaf will be powered by a winch system that will not perform at the usual speed for this drawbridge. In order to avoid lengthy inoperative periods, the bridge owner proposed three daily periods during which the draw will open fully for vessels unable to safely pass through one-half of the span. With five hours notice, both leaves of the draw would open at 5 a.m., 11 a.m., and 7 p.m. on any day of the week. The second and third periods are changed from 12:30 p.m. and 8 p.m. to better accommodate larger vessels. In addition a provision has been added for double-leaf openings at any time for vessels of at least 480 gross tons whenever at least one-week notice is provided. The established closed periods Monday through Friday of 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m., except federal holidays, will remain in effect. The start time for the special operations is changed from June 4 to September 4, 2001. During the project, single-leaf openings are available according to the operating schedule currently in effect. These regulations provide that both draw leaves need not be opened for the passage of vessels, including vessels engaged in towing operations, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays, for any vessel under 1000 gross tons.

### Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that most vessels will be able to pass the bridge with little change from normal operations and that all vessels can be accommodated three times a day. The largest vessels affected will be able to provide the one-week notice whenever the scheduled full openings are not convenient.

### Indian Tribal Governments

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

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Some vessel owners might be temporarily inconvenienced by the change, if effected, but the delay should not be significant, especially after vessel operators learn of the change and can therefore plan their trips on the canal accordingly.

### Collection of Information

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

### Federalism

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

### Taking of Private Property

This 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize

litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

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

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 117**

Bridges, Regulations.

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

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.1051(d) is amended by temporarily adding paragraph (4) as follows:

**§ 117.1051 Lake Washington Ship Canal.**

* * * * *

(d) * * *

(4) From 5 a.m. on September 4, 2001, to 8 p.m. September 30, 2002, the Ballard Bridge, mile 1.1, need not open both draw leaves for the passage of vessels, including those engaged in towing operations, except at 5 a.m., 11 a.m., and 7 p.m. if at least five hours notice is given or at any time for vessels of 480 gross tons or more if at least one-week notice is provided, other than 7 a.m. to 9 p.m. and 4 p.m. to 6 p.m. Monday through Friday, except federal holidays.

* * * * *

Dated: June 5, 2001.

**Erroll Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 01–17107 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 20

**RIN 2900–AK74**

## Board of Veterans' Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on the Grounds of Clear and Unmistakable Error

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error (CUE) fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment is made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

**DATES:** *Effective Date:* This interim final rule is effective July 10, 2001. Comments must be received on or before September 10, 2001.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900-AK74.'' All comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

**SUPPLEMENTARY INFORMATION:** The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 57 Members decide about 35,000 to 40,000 cases per year.

In 1999, the Department of Veterans Affairs (VA) published rules implementing the provisions of section 1(b) of Pub. L. No. 105–111 (Nov. 21, 1997), which permit challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). 64 FR 2134 (Jan. 13, 1999). Those regulations were challenged in the U.S. Court of Appeals for the Federal Circuit. On December 8, 2000, that court upheld all of the challenged regulations with the exception of Rule 1404(b) (38 CFR 20.1404(b)). To the extent that Rule 1404(b) provided that a CUE motion which failed to specifically allege error would be denied, rather than dismissed without prejudice to refiling, the court stated:

> We hold that CUE Rule 1404(b) (codified at 38 CFR 20.1404(b)) is invalid because, in conjunction with the CUE Rule 1409(c) (codified at 38 CFR 20.1409(c)), it operates to prevent Board review of any CUE claim that is the subject of a motion that is denied for failure to comply with the pleading requirements of Rule 1404(b). That is contrary to the requirement of 38 U.S.C. 7111(e) that a CUE claim ''shall be decided by the Board on the merits.''

*Disabled American Veterans* v. *Gober,* 234 F.3d 682, 704 (Fed. Cir. 2000). *See also id.* at 698–99 (discussion of Rule 1404(b)).

Based on that holding, this document amends Rule 1404(b) to provide that the Board will dismiss such motions without prejudice to refiling. The document also makes conforming changes to Rule 1409(b) (38 CFR 1409(b)) to provide that the dismissal without prejudice of a CUE motion is not a final decision of the Board.

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from

the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

**List of Subjects in 38 CFR Part 20**

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: June 29, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

## PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.1404, paragraph (b) is revised amended to read as follows:

### § 20.1404. Rule 1404. Filing and pleading requirements; withdrawals.

* * * * *

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

* * * * *

3. In § 20.1409, paragraph (b) is revised amended to read as follows:

### § 20.1409. Rule 1409. Finality and appeal.

* * * * *

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.

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[FR Doc. 01–17137 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TX 28–1–7382a; FRL–7008–3]**

## Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** In this direct final action, the EPA is approving the Texas State Implementation Plan(SIP) for the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset Plan as part of the State's effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone. The State demonstrated that emissions from increases in VMT or numbers of vehicle trips within HGA will not rise above an established ceiling by 2007; thereby not requiring additional transportation control measure (TCM) offsets to prevent an increase in VMT above the ceiling. This action replaces the October 21, 1997 proposed disapproval of the HGA VMT Offset SIP revision previously submitted on August 16, 1994. This action is being taken under sections 110 and 182 of the Federal Clean Air Act, as amended (the Act).

**DATES:** This direct final rule is effective on September 10, 2001, without further notice, unless EPA receives adverse comment by August 9, 2001. If significant 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:** Written comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2377. Copies of the relevant material for this notice are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brooke M. Ivener, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7362.

**SUPPLEMENTARY INFORMATION:**

### I. Table of Contents

1. Background
2. State Submittals
3. Analysis of 1997 VMT Plan
4. Comments on the Proposed Disapproval Action

Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

*1. Background*

What Is a VMT SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's Reasonable Further Progress milestones (section 182(b)(1) and (c)(2)(B)) and attainment demonstration requirements (section 182(c)(2)(A)). Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498, the General Preamble). Section 182(d)(1)(A) of the Act requires that states submit the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. Texas has one severe ozone nonattainment area, the HGA area, with an attainment deadline of 2007.

*2. State Submittals*

Previous Submittals

On November 13, 1992, the State submitted a committal SIP to EPA for VMT Offset for the HGA nonattainment area. The submittal committed to submitting subsequent SIPs in 1993 and 1994 to parallel development of the 15 percent Rate of Progress (ROP) SIP revision, and to parallel the Post 1996 ROP SIP revision and the demonstration of attainment SIP revision, both due November 1994. On November 12, 1993, and November 6, 1994, the State of Texas submitted revisions to the SIP for the VMT Offset Plan to fulfill the committal SIP requirement. On October 21, 1997, EPA proposed disapproval of the 1993 and 1994 VMT Offset SIP submittals (62 FR 54598). These submittals were no longer accurate since the calculated vehicle emissions relied

upon programs no longer in effect; specifically, a centralized loaded mode vehicle inspection and maintenance (I/M) program and an Employer Trip Reduction (ETR) program. A complete discussion of the background surrounding program changes is included in the above referenced proposed disapproval action.

Current Submittal

The State subsequently submitted a SIP revision for VMT Offset on August 25, 1997. The submittal was determined complete on December 10, 1997. For information regarding our analysis of the State submittal, please refer to the Technical Support Document for this action. On May 17, 2000, the State submitted to the EPA a new SIP revision for VMT Offset. This submittal does not contain any substantive changes and does not affect any approval of the revision submitted on August 25, 1997. The State submitted the revision, which the State adopted on May 9, 2000, because the VMT Offset SIP references the TCM rules in 30 TAC § 114.270, which were reevaluated and renumbered. The discussion of the VMT Offset SIP in this rule is therefore still in reference to the August 25, 1997 submittal, as it is the substantive SIP revision document on which this proposed approval is based.

*3. Analysis of 1997 VMT Plan*

How Is the VMT Offset Requirement Satisfied?

The EPA General Preamble (57 FR 13498, 13521–13523, April 16, 1992) explains how to demonstrate that the VMT requirement is satisfied. Sufficient measures must be adopted so projected motor vehicle volatile organic compound (VOC) emissions will stay beneath a ceiling level established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied. In order to make these projections, two curves of vehicle emissions are modeled (please refer to Graph 1 in the Technical Support Document). The upper curve profiles the effects of required reductions from the following mandatory programs: a low-enhanced performance standard vehicle I/M program, Reid Vapor Pressure (RVP) controls, and reformulated gasoline. The lower curve depicts the control strategy program and includes the effects not only of the mandated controls, but also of the Motorist Choice I/M program and TCMs.

What Does Texas' Demonstration Show?

The August 25, 1997, VMT SIP submittal includes a projection of the mobile source emissions profile for HGA through 2007, the date by which the HGA area is to attain the NAAQS for ozone. It also contains an upper curve modeled scenario that includes the effects of required reductions from the following mandatory programs: a Low-Enhanced Performance Standard I/M program, Phase II RVP controls, reformulated gasoline, and the Federal Vehicle Control Program (FMVCP) for new vehicles, including the Tier I FMVCP standard. The lower curve, which depicts the control strategy program, includes the Motorist Choice I/M program, Phase II RVP controls, reformulated gasoline, the FMVCP, and certain TCMs.

What TCMs Are Part of the VMT Offset SIP?

The Transportation Policy Council for the HGA Transportation Management Area adopted, through resolution on September 29, 1995, TCM commitments in the 1996–1997 Transportation Implementation Project and the 2020 Metropolitan Transportation Plan. These TCMs were included in the 15% ROP Plan and the Post 1996 ROP Plan submitted on July 24, 1996, and have been included in the VMT Offset SIP as measurable emission reduction credits.

The TCM commitments for Fiscal Year (FY) 1996 include 14.7 miles of High Occupancy Vehicle (HOV) Lanes, 3,745 parking spaces in Park-and-Ride Lots, 41 miles of Arterial Traffic Management Systems, 22.2 miles of Computer Transportation Management Systems, and 2.9 miles of signalization.

Although not credited for the VMT Offset SIP demonstrations, as explained below, the TCMs for FY 1999 include 3.2 miles of Accident Investigation Sites, 65.8 miles of Arterial Traffic Management Systems, 262.3 miles of Bicycle Facilities, 70.3 miles of Computer Transportation Management Systems, 3.5 miles of HOV lanes, 1643 Park and Ride Lot spaces, 49.3 miles of signalization, and 225 Vanpool vans. The TCMs for FY 2007 include 30.0 miles of Accident Investigation Sites, 1.5 miles of Arterial Traffic Management Systems, and 59.5 miles of Computer Transportation Management Systems.

EPA stated in its comment letter dated June 5, 1997, that any TCMs for which Texas takes credit in the VMT SIP should be specifically documented on a project-by-project basis. At the time of comment in 1997, the HGA Metropolitan Planning Organization (MPO) commited to TCM reductions on a project category (e.g., HOV lanes) basis, not on a project specific basis. Therefore, to resolve the dilemma, no future credit is taken in the SIP for any TCMs committed for milestone years after November 15, 1996. Thus, the lower curve includes only TCMs through FY 1996. A detailed description of the FY 1996 TCM projects and the associated implementation, and completion schedules is included in an Appendix to the SIP. The EPA gave conditional interim approval of these FY 1996 TCMs as part of the 15 percent ROP Plan on November 10, 1998 (62 FR 62943). It is worth mentioning here that later SIPs have included additional TCMs which are not credited. This, in effect, means that the VMT Offsets are, in actuality, even greater than accounted for here.

Results of the Analysis

The modeled curves in Graph 1 satisfy the VMT Offset requirement as discussed in the General Preamble. Modeling of the lower curve, at no time, shows the emission estimates meeting or exceeding the lowest point in the upper curve, reached in 2007. The upper curve reaches its lowest point in 2007, so no upward turn is demonstrated in this instance. The low point establishes the ceiling, but no true ceiling is established in this demonstration because there is no upward turn of the curve to identify the lowest point. Since the curve does not turn upward (indicating the control programs are offsetting increases in emission from growth in VMT) no TCMs would be necessary to offset emissions from growth in VMT. The State, however, chose to include the five FY 1996 TCMs anyway, although they are not necessary.

The TCMs selected reduce emissions associated with mobile sources by relieving congestion, improving traffic flow, and decreasing idle time. As required by section 182(d)(1)(A) of the Act, they neither impede adequate access to downtown or other commercial and residential areas nor increase or relocate emissions and congestion.

The August 25, 1997 submittal includes all elements required by the Act to fulfill the requirements for a VMT Offset Plan in the HGA severe ozone nonattainment area. It is worth noting that subsequent to the submission of the VMT Offset plan, Texas has submitted additional mobile source control

measures as part of its attainment plan. These include a more extensive I/M program and a low emissions diesel requirement. Therefore, if these additional control measures were factored in to the analysis, the area would be able to demonstrate compliance by a wider margin.

*4. Comments on the Proposed Disapproval Action*

Three comments were received in response to the proposed disapproval (referenced above) of the 1993 and 1994 submittals which comprised the VMT Offset requirement. Two comments supported the proposed disapproval because the SIP relied upon the repealed I/M and ETR Programs. The SIP submittal being acted upon in this action does not rely on those two programs. A third comment supported approval of the August 1997 VMT Offset submittal. No other comments were received.

**II. Final Action**

The EPA has determined that Texas has adequately demonstrated that emissions from growth in VMT and number of vehicle trips will not rise above the ceiling. Therefore, we are approving the VMT Offset SIP, submitted by the State on August 25, 1997 and with minor revisions submitted on May 17, 2000, under sections 110 and 182 of the Act.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 10, 2001 without further notice unless we receive adverse comment by August 9, 2001. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**III. Administrative Requirements**

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. This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it 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 Act. This rule also is not subject to Executive Order 13045 (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 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 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. The rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16,1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2001 unless EPA receives adverse written comments by August 9, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2001. 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) of the Act.

**List of Subjects in 40 CFR Part 52**

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

Dated: June 13, 2001.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

Part 52, 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 SS—Texas

2. In § 52.2270, paragraph (e), in the table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP,'' one entry is added to the end of the table to read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

| Name of SIP provision | Applicable geographic or non-attainment area | State sub-mittal/effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| Vehicle Miles Traveled Offset Plan. | Houston/Galveston Ozone nonattainment area. | 05/09/2000 | July 10, 2001, 66 FR 35906 .. | Originally submitted 11/12/93 and revised 11/06/94, 8/25/97, and 05/17/00. |

[FR Doc. 01–16806 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[GA–47; GA–52; GA–55–200111; FRL–7009–3]**

## Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to Georgia State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today's action, EPA is granting final approval to the rule revisions contained in the December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

**EFFECTIVE DATE:** This rule will be effective August 9, 2001.

**ADDRESSES:** All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Martin at (404) 562–9036. martin.scott@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a December 16, 1999, **Federal Register** document (see 64 FR 70478), EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta attainment demonstration), as well as the underlying rule revisions, which were submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999. EPA's proposed approval was based on the condition that the GAEPD satisfy certain requirements established in the proposal. Subsequently, the GAEPD submitted revisions to the Atlanta attainment demonstration on January 31, 2000, and July 31, 2000. Those rule revisions were proposed for approval in the **Federal Register** on December 18, 2000, at 65 FR 79034. No adverse comments were received pertaining to any rule revisions. In today's action, EPA is granting final approval to the rule revisions contained in the December 16, 1999, and December 18, 2000, proposals. Action will be taken on the Atlanta attainment demonstration in a separate notice.

*Description of Major Revisions to Rules for Air Quality Submitted on October 28, 1999*

The October 28, 1999, attainment demonstration submittal included several regulations that will reduce emissions of $NO_X$ and VOC in the Atlanta modeling domain. EPA is approving the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

Rule 391–3–.02, subparagraph (2)(ii) relating to ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products'' is being amended. This rule is amended to exempt aerospace manufacturing and rework facilities from the rule. The rule is also being modified in order to keep Rule (ii) consistent with the most current Architectural Aluminum Manufacture's Association (AAMA) standard in place.

The current rule only exempts the surface coating of airplane exteriors. Rule (ii) is no longer applicable to aerospace sources because the State has previously submitted a new rule limiting VOC emissions from aerospace manufacturing and rework facilities that meets EPA requirements (i.e., AAMA standards). In order to keep Rule (ii) consistent with the current AAMA standard, subparagraph 5.(xiii) has been modified to state that the coatings must satisfy the requirements of the most recent AAMA publication (number AAMA 605.2). This will prevent the standard that is stated in Rule (ii) from becoming outdated.

Rule 391–3–1–.02 subsection (6) relating to ''Specific Monitoring'' is being amended by adding a new subsection (a)2.(xii) which requires affected sources to install and operate continuous emissions monitoring

systems for $NO_X$ and for oxygen or an approved alternative. The affected sources are those subject to the new rules for boilers (rule 391–3–1.02(2)(lll)). A requirement to install and operate monitors in order to determine initial compliance and track ongoing compliance with the above rule for boilers with a maximum design heat input capacity equal to or greater than 100 million BTU has been added. The rule allows, as an alternative, the use of predictive emissions monitoring systems for certain fuels.

Rule 391–3–1–.03 subsection (6)(b)11 relating to ''Stationary Engines'' is being amended to narrow the group of stationary engines that are not required to obtain air quality permits. Stationary engines with a rated capacity of 300 kilowatts or greater that are used for emergency and/or peaking power and that are located in a 45 county area in and around Atlanta would no longer be exempt from air quality permitting.

Rule 391–3–1–.03, paragraph (8)(c)(9) relating to ''Permit Requirements'' is being amended to correct a typographical error. Federal regulation 40 CFR part 52, appendix S is referenced in this regulation. It was incorrectly listed as part 51.

Rule 391–3–1–.03 subsection (8)(e) relating to ''Permit Requirements'' is being amended to require those sources in the additional 32 counties outside the designated nonattainment area to comply with new source permitting requirements because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area. This rule identifies the 32 counties in the modeling analysis but outside the 13 county nonattainment area where the rule will apply and requires new or modified stationary sources in the counties to comply with the requirements of section (c). This rule will apply to new or modified stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

*Description of Major Revisions to the Inspection and Maintenance Rules*

The EPA is approving the revisions to Georgia's Rules for Enhanced Inspection and Maintenance Chapter 391–3–20 described below.

Rule 391–3–20–.01 relating to ''Definitions'' is being amended to change or delete definitions related to biennial testing, to modify the definition of ASM to include a dual-mode ASM test for older vehicles, to update the reference to the Federal I/M regulations, to define the term ''Waiver,'' and to renumber the definitions.

The ASM test requirement is modified to require a dual-mode ASM 2525/5015 test, effective January 1, 2002. The GAEPD also revised the I/M rule to require annual testing effective January 1, 2000. The definitions of ''Off-Year Inspection'' and ''Regular Inspection'' are deleted since they are not relevant after the change to an annual program. The term ''Waiver'' is defined. The Federal I/M regulations, as of July 1, 1999, are referenced. Other clarifications are made.

Rule 391–3–20–.03 paragraph (4) relating to ''Covered Vehicles; Exemptions'' is being amended to extend the exemption period for new vehicles. Effective January 1, 2001, new vehicles are exempt from testing until the test year three years following the model year of the vehicle.

*Description of Major Revisions to Rules for Air Quality Submitted on January 31, 2000*

The January 31, 2000, submittal included several regulations that will reduce emissions of $NO_X$ and VOC in the Atlanta modeling domain. EPA is approving the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below.

The October 28, 1999, submittal expanded the coverage of several rules outside the 13 county nonattainment area to an additional 32 counties for a total of 45 counties. After receiving adverse comment from many of the counties affected by the expansion, the EPD agreed to revise the rules to reduce the economic hardship imposed on the smaller and more rural counties. The following 26 counties shall no longer be subject to the requirements of the rules listed below: Banks, Barrow, Butts, Chattooga, Clarke, Dawson, Floyd, Gordon, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pickens, Pike, Polk, Putnam, Troup and Upson; these rules are 391–3–1–.02(2)(tt), (vv), (yy), (ccc), (ddd), (eee), (hhh) and 391–3–1–.03(8)(c)(14). In addition to the 13 counties in the Atlanta 1-hour ozone nonattainment area, Bartow, Carroll, Hall, Newton, Spalding, and Walton counties shall be subject to the rules listed above.

Rule 391–3–1–.02(2)(jjj) relating to ''$NO_X$ Emissions from Electric Utility Steam Generating Units'' is being amended to expand the coverage of the rule to include affected coal-fired electric utility steam generating units in the counties of Monroe and Putnam and to include a lower average $NO_X$ emissions limit for all affected units.

Effective May 1, 2003, the $NO_X$ emissions from all affected units at Plants Bowen (Bartow County), Hammond (Floyd County), McDonough (Cobb County), Wansley (Heard County), and Yates (Coweta County) will be limited to the equivalent of 0.13 lb/million BTU five plant average. An overlapping requirement, also effective May 1, 2003, limits $NO_X$ emissions from all the same units described above plus the units at Plants Branch (Putnam County) and Scherer (Monroe County) to the equivalent of 0.20 lb/million BTU seven plant average. Compliance will be determined potentially in two steps. First, each source will be assigned a specific alternative emission limit. If the actual emission rate from each source is less than its alternative limit, then all affected sources would be in compliance. If the actual emission rate from any source is greater than its alternative limit, then compliance would be demonstrated by showing that the actual BTU-weighted average emission rate for all affected sources is less than 0.13 lb/million BTU for the 5 plants and 0.20 lb/million BTU for the 7 plants listed above. Compliance with the alternative emission limits would be determined such that their BTU-weighted average does not exceed the 0.13 and 0.20 lb/million BTU limits. The compliance period will be based on a 30-day rolling average beginning May 1 and ending September 30 of each year.

Rule 391–3–1–.02(2)(kkk) relating to ''VOC Emissions from Aerospace Manufacturing and Rework Facilities'' is being amended by adding compliance dates. Compliance dates have been added which give affected sources located outside of the Atlanta 1-hour ozone nonattainment area until January 1, 2001, to comply with the rule.

Rule 391–3–1–.02(2)(mmm) relating to ''$NO_X$ Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity'' is being amended to remove an exemption from the rule. The exemption, ''Stationary engines used exclusively in the handling and distribution of natural gas,'' is being removed. Stationary engines used to pump, compress, or liquefy natural gas are still exempt under another exemption which exempts engines not connected to an electrical generator. Therefore, the removal of the exemption makes engines used to generate electricity at natural gas pumping, compression, or liquefaction plants subject to the rule consistent with other industries.

Rule 391–3–1–.03(8)(c)(15) relating to ''Additional Provisions for Electrical Generating Units Located in Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area'' is being

added. ''Electrical generating unit'' is defined as a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that serves a generator which produces electricity for sale. Any new electrical generating unit located at a ''major source'' (which is defined as any source which has the potential to emit at least 100 tons per year $NO_X$) or any physical change or change in the method of operation of an existing electrical generating unit located at an existing major source which results in a net increase of 40 tons or more $NO_X$ is subject to additional permitting requirements. This rule is applicable to electrical generating units at major sources located in 26 counties surrounding the 13 county Atlanta nonattainment area and the six counties subject to Rule 391–3–1–.03(8)(c)(14). Sources subject to this rule are required to use best achievable control technology (BACT) to control emissions and are required to obtain emission offsets at a ratio of 1.1 to 1. Sources located in the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton (32 county area) shall be subject to this rule.

Rule 391–3–1–.03(13) relating to ''Emission Reduction Credits'' is being amended. The purpose of this rule is to facilitate construction permitting for sources undertaking major modifications or new constructions in federally designated ozone nonattainment areas and areas contributing to ambient concentrations of ozone in nonattainment areas in the state of Georgia. The proposed amendments to this rule revise the eligibility requirements for major sources to make them consistent with corresponding changes that are being proposed for Rule 391–3–1–.03, Section (8); respond to comments received from EPA concerning applicability of its recently issued Economic Incentives Program to the Emission Reductions Credit Program; clarify the provisions for discounting of credits based on time banked; consolidate and move all definitions to the end of the rule; and strike a section referring to provisions of Rule 391–3–1–.03, Section (8).

*Description of Major Revisions to Rules for Air Quality Submitted on July 31, 2000*

Rule 391–3–1–.01, Definitions, subsection (nnnn) ''Procedure for Testing and Monitoring Sources of Air Pollutants'' is amended to reference a revised version of the Procedures for Testing and Monitoring Sources of Air Pollutants (''PTM'') effective April 1, 2000, which includes changes to specific test methods and procedures and to include a new section describing compliance procedures and monitoring requirements for a new emission standard for large combustion turbines. These revisions have been reviewed and meet applicable requirements.

Rule 391–3–1–.02(2)(lll) relating to ''$NO_X$ Emissions from Fuel-Burning Equipment'' is being amended to exempt fuel burning equipment brought on site by May 1, 1999, but which had not been installed or obtained an air quality permit under 391–3–1–.03(1) by May 1, 1999 and to provide an exemption for duct burners associated with combined cycle gas turbine systems. The original rule exempted existing boilers in their current locations because the cost of retrofitting existing boilers to comply with this rule was determined to be prohibitive. The rule was amended in January 2000, with an effective date of February 16, 2000, to exempt fuel burning equipment which had been permitted by May 1, 1999, even if the equipment was not yet installed and operational by that date. The intent was to grandfather such units because the permittee was likely to have contracted for a new boiler that could have not complied with the emission limit and incurred unrecoverable expense. Likewise, the intent in proposing this second amendment is to grandfather fuel burning equipment which had been purchased and brought on site, but which had not been installed nor made application sufficiently in time to obtain a permit by May 1, 1999. Another exemption is being added for duct burners associated with combined cycle gas turbine systems. These emission units will be subject to more stringent $NO_X$ limits under Georgia Rule 391–3–1–.02(2)(nnn) or Georgia Rule 391–3–1–.03(8)(c) as part of the overall combined cycle system.

Rule 391–3–1–.02(2)(nnn) relating to ''$NO_X$ Emissions from Large Stationary Gas Turbines'' is being amended. This rule will regulate $NO_X$ emissions from new and existing stationary gas turbines greater than 25MW that are located in a 45 county area in and around Atlanta (i.e. 13 county nonattainment area and the 32 county area adjacent to the nonattainment area) $NO_X$ emissions from affected stationary gas turbines permitted before April 1, 2000 will be limited to not more than 30 parts per million (or 50 parts per million for the oil-fired unit) at 15 percent oxygen with a compliance date of May 1, 2003. $NO_X$ emissions from affected stationary gas turbines permitted on or after April 1, 2000, will be limited to not more than 6 parts per million at 15 percent oxygen with a compliance requirement upon startup. The limits in this rule will apply during the period May 1 through September 30 of each year. New units subject to a $NO_X$ limit under 391–3–1–.03(8)(c)14. or 15. would be exempt from this rule. For existing units, a provision was included in the rule allowing the owner/operator to petition the Director for a revision to the rule in case a source is unable to meet the 30 parts per million (or 50 parts per million for the oil-fired unit) through combustion modifications.

Rule 391–3–1–.02(5) relating to ''Open Burning'' is being amended. The coverage of the rule is being expanded beyond the existing 13 county Atlanta 1-hour ozone nonattainment area to include the additional 32 county area. Subparagraph (a) is amended to add a ''prescribed burning'' and a ''slash burning'' exemption to the rule. Subparagraph (b) is reorganized to add clarity to the rule and is amended to add county specific restrictions for the six counties of Bartow, Carroll, Hall, Newton, Spalding, and Walton as well as the remaining 26 counties of the 32 county area. The six counties listed above will have the same restrictions as those in the Atlanta nonattainment area. The 26 counties remaining of the 32 county area will have the same restrictions as those in the Atlanta nonattainment area with the exception that ''prescribed burning'' is allowed in the 26 counties. Subparagraph (f) is added to include the definitions for ''Prescribed Burning'' and ''Slash Burning.''

Rule 391–3–1–.03(6)(h)3 relating to ''SIP Permit Exemptions for Industrial Operations'' is being amended. A new exemption from permitting for small feed mill or grain mill ovens and for surface coating drying ovens is being added.

Rule 391–3–1–.03(8) is being amended. Provisions for internal offsets at a ratio of 1.3 to 1 to avoid New Source Review permitting requirements are being restored in paragraphs (c)(13)(iii) and (iv). These provisions will allow existing sources located within the Atlanta 1-hour ozone nonattainment area to avoid becoming subject to federal New Source Review permitting requirements by offsetting emission increases associated with modifications at a 1.3 to 1.0 ratio.

Rule 391–3–1–.03(11) relating to ''Permit by Rule'' is being amended. A typographical error in the citation of

federal operating permit regulations is being corrected. The reference to 40 CFR 70.5(6)(f) is being replaced with the correct reference to 40 CFR 70.6(f).

### III. Final Action

EPA is granting final approval to the rule revisions to the Georgia SIP as discussed above because they are consistent with Clean Air Act and Agency requirements.

### IV. Administrative Requirements

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. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the 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 September 10, 2001. 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 12, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

## PART 52—[AMENDED]

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

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

## Subpart L—Georgia

2. a. In the table in § 52.570(c), the following entries are revised: 391–3–.01; 391–3–1–.02(2)(ii); 391–3–1–.02(2)(ccc); 391–3–1–.02(2)(eee); 391–3–1–.02(2)(hhh); 391–3–1–.02(2)(jjj); 391–3–1–.02(2)(5); 391–3–1–.02(2)(6); 391–3–1–.03; 391–3–20.

b. In the table in § 52.570(c), the following entries are added: 391–3–1–.02(2)(tt); 391–3–1–.02(2)(vv); 391–3–1–.02(2)(yy); 391–3–1–.02(2)(ddd); 391–3–1–.02(2)(kkk); 391–3–1–.02(2)(lll); 391–3–1–.02(2)(mmm); 391–3–1–.02(2)(nnn).

3. In § 52.570 paragraph (e), the table is amended by adding a new entry ''14'' and ''15''.

The additions and revisions read as follows:

**§ 52.570 Identification of plan.**

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| 391–3–1–.01 | Definitions | 8/16/00 | July 10, 2001 | |

EPA APPROVED GEORGIA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * * | * * | * | * | * |
| 391–3–1–.02(2)(ii) | VOC Emissions from surface Coating of Miscellaneous Metal Parts and Products. | 10/7/99 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(tt) | VOC Emissions from Major Sources | 2/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(vv) | Volatile Organic Liquid Handling and Storage. | 2/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(yy) | Emissions of Nitrogen Oxides from Major Sources. | 2/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(ccc) | VOC Emissions from Bulk Mixing tanks. | 2/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(ddd) | VOC Emissions from Offset Lithography. | 2/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(eee) | VOC Emissions from Expanded Polystyrene Products Manufacturing. | 2/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(hhh) | Wood Furniture Finishing and Cleaning Operations. | 2/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(jjj) | $NO_X$ Emissions from Electric Utility Steam Generating Units. | 2/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(kkk) | VOC Emissions from Aerospace Manufacturing and Rework Facilities. | 2/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(lll) | $NO_X$ Emissions from Fuel-Burning Equipment. | 8/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(mmm) | $NO_X$ Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity. | 2/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(nnn) | $NO_X$ Emissions from Large Stationary Gas Turbines. | 8/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.02(2)(5) | Open Burning | 8/16/00 | July 10, 2001 | |
| 391–3–1–.02(2)(6) | Source Monitoring | 10/7/99 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–1–.03 | Permits | 8/16/00 | July 10, 2001 | |
| * * | * * | * | * | * |
| 391–3–20 | Enhanced Inspection and Maintenance. | 10/7/99 | July 10, 2001 | |

* * * * * * *

(e) * * *

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date |
|---|---|---|---|
| * * * | * | * * | * |
| 14. Procedures for Testing and Monitoring Sources of Air Pollutants. | Atlanta Metropolitan Area | July 31, 2000 | July 10, 2001. |
| 15. Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications. | Atlanta Metropolitan Area | September 20, 2000 | July 10, 2001. |

[FR Doc. 01–17076 Filed 7–9–01; 8:45am]

BILLING CODE 6560–50–U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 010111009–1009–01; I.D. 122600A]**

**RIN 0648–AO72**

## Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule to Revise Certain Provisions of the American Fisheries Act; Extension of Expiration Date

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

**ACTION:** Extension of an emergency interim rule; request for comments.

**SUMMARY:** On January 22, 2001, NMFS published an emergency interim rule, effective January 18, 2001, through July 17, 2001, which supersedes and revises certain provisions of the American Fisheries Act (AFA). On May 15, 2001, NMFS published a correction to the emergency interim rule. This action extends this emergency interim rule, as corrected for an additional 180 days, through January 14, 2002, to maintain requirements of the AFA for the 2001 fishing year. The intended effect of this action is to further the socioeconomic objectives of the AFA.

**DATES:** The expiration date of the emergency interim rule, published on January 22, 2001 (66 FR 7327), and corrected on May 15, 2001 (66 FR 26808), is extended from July 17, 2001, to January 14, 2002.

Comments on this emergency interim rule must be received by August 9, 2001.

**ADDRESSES:** Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to (907) 586–7465. Comments will not be accepted if sent by e-mail.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228 or gretchen.harrington@noaa.gov.

**SUPPLEMENTARY INFORMATION:** On October 21, 1998, the President signed into law the AFA (Div. C, Title II, Subtitle II, Public Law No. 105–277, 112 Stat. 2681, 1998), which made profound changes to the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery and, to a lesser extent, to the groundfish and crab fisheries within the exclusive economic zone off Alaska. The major provisions of the AFA were implemented on an interim basis by an emergency rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107, June 23, 2000). Detailed information on the AFA may be found in the January 2000 emergency interim rule and in the Environmental Assessment/Regulatory Impact Review developed for that emergency interim rule. The Council has recommended Federal fishery management plan amendments to implement the major provisions of the AFA. If approved by NMFS, implementing regulations are expected to be effective by early 2002.

On January 22, 2001, NMFS published an emergency interim rule that implemented management measures to supersede and revise certain provisions of the AFA prior to the start of the Bering Sea pollock fishery (66 FR 7327). The preamble to the emergency interim rule provides a detailed description of the purpose and need for that action and is not repeated here. NMFS received no public comments during the comment period, which expired on February 21, 2001. A correction notice for this emergency interim rule was published on May 15, 2001 (66 FR 26808), which added Prohibitions specific to the AFA that were inadvertently omitted in the emergency interim rule. Extending the emergency interim rule maintains the revisions necessary for the continuation of the pollock fisheries in 2001. This extension makes no changes to the emergency interim rule, as corrected.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the extension of this emergency interim rule, as corrected, is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the AFA, and other applicable laws.

Dated: June 29, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 01–17094 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

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 39

**[Docket No. 95–NM–215–AD]**

### Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that would have superseded an existing AD that currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. The proposed AD also would have required additional inspections for certain airplanes, and would have revised certain compliance times for all airplanes. That proposed AD was prompted by reports of fatigue cracks in those outboard chords. This new action revises the proposed AD by reducing the proposed initial inspection compliance times; simplifying and clarifying the repetitive inspection compliance times; and adding airplanes to the applicability. The actions specified by this new proposed AD are intended to detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane.

**DATES:** Comments must be received by August 24, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 95–NM–215–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Scott Fung, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1221; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–215–AD.'' The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 7, 1997 (62 FR 945). That NPRM proposed to supersede AD 95–12–17, amendment 39–9268 (60 FR 36981, July 19, 1995), which is applicable to certain Boeing Model 737–100 and –200 series airplanes. That NPRM would have continued to require various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That NPRM would have required additional inspections for certain airplanes, and would have revised certain compliance times for all airplanes. That NPRM was prompted by reports of fatigue cracks in the outboard chords. That condition, if not corrected, could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane.

**Comments**

Due consideration has been given to the comments received in response to the NPRM.

**No Objection to the Proposed Rule**

Two commenters, both airline operators, advised that they did not have any objections to the proposed rule.

**Request To Reduce the Threshold**

One commenter, the manufacturer, requests that the initial threshold compliance time for the proposed rule be changed from ''prior to 50,000 total flight cycles'' to ''prior to 35,000 total flight cycles.'' The commenter states that fleet data reviewed since the release of Boeing 737 Service Bulletin 737–53A1166 (the applicable service information specified in the proposed rule) shows that small cracks have been detected as early as 28,000 flight cycles. The commenter suggests that if there are no cracks found, the next inspection should be accomplished at 50,000 total flight cycles. The commenter states that the repetitive intervals of 4,500 flight cycles as specified in the proposed rule should be retained.

The FAA partially agrees. For the reason the commenter stated, we concur that the threshold compliance time of paragraph (a) of the proposed rule should be reduced. However, based on the new reports of cracks, we have determined that the compliance time should be reduced to ''prior to the accumulation of 30,000 total flight cycles,'' and have revised this supplemental NPRM accordingly. This has the effect of retaining the initial compliance time specified in AD 95–12–17. We do not concur that, if no cracks are found, the next inspection should be accomplished only prior to 50,000 total flight cycles. Based on the new crack data that Boeing has provided, we find that, if there are no cracks found during an initial inspection that is performed prior to 30,000 total flight cycles, waiting to perform the next inspection until 50,000 total flight cycles are accumulated could allow sufficient and ample time for cracking to develop. Therefore, we have determined that the previously proposed repetitive inspection interval of 4,500 flight cycles should remain the same throughout this supplemental NPRM.

**Additional Changes to the NPRM**

Since the issuance of the original NPRM, the FAA has determined that a new group of airplanes (i.e., for airplanes that have accumulated less than 27,000 total flight cycles) were inadvertently excluded in the original NPRM. Therefore, that group of airplanes has been included and addressed in paragraph (c) of this supplemental NPRM.

Also, we have determined that the various repetitive inspection times specified in the original NPRM should be combined into a single repetitive interval not to exceed 4,500 flight cycles. That single repetitive compliance time will continue to provide an adequate level of safety and should make it simpler and easier for operators to schedule their fleets for required maintenance.

**Conclusion**

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

There are approximately 999 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–12–17 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $71,040, or $240 per airplane, per inspection cycle.

This proposed AD specifies inspection requirements for airplanes that were omitted inadvertently from the existing AD. However, the costs associated with the inspections for those airplanes were included previously in the cost impact on U.S. operators for accomplishment of AD 95–12–17. Therefore, the FAA estimates that no additional costs would be required for accomplishment of the proposed requirements of this AD for those airplanes.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this proposed AD, it would take approximately 50 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,680 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,680 per airplane.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9268 (60 FR 36981, July 19, 1995), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 95–NM–215–AD. Supersedes AD 95–12–17, Amendment 39–9268.

*Applicability:* Model 737–100 and –200 series airplanes, line numbers 1 through 999 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and consequent rapid decompression of the airplane., accomplish the following:

**Restatement of AD 95–12–17**

*Inspections of the Outboard Chord*

(a) For airplanes on which the body station (BS) 727 frame upper outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 30,000 total flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after August 18, 1995, the effective date of AD 95–12–17 (60 FR 36981, July 19, 1995), whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995.

*Certain Other Inspections*

(b) For airplanes on which the BS 727 frame outboard chord has not been replaced or on which only the lower outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Perform close visual, PESW, and HFEC inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; at the times specified in paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) of this AD. Thereafter, repeat the inspections at intervals not to exceed 4,500 flight cycles.

(1) For airplanes that have accumulated 27,000 or more total flight cycles, but fewer than 50,000 total flight cycles, as of August 18, 1995: Perform the inspections within 4,500 flight cycles after August 18, 1995.

(2) For airplanes that have accumulated 50,000 or more total flight cycles, but fewer than 60,000 total flight cycles, as of August 18, 1995: Perform the inspections within 2,500 flight cycles after August 18, 1995.

(3) For airplanes that have accumulated 60,000 or more total flight cycles, as of August 18, 1995: Perform the inspections within 1,500 flight cycles after August 18, 1995.

(4) For airplanes that have accumulated 70,000 or more total flight cycles as of August 18, 1995: Perform the inspections within 500 flight cycles or within 90 days after August 18, 1995.

**New Requirements of This AD**

(c) For any airplane that had accumulated less than 27,000 total flight cycles as of August 18, 1995 (the effective dated of AD–95–12–17): Within 4,500 flight cycles after the effective date of this AD, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections at intervals not to exceed 4,500 flight cycles.

(d) If any crack is found in the outboard chord of stringer 18A during any inspection required by this AD, prior to further flight, repair in accordance with either paragraph (d)(1) or (d)(2) of this AD.

(1) Repair in accordance with Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by this AD: Accomplish paragraph (e)(1) or (e)(2) of this AD, as applicable, in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections required by either paragraph (a) or (b) of this AD, as applicable, at intervals not to exceed 4,500 flight cycles.

(1) If any crack extends from the forward edge of the chord or from the forward fastener hole, but does not extend past the second fastener hole, accomplish either paragraph (e)(1)(i) or (e)(1)(ii) of this AD.

(i) Prior to further flight, install the time-limited repair. Prior to the accumulation of 4,500 flight cycles or within 18 months after accomplishment of the repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

**Note 2:** Boeing Alert Service Bulletin 737–53A1166 references Boeing Service Bulletin 737–53–1088 as an additional source of service information for procedures to replace the chord.

(2) If any crack extends from the forward edge of the chord, or from the forward fastener hole, and extends past the second fastener hole, prior to further flight, replace the outboard chord in accordance with either the original issue or Revision 1 of the service bulletin.

(f) Accomplishment of the actions specified in paragraph (f)(1) or (f)(2) of this AD in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995, constitutes terminating action for the requirements of this AD.

(1) For airplanes on which no crack is found: Install the preventative modification.

(2) For airplanes on which any crack is found: Prior to further flight, replace the cracked chord and install the preventative modification.

**Alternative Methods of Compliance**

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 2, 2001.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01–17122 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–ANM–12]**

## Proposed Establishment of Class D Airspace; Kalispell, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposal would establish the Kalispell, MT, Class D surface area airspace to accommodate the procedures associated with the operation of a new Airport Traffic Control Tower (ATCT) at Glacier Park International Airport, Kalispell, MT.

**DATES:** Comments must be received on or before August 24, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

**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 the airspace docket number 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 Airspace Docket No. 01–ANM–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class D airspace at Kalispell, MT. This amendment would provide Class D airspace to be used with the establishment of a new operational ATCT at Glacier Park International Airport. This amendment would allow the proper type of airspace to be established to promote safety of flight while the ATCT is operational. The FAA establishes Class D airspace where necessary to protect aircraft transitioning between the terminal and en route environments, and to provide local Visual Flight Rules (VFR) sequencing by ATCT personnel. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and VFR at Glacier Park International Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D surface airspace areas are published in Paragraph 5000, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class D 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. It, therefore, (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).

## The Proposed Amendment

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

## PART 71—DESIGNATION OF CLASS A, 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, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 5000 General.*

* * * * *

**ANM MT D Kalispell, MT [New]**

Glacier Park International Airport, Kalispell, MT

(Lat. 48°18′41″ N, long. 114°15′17″ W)

That airspace extending upwards from the surface to and including 5,500 feet MSL within a 4.3-mile radius of the Glacier Park International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

**Lee Daniel,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 01–17241 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 01–ANM–09]**

## Proposed Modification of Class E Airspace, Pasco, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This action proposes to modify the Class E airspace at Pasco, WA. An area of uncontrolled airspace has been discovered in the Tri-Cities terminal area. This area impedes safe and efficient air traffic control operations to, from, and in the vicinity of Tri-Cities Airport. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft conducting IFR operations at Pasco, Tri-Cities Airport, therefore making this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Pasco, Tri-Cities Airport, Pasco, WA.

**DATES:** Comments must be received on or before August 24, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–09, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**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 the airspace docket number 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 Airspace Docket No. 01–ANM–09.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Pasco, WA. Additional Class E 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft conducting IFR operations at Pasco, Tri-Cities Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of th navigable airspace. This proposal would promote safe flight operations under IFR at the Pasco, Tri-Cities Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 740.9H dated September 1, 2000, and effective September 16, 2000, 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. It, therefore, (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 11013; 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).

### The Proposed Amendment

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

## PART 71—DESIGNATION OF CLASS A, 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, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

**ANM WA E5 Pasco, WA [Revised]**

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′08″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)

Richland Airport
(Lat. 46°18′20″ N., long 119°18′15″ W.)

That airspace extending upward from 700 feet above the surface within 9.2 miles northwest and 5.3 miles southeast of the Pasco VOR/DME 046° and 226° radials extending from 20.1 miles northeast to 10.5 miles southeast of the VOR/DME, and within 8.3 miles northeast and 6.1 miles southwest of the Pasco VOR/DME 131° radial extending from the VOR/DME to 26.3 miles southeast of the VOR/DME, and within 4.3 miles north and 6.6 miles south of the Pasco VOR/DME 288° radial extending from 7 miles west of the VOR/DME to 23.1 miles west of the VOR/DME, and within 8.3 miles west and 4 miles east of the 166° bearing from the Richland Airport extending from the airport to 20.9 miles; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°49′00″ N., long. 118°00′00″ W.; thence to lat. 45°49′00″ N., long. 119°45′00″ W.; to lat. 47°00′00″ N., long. 119°45′00″ W.; to lat. 47°00′00″ N., long. 118°00′00″ W.; thence to the point of origin, excluding that airspace within Federal Airways; and the Hermiston, OR; Pendleton, OR; Walla Walla, WA, Moses Lake, WA, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

**Lee Daniel,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 01–17240 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 01–ANM–08]**

## Proposed Amendment to Class E2 Airspace, Coppertown, MT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class E2 airspace at Coppertown, MT and to change the designation of this airspace to Butte, MT. A recently installed weather reporting device qualifies the E2 airspace to be effective continuously. Class E2 controlled airspace, above the surface of the earth is required to contain aircraft executing the Instrument Flight Rules (IFR) operations at the Bert Mooney Airport, Butte, MT. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Bert Mooney Airport, Butte, MT. Additionally, this action proposes to change the designation of this airspace by removing the designation of Coppertown, MT, and designating it as Butte, MT to adequately reflect the proper name of the airspace.

**DATES:** Comments must be received on or before August 24, 2001.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 01–ANM–08, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–08, 1601 Lind Avenue SW., Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**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 the airspace docket number 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 Airspace Docket No. 01–ANM–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by amending the Class E airspace at Coppertown, MT. The effective times for Class E2 airspace at Bert Mooney Airport, Butte, MT was restricted by NOTAM due to the availability of weather reporting. Newly installed weather reporting equipment at the Bert Mooney Airport now qualifies the Class E2 airspace for continuous operations. This action would promote safe flight to Bert Mooney Airport by Class E2 controlled airspace above the surface of the earth is required to contain aircraft executing the instrument flight operations at Bert Mooney Airport. Class E2 airspace is required to contain aircraft executing the instrument flight operations at Bert Mooney Airport.

The legal designation of Coppertown, MT, does not adequately reflect the airspace and airport this legal description supports. Confusion has occurred by airspace researchers analyzing the Butte, MT, Class E2 airspace as it is listed as Coppertown. Therefore, this amendment also proposes to change the designation of this Class E2 airspace from Coppertown, MT, to Butte, MT. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Bert Mooney Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designated as surface area for an airport, are published in Paragraph 6002, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, 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. It, therefore, (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 11013; 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).

**The Proposed Amendment**

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

## PART 71—DESIGNATION OF CLASS A, 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, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6002 Class E airspace designated as surface area for an airport.*

* * * * *

**ANM MT E2 Coppertown, MT [Remove]**

* * * * *

**ANM MT E2 Butte, MT [New]**

Bert Mooney Airport, MT
(Lat. 45°57′17″ N., long. 112°29′57″ W.)
Coppertown VORTAC
(Lat. 46°01′58″ N., long. 112°44′50″ W.)

Within a 4.3-mile radius of the Bert Mooney Airport; and within 1.8 miles each side of the Coppertown VORTAC 115° radial extending from the 4.3-mile radius to the VORTAC, and within 2.7 miles each side of the 316° bearing from the airport extending from the 4.3-mile radius to 11.4 miles northwest of the airport.

* * * * *

Issued in Seattle, Washington, on June 29, 2001.

**Lee Daniel,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 01–17242 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF AGRICULTURE

## Forest Service

## 36 CFR Parts 219 and 294

**RIN 0596–AB85**

## National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation

**AGENCY:** Forest Service, USDA.

**ACTION:** Advance notice of proposed rulemaking; request for comment.

**SUMMARY:** On May 4, the Secretary of Agriculture expressed the Administration's commitment to providing protection of roadless areas in the National Forest System. However, acknowledging concerns raised by local communities, tribes, and States impacted by the roadless area conservation rule published January 12, 2001, the Secretary also indicated that USDA would move forward with a responsible and balanced approach to re-examining the rule that fairly addressed those concerns.

This advance notice is intended to give the public the opportunity to comment on key issues that have been raised regarding the protection of roadless areas. These comments will help the Department determine the next steps in addressing the long-term protection and management of roadless values within the National Forest System.

**DATES:** Comments must be received in writing by September 10, 2001.

**ADDRESSES:** Send comments in writing by mail to USDA-Forest Service—CAT, Attention: Roadless ANPR Comments, P.O. Box 221090, Salt Lake City, Utah, 84122; via electronic mail to roadless_anpr@fs.fed.us; or via facsimile to 1–801–296–4090, Attention: Roadless ANPR Comments. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Jody Sutton at telephone number, 801–517–1023.

**SUPPLEMENTARY INFORMATION:** The Department is seeking public comment to help decide the next steps in providing long-term protection of roadless values.

On January 12, 2001, the Department issued a final rule accompanied by a final environmental impact statement (Forest Service Roadless Area Conservation, USDA Forest Service, November 2000) and Record of Decision (published as part of the final rule, 36 CFR Part 294, Special Areas; Roadless Area Conservation, on January 12, 2001 at 66 FR 3244). This rule changed the land management on 58.5 million acres of inventoried roadless areas in 120 national forests. Originally scheduled to take effect on March 12, the Secretary of Agriculture extended the effective date until May 12, 2001, to permit the new Administration to review the rule.

Previously, the long-standing process employed by the Forest Service for all resource management decisions relied on amendments and revisions to forest plans governed by the National Forest Management Act. This is a highly collaborative process involving local, regional, and national interests, using the best available forest-level information and maps.

Following publication of the final rule, a number of States, tribes, organizations, and citizens have raised a number of concerns. Many assert that the most appropriate process for evaluating and making long-term resource management direction—including inventoried roadless area protection and management—is through the local forest planning process, which is governed by the rules at 36 CFR 219. They also maintain that environmental analysis and resource management decisions affecting individual national forests should be based on local information and knowledge and the best available science rather than applying one standard uniformly to every inventoried roadless area, no matter the location.

The Department recognizes that inventoried roadless areas contain important environmental values that warrant protection. Appropriate protection and management should be crafted through an open and fair process and address the concerns of States, tribes, local communities, and others.

On May 4, 2001, the Secretary of Agriculture presented five principles on which the protection and management of roadless values should be based:

1. *Informed decisionmaking,* using reliable information and accurate

mapping, and drawing on local expertise and experience through the local forest planning process;

2. *Working together,* by collaborating with States, tribes, local governments, organizations, and individuals through a fair and open process that is responsive to local input and information;

3. *Protecting forests* from the negative effects of severe wildfire and insect and disease outbreaks;

4. *Protecting communities, homes, and property* from the risk of severe wildfire or other risks existing on adjacent federal lands; and

5. *Protecting access to property,* by ensuring that States, tribes, and citizens owning property within inventoried roadless areas have access to that property as required by existing laws.

Eight lawsuits, involving seven states in six judicial districts of four federal circuits have been filed against the January 12, 2001, rule. Among the various issues raised these lawsuits share a common allegation that there was inadequate opportunity for public review and comment on the roadless rule.

On May 10, 2001, the Idaho District Court granted the preliminary injunction requested in *Kootenai Tribe of Idaho* v. *Veneman* and *State of Idaho* v. *U.S. Forest Service,* enjoining the Forest Service from implementing ''all aspects of the Roadless Area Conservation Rule'' as well as a section of the November 2000, forest planning rule that addresses the inventory and evaluation of roadless areas during the forest plan revision. The Court based its decision, in part, on concerns noted in its April 5, 2001, order related to the public review and comment 3 process; namely that, ''* * * the Court conclusively finds that the comment period was grossly inadequate and thus deprived the public of any meaningful dialogue or input in to the process * * *'' The Idaho District Court's decision to grant a preliminary injunction has been appealed and is now pending before the Ninth Circuit Court of Appeals.

On June 7, 2001, the Chief of the Forest Service issued a letter concerning interim protection of inventoried roadless areas, stating that ''the Forest Service is committed to protecting and managing roadless areas as an important component of the National Forest System. The best way to achieve this objective is to ensure that we protect and sustain roadless values until they can be appropriately considered through forest planning.'' As part of that letter, the Chief indicated he would be issuing interim direction regarding timber harvest and road construction in inventoried roadless areas until a forest plan amendment or revision considers the long-term protection and management of unroaded portions of inventoried roadless areas.

The Forest Service has been evaluating roadless areas for nearly 30 years. Decisions about how to manage inventoried roadless areas have been difficult and controversial. In 1972, the Forest Service began a review of National Forest System roadless areas (the Roadless Area Review and Evaluation, subsequently called RARE I) to determine their suitability for inclusion in the National Wilderness Preservation System. A second review for wilderness consideration of roadless areas at the national scale was initiated in 1978 (RARE II). Upon review of the RARE II process, the Ninth Circuit Court of Appeals ruled in *California* v. *Block 690 F. 2d. 753* (9th Cir. 1982) that the national evaluation of roadless area categorization was insufficiently site-specific and did not consider a sufficient range of alternatives.

Similarly, with respect to the January 12, 2001, rule, it is difficult, and perhaps infeasible to collect in a short timeframe, on a national scale, the local data needed to produce a sufficient EIS that analyzes all relevant information or that proposes an adequate range of alternatives. Moreover, within an extended timeframe, collecting and analyzing the information may unnecessarily duplicate the forest planning process.

The National Forest System is comprised of 192 million acres, which is 8.5 percent of the total land base of the United States. Within the National Forest System, there are currently 34.7 million acres of Wilderness, 58.5 million acres of inventoried roadless area, and 4.2 million acres of areas in Congressional designations other than Wilderness that are not included in the inventoried roadless areas, such as Wild and Scenic Rivers or National Recreation Areas. The remaining 94.9 million acres includes roaded and other non-inventoried unroaded areas. The January 12, 2001, roadless rule applies only to the inventoried roadless areas, as described in Volume 2 of the FEIS (maps). All of the 58.5 million acres of inventoried roadless areas were considered for their potential as wilderness during the RARE II process. For a variety of reasons, most were not recommended for designation as Wilderness. For instance, other areas in comparison had greater wilderness values or more public support, or other resource potentials were believed to outweigh the area's contribution to the national wilderness system. Most of these areas still retain their natural characteristics and vary in importance for primitive types of recreation, pristine scenic quality, important fish and wildlife habitats, contributions to biological diversity, watershed protection, other natural values, and, in some cases, resource development options.

Approximately 2.8 million acres (4.8 percent) of inventoried roadless areas have undergone resource development in the form of road construction, timber harvest, mining, or recreational development during the last 30 years. Of the total inventoried roadless area acreage, current forest plans assign 24.2 million acres to roadless or non-development management prescriptions and 34.3 million acres are in prescriptions that allow road construction. In the latter category, there are about 9 million acres of productive timberland, and about 25 million acres are not suitable for timber production.

The Forest Service Roadless Area Conservation Final Environmental Impact Statement (USDA Forest Service, November 2000, pages 2–25) estimated that less than two-tenths of one percent of the total of inventoried roadless areas (94,600 acres of 58.5 million acres) might be developed between 2000 and 2004.

**How Should Roadless Areas Be Managed?**

The Department is studying whether to amend the Roadless Area Conservation rule published January 12, 2001, or to provide further administrative protections. This is consistent with the Idaho Court finding that: ''[b]y issuing the Preliminary Injunction the Court is not precluding or even proposing that the USDA not go forward with their study concerning the proposed amendments because the ultimate responsibility lies with the Government or its agencies and not with the Court.''

All interested parties are encouraged to express their views on inventoried roadless area management. In providing input, reviewers are especially asked to include responses to the following questions, which are framed around the key principles established by the Secretary and the issues raised by States, tribes, organizations, and individuals.

1. *Informed Decisonmaking.* What is the appropriate role of local forest planning as required by NFMA in evaluating protection and management of inventoried roadless areas?

2. *Working Together.* What is the best way for the Forest Service to work with the variety of States, tribes, local

communities, other organizations, and individuals in a collaborative manner to ensure that concerns about roadless values are heard and addressed through a fair and open process?

3. *Protecting Forests.* How should inventoried roadless areas be managed to provide for healthy forests, including protection from severe wildfires and the buildup of hazardous fuels as well as to provide for the detection and prevention of insect and disease outbreaks?

4. *Protecting Communities, Homes, and Property.* How should communities and private property near inventoried roadless areas be protected from the risks associated with natural events, such as major wildfires that may occur on adjacent federal lands?

5. *Protecting Access to Property.* What is the best way to implement the laws that ensure States, tribes, organizations, and private citizens have reasonable access to property they own within inventoried roadless areas?

6. *Describing Values.* What are the characteristics, environmental values, social and economic considerations, and other factors the Forest Service should consider as it evaluates inventoried roadless areas?

7. *Describing Activities.* Are there specific activities that should be expressly prohibited or expressly allowed for inventoried roadless areas through Forest Plan revisions or amendments?

8. *Designating Areas.* Should inventoried roadless areas selected for future roadless protection through the local forest plan revision process be proposed to Congress for wilderness designation, or should they be maintained under a specific designation for roadless area management under the forest plan?

9. *Competing Values and Limited Resources.* How can the Forest Service work effectively with individuals and groups with strongly competing views, values, and beliefs in evaluating and managing public lands and resources, recognizing that the agency can not meet all of the desires of all of the parties?

10. *Other Concerns.* What other concerns, comments, or interests relating to the protection and management of inventoried roadless areas are important?

## Regulatory Findings

This advance notice of proposed rulemaking is being issued to obtain public comment regarding the protection and management of inventoried roadless areas. Because the Department is not proposing any specific approach for managing inventoried roadless areas, there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

## Conclusion

The Department of Agriculture is considering how to best proceed with long-term protection and management of inventoried roadless areas. Through this advance notice of proposed rulemaking, the Department is seeking public input as responses to a series of questions about inventoried roadless area protection and management. Public input and comment on management of inventoried roadless areas and their values will help inform the Department's consideration of how best to proceed with long-term protection and management of these areas. How the Department ultimately addresses protecting roadless values will depend on a number of factors. These include court decisions, public comments, and practical options for amending the current rule or EIS or both, using other administrative tools to implement inventoried roadless area protections.

Dated: July 3, 2001.

**Dale N. Bosworth,**

*Chief.*

[FR Doc. 01–17249 Filed 7–5–01; 3:53 pm]

BILLING CODE 3410–11–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TX 28–1–7382b; FRL–7008–2]**

## Approval and Promulgation of Implementation Plans; Texas; Houston/Galveston Ozone Nonattainment Area Vehicle Miles Traveled Offset Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to approve the Houston/Galveston Ozone Nonattainment Area (HGA) Vehicle Miles Traveled (VMT) Offset State Implementation Plan (SIP) revision submitted by the Governor of Texas on August 25, 1997 and the revision submitted on May 17, 2000. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and it will not take effect, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**DATES:** Comments must be received in writing by August 9, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brooke M. Ivener, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7362.

**SUPPLEMENTARY INFORMATION:** This document concerns the HGA VMT Offset SIP. For additional information, see the direct final rule which is published in the ''Rules and Regulations'' section of this **Federal Register**.

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

Dated: June 13, 2001.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 01–16807 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP–301121; FRL–6779–7]**

**RIN 2070–AB78**

## Vinclozolin; Notice of Proposed Pesticide Tolerance Revocations and Channels of Trade Provision Guidance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revoke the tolerances for the fungicide vinclozolin on strawberries, stonefruits, cucumbers, and bell peppers. Foods legally treated with vinclozolin may continue to be marketed under the provisions of the FFDCA. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These tolerances were established under section 408 of the Federal Food, Drug, and Cosmetic Act (''FFDCA''), 21 U.S.C. 346a. EPA is proposing to revoke the strawberry and stonefruit tolerances because the Agency has canceled the pesticide registrations under Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 et seq., associated with them. In addition, the registrant for vinclozolin, BASF, is no longer supporting the tolerances on cucumbers and bell peppers, which were established for importation purposes only.

The Food and Drug Administration (FDA) in a related document published elsewhere in this issue of the **Federal Register** is announcing the availability of a proposed guidance document presenting FDA's policy on its planned enforcement approach for foods containing vinclozolin residues. This guidance will assist firms in understanding the types of showing under 408(1)(5) of the FFDCA (hereinafter referred to as the ''channels of trade provision'') that FDA may find satisfactory in accordance with its planned enforcement approach for such section. EPA and FDA are cooperating on this effort. FDA will be asking for comment on this proposed guidance and EPA also encourages you to comment on this guidance.

**DATES:** Comments, identified by the docket control number must be received on or before September 10, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301121 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Deanna Scher, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703–308–7043; and e-mail address: Scher.Deanna@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to the following:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Industry | 111 | Crop production |
| | 112 | Animal production |
| | 311 | Food manufacturing |
| | 32532 | Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have 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 Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301121. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301121 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–301121. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the 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 proposed rule 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 control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*F. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

As discussed in Unit II, below, EPA does not believe that these tolerances can be maintained under FFDCA. Persons believing otherwise should submit comments to this proposed rule and any evidence as to why the tolerances are consistent with the FFDCA safety standard. In addition, any person may petition EPA to establish new tolerances. Petitioners should consult EPA regulations at 40 CFR part 180 on the necessary data and information to support tolerance petitions.

## II. Background

*A. What Action is the Agency Taking?*

After consultation with FDA, USDA and stakeholders, EPA is proposing to revoke the tolerances for the fungicide vinclozolin on strawberries, stonefruits, cucumbers, and bell peppers. EPA intends to finalize this action after consideration of comments. The tolerance revocation is proposed to be effective on the date of publication of the final rule.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. (21 U.S.C. 342(a)). FFDCA section 301 prohibits, among other things, introduction or delivery for introduction into interstate commerce of any adulterated food. (21 U.S.C. 331(a)). For a pesticide to be sold and distributed, the pesticide must be registered under section 3, used in accordance with an experimental use permit under section 5, or exempted from section 3 requirements in accordance with section 18 of FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States may have tolerances for residues of such pesticides in or on commodities imported into the United States, provided that EPA has determined that the tolerance is safe under section 408.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

Under FFDCA section 408(l)(2), if EPA cancels each FIFRA registration for the use of a pesticide on a food ''due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food,'' EPA is required to revoke any tolerance or exemption in connection with the canceled use that allows residues of the pesticide on food. This provision imposes a mandatory duty on EPA. Once EPA cancels a FIFRA use due in part to dietary risks, EPA must revoke the associated tolerances and exemptions. Under section 408(l)(5), foods lawfully treated prior to the last legal use date may in most cases continue to be marketed.

*C. Why is this Action being Proposed?*

1. *Strawberries and stonefruits.* During a 1998 review of the vinclozolin toxicology data base, it was determined that an additional tenfold margin of safety, as specified in the Food Quality Protection Act, was required to protect the safety of infants and children. Based on EPA's assessment of the acute dietary risk posed by vinclozolin, the use of the additional tenfold margin of safety rendered aggregate risk to vinclozolin under existing use patterns unacceptable. BASF Corporation, the sole registrant for vinclozolin, requested amendment of its registrations to terminate the use of vinclozolin on strawberries and stonefruits in June 1998 in response to potential Agency action to revoke tolerances and cancel registrations due to unacceptable dietary risk. On July 30, 1998, EPA published a notice in the **Federal Register** (63 FR 40710–40712) (FRL–6020–9) announcing the cancellation of the FIFRA registered uses for the pesticide vinclozolin on strawberries and stonefruits. That notice informed the public of how it could comment on the request for cancellation. One comment was received in response to the proposal, submitted on behalf of the California Strawberry Commission. This

comment was fully addressed in a subsequent FR Notice (63 FR 59557–59558) (FRL–6041–7) published on November 4, 1998 which announced the approval, with one minor change, of the proposed existing stocks provision for products containing vinclozolin. Under limitations on the use of existing stocks, the application of the pesticide vinclozolin on strawberries and stonefruit became unlawful after January 30, 2000.

Although the use cancellations on strawberries and stonefruits were requested by the vinclozolin registrant, the cancellations closely followed, and in EPA's view, were precipitated by, EPA's determination that aggregate exposure to vinclozolin exceeded the safety standard under the FQPA. Thus, the cancellation action was ''due in whole or part to dietary risks to humans posed by residues of that pesticide chemical on food.''

2. *Cucumbers and bell peppers.* Additional dietary and aggregate risk concerns were identified last year when vinclozolin was reevaluated for the purposes of reregistration. Acute dietary risk from vinclozolin in food was above the Agency's level of concern and potential exposure from surface and ground water sources exceeded the Agency's level of concern for cancer dietary risk from vinclozolin-derived 3,5-DCA (see vinclozolin RED, http://www.epa.gov/REDs/). On May 31, 2000, BASF submitted a risk mitigation proposal designed to address dietary and aggregate risk concerns identified during the reregistration process for vinclozolin. BASF requested a phase out of all domestic food uses of vinclozolin except for use on canola (65 FR 56894, September 20, 2000) (FRL–6744–2). The proposal also involved the cancellation of all import tolerances except for wine grapes; specifically, the import tolerances for cucumbers and bell peppers. Vinclozolin is not registered for use on bell peppers and cucumbers in the United States. BASF requested that EPA revoke the established import tolerances for bell peppers and cucumbers not before January 1, 2001. These mitigation measures allowed the Agency to determine that the use of vinclozolin, with the amendments proposed by the registrant, would meet the safety standard of the Food Quality Protection Act (FQPA).

### *D. When do These Actions Become Effective?*

Under FFDCA section 408(l)(2), revocations required by that provision must take place no later than 180 days after the date such cancellation takes effect or the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later. EPA approved BASF's label amendments deleting strawberries and stone fruits in September, 1998; however, use of vinclozolin on strawberries and stonefruits did not become unlawful until January 30, 2000, the last date for use of existing stocks.

Since vinclozolin is not registered for use on bell peppers and cucumbers in the United States, imported cucumbers and bell peppers are the only foods that will be affected by this proposal. FFDCA 408(l)(2) does not apply to these commodities because there are no associated FIFRA uses.

EPA intends to finalize this action as quickly as possible after consideration of comments. The tolerance revocation is proposed to be effective on the date of final publication.

### *E. Will Food Treated Prior to the Last Lawful Date of Application Be Permitted to Clear the Channels of Trade?*

Any commodities listed in the regulatory text of this document that are treated with vinclozolin, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of vinclozolin in or on such commodities shall not render the commodities adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. The channels of trade provision allows for the orderly marketing of foods that may currently contain legal residues resulting from lawful applications of vinclozolin.

Use of vinclozolin on strawberries and stonefruits became unlawful under FIFRA on January 30, 2000, the last date on which use of existing stocks was permitted. Because application of vinclozolin outside the United States after January 30, 2000 is essentially unregulated by FIFRA, EPA considers commodities with residues resulting from application outside the United States after that date to be outside the scope of the channels of trade provision in section 408(l)(5). Therefore, residues on both domestic and foreign commodities treated subsequent to January 30, 2000 would not be present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and thus, would not be covered or subject to the channels of trade provision.

FDA is announcing, elsewhere in this issue of **Federal Register**, the availability of a proposed guidance document on how it plans to administer FFDCA section 408(l)(5) for both domestic and imported commodities. FDA will invite comment on this draft guidance before issuing any final guidance. EPA encourages all interested parties to commnet on FDA's draft guidance.

Considering the perishable nature of cucumbers and bell peppers, FDA estimates that they will either be consumed as fresh produce or will be further processed within three months of the effective date of the tolerance revocations. FDA's guidance indicates its intent to exercise enforcement discretion following the effective date of the revocation of the associated tolerances in order to: (1) Allow fresh bell peppers and cucumbers which bear residues of vinclozolin and which were imported prior to the effective date of tolerance revocation, to reach the ultimate consumer or be sold for further processing and (2) permit bell peppers and cucumbers bearing residues of vinclozolin which were processed abroad no later than three months after the tolerance revocations, to be subsequently imported into the U.S., thus granting equal treatment to foreign and domestic processors. EPA believes that allowing bell peppers or cucumbers to remain in domestic commerce during this three month period, or permitting processed bell peppers or cucumbers processed abroad during that 3 month period to be imported into the U.S., will not significantly impact the dietary risk contribution to the general population or any population subgroup. Exposure to residues is expected to be very low due to the fact that the majority of cucumbers and bell peppers consumed in the U.S. are grown domestically and of the fraction which are imported into the United States, EPA estimates that 1% or less have been treated with vinclozolin.

### *F. What Is the Contribution to Tolerance Reassessment?*

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August, 2006. As of October 15, 2000, EPA has reassessed over 3,550 tolerances. This document proposes to revoke 4 vinclozolin tolerances; however, the reassessments were previously counted in 1997 when all vinclozolin tolerances

were reassessed in order to make a decision on a new tolerance petition. Consequently, no further vinclozolin reassessments, including these 4 revocations, count towards the August, 2002 review deadline of FFDCA section 408(q).

## III. Are The Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

## IV. Regulatory Assessment Requirements

In this proposed rule, EPA is proposing to revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action; i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances for previously canceled uses might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present proposed revocations that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.''

## List of Subjects in 40 CFR Part 180

Environmental protection, pesticides and pest.

Dated: June 19, 2001.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. Section 180.380 is amended by removing from the table in paragraph (a) the entries for ''cucumbers'', ''peppers (bell)'', ''stonefruits, except plums/fresh prunes'' and ''strawberries'', and by adding paragraph (e) to read as follows.

**§180.380 Vinclozolin; tolerances for residues.**

* * * * *

(e) *Revoked tolerances subject to the channel of trade provisions.* The following table lists commodities with residues of vinclozolin resulting from lawful use are subject to the channels of trade provisions of section 408(1)(5) of the FFDCA:

| Commodity | Parts per million |
|---|---|
| Cucumbers | 1.0 |
| Peppers (bell) | 3.0 |
| Stonefruits, except plums/fresh prunes | 25.0 |
| Strawberries | 10.0 |

[FR Doc. 01–16955 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 01–1539; MM Docket No. 01–141; RM–10146]**

### Radio Broadcasting Services; Las Vegas and Pecos, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Meadows Media, LLC, permittee of Station KTRL, Channel 275C2, Las Vegas, New Mexico, requesting the substitution of Channel 275C3 for Channel 275C2, and reallotment of the channel from Las Vegas to Pecos, New Mexico, as that community's second local and first competitive FM service, and modification of the authorization issued to Station KTRL accordingly. Additionally, Meadows Media, LLC requests the allotment of Channel 283C2 to Las Vegas, New Mexico. Channel 275C3 can be allotted to Pecos at a site located 15.5 kilometers (9.6 miles) southwest at coordinates 35–40–15 NL and 105–33–06 WL, to accommodate petitioner's desired transmitter site. Channel 283C2 can be allotted to Las Vegas at coordinates 35–35–57 NL and 105–12–12 WL, representing the currently authorized site of Station KTRL.

**DATES:** Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood and Paul H. Brown, Esqs., Wood, Maines & Brown, Chartered, 1827 Jefferson Place, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–141, adopted June 20, 2001, and released June 29, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. §§ 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275C2 and adding Channel 283C2 at Las Vegas, and adding Channel 275C3 at Pecos.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01–17197 Filed 7–9–01; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 01–1540, MM Docket No. 01–142, RM–10144]**

### Radio Broadcasting Services; Comfort, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Charles Crawford requesting the allotment of Channel 291A at Comfort, Texas. The coordinates for Channel 291A at Comfort are 29–58–06 and 98–54–54. Mexican concurrence will be requested for the allotment of Channel 291A at Comfort.

**DATES:** Comments must be filed on or before August 20, 2001, and reply comments on or before September 4, 2001.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–142, adopted June 20, 2001, and released June 29, 2001. The full text of this Commission decision is available

for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CRF part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. §§ 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 291A at Comfort.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01–17198 Filed 7–9–01; 8:45 am]

BILLING CODE 6712–01–U

# Notices

Federal Register
Vol. 66, No. 132
Tuesday, July 10, 2001

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 COMMERCE

### Bureau of Export Administration

**[Docket No. 010412092–1165–03]**

### Cancellation of Public Hearing on Section 232 National Security Investigation of Imports of Iron Ore and Semi-Finished Steel

**AGENCY:** Bureau of Export Administration, Office of Strategic Industries and Economic Security, Strategic Analysis Division, Department of Commerce.

**ACTION:** Cancellation of public hearing on section 232 national security investigation of imports of iron ore and semi-finished steel.

**SUMMARY:** In a June 14, 2001, **Federal Register** Notice (66 FR 32315), the Bureau of Export Administration (BXA) announced three public hearings on the investigation that the Department of Commerce initiated, on February 1, 2001, to determine the effects on the national security of imports of iron ore and semi-finished steel. This investigation is being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). This notice announces the cancellation of the public hearing scheduled for July 19, 2001, in Irvine, California, due to a low number of requests to speak at that location.

**FOR FURTHER INFORMATION CONTACT:** Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4060, *bbotwin@bxa.doc.gov* or Michael Vaccaro, Trade and Industry Analyst, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–8232, *mvaccaro@bxa.doc.gov.* For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.doc-bxa.bmpcoe.org* under ''Programs.''

**SUPPLEMENTARY INFORMATION:**

### Background

On February 1, 2001, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of iron ore and semi-finished steel. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President no later than October 29, 2001. For further details on this investigation, see the **Federal Register** notices of February 6, 2001 (66 FR 9067) and April 18, 2001 (66 FR 19917).

The iron ore and semi-finished steel products subject to this investigation include:

1. Iron Ore
   —Briquettes
   —Pellets
   —Sinter
2. Semi-finished Steel
   —Ingots
   —Billets
   —Blooms
   —Slab

As announced in the June 14, 2001 **Federal Register** Notice (66 FR 32315), BXA is holding public hearings as part of the investigation. The hearings will assist the Department in determining whether imports of iron ore and semi-finished steel threaten to impair the national security and in recommending remedies if such a threat is found to exist. The Department has cancelled the public hearing scheduled for Thursday, July 19, 2001 at the Newport Gateway, in Irvine, California, due to a low number of requests to speak at that location. The June 14, 2001 **Federal Register** Notice provided that any person, whether presenting or not, may submit a written statement through August 17, 2001, 30 days after the last hearing date. Written submissions by persons not selected to make presentations at the Thursday, July 5, 2001 and Sunday, July 15, 2001 public hearings will be made part of the public record of the proceedings. Written statements should be submitted to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, Room 3876, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 2, 2001.

**James J. Jochum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 01–17151 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–846]**

### Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of extension of time limit for preliminary results of administrative review.

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael Strollo or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3964, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

### Background

On June 30, 2000, the Department of Commerce (the Department) received a request from Kawasaki Steel Corporation (''Kawasaki'') for an administrative review of the antidumping duty order on hot-rolled flat-rolled carbon-quality steel products from Japan. On July 31, 2000, the Department published a notice of initiation of this administrative review, covering the period of February 19, 1999 through May 31, 2000 (65 FR 46687). On January 10, 2001, the Department

published a partial extension of the time limit for the preliminary results of this first administrative review. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review,* 66 FR 1952 (January 10, 2001).

**Extension of Time Limit for Preliminary Results**

This is the first administrative review of this order. There are several complex issues and, as such, it is not practicable to complete this review within the initial time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are fully extending the due date for the preliminary results until June 30, 2001. Because June 30, 2001, the date which is 365 days after the last day of the month in which the anniversary of the date of publication of the order, is a Saturday, the Department is extending the time limit for the preliminary results until the first business day thereafter, i.e., July 2, 2001. *See* 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: June 29, 2001.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 01–17233 Filed 7–9–01; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–846]**

### Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Japan in response to a request by Kawasaki Steel Corporation (Kawasaki). This review covers shipments of this merchandise to the United States during the period of February 19, 1999 through May 31, 2000.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael Strollo or Sean Carey, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–5255 or (202) 482–3964, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (2001).

**Background**

The Department published in the **Federal Register** an antidumping duty order on hot-rolled steel from Japan on June 29, 1999 (64 FR 34778). On June 30, 2000, the Department received a timely request from Kawasaki to conduct an administrative review pursuant to section 351.213(b)(2) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on hot-rolled steel on July 31, 2000 (64 FR 46687).

The Department subsequently determined it was impracticable to complete the review within the standard time frame, and extended the deadline for completion of this antidumping duty administrative review on January 10, 2001. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review,* 66 FR 1952 (January 10, 2001). On June 29, 2001, in accordance with section 751(a)(3)(A) of the Act, the Department fully extended the deadline for the completion of this antidumping duty administrative review.

**Scope of the Antidumping Duty Order**

The products covered by this antidumping duty order are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).

• SAE/AISI grades of series 2300 and higher.

• Ball bearing steels, as defined in the HTSUS.

• Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

• ASTM specifications A710 and A736.

• USS abrasion-resistant steels (USS AR 400, USS AR 500).

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

| C | Mn | P | S | Si | Cr | Cu | Ni |
|---|---|---|---|---|---|---|---|
| 0.10–0.14% | 0.90% Max | 0.025% Max | 0.005% Max | 0.30–0.50% | 0.50–0.70% | 0.20–0.40% | 0.20% Max |

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

| C | Mn | P | S | Si | Cr | Cu | Ni |
|---|---|---|---|---|---|---|---|
| 0.10–0.16% | 0.70–0.90% | 0.025% Max | 0.006% Max | 0.30–0.50% | 0.50–0.70% | 0.25% Max | 0.20% Max |
| Mo | | | | | | | |
| 0.21% Max | | | | | | | |

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

| C | Mn | P | S | Si | Cr | Cu | Ni |
|---|---|---|---|---|---|---|---|
| 0.10–0.14% | 1.30–1.80% | 0.025% Max | 0.005% Max | 0.30–0.50% | 0.50–0.70% | 0.20–0.40% | 0.20% Max |
| V (wt.) | Cb | | | | | | |
| 0.10 Max | 0.08% Max | | | | | | |

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

| C | Mn | P | S | Si | Cr | Cu | Ni |
|---|---|---|---|---|---|---|---|
| 0.15% Max | 1.40% Max | 0.025% Max | 0.010% Max | 0.50% Max | 1.00% Max | 0.50% Max | 0.20% Max |
| Nb | Ca | Al | | | | | |
| 0.005% Min | Treated | 0.01–0.07% | | | | | |

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm$^2$ and 640 N/mm$^2$ and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm$^2$ and 690 N/mm$^2$ and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30,

7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

**Period of Review**

This review covers the period February 19, 1999 through May 31, 2000.

**Verification**

As provided in section 782(i) of the Act, we verified information provided by Kawasaki using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records.

**Date of Sale**

Kawasaki reported the date of invoice as the date of sale for both U.S. and home market sales. Kawasaki stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. On February 13, 2001, the Department requested that Kawasaki provide additional information concerning the nature and frequency of price and quantity changes occurring after the date of order confirmation. On March 6, 2001, Kawasaki reiterated that invoice/shipment date is the most appropriate date of sale, stating that a significant percentage of both home market and export orders were changed in some way between order confirmation and invoice. The Department, therefore, is preliminarily using the dates of sale reported by Kawasaki.

**Normal Value Comparisons**

To determine whether Kawasaki's sales of the subject merchandise to the United States were made at less than NV, we compared its United States price to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

**United States Price**

For United States price, we calculated an export price (EP) in accordance with section 772(a) of the Act. Because the subject merchandise was sold by Kawasaki directly to unaffiliated purchasers in Japan prior to importation into the United States, we have used the price paid by the unaffiliated purchaser in Japan. Constructed export price (CEP) was not otherwise warranted by facts on the record.

We calculated EP for Kawasaki based on packed prices to customers in the United States. We made deductions from the starting price for foreign inland freight, inland insurance, and brokerage and handling in accordance with section 772(c)(2) of the Act.

**Normal Value**

The Department determines the viability of the home market and the comparison market by comparing the aggregate quantity of home market and U.S. sales. We determined that the aggregate quantity of the foreign like product sold by Kawasaki in Japan is more than 5 percent of the aggregate quantity of its sales of the subject merchandise to the United States. We, therefore, have determined that the home market for Kawasaki is a viable market, pursuant to 19 CFR 351.404. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP.

In the most recently completed segment of the proceeding involving Kawasaki, i.e., the investigation, the Department disregarded Kawasaki's sales that failed the cost test. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 24329 (May 6, 1999) (*Final Determination*). We therefore had reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that Kawasaki's sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Therefore, we initiated a COP investigation of sales in the home market for Kawasaki.

**Calculation of COP**

We compared sales of the foreign like product in the home market with model-specific cost of production figures for the period of review (POR). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment.

We relied on the home market sales and cost of production information Kawasaki provided in their questionnaire responses, except for the following adjustments.

We adjusted the cost of manufacture for the recalculated variance rate. In accordance with section 773(f)(2) of the Act, we increased COM to reflect the market price of electricity obtained from an affiliated party. We revised Kawasaki's G&A expense rate calculation to exclude the favorable variance in consumption tax, profit on the sale of a vegetable factory, foreign exchange loss on accounts receivables, lease fees, and lease expense. We also included in the G&A rate calculation foreign exchange losses on other items, and loss on disposal of fixed assets. We revised Kawasaki's interest expense rate calculation to exclude profit on cancellation of interest rate swap. *See Memorandum to Neal Halper From Sheikh M. Hannan through Michael Martin: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results in the Antidumping Duty Administrative Review of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* dated June 29, 2001 (*COP/CV Memo*).

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a

product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time. Based on this test, we disregarded below-cost sales of the foreign like product under review for Kawasaki.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. We relied on the submitted CV information for Kawasaki with the exception of the adjustments to COP noted above.

For those models for which there were sales at prices above COP, we based NV on home market prices to affiliated and unaffiliated parties. We used sales to affiliated customers only where we determined such sales were made at arms-length prices, i.e., at prices comparable to the prices at which the respondents sold identical merchandise to unaffiliated customers. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, for comparison to EP, we made circumstance-of-sale (COS) adjustments to NV by deducting home market direct selling expenses (credit expenses minus short-term interest revenue, advertising, warranty expenses, technical service expenses, and other direct selling expenses minus short-term interest revenue and adding U.S. direct selling expenses (credit and advertising expenses).

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. (In this case, the starting-price sale is from the exporter to an unaffiliated trading company in Japan.)

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the comparison market sales on which NV is based and sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Kawasaki stated that it sold subject merchandise through four channels of trade during the POR: three for sales in the home market and one for sales to the United States. Kawasaki's U.S. sales were made to unaffiliated trading companies in Japan and reported as EP sales. Its three claimed home market channels of trade involved sales to unaffiliated trading companies; sales to unaffiliated end-users; and sales through its affiliated reseller, Kawasho. Kawasaki claimed that its U.S. sales were made at the same LOT as its home market sales to unaffiliated trading companies.

After noting that sales by Kawasho pass through two companies before reaching the customer, whereas sales in the other chains of distribution pass directly to the customer, the Department then examined whether any differences existed with respect to the selling functions performed by Kawasaki in making sales to its three types of home market customers. For the sales through Kawasho, the Department conducted its LOT analysis based on Kawasho's sales to its customer. The information on the record indicates that the selling functions performed in connection with sales to end-users and sales through Kawasho are almost identical. The information on the record also indicates that, while there were some differences in selling functions performed in selling to end-users, directly or via affiliated trading companies, as compared to selling to unaffiliated trading companies, many selling functions were the same. Accordingly, we do not find the differences in selling functions so significant as to warrant finding a distinct LOT. In other words, the Department preliminarily finds that Kawasaki made home market sales at one level of trade during the POR. *See Memorandum for Barbara E. Tillman from Mike Strollo through Maureen Flannery: Level of Trade Analysis of Kawasaki Steel Corporation (Kawasaki) for the Preliminary Results of the First Administrative Review of Hot-Rolled Flat-Rolled Carbon-Qualtiy Steel Products from Japan,* dated June 29, 2001 (*Kawasaki Level-of-Trade Analysis Memo*). Thus, we matched Kawasaki's EP sales to its sales in the one home market and made no LOT adjustment.

**Currency Conversion**

We made currency conversions based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

**Preliminary Results of Review**

We preliminarily determine that the following dumping margin exists:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Kawasaki Steel Corporation | 02/19/1999–05/31/2000 | 6.54% |

We will disclose to any party to the proceeding calculations performed in connection with these preliminary results of review, within five days after the date of the publication of the preliminary results of review. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. The hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. 19 CFR 351.309(d). Unless extended under section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled steel from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Kawasaki, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the LTFV investigation, which is 29.30 percent. See *Final Determination*.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of th 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 double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. § 1675(a)(1) and 19 U.S.C. 1677(f)(i)(1)).

Dated: July 2, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–17234 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–810]**

### Mechanical Transfer Presses From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Order, and Preliminary Determination To Revoke the Order, in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 351.216(b) of the Department's regulations, Sumitomo Heavy Industries, Ltd. (Sumitomo) filed a request for a changed circumstances review of the antidumping order on mechanical transfer presses from Japan with respect to large, hot-forging presses as described below. Domestic producers of the like product have expressed no interest in continuation of the order with respect to these particular mechanical transfer presses. In response to Sumitomo's request, the Department of Commerce (the Department) is initiating a changed circumstances review with respect to this request and issuing a notice of intent to revoke, in part, the antidumping duty order on mechanical transfer presses from Japan as it pertains to large, hot-forging presses. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0666.

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2000).

**SUPPLEMENTARY INFORMATION:**

### Background

On May 3, 2001, Sumitomo requested that the Department revoke, in part, the antidumping duty order on mechanical transfer presses from Japan as it pertains to large, hot-forging presses. Specifically, Sumitomo requested that the Department revoke the order with respect to imports meeting the following specifications: automatic forging presses within the current scope of the order, which operate at a forging temperature of 900 degrees centigrade or higher, and which have a capacity of 1600 metric tons or greater. Sumitomo is a foreign producer of the products in question.

Attached to its request, Sumitomo submitted two letters from the only two domestic parties claiming to be producers of subject merchandise, Enprotech Mechanical Services, Inc. (Enprotech) and IHI-Verson Press Technology, LLC. (Verson), stating that they did not oppose excluding large, hot-forging presses, as defined above, from the scope of the order.

On June 11, 2001, we sent letters to all three domestic interested parties who have expressed an interest in this proceeding, the two domestic producers noted above and the International Union, United Auto Workers, requesting comments either supporting or objecting to the revocation of the order, in part, with respect to large, hot-forging presses by June 15, 2001. As foreign producers participated in an earlier request for a changed circumstances review, we sent the same letter to Komatsu Ltd., Hitachi Zosen Corporation, and Hitachi Zosen Fukui Corporation, foreign producers of the subject merchandise. We received no comments in opposition to the changed circumstances review or the revocation, in part.

### Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTSUS) item numbers 8462.99.0035 and 8466.94.5040. The HTSUS

subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive. The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 3, 1996.)

**Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order in Part**

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under section 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. *See also* sections 751(b) and 782(h)(2) of the Act. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In the *Memorandum to Joseph A. Spetrini from Barbara E. Tillman, Request for Changed Circumstances Review* (April 13, 2001) (on file in the Central Records Unit of the Department of Commerce, Room B–099), the Department denied a previous request by Sumitomo to initiate a changed circumstances review and partially revoke the order as it pertains to large, hot-forging presses, as defined above, because of a lack of support from petitioners. We believe, however, that the necessary support has been demonstrated in this request and have determined to initiate a changed circumstances review. As stated above, two letters of support from the domestic producers have been placed on the record. We received no objections to the request.

Furthermore, because petitioners have expressed a lack of interest in large, hot-forging presses, we determine that expedited action is warranted and are combining the notice of initiation and preliminary results, in accordance with section 351.221(c)(3)(ii) of our regulations. Therefore, we are hereby notifying the public of our preliminary determination to revoke, in part, the antidumping duty order with respect to large, hot-forging presses from Japan meeting the above description.

If the final revocation, in part, occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of large, hot-forging presses meeting the specifications indicated above, and not subject to final results of administrative review, as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with section 351.222 of the regulations. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on large, hot-forging presses meeting the above specifications will continue unless and until we publish a final determination to revoke, in part.

**Public Comment**

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceeding may request a hearing within 14 days of publication of this notice. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with section 351.303 of the regulations and shall be served on all interested parties on the Department's service list in accordance with section 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the regulations.

Dated: June 20, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–17232 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

### Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

**SUMMARY:** In response to a request from two respondents and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1999 through May 31, 2000.

We preliminarily determine that there are sales at less than normal value for SKC Limited (SKC), and no or *de minimis* sales at less than normal value for H.S. Industries (HSI) and Hyosung Corporation (Hyosung) during the period June 1, 1999 through May 31, 2000. Based on three years of sales at not less than normal value (NV), we intend to revoke the order with respect to HSI if the preliminary results of this review are affirmed in our final results. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (U.S.P.) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475 and (202) 482–0649, respectively.

## Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991. *See Antidumping Duty Order and Amendment to Final Determination of Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea,* 56 FR 25660 (June 5, 1991). On June 30, 2000, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Mitsubishi Polyester Film L.L.C. requested reviews of HSI, Hyosung, and SKC for the period June 1, 1999 through May 31, 2000. On June 30, 1999, SKC and HSI requested administrative reviews of their sales for the same time period. We published a notice of initiation of the review on July 31, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 46687 (July 31, 2000).

On February 21 2001, the Department published a notice extending the time limits for publication of its preliminary results by 120 days to June 29, 2001. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Postponement of Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 10988 (February 21, 2001).

## Verification

As provided for in section 782(i)(2) of the Act, we verified the information submitted by HSI. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification findings are outlined in the verification report which is on file in Room B–099 of the main Department of Commerce Building. *See Verification of HSI Sales Questionnaire and Supplemental Questionnaire Responses* dated June 22, 2001.

## Intent To Revoke

In its submission of June 30, 2000, HSI requested, pursuant to 19 CFR § 351.222(e)(1), partial revocation of the order with respect to its sales of PET film. HSI certified that (1) it sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years, (2) in the future it will not sell the subject merchandise at less than NV; and (3) it agreed to its immediate reinstatement of the order if the Department determines that, subsequent to revocation, it sold the subject merchandise at less than NV.

Based upon the preliminary results in this review and the final results of the two proceeding reviews (*see Polyethylene Terephthalate, Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 65 FR 55003 (September 12, 2000), and *Polyethylene Terephthalate, Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty New Shipper Review,* 64 FR 42670 (August 5, 1999)), HSI has preliminarily demonstrated three consecutive years of sales at not less than normal value. Furthermore, we have determined that HSI's aggregate sales to the United States have been made in commercial quantities during these three segments of this proceeding. The company also agreed in writing to immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that subsequent to the partial revocation, HSI sold the subject merchandise at less than normal value. Based on the above facts, and absent a determination that the continued application of the antidumping order is otherwise necessary to offset dumping, the Department preliminarily determines that partial revocation with respect to HSI is warranted. Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by HSI. In accordance with 19 CFR 351.222(b), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption after May 31, 2000. The Department is conducting this review in accordance with section 751 of the Act, as amended.

## Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1999 through May 31, 2000.

## Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

## United States Price (USP)

In calculating USP, the Department treated HSI's, Hyosung's and SKC's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was first sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was first sold to unaffiliated U.S. purchasers after importation.

EP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, bank charges, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made additions to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, for SKC the price was further reduced by an amount for profit to arrive at the CEP.

**Normal Value**

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, for each respondent we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade and, to the extent practicable, at the same level of trade.

The Department disregarded sales by SKC of the foreign like product in the June 1998—May 1999 administrative review because they failed the cost test (*see Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 64 FR 62648 (November 17, 1999) (*1998–1999 Administrative Review*)). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that SKC made sales below cost of production (COP) during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the Act. The June 1998—May 1999 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. *See e.g., 1998–1999 Administrative Review,* 64 FR at 62649.

In calculating SKC's G&A expenses, we excluded non-operating income related to SKC's sale of certain production facilities in its Converted Film Division. We excluded this income because it is unrelated to the general operations of the company. We based our calculation of SKC's G&A expenses upon the remaining information reported in Appendix D–14 of SKC's October 27, 2000 questionnaire response.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) In substantial quantities within the POR (*i.e.,* within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.,* the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of SKC's cost of materials, fabrication, G&A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film, and recalculated G&A expenses as described above. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing expenses.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S. credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

**Level of Trade and CEP Offset**

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked each respondent to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. HSI also identified two channels of distribution: sales to end-users and sales to distributors. Hyosung identified one channel of distribution in the home market: sales to end-users, and we found that Hyosung performed the same type and level of selling functions for all of its sales to end-users. For both channels, SKC and HSI perform similar selling functions such as order processing, market research and after-sales warranty services. Because channels of distribution do not qualify *per se* as separate LOTs, when the selling functions performed for each customer class are sufficiently similar, as in the instant review, we determined that there exists one LOT for SKC's, HSI's, and Hyosung's home market sales.

For the U.S. market, SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. HSI and Hyosung each identified one LOT: EP sales made directly to U.S. customers. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (*i.e.,* visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. The Department also examined the selling functions performed by HSI and Hyosung on their home market and U.S. sales, and determined that Hyosung and HSI both performed substantially the same level of sales contact, inventory maintenance, and/or business system development on both their home market and U.S. sales.

For EP sales, SKC provided its US customers with the selling functions noted above. For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. On CEP sales, these selling fuctions were generally performed by SKC America, Inc. We found that SKC performed significantly greater selling functions on its EP sales, and that the selling functions performed by SKC on its EP and CEP sales were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that for each respondent both sales were made at the same LOT. For both EP and home market transactions, each respondent sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Because each respondent performed essentially equivalent services on its EP and home market sales, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development then it did in the home market. As previously noted, SKC America, Inc. generally provided these selling functions to SKC's CEP customers. The differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales since SKC provided a greater degree of services on its home market sales then it did on its CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there is no other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

**Preliminary Results of Review**

We preliminarily determine that the following margins exist for the period June 1, 1999 through May 31, 2000:

| Company | Margin (percent) |
|---|---|
| HSI | 0 |
| Hyosung | 0 |
| SKC | 5.13 |

We will disclose calculations performed in connection with these preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all

appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 29, 2001.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration*

[FR Doc. 01–17231 Filed 7–9–01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–601]**

## Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of 1999–2000 administrative review, partial rescission of the review, and notice of intent not to revoke order in part.

**SUMMARY:** We preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1999 through May 31, 2000. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Weihai Machinery Holding (Group) Co., China National Machinery Import & Export Corporation, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we preliminarily find that none of these companies qualifies for revocation. Accordingly, we preliminarily determine not to revoke the order with respect to the subject merchandise produced and exported by these four companies.

If these preliminary results are adopted in our final results of review, we will instruct the Customs Service to assess antidumping duties based on the differences between the export price or constructed export price and normal value on all appropriate entries. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder, Melani Miller, or Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–0116, or (202) 482–3853, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department of Commerce's (''the Department'') regulations are to 19 CFR Part 351 (April 2000).

### Background

On May 27, 1987, the Department published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). The Department notified interested parties of the opportunity to request an administrative review of this order on June 20, 2000 (65 FR 38242). On June 26, 2000, Wanxiang Group Corporation (''Wanxiang''), China National Machinery Import & Export Corporation (''CMC''), Liaoning MEC Group Co. Ltd. (''Liaoning''), Premier Bearing & Equipment Ltd. (''Premier''), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory (''Hailin''), and Weihai Machinery Holding (Group) Co., Ltd. (''Weihai'') requested administrative reviews. On June 30, 2000, Wafangdian Bearing Group Corp. Import & Export Company (''Wafangdian''), Luoyang Bearing Corporation (Group) (''Luoyang''), Zhejiang Machinery Import & Export Corp. (''ZMC''), and Zhejiang Changshan Changhe Bearing Corp. (''ZCCBC'') also requested administrative reviews. Weihai, Wafangdian, ZMC, Wanxiang, and CMC also requested that the Department revoke the antidumping duty order as it pertains to them. On June 30, 2000, the petitioner, The Timken Company, requested that the Department conduct an administrative review of the antidumping duty order on hundreds of PRC TRB exporters. In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on July 31, 2000 (65 FR 46687). We published a revision to this initiation notice on August 10, 2000 (65 FR 48968).

On August 16, 2000, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter, we also requested

information relevant to the issue of whether the companies named in the initiation notice are independent from government control. *See* the Separate Rates Determination section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation.

We received responses to the questionnaire in September and October 2000 from the following seven companies: CMC, ZMC, Wafangdian, Wanxiang, Hailin, Weihai, and Luoyang. We sent out supplemental questionnaires in January, February, and May 2001, and received responses to these supplemental questionnaires in February, March, and May 2001.

On September 22 and November 3, 2000, ZCCBC and Liaoning, respectively, requested that the Department rescind the review with respect to these companies. Pursuant to 19 CFR 351.213(d)(1), because ZCCBC and Liaoning withdrew their requests for reviews within 90 days of the date of publication of the notice of initiation of this review and no other party requested a review of these companies, we are rescinding the review with respect to ZCCBC and Liaoning.

In addition, on September 8 and 11, 2000, respectively, Premier and Chin Jun Industrial Ltd. (''Chin Jun'') reported that they had no shipments of subject merchandise to the United States during the period of review (''POR''), June 1, 1999 through May 31, 2000. With respect to Chin Jun, in accordance with 19 CFR 351.213(d)(3), we preliminarily conclude that there were no shipments from Chin Jun to the United States during the POR and are preliminarily rescinding the review with respect to this company. However, prior to issuing the final results, we will confirm with the Customs Service that Chin Jun had no shipments during the POR. With respect to Premier, on January 17, 2001, Premier reported to the Department that it did, in fact, have sales of the subject merchandise to the United States during the POR, and it submitted a questionnaire response. Because Premier's deadline for submitting a response was in October 2000, and no further extensions were requested or granted on behalf of Premier, we rejected Premier's submission. See the Facts Available section, below, for a further discussion of Premier.

Finally, because the order with respect to Wafangdian was revoked in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to RevokeOrder in Part*, 66 FR 11562 (February 26, 2001) (''*TRBs XII Amended Final*''), we are terminating this review with respect to Wafangdian.

**Scope of the Order**

Merchandise covered by this order includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Separate Rates Determination**

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC TRB industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*''Sparklers''*), as amplified by the *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*''). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide,* 59 FR at 22587, and *Sparklers,* 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC, we determined that CMC, Luoyang, Hailin, Wanxiang, Weihai, and ZMC, should receive separate rates (*see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part,* 66 FR 1953 (January 10, 2001) and *TRBs XII Amended Final* (collectively, *''TRBs XII''*)). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in *Sparklers* and *Silicon Carbide.* The evidence in question consisted of, among other things, the companies' business licenses and copies of relevant PRC laws on trade and incorporation. Therefore, we have continued to assign each of these companies a separate rate.

Additionally, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. See the Use of Facts Otherwise Available section, below.

**Use of Facts Otherwise Available**

We preliminarily determine that companies which did not respond to our requests for information did not cooperate to the best of their abilities. Thus, in accordance with sections 776(a) and (b) of the Act, the use of

adverse facts available is appropriate for such companies.

1. *Companies that did not respond to the questionnaire:* Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference that is adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the investigation, a previous administrative review, or any other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expenses resulting in an unusually high margin)).

We have preliminarily assigned a margin of 33.18 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Xiangfan Machinery Import & Export (Group) Corp. during the 1996–97 review (*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Administrative Review and New Shipper Review and Determination Not to Revoke Order in Part,* 63 FR 63842 (November 17, 1998)), represents the highest overall margin for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances or documentation indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 33.18 percent rate is corroborated.

As noted in the Separate Rates Determination section above, we have also preliminarily determined that the non-responsive companies should not receive separate rates. Thus, they are viewed as part of the PRC-wide entity. Accordingly, the facts available for these companies form the basis for the PRC rate, which is 33.18 percent for this review.

2. *Premier:* As noted above, on August 16, 2000, the Department issued the antidumping duty questionnaire for this review to all PRC manufacturers of TRBs, including Premier. This questionnaire noted that responses to Section A of the questionnaire were due on September 25, 2000, and that all other sections were due on October 10, 2000. The due dates for several companies, including Premier, were extended by the Department to October 2, 2000, for the Section A response and to October 27, 2000, for the remaining sections. (*See* September 20, 2000 and October 23, 2000 memos to the file, both entitled ''Request for Extension,'' which are on file in the Department's Central Records Unit in Room B–099 (''CRU'').)

On September 8, 2000, Premier submitted a letter to the Department stating that it had made no shipments of the subject merchandise to the United States during the POR. Accordingly, Premier did not submit a questionnaire response by the deadlines noted above. However, on January 17, 2001, Premier submitted a letter stating that it did, in fact, make sales of TRBs to the United States during the POR. Enclosed with the letter was a questionnaire response for Premier.

Under 19 CFR 351.301(c)(2), the deadline for submitting information requested by the Department is the deadline specified by the Department. As noted above, Premier's extended deadline for submitting a Section A response was October 2, 2000; the extended deadline for submitting the remainder of Premier's response was October 27, 2000. No other extensions were requested or granted on behalf of Premier. Moreover, no further request for information was made to Premier by the Department. Finally, 19 CFR 351.301(b)(2) states that the deadline for submission of factual information in a review is 140 days after the last day of the anniversary month. In this case, that date was November 17, 2000, two months prior to the January 17, 2001 submission made by Premier. Based on these facts, pursuant to 19 CFR 351.302(d)(2), on January 19, 2001, the Department returned to Premier its January 17, 2001 submission.

Pursuant to section 776(a)(2) of the Act, we have determined that the use of facts available is warranted with respect to Premier. As noted above, and discussed in section 776(a)(2)(B) of the Act, Premier failed to provide information requested by the Department by the deadlines for submission of this information. Moreover, as Premier did not provide a response to the Department's questionnaire by the deadlines for submission of this information, we have determined that Premier failed to cooperate by not acting to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, we have determined that the use of an adverse inference is appropriate in choosing from among the facts available for Premier. Additionally, as noted above, we have preliminarily determined that companies which did not respond to the questionnaire should not receive separate rates. Thus, consistent with our methodology noted in the Use of Facts Otherwise Available section above, we have preliminarily assigned a margin of 33.18 percent to Premier.

**Export Price and Constructed Export Price**

For certain sales made by CMC to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by other respondents, as well as the remaining sales made by CMC, we used export price (''EP''), in accordance with section 772(a) of the

Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances.

We calculated EP based on the FOB or CIF prices to unaffiliated purchasers, as appropriate. From these prices we deducted amounts, where appropriate, for foreign inland freight, foreign brokerage and handling, international freight, and marine insurance. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data (Indian freight costs). (We selected India as the surrogate country for the reasons explained in the Normal Value section of this notice, below.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight values for all U.S. sales made by that company.

We calculated CEP based on the packed, ex-warehouse prices from CMC's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and customs duties. In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: credit expenses and indirect selling expenses (including inventory carrying costs). In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose India as the surrogate on the basis of the criteria set out in 19 CFR 351.408(b). *See* the November 14, 2000, Memorandum to John Brinkmann from Jeff May ''Tapered Roller Bearings from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection,'' and the June 29, 2001, Memorandum to Susan Kuhbach ''Selection of a Surrogate Country and Steel Value Sources'' (''Steel Values Memorandum'') for a further discussion of our surrogate selection. (Both memoranda are on file in the Department's CRU.)

We used publicly available information from India to value the various factors. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price index (''WPI'') published by the International Monetary Fund.

Pursuant to the Department's factors-of-production methodology, we valued the respondent's reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 29, 2001, which is on file in the Department's CRU):

1. *Steel Inputs.* For hot-rolled alloy steel bars used in the production of cups and cones, consistent with *TRBs XII,* we used an adjusted weighted-average of Japanese export values to India from the Japanese Harmonized Schedule (''HS'') category 7228.30.900 obtained from Official Japan Ministry of Finance statistics. For cold-rolled steel rods used in the production of rollers and for cold-rolled steel sheet used in the production of cages, we utilized Indian import data under Indian tariff subheadings 7228.5009 and 7209.1600, respectively, obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports.* (For further discussion of selection of steel value sources, *see* the Steel Values Memorandum.)As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of rollers, we also excluded imports from countries that do not produce bearing-quality steel (*see, e.g., TRBs XII*). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory or the domestic supplier to the TRBs factory (*see Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China,* 62 FR 51410 (October 1, 1997), and *Sigma Corporation* v. *United States,* 117 F. 3d 1401 (Fed. Cir. 1997)).

Certain producers in this review purchased steel used to make TRBs or TRB parts from market economy suppliers and paid for the steel with market economy currency. In accordance with 19 CFR 351.408(c)(1), we generally valued these steel inputs using the actual price reported for directly imported inputs from a market economy. However, in *TRBs XII,* we found a reasonable basis to believe or suspect that certain market economy steel inputs purchased by PRC TRB manufacturers and used to manufacture TRBs were subsidized. Consistent with our treatment of subsidized inputs in *TRBs XII,* we have not used the actual prices paid by PRC producers of TRBs for steel which we have continuing reason to believe or suspect is subsidized. Instead, we relied on surrogate values. (*See* individual company calculation memoranda for a more detailed company-specific discussion of this issue.)

We valued scrap recovered from the production of cups, cones, and rollers using Indian import statistics from Indian HS category 7204.2909. Scrap recovered from the production of cages was valued using import data from Indian HS category 7204.4100.

2. *Labor.* 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. We have used the regression-based wage rate available on Import Administration's internet website at www.ia.ita.doc.gov/wages.

3. *Overhead, SG&A Expenses, and Profit.* For factory overhead, we used information obtained from the fiscal year 1999–2000 annual reports of five Indian bearing producers. We calculated factory overhead and selling, general and administrative (''SG&A'') expenses (exclusive of labor—but, including employer provident funds and welfare expenses not reflected in the Department's regressed wage-rate—and electricity) as percentages of direct inputs (also exclusive of labor) and applied these ratios to each producer's direct input costs. This is consistent with the methodology we utilized in *TRBs XII.* For profit, we totaled the

reported profit before taxes for the five Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value.

4. *Packing.* Consistent with our methodology in prior reviews (*see, e.g., TRBs XII*), we calculated packing costs as a percentage of COP for each respondent based on company-specific information submitted in previous reviews. This ratio was applied to the respondents' COPs for the current review.

5. *Electricity.* Consistent with *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 66 FR 15076 (March 15, 2001), we calculated our surrogate value for electricity based on a simple average of the 1998/1999 rates for the ''industrial'' category listed for 19 Indian states or electricity boards. The source of this data was the *Energy Data Directory and Yearbook* published by Tata Energy Research Institute.

6. *Inland Freight.* We valued truck freight using an average of November 1999 truck freight rate quotes collected from Indian trucking companies by the Department and used in the *Notice of Preliminary Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China,* 65 FR 116 (January 3, 2000) (''*Bulk Aspirin from the PRC*''). We valued rail freight using two November 1999 rate quotes for domestic bearing quality steel shipments within India that were also used in *Bulk Aspirin from the PRC*. Because this information is contemporaneous with the current POR, no further calculations were necessary. For inland freight expenses incurred by boat, we used August 1993 shipping freight data used in *Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 65 FR 31143 (May 16, 2000). We inflated this inland shipping rate to the POR using the Indian WPI.

7. *Ocean Freight.* We calculated a value for ocean freight based on May 2000 rate quotes from Maersk Inc. Because this information is contemporaneous with the current POR, no further calculations were necessary.

8. *Marine Insurance.* We calculated a value for marine insurance based on the CIF value of shipped TRBs. This rate was obtained for *TRBs XII* through queries made directly to an international marine insurance provider. We adjusted the marine insurance rate to the POR using the U.S. purchase price index.

9. *Brokerage and Handling.* We used the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review,* 65 FR 48965 (August 10, 2000). Because this information is contemporaneous with the current POR, no adjustments were necessary.

**Revocation**

Pursuant to 19 CFR 351.222(e)(1), Weihai, CMC, Wanxiang, and ZMC requested revocation of the antidumping duty order, in part, based on an absence of dumping for each company for at least three consecutive years. Wafangdian also requested revocation of the antidumping duty order with respect to its sales. However, because the order with respect to Wafangdian was revoked in *TRBs XII,* we do not need to address Wafangdian's request for revocation in this review.

In accordance with 19 CFR 351.222(e), Weihai, CMC, Wanxiang, and ZMC's requests were accompanied by certifications that they had sold the subject merchandise at not less than normal value during the current period of review and would not sell the subject merchandise at less than normal value in the future. They further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. The companies also agreed to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the revocation, the companies sold the subject merchandise at less than normal value.

In *TRBs XII,* CMC and ZMC were found to have made sales below normal value. Because CMC and ZMC do not have three consecutive years of sales at not less than normal value, we preliminarily find that these two companies do not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b). Therefore, we intend not to revoke the order in part with respect to these companies in our final results.

Weihai first participated in this proceeding as a new shipper. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 45511 (August 20, 1999); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837 (November 15, 1999) (''*TRBs NSR*''). *TRBs NSR* covered the period June 1, 1998 through November 30, 1998. Subsequently, Weihai participated in *TRBs XII,* which covered the period June 1, 1998 through May 31, 1999. *See TRBs XII.* Finally, Weihai is participating in the instant review, which covers the period June 1, 1999 through May 31, 2000. Since the time period covered by *TRBs NSR* is included in the time period covered by *TRBs XII,* the Department has reviewed only two years of Weihai's shipments. Thus, we preliminarily find that Weihai has not sold the subject merchandise at not less than normal value for a period of at least three consecutive years and, accordingly, does not qualify for revocation in this review.

Finally, with respect to Wanxiang, in *TRBs XII* we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation. Based on our determination that Wanxiang did not make sales in commercial quantities during the PORs of *TRBs XII* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review,* 64 FR 61837 (November 15, 1999), we do not need to examine whether Wanxiang made sales in commercial quantities during the instant review. Because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we preliminarily find that Wanxiang does not qualify for revocation of the order on TRBs (*see* 19 CFR 351.222(b)).

**Preliminary Results of the Review**

We preliminarily determine that the following dumping margins exist for the period June 1, 1999, through May 31, 2000:

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Weihai Machinery Holding (Group) Co | 0.00 |
| China National Machinery Import & Export Corporation | 4.79 |
| Wanxiang Group Corporation | 0.00 |

| Exporter/manufacturer | Weighted-average margin percentage |
|---|---|
| Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory | 0.00 |
| Luoyang Bearing Corporation (Group) | 0.12 |
| Zhejiang Machinery Import & Export Corp | 0.00 |
| PRC-wide rate (including Premier Bearing & Equipment Ltd.) | 33.18 |

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. To calculate the amount of duties to be assessed with respect to EP sales, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's/customer's entries during the review period.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates, i.e., less than 0.50 percent, no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01–17230 Filed 7–9–01; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 070501A ]**

## Submission for OMB Review; Comment Request

The Department of Commerce 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:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Pacific Tuna Fisheries Logbook.

*Form Number(s):* None.

*OMB Approval Number*: 0648–0148.

*Type of Request*: Regular submission.

*Burden Hours*: 117.

*Number of Respondents*: 25.

*Average Hours Per Response*: 6 minutes per day.

*Needs and Uses*: Operators of U.S. purse seine vessels fishing for tuna in the eastern tropical Pacific Ocean are required (50 CFR 300.22) to maintain logbooks of catch and effort. Information requirements include the date, noon position, and tonnage of fish on board by species. The data collected is used to meet U.S. obligations to the Inter-American Tropical Tuna Commission (IATTC) and for the management of tuna stocks.

*Affected Public*: Business and other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 2, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–17226 Filed 7–9–01; 8:45 am]

BILLING CODE 3510–22–S

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 01–C0009]**

## The Lane Company Inc., A Corporation Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with The Lane Company, Inc., a corporation containing a civil penalty of $900,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 25, 2001.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 01–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Leonard H. Goldstein, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0980, 2202.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: July 2, 2001.

**Todd A. Stevenson,**

*Acting Secretary.*

**Settlement Agreement**

1. The Lane Company, Inc. (''Lane''), a corporation, enters into this Settlement Agreement with the Consumer Product Safety Commission staff (''staff''), and agrees to entry of the Order incorporated herein, in accordance with 16 CFR 1118.20 of the procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2051, *et seq.*

*I. The Parties*

2. The staff is the staff of the Consumer Product Safety Commission (''Commission''), an independent federal regulatory agency established by Congress pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Lane is a corporation organized and existing under the laws of the Commonwealth of Virginia. Its principal offices are located at 701 Fifth St., Altavista, Virginia.

*II. The Product*

4. Lane manufacturers various sizes and styles of cedar chests for sale to, and the personal use, consumption or enjoyment of, a consumer in or around a permanent or temporary household or residence. The cedar chests are, therefore, ''consumer products'' within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. When the lid of the cedar chest is closed, the cedar chest provides airtight protection of stored household and personal items that may otherwise be susceptible to moth damage. Lane cedar chests are sold in furniture stores throughout the United States under the brand name ''Lane'' and previously, at times, under the brand name ''Virginia Maid.''

6. The cedar chests that are the subject of this Settlement Agreement were manufactured by Lane between 1912 and 1986. Lane manufactured approximately 12 million of the cedar chests during that period.

*III. Staff Allegations*

7. The design of the Lane cedar chests described in paragraph 6 of this Settlement Agreement incorporated a latching mechanism that caused the lid of the cedar chest to automatically latch when closed. Once latched, the lid could only be opened by depressing a release button on the outside of the cedar chest.

8. During the mid- to late 1970's, Lane discussed with representatives of The National Lock Company (''National'') the development of a new lock (the ''childproof lock'') for use on Lane cedar chests. National delivered a prototype of the childproof lock to Lane in 1979. The childproof lock required a manual activation of the latching mechanism from outside the cedar chest in order to latch the lid. The childproof lock was incorporated in all Lane cedar chests by 1987.

9. An intra-company memorandum on June 8, 1988 from A.J. Ottinger, Lane's Vice President of Manufacturing, states that ''National and Slaymaker were given the opportunity to design a 'childproof' lock because of liability concerns.''

10. The airtight design of the pre-1987 cedar chests coupled with the automatic latching feature of the lock used in such cedar chests created a risk of asphyxiation in the event that a child at play became entrapped in one of these cedar chests. This risk of asphyxiation was recognized in the patent documents (Patent No. 4,306,431) filed with the U.S. Patent Office on December 22, 1981 by the inventor of the childproof lock. In describing the ''current'' lock and the need for the childproof lock, the patent documents state that, ''A problem may result, however, in the event that a small child enters the chest and lowers the lid. The latch mechanism may catch thereby preventing egress from the chest.''

11. Between April 1991 and February 1996, Lane received reports of suffocation deaths of 5 young children in 4 separate incidents involving a Lane cedar chest.

12. The staff sent Lane a case opening letter on March 26, 1996 stating that the staff had initiated an investigation regarding Lane's cedar chests and requesting information specified in the Commissions regulations on ''Substantial Product Hazards,'' 16 CFR 1115.13(d). The company timely responded to the staff's letter with the requested information on April 12, 1996. Lane subsequently conducted a nationwide campaign to replace old style locks on its cedar chests with a childproof lock.

13. Lane cedar chests described in paragraph 6 of this Agreement presented the same type of risk of death or injury that prompted the 1956 enactment of the Refrigerator Safety Act (''RSA''), 15 U.S.C. 1211, *et seq.,* which makes it unlawful to manufacture refrigerators unless the doors can be opened easily from the inside. The impetus from the RSA was the suffocation deaths of young children in abandoned refrigerators.

14. Lane cedar chests described in paragraph 6 of this Agreement contain a defect which could create a substantial product hazard, as described in 15 U.S.C. 2064(a)(2), and create an unreasonable risk of serious injury or death. Lane's failure to immediately report such defect and unreasonable risk to the Commission, as required by 15 U.S.C. 2064(b), constituted a prohibited act under 15 U.S.C. 2068(a)(4). Lane ''knowingly'' failed to report and is, therefore, subject to civil penalties under 15 U.S.C. 2069.

*IV. Lane's Response*

15. Lane denies each and every allegation set forth in paragraph 7 through 14 of this Settlement Agreement, including allegations that Lane cedar chests described in paragraph 6 of this Settlement Agreement contained a defect that created a substantial product hazard or an unreasonable risk of serious injury or death, that Lane violated the reporting requirements of 15 U.S.C. 2064(b), and that it committed a prohibited act under 15 U.S.C. 2068(4).

16. Lane asserts that the cedar chests were properly designed and manufactured and contained adequate warnings and labeling.

17. In April 1996, Lane filed a report under section 15(b) of the CPSA and proposed a voluntary lock replacement program for its cedar chests. In addition, since 1996, Lane has worked cooperatively with the Commission staff in advertising and implementing its voluntary lock replacement program and has committed in excess of $1 million to the program to resolve this matter.

18. Prior to April 1996, Lane did not have reason to believe that the cedar chests posed a substantial product hazard or an unreasonable risk of serious injury of death. Lane believes the information available to it did not reasonably support the conclusion that the cedar chests were defective or created an unreasonable risk within the meaning of the CPSA, and, therefore, no report was required under section 15(b) of the Act. For these reasons, Lane was not required to, and did not, report to the Commission prior to April 1996. Furthermore, Lane believes that the information currently available to it does not reasonably support the conclusion that the cedar chests are defective, pose a substantial product hazard or create an unreasonable risk of serious injury or death.

19. By entering into this Settlement Agreement and Order, Lane does not admit any liability or wrongdoing, nor does Lane admit that its cedar chests contain a defect which could create a substantial product hazard or that its cedar chests create an unreasonable risk of serious injury or death. This Settlement Agreement and Order is agreed to by Lane for settlement purposes only, to avoid incurring additional legal costs and does not constitute, and is not evidence of, an admission of any liability or wrongdoing by Lane.

*V. Agreement of the Parties*

20. The Commission has jurisdiction over this matter under the CPSA.

21. Upon final acceptance by the Commission of this Settlement Agreement and issuance of the Final Order, Lane knowingly, voluntarily and completely waives any rights it may have to:

a. the issuance of a complaint in this matter;

b. an administrative or judicial hearing with respect to the staff allegations discussed in paragraphs 7 through 14 above;

c. judicial review or other challenge or contest of the validity of the Commission's Order;

d. a determination by the Commission as to whether a violation of 15 U.S.C. 2064(b) has occurred;

e. a statement of findings of fact and conclusions of law with regard to the staff allegations; and

f. any claims under The Equal Access to Justice Act.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the Federal Register, in accordance with 16 CFR 1118.20(f).

23. The Settlement Agreement and Order becomes effective upon final acceptance of the Settlement Agreement by the Commission and service of the Final Order upon Lane.

24. Lane agrees to pay to the United States Treasury a civil penalty in the amount of Nine Hundred Thousand Dollars ($900,000) within thirty (30) calendar days after receipt of service of the Final Order in this matter. Upon payment of such civil penalty, all reporting claims under 15 U.S.C. 2064(b) against Lane, its current and former officers, directors, employees, agents, attorneys, parents and affiliates relating to the cedar chests that are described in paragraph 6 of this Settlement Agreement will be considered to be released.

25. Lane agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

26. This Settlement Agreement and Order are entered into for settlement purposes only and shall not constitute a determination or admission of any fault, liability or statutory or regulatory violation. Nothing contained in this Settlement Agreement and Order precludes Lane from raising any defenses in any future litigation not arising out of the terms of this Settlement Agreement and Order.

27. The Commission's Order in this matter is issued under the provisions of the CPSA and 16 CFR 1118.20, and a violation of this Order may subject Lane to appropriate legal action.

28. This Settlement Agreement and Order is binding upon and shall inure to the benefit of Lane, its current and former officers, directors, employees, agents, attorneys, parents and affiliates.

29. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

30. For the purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had been issued, and upon provisional acceptance of this Settlement Agreement, the Commission may publicize the terms of the Settlement Agreement and Order.

The Lane Company, Inc.
Jerry Ruff,
*Vice President*
Dated: June 5, 2001.

Consumer Product Safety Commission Staff
Michael S. Solender,
*General Counsel.*

Alan C. Shakin,
*Assistant General Counsel.*
Dated: June 19, 2001.
Leonard H. Goldstein,
*Attorney, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between The Lane Company, Inc. and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and The Lane Company, Inc., and it appearing that the Settlement Agreement and Order is in the public interest.

*It Is Ordered,* that the Settlement Agreement be, and Hereby is, provisionally accepted, and

*It Is Further Ordered,* that upon final acceptance of the Settlement Agreement and issuance of the Final Order, The Lane Company, Inc. shall pay the United States Treasury a civil penalty in the amount of Nine Hundred Thousand Dollars ($900,000) within 30 calendar days after service upon The Lane Company, Inc. of a copy of the Final Order.

By direction of the Commission, this Settlement Agreement is provisionally accepted pursuant to 16 CFR 1118.20(d) and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Settlement Agreement in the Commission's Public Calendar and in the **Federal Register**.

*So Ordered* by the Commission, this 2nd day of July, 2001.

Todd A. Stevenson,
*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. 01–17112 Filed 7–9–01; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Proposed Collection; Comment Request

**AGENCY:** Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by September 10, 2001.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Institutional Research & Analysis, Office of Policy, Planning & Analysis, United States Military Academy, West Point, New York 10966, (ATTN: Dr. William Burke). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

*Title, Associated Form, and OMB Number:* West Point Engineering Graduates Surveys.

*Needs and Uses:* Perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricular are needed for periodic accreditation by the Accreditation Board

for Engineering and Technology. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

*Affected Public:* Business or other for profit

*Annual Burden Hours:* 218.

*Number of Respondents:* 519.

*Responses per Respondent:* 1.

*Average Burden per Response:* 25 minutes.

*Frequency:* Other (Every three years).

**SUPPLEMENTARY INFORMATION:** The information will be collected via seven surveys, each with content appropriate to graduates of engineering and engineering-related courses of study at USMA. The surveys will go to graduates currently serving as officers in the U.S. Army (non-DA) civilians. Those graduates are distributed throughout the world. Since not all will have access to online computers, respondents will be allowed to choose between completing a mailout survey or an Internet survey.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01–17115 Filed 7–9–01; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 3, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Student Financial Assistance Programs

*Type of Review:* Revision.

*Title:* Income Contingent Repayment Program Consent to Disclosure of Tax Information Form.

*Frequency:* Once every 5 years.

*Affected Public:* Individuals or households.

*Reporting and Recordkeeping Hour Burden:*

Responses: 300,000

Burden Hours: 75,000.

*Abstract:* This form is the means by which a defaulted student loan borrower (and, if married, the borrower's spouse), choosing to repay under the Income Contingent Repayment Plan, provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17127 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or

Recordkeeping burden. OMB invites public comment.

Dated: July 5, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Distance Education Demonstration Program Annual Reporting Form.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:* Responses: 30,544; Burden Hours: 6,340

*Abstract:* The information will be used by the Department of Education to conduct analyses and prepare reports required by the Congress in the authorization of the Distance Education Demonstration Program. These analyses may also become the basis of recommendations the Department may make to amend the governing statue as prescribed by the Congress in its program authorization. Respondents include participants in the Distance Education Demonstration Program (institutions and systems and consortia of institutions) and their students who are enrolled in distance education courses and programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address *OCIO—IMG—Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17237 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 9, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Lauren__Wittenberg@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 5, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Student Financial Assistance Programs

*Type of Review:* Extension.

*Title:* Consolidation Loan Rebate Fee Report.

*Frequency:* Monthly.

*Affected Public:* Business or other for-profit; State, Local, or Tribal Gov't SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:* Responses: 9,804; Burden Hours: 10,621.

*Abstract:* The Consolidation Loan Regate Fee Report for payment by check or electronic Funds Transfer (EFT) will be used by approximately 400 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–17238 Filed 7–9–01; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: proposed collection; comment request.

**SUMMARY:** The EIA is soliciting comments on the proposed revision, and three-year extension of the Office of Management and Budget (OMB) expiration date of the form RW–859, ''Nuclear Fuel Data Survey''.

**DATES:** Comments must be filed on or before September 10, 2001. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESS:** Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0650,

telephone: (202) 287–1966, e-mail: *jim.finucane@eia.doe.gov*, and fax (202)–287–1934.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of any forms and instructions should be directed to Jim Finucane at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

## I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(a) of the Paperwork Reduction Act of 1995.

This data collection will provide the Office of Civilian Radioactive Waste Management of DOE with detailed information concerning the spent nuclear fuel generated by the respondents (commercial utility generators of spent nuclear fuel within the U.S. are respondents to this survey). The DOE will take possession of this spent fuel and will need this data to properly design the spent fuel repository (spent fuel receiving systems, spent fuel handling systems, etc.) which will be the final disposal site for all of the spent fuel and high level radioactive waste materials.

## II. Current Actions

The current proposed action is: a revision of and a three-year extension of an existing data collection, RW–859. As before, all data will be collected once. Only changes in the specific previously reported data element will require updating. Other changes to the Form RW–859 Nuclear Fuel Data survey are as follows:

—The requirement to enter each individual assembly identifier for all assemblies stored in a pool has been deleted from Section 4.3.1 ''Storage Inventory''. It has been replaced with a single number indicating the number of assemblies in that pool.
—A column to the table has been added to Section 3 ''Permanently Discharged Fuel'' to indicate the pool in which an assembly is stored. This column replaces the requirement to re-enter all assembly identifiers in Section 4.3.1.
—Respondents may now enter either cycle number or cycle date in Section 3 ''Permanently Discharged Fuel''. Only cycle date was previously accepted.
—Only data on permanently discharged fuel are collected in Section 3 ''Permanently Discharged Fuel''.
—Respondents may now designate between Operating License Date and Possession Only License Date in Section 2.1 ''Reactor License Data''.
—Burnup data may be submitted in gigawattdays thermal per metric ton of uranium instead of megawattdays thermal per metric ton of uranium.
—Section 4.6.4 ''Canister Closure'' has been simplified.
—Clarification has been provided on whether certain data should be entered in Section 4.6 ''Canistered Material'' or Section 4.7 ''Uncanistered Fuel and Non-Fuel Components.''
—The requirement to enter each individual assembly identifier for all assemblies stored in dry storage has been deleted from Section 5.3 ''Assemblies in Dry Storage''. It has been replaced with a single number indicating the number of assemblies in each module
—Footnotes have been modified to provide additional information.
—Instructions have been clarified and modified where appropriate. Specific changes have been made to the instructions regarding the transmittal of data to DOE, failed fuel status codes, reporting of midcycle fuel outages, license dates, required degrees of precision, and data on canistered fuel and non-fuel components.

The DOE will provide each respondent with a file which contains a copy of previously provided data with which to update. This revision will also facilitate the streamlining of data elements, which will be collected. Although this survey is planned for use in 2003, its extension at this time is being carried out to avoid its expiration at the end of 2001.

## III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

*General Issues*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent to the Request for Information*

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 40 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

*As a Potential User of the Information To Be Collected:*

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Section 3506(c)(2)(A) and Section 3507(h)(i) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 2, 2001.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 01–17172 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–212–A and EA–213–A]**

## Application To Export Electric Energy; Coral Power, L.L.C.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of applications.

**SUMMARY:** Under two separate applications, Coral Power, L.L.C. (Coral) has applied for renewal of its authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 9, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Coral to transmit electric energy from the United States to Mexico using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national utility of Mexico. That two-year authorization (Order EA–212) will expire on August 13, 2001.

On August 13, 1999, FE authorized Coral to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Authority, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Transmission Company. That two-year authorization (Order EA–213) will expire on August 13, 2001.

On June 27, 2001, Coral filed two applications with FE for renewal of both of the above export authorizations.

DOE notes that the circumstances described in these applications are virtually identical to those for which export authority had previously been granted in FE Order EA–212 and FE Order EA–213. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–212 and FE Docket EA–213 proceedings.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Mexico should be clearly marked with Docket EA–212–A. Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–213–A. Additional copies are to be filed directly with Andrea M. Settanni, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006–1872 AND Robert Reilley, Vice President, Regulatory Affairs, Coral Power, L.L.P., 909 Fannin, Suite 700, Houston, TX 77010.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity'', then ''Pending Procedures'' from the options menus.

Issued in Washington, DC, on July 3, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17177 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket No. EA–145–B]**

## Application To Export Electric Energy; Powerex Corp.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Powerex Corp. (Powerex), formerly the British Columbia Power Exchange Corporation, has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** On May 30, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued an Order (FE Order No. EA–145) authorizing Powerex to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company. That two-year authorization expired on May 30, 1999. On April 15, 1999, Powerex filed an application with FE for renewal of this export authority

and requested that the Order be issued for an additional two-year term. On June 18, 1999, DOE issued FE Order No. EA–145–A granting that request. That two-year authorization expired on June 18, 2001. On June 19, 2001, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–145. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–145 proceeding.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Powerex request to export to Mexico should be clearly marked with Docket EA–145–B. Additional copies are to be filed directly with Mr. Douglas Little, Vice President, Trade Policy & Development, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8, and Ms. Lisa Cherkas, Manager, Trade Policy, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 3, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17173 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket No. EA–243]**

## Application To Export Electric Energy; Tenaska Power Services Company

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Tenaska Power Services Co. (Tenaska Power) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 4, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Tenaska Power to transmit electric energy from the United States to Canada. Tenaska Power, a Nebraska Corporation with its principal place of business in Texas, is engaged in the marketing and trading of electricity at wholesale. Tenaska Power does not own or control any electric power generation or transmission facilities and does not have a franchised power service.

Tenaska Power proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Tenaska Power, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Tenaska Power application to export electric energy to Canada should be clearly marked with Docket EA–243. Additional copies are to be filed directly with Norma Rosner Iacovo, Assistant General Counsel, Tenaska Power Services Co., 1701 E. Lamar Boulevard, Suite 100, Arlington, TX 76006 and Neil L. Levy, Esq., Kirkland & Ellis, 655 Fifteenth Street, NW., Suite 1200, Washington, DC 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 3, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17178 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–M

## DEPARTMENT OF ENERGY

**[Docket No. EA–216–A]**

## Application To Export Electric Energy; TransAlta Energy Marketing (U.S.) Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** TransAlta Energy Marketing (U.S.) Inc., (TEMUS) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 9, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 31, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–216 authorizing TEMUS to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization will expire on August 31, 2001.

On June 15, 2001, TEMUS filed an application with FE for renewal of this export authority and requested that the authorization be granted for a five-year term.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the TEMUS request to export to Canada should be clearly marked with Docket EA–216–A. Additional copies are to be filed directly with Sterling Koch, Counsel & Assistant Secretary, TransAlta Energy Marketing (U.S.) Inc., Box 1900, Station ''M'', 110–12th Avenue, S.W., Calgary, Alberta, Canada T2P 2M1 and Donna J. Bobbish, Counsel, Vinson & Elkins L.L.P., 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA–216. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–216 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity,'' from the Regulatory Info menu, and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on July 3, 2001.

**Anthony Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17174 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket No. PP–229]**

## Notice of Intent To Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings and Notice of Floodplain and Wetlands Involvement; Tucson Electric Power Company

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS) and to conduct public scoping meetings.

**SUMMARY:** Tucson Electric Power Company (TEP) has applied to DOE for a Presidential permit to construct a double-circuit 345,000-volt (345-kV) transmission line originating at TEP's South Substation in Sahuarita, Arizona, and extending approximately 60 miles to the south along one of three alternative routes, where it would cross the United States border with Mexico in the vicinity of Nogales, Arizona. South of the border, the line would extend approximately 60 miles into Mexico and terminate at an existing substation located in the City of Santa Ana, in the Mexican State of Sonora. DOE has determined that the issuance of the Presidential permit would constitute a major Federal action that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). For this reason, DOE intends to prepare an EIS to address reasonably foreseeable impacts from the proposed action and alternatives.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for three public scoping meetings in the vicinity of the proposed transmission lines, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the EIS. Because the proposed project may involve an action in a floodplain or wetland, the EIS will include a floodplain and wetlands assessment and floodplain statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022).

**DATES:** DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the EIS. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until August 9, 2001. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by August 9, 2001 in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public scoping meetings are:

1. July 30, 4 p.m. to 7 p.m., Sahuarita, Arizona
2. July 31, 4 p.m. to 7 p.m., Rio Rico, Arizona

Requests to speak at a public scoping meeting(s) should be received by Mrs. Ellen Russell at the address indicated below on or before July 26, 2001. Requests to speak may also be made at the time of registration for the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

**ADDRESSES:** Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or electronic mail at Ellen.Russell@hq.doe.gov.

The locations of the scoping meetings are:

1. Rancho Resort, 1300 W. Sahuarita Road, Sahuarita, Arizona.
2. Rio Rico Resort, 1069 Camino Caralampi, Rio Rico, Arizona.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice. The TEP application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (www.FE.DOE.GOV; choose ''Electricity Regulation,'' then Pending Procedures).

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

**SUPPLEMENTARY INFORMATION:**

## Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On August 17, 2000, TEP, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE, and on May 18, 2001, supplemented its application with its March 1, 2001, application to the Arizona Corporation Commission for a Certificate of Environmental Compatibility. TEP proposes to construct two 345-kV transmission circuits on a single set of support structures. Both circuits would originate at TEP's existing South Substation located approximately 15 miles south of Tucson in the vicinity of Sahuarita, Arizona, and 1.4 miles east of Interstate Highway 19 (I–19), south of Pima Mine Road, in Pima County, Arizona. South of the border, TEP would extend the line approximately 60 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comision Federal de Electricidad (CFE), the national electric utility of Mexico.

The TEP application, including associated maps and drawings, can be downloaded in its entirety from the Fossil Energy web site (www.FE.DOE.GOV; choose ''Electricity Regulation,'' then Pending Procedures).

TEP states that there are no firm contracts in place for the sale of power to Mexico using the proposed transmission lines. Prior to commencing electricity exports to Mexico using the proposed lines, TEP, or any other electricity exporter, must obtain an electricity export authorization from DOE pursuant to section 202(e) of the Federal Power Act.

TEP proposes three alternative corridors, each beginning at its South Substation. About one-half of each alternative corridor would be on privately-owned land, with the other half on Federally-owned land. The study corridors are about two miles wide, but, when constructed, the transmission line would actually use a right-of-way about 125 to 250 feet wide. One alternative corridor, the ''Westerly Route'' identified by TEP as its preferred route, would extend about 62 miles within the U.S. to the U.S.-Mexico border, primarily on the west side of I–19. The proposed route would exit the South Substation to the west, intersect the existing natural gas pipeline corridor owned by El Paso Natural Gas Company and located approximately six miles west of I–19, turn south, and parallel the natural gas pipeline for about seven miles. Southwest of Green Valley, the Westerly Route would turn southwest for three miles, and then continue south across private lands before crossing the Coronado National Forest on land not currently a Forest Service-designated utility corridor.

The second alternative corridor, the ''Central Route'' (identified by TEP as its preferred route if the Westerly Route could not be constructed), would extend about 56 miles within the U.S. to the U.S.-Mexico border. The Central Route would also be located primarily on the west side of I–19. The proposed Central Route would begin in the same way as the Westerly Route, but southwest of Green Valley it would continue parallel to the existing natural gas pipeline to a point in the vicinity of Tubac, where it would make a slight southwest turn. Then, for about three miles, this proposed route would be one mile west of the natural gas pipeline. The route then would turn southeast, rejoin the natural gas pipeline corridor and parallel it through the Coronado National Forest in a Forest Service-designated utility corridor that currently contains only the natural gas pipeline.

The third alternative corridor, identified by TEP as the ''Easterly Route,'' would extend about 60 miles within the U.S. to the U.S.-Mexico border, and for about half this distance would run parallel to the existing 115-kV transmission line owned by Citizens Communications Company, located east of I–19. In the vicinity of Amado, the Easterly Route would cross to the west side of I–19, intersect the existing natural gas pipeline corridor south of Amado on private land, turn south paralleling the natural gas pipeline, and continue, paralleling the natural gas pipeline through the Coronado National Forest in the Forest Service-designated utility corridor.

Each of the three proposed alternative study corridors would cross 100-year floodplains and may cross wetlands. The Westerly Route would cross approximately 1,500 feet of 100-year floodplain; the Central Route, 2,100 feet; the Easterly Route, 6,600 feet. Project activities would include clearing rights-of-way and access roads, digging tower footings, setting transmission towers, hanging transmission wires, constructing a new substation on the west side of Nogales, Arizona, near Mariposa Road, and modifying TEP's existing South Substation.

In a separate but related proceeding, Public Service Company of New Mexico (PNM) has also applied for a Presidential permit to construct an electric transmission line across the U.S. border in the vicinity of Nogales, Arizona. A separate EIS is being prepared in that proceeding. The study corridor identified by TEP as the Central Route is very similar to the study corridor identified by PNM as its ''Pipeline Corridor.'' TEP's Easterly Route and PNM's ''East Valley Corridor'' study corridors are similar in that a segment of each parallels the Citizens Communications Company's existing

115-kV transmission line. To assist the reader, maps available from the DOE web site (referenced above) reflect the applicants proposal and also the proposed corridors of the other applicant. Each of the EISs being prepared will consider the potential impacts of the other company's proposed transmission line as part of its cumulative impacts analysis.

**Identification of Environmental Issues**

A purpose of this notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts. Following is a preliminary list of issues that may be analyzed in the EIS:

(1) Socioeconomic impacts of development of the land tracts and their subsequent uses;

(2) Impacts on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats;

(3) Impacts on floodplains and wetlands;

(4) Impacts on cultural or historic resources;

(5) Impacts on human health and safety;

(6) Impacts on air, soil, and water;

(7) Visual impacts; and

(8) Disproportionately high and adverse impacts on minority and low-income populations.

The EIS will also consider alternatives to the proposed transmission lines, including, to the extent practicable:

(1) No Action Alternative: The EIS will analyze the impacts associated with ''no action.'' Since the proposed action is the issuance of a Presidential permit for the construction of the proposed transmission lines, ''no action'' means that the permit would not be issued. However, not issuing the permit would not necessarily imply maintenance of the status quo. It is possible that the applicant and/or the Mexican government may take other actions if the proposed transmission lines are not built. The No Action Alternative will address the environmental impacts that are reasonably foreseeable to occur if the Presidential permit is not issued.

(2) Construction of a powerplant in the U.S. closer to the U.S.-Mexico border with a shorter transmission line extending to the border, an alternative concept for supplying electric power to the target region.

**Scoping Process**

Interested parties are invited to participate in the scoping process both to refine the preliminary alternatives and environmental issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not feasible or pertinent. The scoping process is intended to involve all interested agencies (Federal, state, county, and local), public interest groups, Native American tribes, businesses, and members of the public. Potential Federal cooperating agencies include the U.S. Department of the Interior (including the Bureau of Land Management, Bureau of Indian Affairs, Park Service, and the Fish and Wildlife Service), the U.S. Department of Agriculture's Forest Service, the International Boundary and Water Commission, and the Tohono O'odham Nation.

Public scoping meetings will be held at the locations, dates, and times indicated above under the **DATES** and **ADDRESSES** sections. These scoping meetings will be informal. The DOE presiding officer will establish only those procedures needed to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. Speakers will be allocated approximately 5 minutes for their oral statements. Depending upon the number of persons wishing to speak, DOE may allow longer times for representatives of organizations. Consequently, persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting(s), but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Meetings will begin at the times specified and will continue until all those present who wish to participate have had an opportunity to do so.

**Draft EIS Schedule and Availability**

The Draft EIS is scheduled to be issued in December 2001, at which time its availability will be announced in the **Federal Register** and local media and public comments again will be solicited.

People who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mrs. Russell at the address above.

The Draft EIS will be made available for public inspection at several public libraries and reading rooms in Arizona. A notice of these locations will be provided in the **Federal Register** and local media at a later date.

Issued in Washington, DC, on July 5, 2001.

**Steven V. Cary,**

*Acting Assistant Secretary, Office of Environment, Safety and Health.*

[FR Doc. 01–17224 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Office of Fossil Energy

**[Docket Nos. FE C&E 01–67, and C&E 01–76]**

### Certification Notice—201; Notice of Filings of Coal Capability of CPV Pierce, Ltd., GenPower EW Frankfort, LLC, Redbud Energy LP, Desert Power LP, WFEC GENCO, LLC, Duke Energy McClain, LLC, PacifiCorp Power Marketing, Inc., Bastrop Energy Partners, L.P., AES Medina Vallely Cogen, L.L.C., and Entergy Power Ventures L.P. Powerplant and Industrial Fuel Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** CPV Pierce, Ltd., GenPower EW Frankfort LLC, Redbud Energy LP, Desert Power LP, WFEC GENCO, LLC, Duke Energy McClain, LLC, PacifiCorp Power Marketing, Inc, Bastrop Energy Partners, L.P., AES Medina Valley Cogen, L.L.C., and Entergy Power Ventures L.P. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Imports/Exports, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the

capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

*Owner:* CPV Pierce, Ltd (C&E 01–67).
*Operator:* CPV Pierce, Ltd.
*Location:* Polk County, FL.
*Plant Configuration:* Combined-cycle.
*Capacity:* 250 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Florida wholesale power market.
*In-Service Date:* First Quarter 2004.

*Owner:* GenPower EW Frankfort, LLC (C&E 01–68).
*Operator:* General Electric International, Inc.
*Location:* West Frankfort, IL.
*Plant Configuration:* Four combustion turbines.
*Capacity:* 320 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power market.
*In-Service Date:* June, 2003.

*Owner:* Redbud Energy LP (C&E 01–69).
*Operator:* InterGen Operating Company (Redbud).
*Location:* Oklahoma County, OK.
*Plant Configuration:* Combined-cycle.
*Capacity:* 1200 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power market.
*In-Service Date:* Spring 2003.

*Owner:* Desert Power, L.P. (C&E 01–70).
*Operator:* Desert Power, L.P.
*Location:* Tooele County, UT.
*Plant Configuration:* Two combustion turbines.
*Capacity:* 80 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power market.
*In-Service Date:* July 1, 2001.

*Owner:* WFEC GENCO, LLC. (C&E 01–71).
*Operator:* WFEC GENCO, LLC.
*Location:* Caddo County, OK.
*Plant Configuration:* Simple-cycle.
*Capacity:* 90 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Coral Power, L.L.C.
*In-Service Date:* May 8, 2001.

*Owner:* Duke Energy McClain, LLC and Oklahoma Municipal Power Authority, (C&E 01–72).
*Operator:* Duke Energy McClain, LLC.
*Location:* McClain County, OK.
*Plant Configuration:* Combined-cycle.
*Capacity:* 520 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* None.
*In-Service Date:* June 1, 2001.

*Owner:* PacifiCorp Power Marketing, Inc., (C&E 01–73).
*Operator:* PacifiCorp Power Marketing, Inc.
*Location:* Klamath Falls, OR.
*Plant Configuration:* Simple-cycle combustion turbine.
*Capacity:* 100 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Open Electricity Market.
*In-Service Date:* September 1, 2001.

*Owner:* Bastrop Energy Partners, L.P. (C&E 01–74).
*Operator:* Bastrop Energy Partners, L.P.
*Location:* Bastrop County, TX.
*Plant Configuration:* Combined-cycle.
*Capacity:* 550 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Unspecified customers.
*In-Service Date:* Summer 2002.

*Owner:* AES Medina Valley Cogen, L.L.C. (C&E 01–75).
*Operator:* AES Medina Valley Operations, L.L.C.
*Location:* Peoria County, IL.
*Plant Configuration:* Combined-cycle.
*Capacity:* 40 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Central Illinois Light Company.
*In-Service Date:* July 1, 2001.

*Owner:* Entergy Power Ventures, L.P. (C&E 01–76).
*Operator:* Entergy Power Ventures, L.P.
*Location:* Harrison County, TX.
*Plant Configuration:* Combined-cycle.
*Capacity:* 570 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Not yet determined.
*In-Service Date:* July 1, 2003.

Issued in Washington, DC, July 3, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17176 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[FE Dockets No. PP–240]**

## Applications for Presidential Permit, Enron Canada Corp.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Enron Canada Corp. (ECC) has applied for a Presidential permit to construct, operate, maintain, and connect a double-circuit 230,000-volt (230-kV) underground electric transmission facility across the U.S. border with Canada.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before August 9, 2001.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael T. Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On April 23, 2001, ECC, an Alberta, Canada, power marketing corporation and wholly-owned subsidiary of Enron Corp. of Houston, Texas, filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. ECC proposes to construct a double-circuit 230-kV, underground electric transmission line across the U.S.-Canadian border in St. Claire County, Michigan. The proposed power line would connect to a proposed new electric generating facility (the Moore Power Plant) located in Moore Township, Lambton County, Ontario, Canada, extend under the St. Clair River and connect to the St. Clair Power Plant located in St. Clair County, Michigan, and owned by Detroit Edison. The total length of the transmission line would be approximately 7,052 feet. The underground sections would be approximately 3,640 feet in Ontario and 1,150 feet in Michigan. The section beneath the St. Clair River would be approximately 2,000 feet.

ECC asserts that the Moore Power Plant (MPP) is being built to participate in the newly deregulated Ontario electricity market and will be connected to Hydro One's Lambton Substation. The proposed cross-border power line will be a radial line connecting the MPP only to Detroit Edison's system. Accordingly, ECC requests a determination that open access obligations will not be imposed in connection with this Presidential permit.

Since restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888 (Promotion Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, on July 27, 1999, (64 FR 40586) DOE initiated a proceeding in which it noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. That proceeding is not yet complete. However, in this docket DOE specifically requests comment on the appropriateness of or comment on whether the open access requirement should be applied to ECC's proposed power line.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Eric Le Dain, Enron Canada Corp., 3500 Canterra Tower, 400–3rd Avenue SW., Calgary, Alberta T2P 4H2 and Debbie Chance, Enron Corp., 1400 Smith Street, Mail Stop EB2960E, Houston, TX 77002.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed actions pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity'' from the options menu, and then ''Pending Proceedings.''

Issued in Washington, DC, on July 3, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01–17175 Filed 7–9–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2545–071 Washington]**

### Avista Corporation; Notice of Availability of Environmental Assessment

July 3, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed Avista Corporation's application to waive for 4.5 months the aesthetic flow requirements at the Monroe Street development of the Spokane River Hydroelectric Project, located on the Spokane River in Lincoln, Stevens, and Spokane Counties, Washington, and Kootenai County, Idaho. Staff in the Office of Energy Projects has prepared an Environmental Assessment (EA). The Monroe Street development does not occupy any federal or tribal lands.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that approval of the proposed amendment with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on July 3, 2001, for the above application. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

For further information, contact Steve Hocking at (202) 219–2656.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17179 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–375–000]**

### East Tennessee Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed TVA Project, Request for Comments on Environmental Issues, and Notice of Site Visit

July 3, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the TVA Project. This project involves the construction and operation of facilities by East Tennessee Natural Gas Company (East Tennessee) in Moore, Lewis, Lawrence, Giles, Maury, Marshall, Hickman, and Franklin Counties, Tennessee.[1] These facilities would consist of about 26.5 miles of pipeline loop, a new 3,255-horsepower compressor station, additional compression at an existing compressor station, and other facilities. This EA will be used by the Commission in its decision-making process to determine

[1] East Tennessee's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice East Tennessee provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

**Summary of the Proposed Project**

East Tennessee wants to expand the capacity of its facilities in Tennessee to render firm natural gas transportation service of 86,000 dekatherms per day (Dth/d) to the Tennessee Valley Authority (TVA). East Tennessee seeks authority to:

- construct approximately 8.74 miles of 20-inch-diameter pipeline loop and 9.63 miles of 16-inch-diameter pipeline loop on its existing pipeline right-of-way and construct approximately 8.09 miles of 20-inch-diameter pipeline loop adjacent to its existing pipeline right-of-way in Moore, Lewis, Lawrence, Giles, Maury, and Franklin Counties;
- hydrostatically test approximately 5.44 miles of 12-inch-diameter pipeline on its existing Line 3200 in Franklin County in order to increase the maximum allowable operating pressure;
- install a 6,270-horsepower (hp) compressor unit and a regulator at its existing Station 3206 in Marshall County; and a regulator at the Elk River Springs Meter Station in Franklin County;
- construct a new 3,255–hp compressor station (Station 3202) in Hickman County;
- replace aerodynamic assemblies for two existing compressor units at Station 3206 and for two existing compressor units at Station 3209, Franklin County; and
- install associated valves, piping, and appurtenant facilities.

The location of the project facilities is shown in appendix 1.[2]

The TVA would construct approximately 4 miles of 12-inch-diameter pipeline as well as a 510-megawatt combined cycle gas-fired generating plant in Franklin County.

**Land Requirements for Construction**

Construction of the proposed facilities would disturb about 400.9 acres. Of this total, approximately 27.9 acres would become new permanent right-of-way.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by East Tennessee. This preliminary list of issues may be changed based on your comments and our analysis.

- The location of forty-four residences within 50-feet of the proposed construction right-of-way.
- One federally listed endangered or threatened species may occur in the proposed project area.
- Fifteen wetlands would be crossed by the proposed project.

Also we have made a preliminary decision not to address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting the RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

• Reference Docket No. CP01–375–000.

• Mail your comments so that they will be received in Washington, DC on or before August 2, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link to the User's Guide. Before you can file comments or interventions you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 3). If you do not return the Information Request, your name will be taken off the mailing list.

**Site Visit**

On July 18 through 20, 2001, we will be conducting a site visit to the project area. This will be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs (identified at the end of this notice) for more details and must provide their own transportation.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17180 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP01–384–000, and CP01–387–000]**

### Islander East Pipeline Company, L.L.C., Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Islander East Pipeline Project and Request for Comments on Environmental Issues

July 3, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Islander East Pipeline Project involving construction and operation of facilities by Islander East Pipeline Company, L.L.C. (Islander East) and related facilities constructed and operated by Algonquin Gas Transmission Company (Algonquin) in New Haven County, Connecticut and Suffolk County, New York.[1] Islander East's facilities would consist of about 44.8 miles of 24-inch-diameter pipeline, including 22.6 miles offshore in Long Island Sound; 5.6 miles of new 24-inch-diameter lateral; and three new meter stations. In addition, Algonquin would retest and uprate about 27.4 miles of its C–1 and C–1L pipelines, and construct a new 10,310 horsepower (hp) compressor station in New Haven County, Connecticut. This begins a scoping process and the comments received in response to this notice will be used to identify significant environmental issues including whether there is a need to prepare an environmental impact statement (EIS) rather than an EA. The EA (or EIS) will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Islander East and Algonquin provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.gov).

**Summary of the Proposed Project**

Islander East wants to expand the capacity of its facilities in Connecticut and New York to transport an additional 285,000 dekatherms per day of natural gas to one local distribution company and two proposed power plants. Islander East seeks authority to construct and operate:

• 21.2 miles of 24-inch-diameter pipeline in New Haven County, Connecticut, including 11.0 miles offshore in Long Island Sound;

• 23.6 miles of 24-inch-diameter pipeline in Suffolk County, New York, including 11.6 miles offshore in Long Island Sound;

[1] Islander East and Algonquin's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

• 5.6 miles of 24-inch-diameter pipeline from Calverton Lateral to a proposed power plant in Suffolk County, New York;

• a new Islander East/North Haven meter station within or adjacent to Algonquin's existing North Haven meter station in New Haven County, Connecticut;

• a new KeySpan Energy Delivery & ANP Brookhaven meter station in Suffolk County, New York;

• a new AES Calverton meter station in Suffolk County, New York; and

• five new mainline valves in New Haven County, Connecticut and Suffolk County, New York.

In addition, Algonquin plans to:

• retest and uprate about 27.4 miles of the C–1 and C–1L pipeline systems (13.7 miles each) from their current maximum allowable operating pressures of 750 pounds per square inch (psig) to 814 psig;

• investigate, inspect, and repair as needed about 25 feet of anomalies identified on the 10-inch-diameter C–1 line at about milepost (MP) 3.8 in New Haven County, Connecticut;

• construct a new 10,310 hp gas turbine-powered Cheshire Compressor Station and associated aboveground piping, launchers, and buildings in New Haven County, Connecticut; and

• relocate two in-line tool launchers from an aboveground facility at about MP 0.6 in New Haven County, Connecticut to the new Cheshire Compressor Station.

The location of the project facilities is shown in appendix 1.[2]

## Land Requirements for Construction

Islander East proposes to use a 75-foot-wide right-of-way to construct its pipeline; 50 feet would be maintained as permanent right-of-way. About 86 percent of the 27.8 miles of onshore construction would be within or adjacent to existing rights-of-way.

Construction of the proposed facilities would disturb about 536.0 acres. Following construction, about 9.5 acres would be maintained as new aboveground facility sites. The remaining 208.9 acres would be restored and allowed to revert to its former use.

## The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• geology and soils
• water resources, fisheries, and wetlands
• vegetation and wildlife
• endangered and threatened species
• public safety
• land use
• cultural resources
• air quality and noise
• hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

## Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Islander East and Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

• A total of 22.6 miles of Long Island Sound would be crossed, including potential essential fish habitat (EFH).

• Forty-two residences would be located within 50 feet of the construction work area.

• A total of 133.8 acres of pine barrens would be disturbed, with 82.0 acres retained as permanent right-of-way.

• A total of 10 perennial and 4 intermittent waterbodies would be crossed, including two state scenic rivers.

• About 12.9 acres of wetlands would be disturbed during construction, with about 3.8 acres maintained as permanent right-of-way.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. These facilities include the proposed Brookhaven Energy Project power plant in Brookhaven, New York; the AES Long Island power plant located at the former Calverton Naval Reserve Facility on Long Island; and the local distribution company, KeySpan Energy Delivery Long Island. We will briefly describe their location and status in the EA.

## Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes and sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas 2.

• Reference Docket No. CP01–384–000.

• Mail your comments so that they will be received in Washington, DC on or before August 3, 2001.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintencance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17181 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12035–000.

c. *Date Filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Greys River Hydroelectric Project.

f. *Location:* The proposed project would be located on a proposed dam owned by the applicant, on Greys River in Lincoln County, Wyoming. Part of the project would be on lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) a proposed diversion dam 4-feet-high and 160-feet-long, (2) a resulting impoundment with a surface area of 1.5 acres and a storage capacity of 4.75 acre-feet at a normal elevation of 5,690 feet msl, (3) a 48-inch-diameter 3,460-foot-long steel penstock, (4) a powerhouse containing one generating unit with an installed capacity of 4.5 MW, (3) a 25 kv transmission line approximately 0.5 miles long, and (5) appurtenant facilities.

The project would have an annual generation of 28 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17182 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12024–000.

c. *Date Filed:* May 22, 2001.

d. *Applicants:* John D. Foggy and John S. Foggy.

e. *Name of Project:* Stewart Springs Hydroelectric Project.

f. *Location:* The proposed project would be located on Parks Creek near the City of Weed, in Siskiyou County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC § § 791(a)–825(r).

h. *Applicant Contacts:* Mr. John D. Foggy and John S. Foggy, 15 Tiptoe Lane, Burlingame, CA 94010, (408) 919–3049.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consists of: (1) a diversion structure approximately 20-feet-long, and 3-feet-high, (2) a 20-inch-diameter, 6,700 foot-long penstock; (3) a proposed powerhouse containing one generating unit having an installed capacity of 500 kW, (4) a proposed 400-foot-long 12 kv transmission line; and (5) appurtenant facilities.

The project would have an annual generation of 2.3 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17183 Filed 7–9–01; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12048–000.

c. *Date filed:* June 6, 2001.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Spring Canyon Pumped Storage Project.

f. *Location:* On land administered by the National Park Service in Spring Canyon in Mohave County, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Frank L. Mazzone, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, (707) 996–2573; Paul L. Brinkmann, Esq., Shorall Stevens & Brinkmann, 702 North Beaver Street, Flagstaff, AZ 86001–3103, (520) 779–1950.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the Project Number (12048–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project is a pumped storage project that would use Lake Mead, created by the Bureau of Reclamation's Hoover Dam, as the lower reservoir and would consist of: (1) A 210-foot-high, 2500-foot-long dam and 25,000-acre upper reservoir in Spring Canyon; (2) two 30-foot-diameter, 2300-foot-long underground penstocks; (3) an underground powerhouse containing generating units with a maximum installed capacity of 1500 MW; (4) twin circuit 500 kV transmission lines 75 miles long; and (5) appurtenant facilities. The Commission is not authorized to issue permits or licenses for non-federal development at Hoover Dam and Lake Mead. However, this permit is for studying the feasibility of constructing the upper reservoir and related project works.

The project would have an annual generation of 2,019 GWh.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for

inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17184 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12023–000.

c. *Date filed:* May 22, 2001.

d. *Applicant:* Richard V. Williamson.

e. *Name of Project:* Stony Creek Project.

f. *Location:* On Stony Creek, in Colusa County, California. The project would use U.S. Forest Service land within the Mendocino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard V. Williamson, 1111 James Donlon Blvd, No. 2076, Antioch, CA 94509, (707) 745–7334.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12023–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 240-foot-long, 80-foot-high reinforced cast-in-place concrete dam, (2) a proposed impoundment having a surface area of 36.7 acres and storage capacity of 750 acre-feet and a normal water surface elevation of 1520 feet msl, (3) a proposed 5200-foot-long, 42-inch diameter steel penstock, (4) a proposed powerhouse containing one generating unit having an installed capacity of 1600 kW, (5) a proposed 200-foot-long, 36-inch-diameter steel tailrace, (6) a proposed 5000-foot-long 12kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 12.7 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17185 Filed 7–9–01; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12018–000.

c. *Date filed:* May 8, 2001.

d. *Applicant:* San Carlos Irrigation and Drainage District, Arizona.

e. *Name of Project:* Coolidge Dam Project.

f. *Location:* On an existing dam owned by the Bureau of Indian Affairs on the Gila River, in Pinal and Gila Counties, Arizona. The existing power facilities are owned by the U.S. Bureau of Indian Affairs and were operated by the U.S. Bureau of Reclamation until 1983, when a severe flood damaged the powerhouse. The applicant proposes to reconstruct this abandoned facility.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas Mason, General Manager, San Carlos Irrigation and Drainage District, Arizona, Arizona, P.O. Box 218, Coolidge, AZ 85228, (520) 723–5408.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12018–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Bureau of Indian Affairs Coolidge Dam would consist of: (1) An existing intake, (2) an existing powerhouse containing two new generating units having a total installed capacity of 12.4 MW, (3) an existing line, and (4) appurtenant facilities.

The project would have an annual generation of 30 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17186 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12050–000.

c. *Date filed:* June 11, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Pine Creek Project.

f. *Location:* On Pine Creek, in Lincoln County, Wyoming. The project would be located on U.S. Forest Service Lands within the Bridger National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.gov under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12050–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed 30-foot-long, 10-foot-high earth filled dam, (2) a proposed impoundment having a surface area of 1 acre with negligible storage and normal water surface elevation of 7,400 feet msl, (3) a proposed intake structure, (4) a proposed 15,600-foot-long, 24-inch-diameter steel penstock; (5) a proposed powerhouse containing two generating units with a total installed capacity of 1.8 MW, (6) a proposed 5-mile-long 15 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 9.9 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17187 Filed 7–9–01; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12027–000.

c. *Date filed:* May 25, 2001.

d. *Applicant:* Richard V. Williamson.

e. *Name of Project:* Middle and South Forks, Sacramento River Project.

f. *Location:* On the Middle and South Forks, Sacramento River, in Siskiyou County, California. The project would use U.S. Forest Service land within the Shasta-Trinity National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard V. Williamson, 1111 James Donlon Blvd, No. 2076, Antioch, CA 94509, (707) 745–7334.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12027–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project: (1) A proposed 90-foot-long, 25-foot-high reinforced cast-in-place concrete South Fork Dam, (2) a proposed impoundment having a surface area of 6000 square feet with negligible storage and a normal water surface elevation of 4080 feet msl, (3) a proposed 60-foot-long, 15-foot-high reinforced cast-in-place concrete Middle Fork Dam, (4) a proposed impoundment having a surface area of 3000 square feet with negligible storage and a normal water surface elevation of 4120 feet msl, (5)a proposed 6000-foot-long, 60-inch diameter South Fork steel penstock, (6) a proposed 4500-foot-long, 24-inch diameter Middle Fork steel penstock where it would join the South Fork penstock, (7) a proposed powerhouse containing one generating unit having an installed capacity of 6000 kW, (8) a proposed 90-foot-long, 36-inch-diameter steel tailrace, (9) a proposed 14,000-foot-long 12kV transmission line, and (10) appurtenant facilities.

The project would have an annual generation of 50.4 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17188 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12039–000.

c. *Date Filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Alpine Hydroelectric Project.

f. *Location:* The proposed project would be located on the Snake River in Lincoln County, Wyoming. Part of the project would be on lands administered by the U.S. Forest Service (Targhee National Forest).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed diversion dam 65-feet-high and 210-feet-long with negligible impoundment, (2) a screened intake structure, (3) a 900 foot power canal, (4) two 200-feet long 216 inch-diameter steel penstocks 200 feet-long, (5) a powerhouse containing two generating units with an installed capacity of 10 MW, (3) a 25 kv transmission line approximately 1 mile long; and (6) appurtenant facilities.

The project would have an annual generation of 44 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17189 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12022–000.

c. *Date filed:* May 21, 2001.

d. *Applicant:* John M. Mosby.

e. *Name and Location of Project:* The Emigrant Creek Project would be located on Emigrant Creek in Jackson County, Oregon. The applicant states that the proposed project would be located on private lands, however, the project may affect the headworks of the Ashland Lateral Diversion Dam which are owned by the U.S. Bureau of Reclamation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contacts:* Ms. Janet White, Duke Engineering & Services, 19125 North Creek Parkway, Suite 203, Bothell, WA 98011, (425) 485–5668; Mr. Steve Mosby, 2730 Lone Tree Way, Suite 2, Antioch, CA 94509 (925) 754–8907.

h. *FERC Contact:* Tom Papsidero, (202) 219–2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12022–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use a proposed diversion/intake structure 6 feet high and 50 feet in length and include: (1) A proposed powerhouse with a total installed capacity of 935 kilowatts; (2) a proposed 5,013-foot-long, 4.5-foot-diameter penstock; (3) a proposed 400-foot-long, 12.5 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 3.5 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

A copy is also available for inspection and reproduction at the address in item g above.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application.

A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17190 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance).

a. *Type of Application:* New Major License.

b. *Project No.:* 2180–007.

c. *Date Filed:* June 26, 2001.

d. *Applicant:* PCA Hydro Inc.

e. *Name of Project:* Grandmother Falls Hydroelectric Project.

f. *Location:* On the Wisconsin River near the town of Bradley, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth Schultz, Packaging Company of America, N9090 County Road E, Tomahawk, Wisconsin 54481 (715) 453–2131 Ext. 499.

i. *FERC Contact:* Michael Spencer, michael.spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing additional study requests:* August 25, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, interventions and additional study requests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Grandmother Falls Project consists of:* (1) A 450-foot-long gravity dam; (2) a 758-acre reservoir; (3) a powerhouse with a total installed capacity of 3,000-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 17,897 megawatthours.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

n. With this notice, we are initiating consultation with the WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing.

Notice of NEPA Scoping (unless scoping has already occurred).

Notice of application is ready for environmental analysis.

Notice of the availability of the draft NEPA document.

Notice of the availability of the final NEPA document.

Order issuing the Commission's decision on the application.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17191 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12034–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Como Dam Project.

f. *Location:* On an existing dam owned by the Bitter Root Irrigation District, on Rock Creek, in Ravalli County, Montana. The project would not use any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 2,550-foot-long, 70-foot-high earth filled dam, (2) an existing reservoir having a surface area of 980 acres with a storage capacity of 35,100 acre-feet and normal water surface elevation of 4,243 feet msl, (3) a proposed intake structure, (4) a proposed 500-foot-long, 60-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with an installed capacity of 1.8 MW, (6) a proposed 4-mile-long 15 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 6.8 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17192 Filed 7–9–01; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12015–000.

c. *Date filed:* May 3, 2001.

d. *Applicant:* Troup County Board of Commissioners.

e. *Name of Project:* West Point Lake Project.

f. *Location:* On an existing dam owned by U.S. Army Corps of Engineers, on the Chattahoochee River, in Chambers County, Alabama and Troup County, Georgia. The project is for additional capacity to the U.S. Army Corps of Engineers' existing 73 MW powerplant. The applicant states it would not impact the current operation of this plant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben Thompson, Jr., Chairman, Troup County Board of Commissioners, 900 Dallas Street, LaGrange, GA 30240, (706) 883–1610.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12015–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Army Corps of Engineers West Point Lake Dam and powerhouse would consist of following two developments:

A. *Development one would consist of:* (1) The installation of a 35 MW unit in the open bay of the existing Corps of Engineers powerhouse and (2) appurtenant facilities.

B. *Development two would consist of:* (1) A proposed powerhouse on the left (east) bank of the dam containing one generating unit having a total installed capacity of 15 MW, (2) a proposed 115 kV transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 193 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17193 Filed 7–9–01; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12033–000.

c. *Date filed:* June 1, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Helena Valley Project.

f. *Location:* On Ten Mile Creek, in Lewis and Clark County, Montana. The project would use the U.S. Bureau of

Reclamation's existing Helena Valley Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P. O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12033–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the existing U.S. Bureau of Reclamation's Helena Valley Dam and would consist of: (1) a proposed intake structure, (2) a proposed 200-foot-long, 120-inch-diameter steel penstock; (3) a proposed powerhouse containing one generating unit with an installed capacity of 4.5 MW, (4) a proposed 15 kV transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 13.4 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17194 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12037–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name of Project:* Swift Dam Project.

f. *Location:* On an existing dam owned by Pondera County Canal and Reservoir Company, on Birch Creek, in Pondera County, Montana. The project would not use any federal dam or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, Id 83442, (208) 745–8630.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the project number (P–12037–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) an existing 560-foot-long, 205-foot-high concrete dam, (2) an existing reservoir having a surface area of 540 acres with a storage capacity of 30,000 acre-feet and normal water surface elevation of 4,884 feet msl, (3) a proposed intake structure, (4) a proposed 500-foot-long, 48-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with an installed capacity of 1.4 MW, (6) a proposed 1-mile-long 15kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 3.9 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17195 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12046–000.

c. *Date filed:* June 4, 2001.

d. *Applicant:* The Empire District Electric Company.

e. *Name of Project:* Spring River Hydroelectric Project.

f. *Location:* On Spring River, Shoal Creek and Empire Lake, in Cherokee County, Kansas. No federal facilities or lands would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Tom Snyder, Plant Manager, Ozark Beach Plant, The Empire District Electric Company, 602 Joplin Street, Joplin, MO 64801 (417) 625–5100 ext. 2580.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov.* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account.''

Please include the Project Number (12046–000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) an existing concrete dam section (south abutment) approximately 25 feet high, 56 feet long; (2) an existing spillway section 267-feet long with five stop logs; (3) 2 existing water box sections each approximately 102-feet long, integral with 4 draft tubes; (4) an existing earth dam section (north abutment) approximately 10 feet high, 800 feet long, with 3-feet wide and 10-feet high concrete core; (5) an existing auxiliary dam approximately 1100-feet long, 25-feet high that acts as an overflow spillway; (6) an existing 69-foot-long, 40-foot-high powerhouse integral with the dam housing 3 new 600 kW generating units for a total installed capacity of 1.8 MW; (7) a new 12.47 kV transmission line approximately 150 feet long; and (8) appurtenant facilities.

The project would have an annual generation of 8 GWh.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at *http://www.ferc.gov.* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–17196 Filed 7–9–01; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### National Environmental Justice Advisory Council

**[FRL–7009–8]**

### Indigenous Peoples Subcommittee; Notification of Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), Indigenous Peoples Subcommittee (IPS) will meet on the dates and times described below. All times noted are Mountain Time. All meetings are open to the public. Due to limited space, seating at the NEJAC/IPS meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The IPS meetings will take place at the Hacienda de Placitas, 491 Highway 165, Placitas, New Mexico 87043. The meeting dates and times are as follows: July 26 (8:30 a.m.–5:00 p.m.) and July 27 (8:30 a.m.–12:00 p.m.), 2001. The IPS will be focusing on the development of its two year work plan, and will discuss fish consumption and subsistence issues. Any member of the public wishing additional information on the subcommittee meeting, or who plans on attending the meeting should contact Mr. Daniel Gogal, IPS Designated Federal Officer, EPA Office of Environmental Justice, (202) 564–2576.

Dated: July 3, 2001.

**Linda K. Smith,**

*Acting Director, Office of Environmental Justice.*

[FR Doc. 01–17204 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–181081; FRL–6790–3]**

### 1,3,7-Trimethylxanthine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Hawaii Department of Agriculture to use the pesticide 1,3,7-trimethylxanthine (CAS No. 58–08–2) to treat up to 2,000 acres of floriculture and nursery crops, parks, hotels, resort areas, and forest habitats to control Coqui and Greenhouse frogs. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments, identified by docket control number OPP–181081, must be received on or before July 25, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181081 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: madden.barbara@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS Codes | Examples of potentially affected entities |
|---|---|---|
| State government | 9241 | State agencies that petition EPA for section 18 pesticide exemption |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. 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 Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–181081. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of

the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181081 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181081. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as 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 version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the 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 proposed rule 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 control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

*A. What Action is the Agency Taking?*

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. Hawaii Department of Agriculture has requested the Administrator to issue a specific exemption for the use of 1,3,7-trimethylxanthine (caffeine) on floriculture and nursery crops, parks, hotels, resort areas, and forest habitats to control Coqui and Greenhouse frogs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the tropical frogs, *Eleutherodactylus coqui* and *E. planirostris* are two relatively new species introduced to Hawaii from infested nursery plants. These species are native to the Caribbean area. *E. coqui* is now firmly established on Maui and the Island of Hawaii and *E. planirostris* is on Kauai, Oahu, Maui, and the Island of Hawaii. The sites where they are established include commercial plant nurseries, residential areas, resorts, hotels, parks, and forest habitats. *Eleutherodactylus* are spread to additional sites primarily through transportation of infested plant material to uninfested areas.

There is great concern that these frogs pose a threat to both agriculture and the native Hawaiian forest ecosystem, including many endangered species. The majority of native birds are partially or completely insectivorous. In addition, the Hawaiian hoary bat and other arthropods depend upon insects and spiders as a food source. Because *E. coqui* tolerates a higher elevational range, it may invade native rainforest and mesic forests in Hawaii. They may exert a tremendous predation pressure on a wide variety of native arthropods, many of which are already stressed to the edge of extinction due to the establishment of other alien predators and parasitoids. According to Dr. Fred Kraus, Alien Species Coordinator with the Hawaii Department of Land and Natural Resources, Forestry and Wildlife Division, currently none of the sites infested with *Eleutherodactylus* are habitats for endangered species. However, there is a potential for the frogs to enter these habitats, particularly near the Hawaii Volcanoes National Park, where the nearest infested area is about two miles away.

The Applicant proposes to make up to twelve applications per acre per year of 100–200 pounds of product (99–198 pounds of caffeine) in 1,200 gallons of water per acre. However, a maximum of 1,200 pounds of product (1,188 pounds caffeine) will be applied per acre per year. The projected acreage for 2001–2002, is 2,000 acres on floriculture and nursery crops, parks, hotels, resort areas, and forest habitats in the entire state of Hawaii. Therefore, a maximum of 2,376,000 pounds of caffeine could be applied.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the

EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Hawaii Department of Agriculture.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: June 26, 2001.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 01–17205 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7009–1]**

## Internet Availability of Data on a Subset of Federal Facilities in the Sector Facility Indexing Project

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the Internet release of data on a subset of federal facilities in the Sector Facility Indexing Project (SFIP). Based upon the positive results of an Agency study that evaluated the progress of this project, the EPA announced on May 17, 2000 that the SFIP would be expanding to include a subset of federal facilities. (See 65 FR 34704, May 31, 2000). The new federal facility subset includes all federal facilities which are considered to be major facilities under at least two of the three following statutes: the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. This new subset joins the approximately 625 facilities already profiled in SFIP. The existing facilities address five industry sectors: Automobile assembly; petroleum refining; pulp manufacturing; iron and steel manufacturing; and primary smelting and refining of aluminum, copper, lead, and zinc (nonferrous metals).

**DATES:** The SFIP was expanded to include data on a subset of federal facilities on June 25, 2001, and the data is currently available to the public.

**ADDRESSES:** Data may be accessed electronically via the Internet at the following address: http://www.epa.gov/oeca/sfi.

**FOR FURTHER INFORMATION CONTACT:** Robert Lischinsky, U.S. Environmental Protection Agency, Office of Compliance (2223–A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (202)564–2628, fax: (202)564–0050; e-mail: lischinsky.robert@epa.gov

**SUPPLEMENTARY INFORMATION:** As a community right-to-know project, SFIP is a computerized database of environmental information that provides the public with facility-level compliance data in one location on the Internet. This database makes it possible for anyone to easily find and compare information on the environmental record of many industrial facilities. Government agencies can use the information as a planning tool, and facilities can benchmark their data against those of other facilities, or simply monitor their own regulatory performance. SFIP includes such information as a facility's compliance and enforcement history; information on pollutant releases and spills; and demographics of the surrounding community.

When EPA launched the SFIP website (*www.epa.gov/oeca/sfi*) in May 1998 (see 63 FR 27281, May 18, 1998), the Agency made a commitment to monitor and evaluate the progress of this project. User groups both inside and outside the Agency were consulted in our evaluation and the results were positive. SFIP has been extensively accessed by a variety of users. They have found the site easy to navigate and the information useful, resulting in numerous analyses. Users have commented that SFIP has met the challenge of summarizing complex compliance and pollutant release information from multiple statutory programs. They also have stated that the project serves as an incentive to achieve and maintain compliance while helping to improve data quality in the underlying databases.

During the evaluation of SFIP, EPA received feedback that the project should provide for additional sectors to make the project more useful to a broader audience. Prior to expanding the project, the Agency consulted with various groups, including environmental organizations, industry trade associations, several States, and The Environmental Council of the States. The expansion to federal facilities has been viewed as a positive step as it will provide the public with additional information on the U.S. government's own environmental performance. With this expansion, we have continued to ensure that we maintain the public's confidence in the integrity of the data. Regions, States and the affected facilities were given the opportunity to review the data and resolve any data quality issues through a coordinated EPA/State effort prior to release.

Dated: June 29, 2001.

**Ken Gigliello,**

*Acting Chief, Air, Hazardous Waste, & Toxics Branch, Compliance Assessment & Media Programs Div., Office of Compliance.*

[FR Doc. 01–17203 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7009–7]**

## Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a proposed prospective purchaser agreement (''Purchaser Agreement'') associated with the North Penn Area 7 Superfund Site, Lansdale Borough and Upper Gwynedd Township, Montgomery County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against 1190 Church Road Associates, L.P. (''Purchaser''). The settlement would require the Purchaser to, among other things, reimburse the Environmental Protection Agency $90,000.00 for response costs incurred and to be incurred at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before August 9, 2001.

### Availability

The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Purchaser Agreement may be obtained from Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''North Penn Area 7 Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. CERC–PPA–2001–0003,'' and should be forwarded to Thomas A. Cinti at the above address.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Cinti (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2634.

Dated: June 25, 2001.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 01–17202 Filed 7–9–01; 8:45 am]

BILLING CODE 6560–50–U

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Meeting of the Drug Control Research, Data, and Evaluation Committee

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Drug Control Research, Data, and Evaluation Committee will be held on July 26–27, 2001 at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., Washington, DC. The meeting will begin promptly each day at 9:00 a.m. and adjourn at 4:00 p.m. the agenda will include: review and discussion of the National Academy of Science's Report entitled ''Informing American's Policy on Illegal Drugs, What We Don't Know Keeps Hurting Us.'' The agenda will also cover the following: Drug Free Communities Grant Program: Administration activities related to: prevention, families, schools, and workplaces; treatment initiatives: closing the treatment gap, keeping prisons drug free, faith-based programs related to prevention and treatment; Youth Anti-Drug Media Campaign; interagency activities related to public safety and public. There will be an opportunity for public comment from 11:30 to 12:00 on Thursday, July 26, 2001.

**FOR FURTHER INFORMATION CONTACT:** Linda V. Priebe, (202) 395–6622.

Dated: June 25, 2001.

**Linda V. Priebe,**

*Assistant General Counsel.*

[FR Doc. 01–17215 Filed 7–9–01; 8:45 am]

BILLING CODE 3180–02–M

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 2001, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

### Open Session

*A. Approval of Minutes*

- June 21, 2001 (Open).

*B. Reports*

- Corporate Approvals.

*C. New Business—Regulation*

- Termination [12 CFR Parts 611 and 614] (Proposed).

Dated: July 5, 2001.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 01–17290 Filed 7–6–01; 10:49 am]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 94–102; DA 01–1520]**

### Petition for Reconsideration Regarding Allocation of Costs of E911 Implementation; Comments Invited

**AGENCY:** Federal Communications Commission.

**ACTION:** Solicitation of comments.

**SUMMARY:** This document invites comment on a Petition for Reconsideration (Petition) filed June 6, 2001, by four wireless carriers (Nextel Communications, Inc., Qwest Wireless, LLC, Verizon Wireless, and VoiceStream Wireless Corporation) operating in King County, Washington. The Petition challenges the Wireless Telecommunications Bureau's May 7, 2001 response to a letter from the E911 Program Manager for the King Country, Washington E–911 Program Office concerning the proper allocation of E911 implementation costs. In that letter, the Bureau clarifies that the proper demarcation point for allocating costs between wireless carriers and Public Safety Answering Points (PSAPs) is the input to the 911 Selective Router maintained by the Incumbent Local Exchange Carrier. The petitioners argue, among other things, that King County's request constituted an untimely request for reconsideration of the Second Memorandum Opinion and Order (64 FR 72951, December 29, 1999) in the ongoing E911 proceeding and an impermissible collateral attack on the Commission's decisions in that proceeding; that the Bureau's decision exceeds its delegated authority; and that the scope of the inquiry and conclusion reached require a notice-and-comment rulemaking proceeding. The full text of the petition is available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Pursuant to 47 CFR 1.1200(a), this proceeding is designated as a ''permit but disclose'' proceeding and subject to § 1.1206 of the Commission's rules. Presentations to or from Commission decision making personnel are permissible, provided that *ex parte* presentations are disclosed pursuant 47 CFR 1.1206(b).

Interested parties may file comments or oppositions responding to the

Petition on or beforeJuly 30, 2001, and reply comments on or before August 14, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.hmtl.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket or rulemaking number of this proceeding. Parties may also submit an electronic comment by Interest e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form [your e-mail address].'' A sample form and directions will be send in reply. Parties who choose to file by paper must file an original and four copies of each filing.

**DATES:** Comments are due on or before July 30, 2001, and reply comments are due on or before August 14, 2001.

**ADDRESSES:** All paper filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW A–325, Washington, DC 20554. A copy should also be sent to Jane Phillips,Room 3 A–200.

**FOR FURTHER INFORMATION CONTACT:** Jane Phillips, 202–418–1310.

Federal Communications Commission.

**James D. Schlichting,**

*Deputy Chief, Wireless Telecommunications Bureau.*

[FR Doc. 01–17248 Filed 7–9–01; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting

July 5, 2001.

**Open Commission Meeting, Thursday, July 12, 2001**

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 12, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

*Item No., Bureau, and Subject*

1—Common Carrier—Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider a Fourth Report and Order concerning the collocation obligations of incumbent LECs.

2—Common Carrier—Title: Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations. Summary: The Commission will consider a Declaratory Ruling and Notice of Proposed Rulemaking concerning streamlining the process for common carriers to gain authorization pursuant to Section 214 of the Communications Act of 1934, as amended, to transfer domestic interstate transmission lines through an acquisition of corporate control.

3—International—Title: Presentation on the Status of the U.S. International Services Market. Summary: The International Bureau will make a presentation detailing changes in the international services market over the past several years, and resulting decreases in consumer prices and increases in volume of calls and capacity.

Additional information concerning this meeting may be obtained from Maureen Pertino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netco.com. Their Internet address is http://www.itsdocs.com/.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–17346 Filed 7–6–01; 2:16 pm]

**BILLING CODE 6712–01–M**

## FEDERAL ELECTION COMMISSION

**[Notice 2001–9]**

### Voluntary Standards for Computerized Voting Systems

**AGENCY:** Federal Election Commission.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Federal Election Commission (the ''FEC'') requests comments on proposed revisions to the 1990 national voluntary performance standards for computerized voting systems. Please note that the draft revised Standards do not represent a final decision by the Commission, nor do they include proposed revised test standards. The FEC will publish a notice when the proposed revised test standards are available for comment, and another notice when the final revised performance and test standards are issued. Note also that the text of the final documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for States and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the Standards to ensure the reliability, accuracy, and integrity of their products. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** Comments must be received on or before September 10, 2001.

**ADDRESSES:** Copies of the draft revised performance standards may be found on the Federal Election Commission's web site at *www.fec.gov/elections.html,* or may be requested by contacting the Office of Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. They may also be picked up at the Office of Election Administration, 800 N. Capital St. NW., Washington, DC, Suite 600. All comments should be addressed to Ms. Penelope Bonsall, Director, Office of Election Administration, and must be submitted in either written or electronic form. Written comments should be sent to the Office of Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–8500, with printed copy follow-up to ensure legibility. Electronic mail comments should be sent to VSS@fec.gov. See the Supplementary Information that follows for file formats and other information about filing comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Ms. Penelope Bonsall, Director, Office of Election Administration, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1095; Toll Free (800) 424–9530, extension 1095.

**SUPPLEMENTARY INFORMATION:** The FEC issued the first national voluntary voting system standards in response to various States' requests for assistance, after a number of voting system failures in the field. The FEC's Office of Election Administration undertook this activity pursuant to its responsibilities under 2 U.S.C. 438(a)(10), which requires the FEC to ''serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections.''

The FEC began developing the first performance standards and test criteria for computer based voting systems in 1984, subsequent to two studies. The first study was the 1975 publication entitled ''Effective Use of Computing Technology in Vote Tallying'', which was prepared jointly by the National Bureau of Standards (now the National Institute of Standards and Technology) and the FEC's predecessor at the General Accounting Office. This report concluded that one of the primary causes for computer-related election problems was a lack of appropriate technical skills at the State and local level for developing or implementing complex written standards, against which voting system hardware and software could be tested. The second report was a Congressionally mandated feasibility study published in 1982 and entitled ''Voting System Standards: A Report to the Congress on the Development of Voluntary Engineering and Procedural Performance Standards for Voting Systems''. This document, produced by the FEC in cooperation with the National Bureau of Standards, cited a substantial number of technical and management problems that affected the integrity of the vote counting process. It also detailed the need and desirability of having a federal agency develop voluntary national technical standards and test criteria for voting systems other than mechanical lever or hand-counted paper ballot systems.

The original Standards took six years to develop. A series of public meetings were held. State and local election officials, representatives of voting system vendors, technical consultants, and others reviewed drafts of the proposed criteria. A notice soliciting comments from the public was published in the **Federal Register** on August 8, 1989. 54 FR 32479. The FEC reviewed all responses to the notice and incorporated corrections and suitable suggestions. Notice of the final Standards was published in the **Federal Register** on February 5, 1990. 55 FR 3764.

Thirty-seven States now report that they have implemented, or intend soon to adopt, the Standards. While most States apply the Standards only to newly acquired voting systems, States may also consider using the Standards to test existing voting systems. The National Association of State Election Directors (''NASED'') oversees the national testing of voting systems by independent test authorities using the Standards. The Election Center, a private membership association of election officials, serves as Secretariat for the NASED testing program.

Today, election officials are better assured that the voting systems they procure will work accurately and reliably. Voting system failures are on the decline, and now tend to involve pre-standard equipment, untested equipment configurations, or the mismanagement of tested equipment.

Nevertheless, after ten years of use, the Standards need revision. The technologies used to develop voting systems and way the voting process is administered had evolved and continue to evolve. The needs of the disabled community have been widely recognized. In addition, voting system vendors, NASED independent test authorities, States, and local jurisdictions have gained much experience in using the Standards and have identified areas for refinement.

The FEC initiated this particular revision process in the fall of 1999, after conducting an analysis to pinpoint where revisions were needed and to estimate associated costs. The production of draft revised Standards involved technical consultants, representatives of the two NASED certified independent test authorities, State and local election officials who are members of the NASED committee that oversees the testing process, and the Executive Director of The Election Center. Voting system vendors were also given the opportunity to comment on problems with the current Standards, the focus of and framework for the revised Standards, and an early draft of the functional requirements for the revised Standards.

The proposed revised Standards separate the original performance standards and test criteria, which had been presented together as one large volume, into two volumes to better suit the needs of different user groups. ''Volume I: Voting System Performance Standards'' provides an introduction to the Standards, describes the functional and technical requirements for voting systems, and includes a summary of the testing process. ''Volume II: Voting System Test Standards'' will provide details of the test process in terms of information to be submitted by the vendor, testing conducted by the independent test authorities, and criteria for passing the individual tests of the test process.

To improve readability, the revised performance standards also have been reorganized to clearly identify individual elements as either mandatory requirements or recommended guidelines or practices. They focus on voting system functionality, identifying requirements common to all types of voting systems and those that apply only to subclasses of voting systems (e.g.; paper based versus all electronic, central count versus precinct count).

The proposed performance standards provide expanded coverage of certain automated election management functions that interface with vote recording and tabulating systems; both on the front end during the preparation of ballots and the election-specific coding of software and on the back end during vote consolidation and reporting. They augment coverage of system requirements for feedback to the voter, audit trails, telecommunications, security, and the documentation of vendor quality assurance practices. They also provide new coverage for Internet voting, accessibility for disabled voters, and documentation of the vendor's process for managing voting system development and changes. The Commission encourages detailed comments on these new and expanded areas.

The proposed performance standards no longer describe fundamental professional systems development processes. They do not address election practices and procedures that are not under the control of the vendor, although vendors will be required to document actions, materials, and environmental considerations necessary to properly secure, use, transport, and maintain their specific voting systems. This version of the performance standards also does not address many specific human interface considerations, except for the accessibility of information technology components to the disabled and some general provisions for ballot presentation, feedback to the voter, and warning signals. The FEC has requested funds to enhance existing documents and develop new ones to address these matters.

The proposed performance standards also do not cover election administration databases and information technology that are not involved in ballot preparation, election coding of software, vote recording and tabulation, or vote consolidation and reporting (e.g.; databases used to manage voter registration, absentee balloting requests, precinct boundaries, poll worker remuneration, etc.). Further discussion of the reasons for these exclusions is contained in the Overview document that accompanies the proposed Standards.

The FEC is now making the draft ''Volume I: Voting System Performance Standards'' available for comment. This fall, the Commission plans to publish a notice in the **Federal Register** to announce when the draft ''Volume II: Voting System Test Standards'' is available for comment. The Commission will evaluate comments received on both volumes to determine what additional refinements are warranted. Following this process, a notice will be published in the **Federal Register** announcing the availability of the final documents. Assuming a continuous funding stream, the Commission anticipates a final issuance date no later than April 2002 and will recommend to the States, voting system vendors, and independent test authorities an effective date of July 1, 2002.

**Electronic Access and Filing Addresses**

Comments may be submitted by sending electronic messages to *VSS@fec.gov.* The FEC also accepts comments in electronic mail attachments and on disk that are in Word 5.0, or earlier version, file format. Commenters should avoid the use of special characters or encryption. When possible, commenters should reference the section to which a particular comment relates. Comments on the need to address issues not covered by this draft should identify the scope of what needs to be addressed as specifically as possible.

Persons sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

Dated: July 3, 2001.

**Danny L. McDonald,**

*Chairman, Federal Election Commission.*

[FR Doc. 01–17110 Filed 7–9–01; 8:45 am]

BILLING CODE 6715–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* National Fire Academy Executive Fire Officer Program Application Form.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 3067–0194.

*Abstract:* FEMA Form 95–22, National Fire Academy Executive Fire Officer Program Application for Admission is used by respondents who are senior-level (executive) fire officers to apply into the National Fire Academy's Executive Fire Officer Program. FEMA uses the application form for effective screening/selection of applicants/students.

*Affected Public:* State, Local or Tribal Government and individuals or households.

*Number of Respondents:* 300.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 300.

*Frequency of Response:* On Occasion.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resources Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or email *muriel.anderson@fema.gov.*

Dated: July 2, 2001.

**Muriel B. Anderson,**

*Acting Director, Program Services and Systems Branch, Facilities and Services Management Division, Administration and Resources Planning Directorate.*

[FR Doc. 01–17123 Filed 7–9–01; 8:45 am]

BILLING CODE 6718–01–P

## FEDERAL LABOR RELATIONS AUTHORITY

### Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the members of the Performance Review Board.

**DATE:** July 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michele Pilipovich, Human Resources Director, Federal Labor Relations Authority (FLRA), 607 Fourteenth Street, NW., Washington, DC 20424–0001; (202) 482–6690, extension 423.

**SUPPLEMENTARY INFORMATION:** Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

James Petrucci, Office of the General Counsel, FLRA

Gloria Joseph, National Labor Relations Board

Stephen Crable, National Mediation Board

Brian Flores, Federal Mediation and Conciliation Service.

Dated: July 5, 2001.

**Michele Pilipovich,**

*Human Resources Director.*

[FR Doc. 01–17225 Filed 7–9–01; 8:45 am]

BILLING CODE 6727–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 24, 2001.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Charles Weldon Morrison,* Dallas City, Illinois; to acquire additional voting shares of Lamoine Bancorp, Inc., La Harpe, Illinois, and thereby indirectly acquire voting shares of First State Bank of Western Illinois, La Harpe, Illinois.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Mr. Arthur D. Hagan,* Stillwater, Oklahoma; to retain voting shares of Ameribanc Holdings, Durango, Colorado, and thereby indirectly retain voting shares of The Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, July 3, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–17142 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2001.

**A. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Western Bancorporation, Inc.,* Duluth, Minnesota; to acquire 100 percent of the voting shares of Cass Lake Company, Cass Lake, Minnesota, and thereby indirectly acquire First National Bank of Cass Lake, Cass Lake, Minnesota.

In connection with this proposal, Western Bancorporation, Inc., has applied to acquire indirectly voting shares of Cass Lake Company, Cass Lake, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000 as set forth in section 225.28(b)(11)(iii) of Regulation Y.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Centennial Bank Holdings, Inc.,* Eaton, Colorado; to acquire 100 percent of the voting shares of Farmers Bank, Ault, Colorado (in organization).

Board of Governors of the Federal Reserve System, July 3, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–17141 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of May 15, 2001.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 15, 2001.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 4 percent.

By order of the Federal Open Market Committee, July 2, 2001.

**Donald L. Kohn,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 01–17143 Filed 7–9–01; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Program Support Center; Statement of Organization, Functions and Delegations of Authority

Part P, Program Support Center (PSC) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS), as last amended at 60 FR 51480 dated October 2, 1995, and 66 FR 31240–41 dated June 11, 2001; and Part R, Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (RC), Division of Federal Occupational Health (RCB) of the Statement of Organization, Functions, and Delegations of Authority of HHS as last amended at 60 FR 56605 dated November 6, 1995, are being amended to reflect the transfer of the Division of Federal Occupational Health from HRSA to the PSC as the Federal Occupational Health Service (FOHS). The FOHS will be headed by a Director who will report to the Director, Program Support Center.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 15, 2001, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The changes are as follows:

I. Under Part R, Health Resources and Services Administration make the following changes:

A. Delete the Bureau of Primary Health Care (RC) in its entirety and replace with the following:

*Bureau of Primary Health Care (RC):* Serves as a national focus for efforts to assure the availability and delivery of health care services in medically underserved areas and to special service populations. To this end, the Bureau, through its Field staffs: (1) Assists States through program and clinical efforts to provide health care to underserved populations; (2) administers the Community Health Centers Program; (3) provides through project grants to State, local, voluntary, public and private entities, funds to help them meet the health needs of special populations such as migrants, the homeless, substance abuse problems, and victims of black lung disease; (4) provides leadership and direction for the Bureau of Prisons Medical Program, the National Hansen's Disease Program, the Coast Guard Medical Program CHAMPUS Program, and the Cuban and Haitian Refugee Program; and (5) administers the *National or Health Service Corps Program* which assures accessibility of health care in underserved areas.

B. Delete the Division of Federal Occupational Health (RCB) in its entirety.

II. Under Part B, Program Support Center, make the following changes:

1. Under Section P–10 Organization, add the following line: ''6. Federal Occupational Health service.''

II. Under Chapter P–20 Functions, add the following new clause: ''(7) provides occupational and environmental health services.''

III. Under Section P–20 Functions, add Chapter ''PG'' to establish the ''Federal Occupational Health Service (PG),'' to read as follows:

*Federal Occupational Health Service (PG):* (1) Provides consultation on, and stimulates the development of, improved occupational health and safety programs throughout the Federal Government; (2) provides evaluation, consultation, and direction to Federal managers concerning the management and delivery of the full scope of agency occupational health programs in relation to established standards; (3) provides nationwide assistance in planning, implementing and monitoring health programs for Federal agencies on a reimbursable basis including improved environmental, education, promotional, clinical and managerial services and the development and incorporation of automated information management systems; (4) conducts research studies, science and engineering ventures, training, and demonstration projects; (5) develops occupational health standards and criteria for occupational health programs; (6) conducts activities designed to promote productivity and reduce absenteeism, lost time and related liability within the Federal work force; (7) provides mechanisms for the development and operation of shared services that promote joint contracting, cost comparison, analysis and program formulation; (8) plans, develops, implements, and operates occupational health programs, including Employee Assistance Programs (EAPs), fitness and wellness, environmental surveillance, medical monitoring, and disability management components; and (9) maintains relationships with health officials in other Federal and occupational health related policy and program development and implementation.

IV. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Health Resources and Services Administration and the Program Support Center that relate to this reorganization heretofore issued and in effect prior to this reorganization continue in full force and effect.

V. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organization components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

VI. *Funds, Personnel, and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

This reorganization is effective upon date of signature.

Dated: July 3, 2001.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 01–17213 Filed 7–9–01; 8:45 am]

BILLING CODE 4168–17–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*David R. Jacoby, M.D., Ph.D., Harvard Medical School (HMS) and Massachusetts General Hospital (MGH):* Based on the report of an investigation conducted by HMS and MGH and additional analysis carried out by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Jacoby, former Instructor, Department of Neurology, MGH, engaged in 15 acts of scientific misconduct by plagiarizing and falsifying research data taken from another scientist's different experiment in a published journal article for use in a program project grant application submitted to, and funded by, the National Institutes of Health (NIH).

Specifically, Dr. Jacoby plagiarized an image of a Southern blot analysis of genomic DNA that appeared as Figure 3A in Balagué, C., Kalla, M., & Zhang, W.–W. ''Adeno-Associated Virus Rep78 Protein and Terminal Repeats Enhance Integration of DNA Sequences into the CellularGenome.'' J. Virology 71:3299–3306, 1997. Dr. Jacoby first falsified the image by adding molecular weight markers and lane labels that misrepresented the image as his own experimental data. He further falsified the image using computer software to intensify a band he claimed was a site-specific integration and to remove identifiable background spots present in the original image. The effect of Dr. Jacoby's falsifications was to misrepresent the image as data from his own experimental analysis of clonal cell lines derived from the infection of a human cell line with a recombinant hybrid virus incorporating two transgenes and adeno-associated virus genes into a herpes simplex virus amplicon. Dr. Jacoby's falsified image was material to his research because it supported his claim that the transgene DNA had integrated into the cell genome at a specific site. These plagiarized and falsified results were reported in:

1. Appendix material supporting an application for a Program Project Grant, Molecular Etiology of Early Onset Torsion Dystonia, 1 P01 NS37409–01A1, submitted by Dr. Jacoby's supervisor; Dr. Jacoby's supervisor relied upon falsified written and oral information provided to her by Dr. Jacoby in her description of his recent research progress;

2. Three presentations by Dr. Jacoby's supervisor to colleagues at MGH in May 1998 regarding the status of the research in her laboratory; Dr. Jacoby's supervisor relied upon falsified written and oral information provided to her by Dr. Jacoby in her description of his recent research progress; and

3. A grant application to NIH for continuation of Dr. Jacoby's Clinical Investigator Award grant, 5 K08 NS01887–03, signed by Dr. Jacoby on May 29, 1998.

In addition, Dr. Jacoby subsequently altered the falsified image described above further by changing the location

of the molecular weight markers to make it appear more consistent with the expected experimental results. Dr. Jacoby then submitted the plagiarized and falsified results to a MGH colleague who included them in a presentation at the First Annual Meeting of the American Society of Gene Therapy, held in Seattle, Washington, on May 30, 1998.

During the institutional investigation in 1998, Dr. Jacoby presented another falsified image as data from his own experiment. Specifically, he used computer software to scan Figure 3A in Balagué et al. and then alter the locations of three major bands in an effort to conceal the origin of the falsified image (i.e., Figure 3A) and to deceive investigating officials into believing that the results were from an independent experiment. Dr. Jacoby then used the different band locations as ''evidence'' of the differences between Figure 3A by Balagué et al. and the data purportedly from his own experiment by presenting the falsified image: (1) To the Chief of MGH's Neurology Service; (2) to a scientist assisting the Inquiry Committee by attempting to reproduce Dr. Jacoby's experiment; and (3) to the Inquiry Committee as data from his own independent experiment.

After the institution concluded that Dr. Jacoby had engaged in scientific misconduct, Dr. Jacoby forged the signature of the institutional official for the MGH Grants and Contracts Office and knowingly included false and material information on his NIH non-competing renewal application for a Clinical Investigator Award, 5 K08 NS01887–05. Specifically, after ceasing to work in his supervisor's laboratory and after being told by his supervisor that she would no longer serve as his mentor on the Clinical Investigator Award, Dr. Jacoby (1) listed his former supervisor as his mentor on his 5 K08 NS01887–05 application; (2) claimed that he was continuing to conduct grant-funded research in her laboratory; (3) forged the signature of the MGH institutional official to avoid detection by MGH; and then (4) submitted the completed application directly to NIH on or about August 1, 2000.

Dr. Jacoby's actions amount to significant and serious falsifications in the proposing and reporting of research. His falsifications gave NIH reviewers inaccurate information for their evaluation of the progress made by the research group at MGH in its PHS-supported research. His falsifications also substantially hindered the progress of the PHS-funded research project. Finally, his falsifications induced NIH to conditionally approve Dr. Jacoby's 5 K08 NS01887–05 grant at a time when he was no longer conducting research.

Accordingly, PHS further finds that Dr. Jacoby engaged in a pattern of dishonest conduct through the commission of 15 acts of data falsification and plagiarism, including additional steps taken to conceal the true nature and origin of the research data, that further demonstrates a lack of present responsibility to be a steward of Federal funds.

Dr. Jacoby has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a period of five (5) years, beginning on June 12, 2001:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations);

(2) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris B. Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 01–17150 Filed 7–9–01; 8:45 am]

BILLING CODE 4150–31–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Agency Information Collection Activities: Proposed Submission to the Office of Management and Budget (OMB) for Clearance; Comment Request; Reinstatement of a Previously Approved Information Collection

**AGENCY:** Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, provides an opportunity for comment on the following proposal for the collection of information in compliance with the Paperwork Reduction Act (PRA; Public Law 96–511):

*Title of Information Collection:* Grantee Data Collection for the Evaluation of the Alzheimer's Disease Demonstration Grants to States Program.

*Type of Request:* Reinstatement of a previously approved collection for which approval has expired. This request significantly streamlines and reduces the amount of data collected as compared to previously approved requirements.

*Use:* Data is collected on client demographic and health characteristics, client service use, and program characteristics to adequately evaluate the implementation, progress and process of the Alzheimer's Disease Demonstration Grants to States Program (Section 398 of the Public Health Service Act, Pub. L. 78–410 as amended). Data is used by the grantee states to manage and evaluate their own programs. The data is also used by the AoA to evaluate and describe all projects funded by this initiative and address the program's statutory evaluation and Government Performance and Results Act (GPRA) requirements. Findings are used to manage the program and better target future activities, as well as to provide a final evaluation of each set of grants to Congress as set forth by statute.

*Frequency:* Client Intake Form—only once per client, data submitted quarterly, Service Use Form—quarterly, Agency Service Profile Form—annually.

*Respondents:* Agencies of State Governments and Territories that have been designated by the Governor as the sole applicant for the State and who have applied for a grant under this program.

*Estimated Number of Responses:* Client Intake Form—5000/year, Service Use Form—2500/year, Agency Service Profile Form—125/year.

*Total Estimated Burden Hours:* Client Intake Form—100 hours/state/year, Service Use Form—420 hours/state/year, Agency Service Profile Form—1.25 hours/state/year.

*Additional Information or Comments:* The Administration on Aging plans to submit to the Office of Management and Budget for reinstatement of a previously approved collection for which approval has expired, for the Alzheimer's Disease Demonstration Grants to States Program, pursuant to requirements set forth by statute. Written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice directly to the following address: Office of Program Development, Administration on Aging, Attention: Melanie Starns, 330 Independence Avenue, SW., Rm. 4270, Washington, DC 20201.

Dated: July 3, 2001.

**Norman L. Thompson,**

*Acting Principal Deputy Assistant Secretary for Aging.*

[FR Doc. 01–17116 Filed 7–9–01; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Embargo on Importation of *Dracaena* Shipments in Standing Water

**AGENCY:** Centers for Disease Control and Prevention (CDC), HHS.

**ACTION:** Notice of embargo on importation of *Dracaena* shipments in standing water.

**SUMMARY:** Shipments of *Dracaena* (''lucky bamboo'') in standing water and infested with mosquitoes are currently being imported into the United States. Because of potential public health threats posed by exotic species of mosquitoes, CDC is implementing an immediate embargo on the importation of *Dracaena* that has been shipped in standing water. This embargo only affects importation of *Dracaena* shipments in standing water.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Kim, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., National Center for Infectious Diseases, Division of Global Migration and Quarantine, Mailstop E–03, Atlanta, Georgia, 30333; (404) 498–1600; E-mail *ddk5@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On June 14, 2001, the Centers for Disease Control and Prevention (CDC), was notified by the Los Angeles district office of the U.S. Department of Agriculture (USDA) that it had identified maritime cargo containers of ''lucky bamboo'' (*Dracaena* species), an ornamental plant, that were infested with mosquitoes. CDC subsequently identified the Asian tiger mosquito, *Aedes albopictus,* a species previously not seen in California, and other species of mosquitoes associated with these cargo containers. The *Dracaena* in the infested cargo containers was shipped in small boxes with two to three inches of standing water. Shipments of *Dracaena* with no standing water or associated mosquito infestation have been arriving in the United States from China, Taiwan, Thailand, Indonesia, Malaysia, Costa Rica and other countries as air and maritime cargo for at least 3 years.

### Public Health Risks

*Dracaena* shipments in standing water appears to pose a considerable risk of importing exotic mosquitoes into the United States. Although previously introduced and widely established in the eastern half of the United States, *Aedes albopictus* has not established a population in California. *Aedes albopictus* is capable of transmitting serious human diseases such as western equine encephalitis, St. Louis encephalitis, and dengue viruses. Introduction of new *Aedes albopictus* populations from China, Taiwan, Indonesia, and other countries might include genotypes that are more efficient vectors of human diseases than the genotypes that are currently present in the United States. There have been precedents of accidental introduction of mosquito species of public health importance into the United States by a similar mechanism, i.e., by importation of materials containing standing water.

### Immediate Action

Introductions of exotic species of mosquitoes, such as *Aedes albopictus* in California and other species in different parts of the United States, through the importation of *Dracaena* shipments in standing water, pose potentially serious public health threats. Accordingly, pursuant to 42 CFR 71.32(c), CDC is implementing an embargo on the importation of *Dracaena* shipments in standing water, effective immediately. This embargo only affects importation of *Dracaena* shipments in standing water.

Dated: July 3, 2001.

**Joseph R. Carter,**

*Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

[FR Doc. 01–17152 Filed 7–9–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 01098]**

## Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN); Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN). This program addresses the ''Healthy People 2010'' focus areas of Nutrition and Overweight, Physical Activity and Fitness, Tobacco Use, Heart Disease and Stroke, Diabetes, and Access to Quality Health Services.

The purpose of this program is to use scientifically rigorous methods to test the effectiveness of a behavioral or lifestyle intervention aimed at preventing cardiovascular disease (CVD) and other chronic diseases. The target population consists of women participating in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The major long-term goal is to demonstrate a successful behavioral or lifestyle intervention for the population targeted by the NBCCEDP. Recipients are also expected to work with existing health care systems to identify free or discounted medication for women who require such therapy.

### B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. NBCCEDP grantees who are currently receiving grants under Program Announcements 99135 and 00115 are not eligible.

### C. Availability of Funds

Approximately $2,000,000 is available in FY 2001 to fund two awards. It is expected that the average amount per award is between $750,000 to $1,250,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*1. Use of Funds*

In accordance with Public Law 101–354, an award may not be made unless the State/Territory/Tribe involved agrees that:

a. At least 60 percent of cooperative agreement funds will be expended for screening, lifestyle intervention, public

health case management, appropriate referral for medical treatment, and to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as medical case management for women with extremely high values. The remaining 40 percent or less will be expended for public education programs, for training of health professionals, for mechanisms to monitor screening procedures, and to evaluate activities conducted under this cooperative agreement through appropriate program surveillance or program-monitoring activities (Sections 1501(a) and 1503(a) (42 U.S.C. 300k(a) and 300m(a)) of the Public Health Service Act (PHS Act), as amended).

b. Use of federal funds for medical care case management of women without alert values is strongly discouraged (see VI. below for definition of alert values). As stated above funds should be expended for screening, appropriate referral for medical treatment, and, to ensure, to the extent practicable, the provision of appropriate follow-up services and support services such as case management (see definitions below). Therefore, it is not required that funds be used to provide follow-up services and support services such as case management. However, programs are encouraged to use funds for screening and intervention case management. When funds must be used for medical care case management, priority is to be given to women with extremely high values (i.e. those with alert values which are defined in Section E.4.e). Because 60–80% of women will have abnormal screening values, the cost of providing medical care case management to women with non-alert screening values is not practicable or cost-efficient.

Case Management: A term for all activities that a physician or other health care professional normally performs to insure the coordination of the public health services or medical services required by a patient.

WISEWOMAN Screening and Intervention Case Management: A term for all activities that a public health professional performs to ensure the coordination of the public health screening, intervention, and referral services required by a client.

WISEWOMAN Medical Care Case Management: A term for all activities that a physician, health care professional, or public health professional performs to ensure the coordination of the medical services required by a patient.

c. All blood pressure, cholesterol, and other preventive health screenings, intervention, referral, follow-up, case management, and evaluation should be initiated by the end of any second fiscal year of payments pursuant to the grant (i.e, by the end of the second year in the budget period). (Section 1503 (a)(3) (42 U.S.C. 300m(a)(3)) of the PHS Act, as amended.)

d. Cooperative agreement funds will not be expended to provide inpatient hospital or treatment services. (Section 1504(g) (42 U.S.C. 300n(g)) of the PHS Act, as amended.) Treatment is defined as any medical, pharmaceutical, or surgical service prescribed by a clinician in the management of a diagnosed condition. Lifestyle and behavioral interventions are included in the definition of case-management but are not considered treatment.

e. Not more than 10 percent of funds will be expended annually for administrative expenses (Section 1504(f) (42 U.S.C. 300n(f)) of the PHS Act, as amended.)

f. The amount paid by a State/Territory/Tribe for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act (Medicare) (section 1501(b)(3) (42 U.S.C. 300k(b)(3))) of the PHS Act, as amended. These may vary by location and grantee should determine appropriate reimbursement rates.

In accordance with section 1504 (c)(2) (42 U.S.C. 300n(c)(2)) of the PHS Act, as amended, CDC may waive the requirements for specific services/activities if it is determined that compliance by the State/Territory/Tribe would result in an inefficient allocation of resources with respect to carrying out an early detection program (as described in Section 1501(a)). A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

*2. Recipient Financial Participation*

Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502 (42 U.S.C. 300) of the PHS Act states that matching funds are required from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. The non-Federal contributions may be made directly in cash or equivalent in-kind or donated services, including equipment, fairly evaluated, through donations from public or private entities. Matching funds may not include: 1. The payment for treatment services or the donation of treatment services (see note below); 2. services assisted or subsidized by the Federal government; or 3. the indirect or overhead costs of an organization. In some States/Territories/Tribes, non-Federal funds from a variety of sources may presently be used to support one or more of the WISEWOMAN early detection activities described in this program announcement.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for conducting activities under 2. (CDC Activities).

*1. Recipient Activities*

a. Build a chronic disease screening and intervention program with priority on preventing cardiovascular disease (i.e. WISEWOMAN program that includes hypertension and cholesterol screening). This program should target populations that have not been previously well-studied.

b. Work collaboratively with other WISEWOMAN programs and partners to develop methods which have the potential to be implemented in other WISEWOMAN programs.

c. Develop program and research protocols (see Attachment I in the application kit).

d. Implement screening, referral, and follow-up according to the recommendations of the NationalCholesterol Education Program (NCEP)of the National Heart, Lung, and Blood Institute (NHLBI) for cholesterol screening; and the recommendations set forth for hypertension screening by the sixthJoint National Report on the Detection, Evaluation and Treatment of High Blood Pressure. Laboratories that perform the screening for cholesterol must be accredited and meet all applicable Federal and State quality assurance standards in the provision of any test performed.

e. Establish cardiovascular disease prevention as the primary focus of interventions, with interventions addressing one or more risk factors for cardiovascular disease: overweight, physical inactivity, inadequate intake of fruit and vegetables and excessive calories and dietary fat. Cigarette smoking, and undiagnosed diabetes may also be addressed as secondary priorities. Some interventions available to the grantee are: strength training programs, culturally-appropriate modifications of the five-day diet, or combined physical activity and nutrition counseling tools. To obtain the statistical power to evaluate the intervention, the program should add cholesterol and blood pressure screenings to a sufficiently large number of NBCCEDP sites. After demonstration

of an effective lifestyle intervention to reduce the risk of cardiovascular disease, recipients may develop a number of other preventive services to be delivered.

f. Implement program/research protocols as developed.

g. Develop abstracts and publications in collaboration with other partners that inform the public, scientific community, and Congress as to the progress and program results.

h. Grantees are expected to use a public health approach in designing an efficient intervention delivery system.

i. If the intervention will be assigned at the level of the site, it is extremely important to provide power calculations justifying the number of sites selected. A method of collecting information for the purpose of program evaluation should be developed and implemented.

*2. CDC Activities*

a. Assist as needed in the development demonstration project protocols and forms.

b. Participate in workshops and/or teleconferences of the recipients for information-sharing and problem-solving.

c. Provide ongoing consultation and technical assistance to plan, implement, and evaluate program activities.

d. Assist recipients as requested with the analysis of their data and in the development of their abstracts and publications.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the evaluation criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 35 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Provide a realistic time-phased work plan that addresses the points below. If the first year of the program will be used for planning, the application should detail how each of the preliminary plans will be finalized by detailing the process used and the time line to a final plan.

*1. Background and Need*

Provide a brief description of the extent of the disease burden. Also describe the background of the health care system to include:

a. The current health care system in whichBCCEDP sites operate and the appropriateness of the health care system for implementing standardized effective interventions, adhering to program protocols, tracking difficult to reach women, and providing timely information on women who have high values of cholesterol and blood pressure;

b. Explanation of all non-cancer-related services currently being provided within the context of the BCCEDP (i.e., are heights and weights measured, is blood pressure routinely taken, is a smoking history obtained, etc.? Are the results of these services recorded so that they are accessible to the BCCEDP?)

c. Describe the current medical care safety network for uninsured persons and how it will be utilized to provide discounted medical care and discounted medications.

*2. Infrastructure*

Document the current BCCEDP infrastructure including:

a. The number of BCCEDP sites in operation as of January, 2001;

b. The total number of political subdivisions(e.g., counties) and the percentage of these subdivisions that had a BCCEDP site in January, 2001; and

c. During the most recent program year: (1) The average number of women served in the State/Territory/Tribal Service Area each month during the past BCCEDP project year;

(2) The racial/ethnic characteristics of the population served;

(3) The percentage of women with a positive mammogram or pap test who did not go on for further diagnostics and reasons why women did not go on; and

(4) The average length of time between a positive mammogram or pap test and the receipt of a diagnostic test.

*3. Collaborative Efforts*

Provide a concise collaboration plan, which addresses program methods and analyzing and publishing data. The following areas should be addressed:

a. Meeting and teleconference attendance for the purpose of developing, to the degree possible, scientifically sound protocols, forms, tracking systems, measurements, etc.;

b. Analyzing data and developing abstracts and publications; and

c. Extent of collaboration with university personnel including public or community health experts.

*4. Program Planning*

Describe how the program will decide the following:

a. Site selection, approximate number, characteristics of and the proportion that will receive WISEWOMAN services and an annual estimate of women served;

b. Public health screening and intervention services to be provided along with a time line for determining and implementing screening and intervention services (allowable screening and diagnostic procedures for the demonstration programs include resting pulse, blood pressure, serum total cholesterol (nonfasting), HDL-cholesterol (nonfasting), height and weight measurements, automated blood chemistry (to assess blood glucose, potassium, calcium, creatinine, uric acid, triglyceride, or micronutrient levels), urine analysis(including urine cotinine), and paper and pencil tests, interviews, or computerized methods that measure level of physical activity, dietary intake, smoking, osteoporosis risk status, immunization status, or other chronic disease risk factors or preventable health problems). Tests that require the participant to fast should be considered diagnostic tests and not public health screening tests. One fasting LDL–C test or fasting lipoprotein profile will be allowed when ordered as a diagnostic test. The use of program funds for other diagnostic tests will require substantial justification by the program;

c. Letters of support for WISEWOMAN from a number of State/Territorial/Tribal BCCEDP site directors, medical staff involved in diagnostic testing and provision of discounted medications, and university personnel;

d. A staffing plan that appoints at least two professional staff members to work full-time on WISEWOMAN, or a plan for hiring such staff members and describe the WISEWOMAN evaluation team with information on their experience and academic degrees;

e. A method for tracking women through the system and after they leave the system (for the purpose of bringing them back for further screening, intervention, and behavioral follow-up), for case management that includes assurances that women will have access to medical care facilities, for flagging women who need immediate referral (i.e. those with alert values) because of extremely high blood pressure (180 systolic blood pressure or 110 diastolic blood pressure), cholesterol (>400 mg/dL), or glucose levels (>375 mg/dL); and

f. How the program will track women, the number and types of standardized lifestyle interventions received, and the costs of the intervention.

*5. Screening and Intervention*

Document the ability of the program to screen and intervene upon women enrolled in the WISEWOMAN program including implementation of WISEWOMAN screening activities, the rationale and guidelines for implementing WISEWOMAN

intervention activities, methods for reaching women for this and the use of staff such as outreach workers to address differing barriers.

*6. Evaluation*

Submit a preliminary evaluation design to examine the impact of chronic disease risk factors intervention(s) on lowering blood pressure and improving cholesterol profiles at six and 12 months after intervention. The plan should include:

a. The extent to which a university or prevention research center at a university will be involved in the evaluation design;

b. The preliminary evaluation questions to be answered;

c. The type of evaluation design (e.g. randomized controlled design) and rationale for using this type of design;

d. Length of follow-up and measurement intervals;

e. Protocol used to ensure that the maximum number of women will return for each evaluation;

f. Statistical techniques that will be used to analyze the data with preliminary estimates of the sample size needed to achieve adequate statistical power; and

g. A plan for pilot testing the methods outlined in the initial research protocols, including methods of screening, proposed lifestyle interventions, delivery system for lifestyle interventions, availability of discounted care and medications, and program evaluation.

One type of evaluation might from a number of sites, compare blood pressure and cholesterol, and risk behaviors for CVD in those assigned to a ''usual care'' (e.g., hypertension and cholesterol screening, referral, and follow-up with minimal intervention) group with those assigned to ''special intervention'' (e.g., added screening for overweight, poor dietary habits, physical inactivity, cigarette smoking, or undiagnosed diabetes followed up by interventions such as special classes, support groups, physician prescriptions, extra follow-up efforts, and/or community programs such as food co-ops, walking clubs, or smoking cessation programs) group. In this case, a discussion of the method that will be used to keep the usual care group from knowing and adopting the interventions that are being implemented in other areas of the clinic is extremely important. Other designs may be proposed given sufficient justification of the scientific method. Special interventions should assure more intensive and frequent behavioral follow-up consistent with counseling recommendations. Assignments to ''usual care'' or ''special intervention'' groups could be at the clinic or individual level. Random assignment to level of intervention is preferred.

*7. Budget and Justification*

Provide a detailed budget and line-item justification that is consistent with the stated objectives, purpose, and planned activities of the project. Identify the required 60/40 cost distribution of program funds in the requested itemized budget by using separate columns for each. CDC WISEWOMAN requires use of funds in accordance with Pub. L. 101–354.

Budget for the following travel:

a. Up to two persons to attend one training session during the year (two to three days). Topic and place to be determined.

b. Up to two persons to Atlanta, GA to participate in the 2002 NCCDPHP Annual Chronic Disease Conference(four days).

c. One person to attend the Physical Activity and Public Health Course that is held at Sea Pines, South Carolina in September 2002 [Cost for seven to eight day package is $1150 for the registration, lodging, and meals. Airfare is not included] or one person to participate in a non-CDC sponsored professional meeting directly relevant to the program.

Budget for collecting and reporting cost data and minimum data elements. Section 1505 (42 U.S.C. 300n–1) requires that applicants provide assurances that the grant funds be used in the most cost-effective manner.

*8. Human Subjects*

State whether or not Human subjects are involved in this proposal. CDC Institutional Review Board approval is required.

*9. Women, Ethnic, and Racial Groups*

Describe how the CDC/ATSDR policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See Women, Racial, and Ethnic Minorities in the Evaluation Criteria and Other Requirements sections.)

**F. Submission and Deadline**

Submit the original and two copies of CDC form 0.1246. Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

On or before August 20, 2001, submit the application to the Grants Management Specialist identified in Section J., ''Where to Obtain Additional Information''.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria (100 Points)**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

*1. Background and Need; Women, Racial, and Ethnic Groups (15 Points)*

The extent of the disease burden and the need among the priority populations, including a description of gaps in the scientific knowledge with regard to preventing cardiovascular disease or other chronic diseases in the selected priority populations. (10 points); The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (5 points).

*2. Infrastructure (10 Points)*

The strength of the State/Territorial/Tribal BCCEDP program as evidenced by the number of BCCEDP sites and the percentage of subdivisions (e.g., counties) within the State/Territory/Tribal Service Area that had a BCCEDP site in January, 2000; the average number of women served each month during the past BCCEDP project year; the racial/ethnic characteristics of the population served; the percentage of women with a positive mammogram or pap test who did not go on for further diagnostics and reasons why they didn't; and the average length of time between a positive test and the receipt of a diagnostic test.

*3. Collaborative Efforts (5 Points)*

Ability to collaborate and extent of proposed collaboration with other WISEWOMAN projects to develop joint program methods and analyze data.

*4. Program Plan (30 Points)*

The adequacy and appropriateness of the preliminary program plan as indicated by:

a. The likelihood that program plans and protocols will be finalized within the first year;

b. Proposed site selection, the approximate number of sites to receive WISEWOMAN services, the characteristics of the sites, the proportion of State/Territorial/Tribal BCCEDP sites that will receive WISEWOMAN services, and estimated number of women who are expected to receive such services in the first, second, and subsequent years;

c. Letters of support for WISEWOMAN from the State/Territorial/Tribal BCCEDP site directors and medical staff;

d. A staffing plan;

e. A proposed tracking system for women for referral and follow up and the number and types of interventions provided; and

*5. Screening and Interventions (15 Points)*

Proposed public health screening and intervention services to be provided along with a time line for determining and implementing screening and intervention services. The adequacy and quality of the proposed rationale and guidelines for implementing eachWISEWOMAN screening and intervention activity; the methods for reaching women from the State/Territorial/Tribal BCCEDP for the purpose of WISEWOMAN screening and intervention; the extent and use of outreach workers to address barriers to program involvement, behavioral change, and maintaining contact for future health screenings and interventions.

*6. Evaluation Plan (25 Points)*

The extent to which the preliminary evaluation plan provides an appropriate design to examine the impact of chronic disease risk factor intervention(s) on lowering blood pressure and improving cholesterol profiles; collaboration with partners including university partners; evaluation; and data analysis.

*7. Budget and Justification (Not Scored)*

The extent to which the proposed budget is adequately justified, reasonable, and consistent with this program announcement.

*8. Human Subjects (Not Weighted)*

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

**H. Other Requirements**

Technical Reporting Requirements:

Provide CDC with original plus two copies of—

1. Progress reports on a quarterly basis;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J., ''Where to Obtain Additional Information''. The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized by sections 1501–1509 (42 U.S.C. 300k–300n–4a) of the Public Health Service Act, as amended. This program is also authorized by the Consolidated Appropriations Act, 2000, Pub. L. 106–113. The Catalogue of Federal Domestic Assistance (CFDA) number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page on the Internet: http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements''.

Should you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement 01098, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2752, E-mail address: gld1@cdc.gov.

For program technical assistance, contact: Julie C. Will, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy, NE., Atlanta, Georgia 30341–4146, Telephone: (770) 488 6024, E-mail address: jxw6@cdc.gov.

Dated: July 2, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01–17039 Filed 7–9–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00E–1254]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Gabitril

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Gabitril and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Gabitril (tiagabine hydrochloride). Gabitril is indicated as adjunctive therapy in adults and children 12 years and older in the treatment of partial seizures. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Gabitril (U.S. Patent No. 5,010,090) from Novo Nordisk A/S, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Gabitril represented the first permitted commercial marketing or use of the product. Subsequently, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Gabitril is 2,346 days. Of this time, 1,651 days occurred during the testing phase of the regulatory review period, while 695 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 1, 1991. The applicant claims May 8, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 1, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: November 6, 1995. The applicant claims November 3, 1995, as the date the new drug application (NDA) for Gabitril (NDA 20–646) was initially submitted. However, FDA records indicate that NDA 20–646 was submitted on November 6, 1995.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that NDA 20–646 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,255 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by September 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 7, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 2001.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 01–17103 Filed 7–9–01; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98E–0838]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Detrol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Detrol and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Claudia Grillo, Regulatory Policy Staff (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Detrol (tolterodine tartrate). Detrol is indicated

for overactive bladder with symptoms of urge urinary incontinence, urgency, and frequency. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Detrol (U.S. Patent No. 5,382,600) from Pharmacia & Upjohn Atiebolag, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Detrol represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Detrol is 1,267 days. Of this time, 901 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 7, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 7, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* March 25, 1997. The applicant claims March 24, 1997, as the date the new drug application (NDA) for Detrol (NDA 20–771) was initially submitted. However, FDA records indicate that NDA 20–771 was submitted on March 25, 1997.

3. *The date the application was approved*: March 25, 1998. FDA has verified the applicant's claim that NDA 20–771 was approved on March 25, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 64 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by September 10, 2001. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 7, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 11, 2001.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 01–17105 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01D–0276]**

### Draft Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues'' (the draft guidance). The draft guidance presents FDA's policy for implementing the channels of trade provision for the pesticide chemical vinclozolin in the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996. The draft guidance is intended to assist firms in understanding FDA's planned approach to the enforcement of this provision of the FQPA with regard to residues of vinclozolin in food.

**DATES:** Submit written comments concerning on the draft guidance by September 10, 2001, to ensure their adequate consideration of the comments in the preparation of a revised guidance, if warranted. However, you may submit comments at any time.

**ADDRESSES:** Submit written comments concerning the draft guidance and the collection of information provisions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance entitled ''Guidance for Industry: Channels of Trade Policy for Commodities With Vinclozolin Residues'' to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321. Send one self-adhesive address label to assist that office in processing your request, or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681, FAX 202–205–4422, e-mail: mkashtoc@cfsan.fda.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 3, 1996, the FQPA was signed into law. This law, which amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA, established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. In accordance with the FQPA, the Environmental Protection Agency (EPA), is responsible for regulating the use of pesticides (under the FIFRA) and establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FFDCA). EPA, in accordance with the FQPA, is in the process of reassessing the pesticide tolerances and exemptions that were in effect when the FQPA was signed into law. When EPA determines that a pesticide's tolerance level does not meet the safety standard under section 408 of the act (21 U.S.C. 346a), the registration for the pesticide may be canceled under the FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the FFDCA (21 U.S.C. 346a(l)(2)), when the registration for a pesticide is canceled or

modified due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for monitoring residue levels and enforcing pesticide tolerances in egg products and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an ''adulterated'' food. However, the channels of trade provision of the FQPA address the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FFDCA) states the following:

PESTICIDE RESIDUES RESULTING FROM LAWFUL APPLICATION OF PESTICIDE.—Notwithstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue in or on a food has been revoked, suspended, or modified under this section, an article of that food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown to the satisfaction of the Secretary that-

(A) the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and

(B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under the tolerance, exemption, food additive regulation, or other sanction then in effect under this Act; unless, in the case of any tolerance or exemption revoked, suspended, or modified under this subsection or subsection (d) or (e), the Administrator has issued a determination that consumption of the legally treated food during the period of its likely availability in commerce will pose an unreasonable dietary risk.

For reasons explained by EPA in its proposed rule on pesticide tolerance revocations published elsewhere in this issue of the **Federal Register**, EPA is proposing to revoke the pesticide tolerances for vinclozolin on bell peppers andcucumbers[1], and also is proposing to revoke the pesticide tolerances for vinclozolin on strawberries and stonefruit as quickly as possible after consideration of comments.

FDA anticipates that some processed strawberries and stonefruit bearing vinclozolin residues resulting from lawful domestic application of this pesticide will remain in the channels of trade after the revocation of the applicable tolerance. In addition, FDA anticipates that some bell peppers and cucumbers, both fresh and processed, that were legally imported bearing residues of vinclozolin will be in the channels of trade after the revocation of the applicable tolerance. If FDA encounters processed strawberries, processed stonefruit, fresh or processed bell peppers, or fresh or processed cucumbers bearing a residue of vinclozolin, it intends to address the situation in accordance with this draft guidance. FDA has developed this draft guidance to set forth its policy for how FDA plans to approach its enforcement of the channels of trade provision with respect to the pesticide chemical vinclozolin.

With this document, FDA is announcing the availability of the draft guidance. The draft guidance represents FDA's current thinking on its planned enforcement approach to the channels of trade provision and how such provision relates to FDA-regulated products with vinclozolin residues. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The draft guidance is being distributed for comment purposes, in accordance with the FDA's final rule on administrative practices and procedures for good guidance practices (21 CFR 10.115; 65 FR 56468, September 19, 2000).

## II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title*: Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision for Foods With Vinclozolin Residues

*Description*: Under the pesticide tolerance reassessment process that EPA wasmandated to carry out under the FQPA, EPA has proposed to revoke the tolerances for the pesticide chemical vinclozolin on several food commodities. The FQPA includes a provision in section 408(l)(5) of the FFDCA, referred to as the ''channels of trade provision,'' that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain vinclozolin residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, will be able to demonstrate that such food was packed or processed during the acceptable timeframes cited in the draft guidance, by providing appropriate documentation to the agency as discussed in the draft guidance. FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered

[1]Vinclozolin is not registered for use on bell peppers and cucumbers in the United States. The tolerances for vinclozolin on bell peppers and cucumbers provide the importation of these commodities with vinclozolin residues.

unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation which FDA anticipates will serve this purpose consists of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

*Description of Respondents*: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of vinclozolin after the tolerances for this pesticide chemical have been revoked.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 307 | 1 | 307 | 3 | 921 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| No. of Recordkeepers | Annual Frequency per Response | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|
| 31 | 1 | 31 | 16 | 496 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes might be found to contain vinclozolin residues. The estimated annual reporting burden was determined using the total number of samples historically tested for vinclozolin and the number of samples that historically contained vinclozolin residues. These numbers established a rate of samples expected to contain vinclozolin residues. This rate, when applied to the number of potentially affected establishments, was used to calculate the number of expected respondents.

When determining the estimated annual recordkeeping burden, FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation to develop and maintain (or maintain access to) documentation such as batch records, inventory records, sales records, and distribution records.

## III. Comments

Interested persons should submit to the Dockets Management Branch (address above) written comments regarding the draft guidance by September 10, 2001, to ensure adequate consideration of the comments of the comments in the preparation of a revised guidance, if warranted. However, interested persons may submit written comments at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit to the Dockets Management Branch written comments concerning this collection of information by September 10, 2001. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

An electronic version of the draft guidance is available on the Internet at http://www.fda.gov.

Dated: June 29, 2001.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–17047 Filed 7–9–01; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–372]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.181 and 441.300–.305; *Form No.:* HCFA–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) Verify that State assurances regarding waiver cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 243; *Total Annual Hours:* 18,225.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 11, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01–17214 Filed 7–9–01; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of the Technical/Agency Draft Florida Manatee Recovery Plan, Third Revision for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability for second public review of the updated Technical/Agency Draft of the Florida Manatee Recovery Plan, Third Revision. We solicit review and written comments from the public on this draft plan.

**DATES:** We must receive comments on the draft recovery plan on or before August 9, 2001 to receive consideration by us.

**ADDRESSES:** You may obtain a copy of the draft recovery plan by contacting Bill Brooks by electronic mail (e-mail) at fw4_es_jacksonville@fws.gov or by calling (904) 232–2580, extension 104 or at Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida, 32216. If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to (904) 232–2404.

3. You may send comments by e-mail to the Field Supervisor at fw4_es_jacksonville@fws.gov. For directions on how to submit electronic filing of comments see the ''Public Comments Solicited'' section.

Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Bill Brooks (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

### Background

The West Indian manatee, *Trichechus manatus,* is currently listed as endangered throughout its range for both the Florida and Antillean subspecies (U. S. Fish and Wildlife Service 1967). The Florida manatee lives in freshwater, brackish, and marine habitats. Submerged, emergent, and floating vegetation are their preferred food. During the winter, cold temperatures keep the population concentrated in peninsular Florida and many manatees rely on the warm water from natural springs and power plant outfalls. During the late spring and summer, they expand their range and are seen on infrequent occasions as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

The most significant threat presently facing manatees in Florida is death and serious injury from boat strikes. In the long term, the greatest challenge to manatee recovery is maintaining adequate sources of warm water so the species can survive the cold in winter. The availability of warm-water refuges for manatees is uncertain due to deregulation of the power industry in Florida, and the lack of secure minimum flows at the natural springs on which many manatees depend. Long term survival also depends on maintaining the integrity of ecosystems and habitat sufficient to support a recovered manatee population.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We developed the initial recovery plan for West Indian manatee in 1980. This plan focused primarily on manatees in Florida, but included Antillean manatees in Puerto Rico and the U.S. Virgin Islands. In 1986, we adopted a separate recovery plan for manatees in Puerto Rico. To reflect new information and planning needs for manatees in Florida, we revised the original plan in 1989 and focused exclusively on the Florida manatee. This first revision covered a 5-year planning period ending in 1994. We revised and updated the plan again in 1996, which again covered a 5-year planning period ending in 2000. In 1999, we initiated the process to revise the plan for a third time. We established an 18-member recovery team made up of the public, agencies, and groups that have an interest in manatee recovery and/or could be affected by proposed recovery actions, to draft this revision. Extensive public comments on the November 30, 2000 Technical/Agency Draft resulted in significant changes to the recovery criteria. We felt these changes were significant enough to warrant another public review of the Technical/Agency Draft as set forth in this Notice.

In the 20 years since approval of the original recovery plan, a tremendous amount of knowledge of manatee biology and ecology has been achieved and significant protection programs have been implemented, through the guidance provided by the recovery planning process. This Technical/Agency Draft of the Florida Manatee Recovery Plan, Third Revision reflects many of those accomplishments, addresses new threats and needs, and specifically addresses the planning requirements of the Act through 2006. The Florida Manatee Recovery Team

provided assistance during the development of this draft plan.

**Public Comments Solicited**

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to approval of the plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make all 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 rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 6, 2001.

**David L. Hankla,**

*Field Supervisor.*

[FR Doc. 01–17153 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–060–1220DH–01]**

## Notice of Intent

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) is proposing to amend the West HiLine Resource Management Plan (RMP) for public lands in an area known as Loma/Vimy Ridge located in Chouteau County, Montana. The BLM is proposing to amend the off-road vehicle (ORV) designation for the public lands that are currently open seasonally or yearlong to motorized cross-country travel and designate the area as limited yearlong and also designate the roads and trails open to motorized vehicles. An environmental assessment will be prepared by the Havre Field Station to analyze the impacts of this proposal and any alternatives.

**DATES:** Comments and recommendations on this notice should be received on or before August 9, 2001.

**ADDRESSES:** Address all comments concerning this notice to: Bureau of Land Management, Attention: Jody Peters, Havre Field Station, 1704 2nd Street West, Drawer 911, Havre, MT 59501.

**FOR FURTHER INFORMATION CONTACT:** Jody Peters, 406–262–2832.

**SUPPLEMENTARY INFORMATION:** The Loma/Vimy Ridge Watershed planning effort would implement decisions of the West HiLine RMP, the Upper Missouri National Wild and Scenic River Plan, the Wood River Ranch Habitat Management Plan, and the Standards for Rangeland Health and Guidelines for Livestock Grazing Management. The Loma/Vimy Ridge Watershed consists of two large blocks of public land located on or adjacent to Rowe Bench and Vimy Ridge, in Chouteau County, Montana. These lands are the high grounds between the Missouri, Teton, and Marias Rivers, where they converge. The land is in north central Montana about ½ mile west of Loma and 11 miles northeast of Fort Benton. Surface ownership consists of approximately 11,450 acres of public land.

About 850 acres of public land are currently designated as open to ORV use, 7,950 acres are designated as limited seasonally, and 2,650 acres are within the Upper Missouri River Breaks National Monument where all motorized vehicle use off road is prohibited except for emergency or authorized purposes. Through the watershed planning for this area the BLM is proposing to change the open and limited seasonally designations to limited yearlong. The watershed plan will include a map showing the transportation network of roads and trails available for use under the terms and conditions set forth in the plan amendment.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712)).

Dated: April 23, 2001.

**Owen Billingsley,**

*Bureau of Land Management.*

[FR Doc. 01–17135 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

## Dakotas Advisory Council Meeting

**AGENCY:** Bureau of Land Management, North Dakota Field Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Dakotas Resource Advisory Council will be held August 20 & 21, 2001, at the Travel Lodge, Dickinson, North Dakota. The session will convene at 8 a.m. on August 20th. A field trip to the Coteau Mine is scheduled for the 21st. Agenda items will include off highway vehicles, energy activities on public lands, Homestake exchange, discussion on Payment-In-Lieu of Taxes, and Fire and Fuel Reductions.

The meeting is open to the public and a public comment period is set for 4 pm on August 20, 2001. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-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 the Dakotas.

**FOR FURTHER INFORMATION CONTACT:** Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Ave. W., Dickinson, North Dakota. Telephone (701) 227–7700.

Dated: June 21, 2001.

**Douglas Burger,**

*Field Office Manager.*

[FR Doc. 01–17136 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–10–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–090–1430–ES; MTM–90869]**

## Notice of Realty Action: Recreation and Public Purposes Act Classification; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Phillips County, Montana, have been examined and classified for lease to Phillips County under the provisions of the Recreation and Public Purposes Act, as amended (43 U. S. C. 869 *et seq.*). The lands were examined and classified in response to a Recreation and Public Purposes Act application, MTM–90869, filed on April 9, 2001, by Phillips County, who is proposing to use the lands to construct and maintain an amphitheater to be known as the Lewis and Clark Amphitheater.

**Principal Montana Meridian**

T. 25 N., R. 25 E.,
Sec. 17, block 8, lot 10.

Containing 2.62 acres more or less.

The lands are located within the townsite of Zortman, Montana, which is currently segregated from all forms of mineral entry. Issuance of a Recreation & Public Purposes lease is consistent with the Phillips Resource Area Resource Management Plan, dated September 1994, and is in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. The rights-of-way for telephone and electrical power purposes granted to Triangle Telephone Cooperative Inc., MTM–00999, and Big Flat Electric Cooperative Inc., MTM–00997.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, except for lease under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification and lease of the lands to the Field Office Manager, Malta Field Office 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for use as an amphitheater. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Public comments submitted for this notice of realty action, including names and street addresses of respondents, will be available for public review at the Malta Field Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holiday. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for amphitheater.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

**Bruce W. Reed,**

*Malta Field Office Manager.*

[FR Doc. 01–17210 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–84–P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Notice of Availability of the Final Environmental Impact Statement (EIS) for Outer Continental Shelf (OCS), Eastern Gulf of Mexico Region (GOM), Proposed Sale 181

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of availability of the final EIS on proposed eastern GOM Sale 181.

**SUMMARY:** The MMS has prepared a final EIS on a proposed OCS oil and gas lease sale in the Eastern GOM. This proposed sale is the only Eastern GOM sale scheduled during the current 5-Year Oil and Gas Leasing Program and the first proposed sale in the Eastern GOM since 1988.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the final EIS should be directed to Mr. Archie Melancon, Minerals Management Service, Branch of Environmental Assessment, 381 Elden Street, MS–4042, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1547.

**SUPPLEMENTARY INFORMATION:** This EIS addresses a proposed Federal action that offers for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Proposed 2001 Eastern Gulf Sale 181 includes lease blocks in the Eastern Planning Area (EPA). The proposed sale is scheduled for December 2001 and would offer for lease 256 blocks in the EPA. At present, 23 blocks within this area are under lease. This area includes about 1.475 million acres located 100 to 200 miles offshore in water depths ranging from 1,600 to 2,926 meters (5,075 to 9,600 feet). The blocks in the EPA outside of the proposed Lease Sale 181 area are excluded from consideration. It is estimated that the proposed action could result in the production of 15 to 115 million barrels of oil and 225 to 750 billion cubic feet of gas. The MMS does not expect all offered blocks to be leased. Of the blocks that will be leased, only a portion would be expected to be drilled and result in subsequent production.

### EIS Availability

You may obtain single copies of the final EIS from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

You may look at copies of the final EIS in the following libraries:

*Alabama*

Auburn University at Montgomery Library, 7300 University Drive, Montgomery;
Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;

Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, 307 University Boulevard, Mobile;

*Florida*

Bay County Public Library, 25 West Government Street, Panama City;
Charlotte-Glades Regional Library System, 18400 Murdock Circle, Port Charlotte;
Collier County Public Library, 650 Central Avenue, Naples;
Environmental Library, Sarasota County, 7112 Curtis Avenue, Sarasota;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee;
Florida Northwest Regional Library System, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
Marathon Public Library, 3152 Overseas Highway, Marathon;
Monroe County Public Library, 700 Fleming Street, Key West;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota;
St. Petersburg Public Library, 3745 Avenue North, St. Petersburg;
Tampa-Hillsborough County Library, Documents Division, 800 North Ashley, Tampa;
University of Florida Library, University Avenue, Gainesville;
University of Florida, Holland Law Library, Southwest 25th Street, and 2nd Avenue, Gainesville;
University of West Florida Library, 1100 University Parkway, Pensacola;
West Florida Regional Library, 200 West Gregory Street, Pensacola;

*Louisiana*

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Eastbank Regional Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish Westbank Regional Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, 2607 Jean Lafitte Blvd. (Hwy. 45), Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
Loyola University, Government Documents Library, 6363 St. Charles Avenue, New Orleans;
LUMCON Library, 8124 Highway 56, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John the Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;
Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern Louisiana, Dupre Library, 302 East Street, Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

*Mississippi*

Eudora Welty Library, 1400 Lynch, Jackson;
Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula.

Dated: July 3, 2001.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 01–17235 Filed 7–9–01; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria). Contra Costa Water District has developed a Water Management Plan (Plan), which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination of Contra Costa Water District's Plan is invited at this time.

**DATES:** All public comments must be received by August 9, 2001.

**ADDRESSES:** Please e-mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California, or lbillingsley@mp.usbr.gov.

**FOR FURTHER INFORMATION CONTACT:** To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the e-mail address above, or by telephone at (916) 978–5215 (TDD 978–5608).

**SUPPLEMENTARY INFORMATION:** We are inviting the public to comment on our preliminary (i.e., draft) determination of the adequacy of Contra Costa Water District's Plan. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982. ''Also, according to section 3405 (e)(1), these criteria will be developed * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

These Criteria states that all parties (Contractors) that contract with

Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMP's for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five Year Revisions

Reclamation will evaluate Contra Costa Water District's Plan based on these Criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowably 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 disclosure in their entirety.

A copy of the Plan will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: May 30, 2001.

**John F. Davis,**

*Regional Resources Manager.*

[FR Doc. 01–16925 Filed 7–9–01; 8:45 am]

BILLING CODE 4210–MN–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review)]**

## Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico

### Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on oil country tubular goods other than drill pipe from Italy, and the antidumping duty orders on oil country tubular goods other than drill pipe from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [2] that revocation of the antidumping duty order on drill pipe from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines [3] that revocation of the antidumping duty orders on drill pipe from Argentina and Mexico would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted these reviews on July 3, 2000 (65 FR 41088) and determined on October 5, 2000, that it would conduct full reviews (65 FR 63889, October 25, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 26, 2001 (66 FR 7941). The hearing was held in Washington, DC, on May 8, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on June 28, 2001. The views of the Commission are contained in USITC Publication 3434 (June 2001), entitled Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico: Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review).

Issued: July 3, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–17111 Filed 7–9–01; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun dissenting.

[3] Commissioners Lynn M. Bragg and Dennis M. Devaney dissenting.

## DEPARTMENT OF LABOR

## Office of the Secretary

## Submission for OMB Review; Comment Request

June 25, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room, 10235, Washington, DC 20503 ((202) 395–7316) within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Program to Prevent Smoking in Hazardous Areas.

*OMB Number:* 1219–0041.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Number of Respondents:* 188.

*Number of Annual Responses:* 188.

*Estimated Time Per Response:* 30 minutes.

*Total Burden Hours:* 94.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* 30 CFR 75.1702 requires operators of underground coal mines to develop programs to ensure that any person entering a mine does not carry smoking materials, matches or lighters.

**Ira Mills,**

*Department Clearance Officer.*

[FR Doc. 01–17211 Filed 7–9–01; 8:45 am]

**BILLING CODE 4510–43–M**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0115(2001)]**

### Cranes and Derricks Standard for Construction: Notification of Operational Specifications and Hand Signals; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request to increase the total burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). These paragraphs require employers to provide notification of specified operating characteristics pertaining to cranes and derricks using documentation, posting, or revised maintenance-instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite.

**DATES:** Submit written comments on or before September 10, 2001.

**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR–1218–0115(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of § 1926.550 is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select ''Information Collection Requests.''

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Several paragraphs of the Cranes and Derricks Standard for Construction (§ 1926.550) contain notification requirements, including paragraphs (a)(1), (a)(2), (a)(4), and (a)(16). If an equipment manufacturer's specifications are not available, paragraph (a)(1) requires employers to operate a crane or derrick using specifications determined and recorded by a qualified engineer who is competent to make such determinations. Under paragraph (a)(2), employers must post on each crane and derrick its rated load capacities, and recommended operating speeds, special hazard warnings, or instruction. Paragraph (a)(4) requires employers to post at the worksite an illustration of the hand signals prescribed by the applicable ANSI standard for that type of crane or derrick. According to paragraph (a)(16), employers must revise as appropriate the capacity, operation, and maintenance-instruction plates, tags, or decals if they make alterations that involve the capacity or safe operation of a crane or derrick.

In summary, these provisions require employers to provide notification of specified operating characteristics through documentation, posting, or revising maintenance-instruction plates, tags, or decals, and to notify employees of hand signals used to communicate with equipment operators by posting an illustration of applicable signals at the worksite. These paperwork requirements ensure that employers operate a crane or derrick according to the limitations and specifications developed for that equipment, and that hand signals used to communicate with equipment operators are clear and correct. Therefore, these requirements prevent employers from exceeding the operating specifications and limitations of cranes and derricks, and ensure that they use accurate hand signals regarding equipment operation. By operating the equipment safely and within specified parameters, and communicating effectively with equipment operators, employers will prevent serious injury and death to the equipment operators and other employees who use or work near the equipment.

### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

### III. Proposed Actions

OSHA is requesting OMB to increase the total burden hours estimated for, and to extend its approval of, the collection-of-information requirements specified by paragraphs (a)(1), (a)(2), (a)(4), and (a)(16) of § 1926.550. Specifically, the Agency is requesting to increase the estimated total burden hours from 4,996 to 5,644 hours, an increase of 648 hours. These additional burden hours resulted from an increase in the estimated number of cranes and derricks covered by the paperwork requirements.

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to increase the existing burden-hour estimates for, and to extend approval of, these information-collection requirements.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Cranes and Derricks Standard for Construction: Notification of Operational Specifications and Hand Signals.

*OMB Number:* 1218–0115.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

*Number of Respondents:* 67,715.[1]

*Frequency of Response:* On occasion.

*Average Time per Response:* 5 minutes (.08 hour) to post specifications or hand-signal illustrations.

*Estimated Total Burden Hours:* 5,644.

*Estimated Cost (Operation and Maintenance):* $398,353.

[1] In estimating the number of establishments covered by these paperwork requirements, the Agency assumes a ratio of 1 crane or derrick per establishment. The determinations made by OSHA in the accompanying ICR indicate that paragraphs (a)(2), (a)(4), and (a)(16) cover 67,715 cranes and derricks, resulting in an equal number of establishments (i.e., 67,715). In addition, the Agency finds that engineers under contract to employers provide the documentation specified by paragraph (a)(1); therefore, OSHA treats this paperwork requirement as a capital cost under Item 13 of the ICR, and did not include it in calculating values for the categories entitled ''Number of Respondents'' and ''Estimated Total Burden Hours.''

## IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–17219 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0093–(2001)]**

### Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request to increase the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by the Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250, respectively). Under § 1926.50(f), employers must post emergency telephone numbers at the worksite if the 911 emergency telephone service is not available, while § 1926.250(a)(2) requires employers to post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade.

**DATES:** Submit written comments on or before September 10, 2001.

**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR–1218–0093(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by these standards are available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select ''Information Collection Requests.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Two Construction standards, ''Medical Services and First Aid'' (§ 1926.50) and ''General Requirements for Storage'' (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to post emergency telephone numbers for physicians, hospitals, or ambulances at the worksite if the 911 emergency telephone service is not available; in the event an employee has a serious injury at the worksite, this posting requirement expedites emergency medical treatment of the employee. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade. This provision prohibits employers from overloading floors in areas used to store material and equipment in multi-story units that are under construction, thereby preventing the floors from collapsing and seriously injuring employees.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA is requesting a net increase in the total burden-hour estimate for, as well as an extension of OMB approval of, the collection-of-information requirements specified by paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250. Specifically, the Agency is requesting to increase the current total burden-hour estimate from 5,555 hours to 6,194 hours, a total increase of 639 hours. The following table provides a description of this increase.

| Information collection requirement | Current burden hours | Requested burden hours | Adjustment (hours) | Explanation of adjustment |
|---|---|---|---|---|
| § 1926.50(f) | 2,667 | 3,667 | 1,000 | Previously underestimated the number of residential-unit sites covered by this provision (i.e., the correct number is 900,000 units instead of 600,000 units). |
| § 1926.250(a)(2) | 2,888 | 2,527 | (361) | Based on information regarding new construction of multi-story units contained in the most recent edition of the F.W. Dodge Construction Report |
| Totals | 5,555 | 6,194 | 639 | |

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to decrease the existing burden-hour estimates for, and to extend approval of, these information-collection requirements.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Construction Standards on the Posting of Emergency Telephone Numbers and Floor Load Limits.

*OMB Number:* 1218–0093.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

*Number of Respondents:* 140,325.[1]

*Frequency of Response:* On occasion.

*Average Time per Response:* Varies from 2 minutes (.03 hour) to post emergency telephone numbers to 5 minutes (.08 hour) to post load limits for floors.

*Estimated Total Burden Hours:* 6,194.

*Estimated Cost (Operation and Maintenance):* $112,762.

## IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor of Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–17220 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

[1] This figure includes the 110,000 sites covered by § 1926.50(f) and the 30,325 multi-story units covered by § 1926.250(a)(2). Although some overlap may occur between these sites and units, OSHA cannot readily differentiate between employers covered by these two provisions.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0151(2001)]**

### Cranes and Derricks Standard for Construction: Posting Weight and Load Capacity of Personnel Platforms; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified by paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). This paragraph requires employers to post a plate or other permanent marking that indicates the weight of a personnel-

hoisting platform and its rated-load capacity or maximum intended load.

**DATES:** Submit written comments on or before September 10, 2001.

**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR–1218–0151(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550) is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select ''Information Collection Requests.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95)(44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550) requires employers to post conspicuously with a plate or other permanent marking the weight and rated load capacity or maximum intended load of each platform used to raise and lower employees to a worksite using a crane or derrick. This requirement helps employers to avoid exceeding the lifting capacity of such platforms and the cranes or derrick being used to lift the platforms. Therefore, this requirement can prevent the platform, crane, or derrick from collapsing and causing serious injury or death to employees on or below the platform.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA is requesting to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (§ 1926.550). the Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

*Type of Review:* Extension of currently approved information-collection requirements.

*Title:* Cranes and Derricks Standard for Construction: Posting Weight and Load Capacity of Personnel Platforms.

*OMB Number:* 1218–0151.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

*Number of Respondents:* 2,750 (platforms).

*Frequency of Response:* On occasion.

*Average Time per Response:* 5 minutes (.08 hour) to post or mark a platform.

*Estimated Total Burden Hours:* 229.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Dated: Signed at Washington, DC on July 3, 2001.

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–17221 Filed 7–9–01; 8:45 am]

**BILLING CODE 4510–26–M**

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0054(2001)]**

### Cranes and Derricks Standard for Construction: Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of an opportunity for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request to decrease the existing burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by paragraph (a)(11) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). If a crane or derrick powered by an internal-combustion engine is exhausting into an enclosed space that employees occupy or will occupy, this paragraph requires employers to record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

**DATE:** Submit written comments on or before September 10, 2001.

**ADDRESSES:** Submit written comments to the Docket Office, Docket No. ICR–1218–0054(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by paragraph (a)(11) of OSHA's Cranes and Derricks

Standard for Construction (§ 1926.550) is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select ''Information Collection Requests.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

Paragraph (a)(11) of OSHA's Cranes and Derricks Standard for Construction (§ 1926.550) addresses conditions in which a crane or derrick powered by an internal-combustion engine is exhausting into an enclosed space that employees occupy or will occupy. Under these conditions, employers must record tests made of the breathing air in the space to ensure that adequate oxygen is available and that concentrations of toxic gases are at safe levels.

Establishing a test record allows employers to document oxygen levels and specific atmospheric contaminants, ascertain the effectiveness of controls, implement additional controls if necessary, and readily provide this information to other crews and shifts who may work in the enclosed space. Accordingly, employers will prevent serious injury and death to equipment operators and other employees who use or work near this equipment in an enclosed space. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required tests and implemented appropriate controls.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

## III. Proposed Actions

OSHA is requesting a decrease in the existing burden-hour estimate for, as well as an extension of OMB approval of, the collection-of-information requirements specified by paragraph (a)(11) of § 1926.550. Accordingly, the Agency is requesting to decrease the current burden-hour estimate from 99 hours to 97 hours, a total reduction of 2 hours. This reduction occurred because OSHA decreased the burden hours previously required for employers to inform OSHA compliance officers, during an inspection, of the location of the test records; the Agency now accounts for these burden hours under § 1910.1020 (OMB Control No. 1218–0065).

The Agency will summarize the comments submitted in response to this notice. OSHA will then include this summary in its request to OMB to decrease the existing burden-hour estimates for, and to extend approval of, this information-collection requirement.

*Type of Review:* Extension of currently approved information-collection requirement.

*Title:* Cranes and Derricks Standard for Construction: Recording Tests for Toxic Gases and Oxygen-Deficient Atmospheres in Enclosed Spaces.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

*Number of Respondents:* 50 (enclosed spaces).

*Frequency of Response:* On occasion.

*Average Time per Response:* 2 minutes (.03 hour) to perform atmospheric testing and record the results.

*Estimated Total Burden Hours:* 97 hours.

*Estimated Cost (Operation and Maintenance):* $9,000.

## IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on July 3, 2001.

**R. Davis Layne,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 01–17222 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–26–M

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# DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Application No. D–10911, et al.]**

## Proposed Exemptions; Deferred Profit Sharing Plan of the Penske Corporation (the Plan) et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638,

200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Deferred Profit Sharing Plan of the Penske Corporation (the Plan) Located in Charlotte, North Carolina**

[Application No. D–10911]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, (1) effective June 15, 2000, to the acquisition and holding by the Plan of interests (the Interests) in the Penske Company, LLC (the LLC), a wholly owned subsidiary of the Plan sponsor, the Penske Corporation (Penske), which were distributed (the Distribution) as dividends to the Plan as a shareholder of Penske common stock (Penske Stock); and (2) the proposed redemption, by the LLC, of the Interests held by the Plan for the greater of $3.37 per-unit or their fair market value at the date of the redemption, provided that the following conditions were or will be met:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;

(b) The Plan's receipt and holding of the Interests occurred in connection with the Distribution;

(c) The Plan's acquisition of the Interests resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner;

(d) Within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for not less than $3.37 per unit;

(e) The price received by the Plan for the Interests is not less than the fair market value of the Interests on the date that the redemption occurs; and

(f) The Plan paid no fees or commissions in connection with the acquisition and holding of the Interests nor will it pay any fees or commissions in connection with the redemption of the Interests.

*Effective Date:* If granted, this proposed exemption will be effective as of June 15, 2000, with respect to the acquisition and holding by the Plan of the Interests. In addition, this exemption will be effective as of the date the final exemption is granted with respect to the LLC's redemption of the Interests held by the Plan.

*Summary of Facts and Representations*

1. Penske, the sponsor of the Plan, is a Delaware corporation engaged in the transportation services industry. Penske maintains its principal place of business in Detroit, Michigan and is more than 50% owned by RSP (RSP). The Plan is a qualified retirement plan described under section 401(a) of the Code and features a qualified cash or deferred compensation arrangement described in section 401(k) of the Code.

As of December 31, 2000, the Plan had a total of 1,174 participants and assets with an approximate aggregate fair market value of $35,477,000. Also as of December 31, 2000, 47.9% (or $16,997,073) of the fair market value of the total assets of the Plan was invested in Penske Stock. The shares of Penske Stock are held by 401 Plan Participants. Before June 15, 2000, the Plan held 5,601 shares of Penske Corporation Class B Voting Common Stock and 106,166 shares of Penske Corporation Class C Non-Voting Common Stock. In total, the Plan owns 111,767 shares (5,601 shares + 106,166 shares) of Penske. This represented 3.33 percent of the total 3,355,685 shares of Penske Stock outstanding at that time (treating the convertible preferred stock as fully converted) (111,767 shares ÷ 3,355,685 shares).

2. First Union National Bank (First Union), of Charlotte, North Carolina, serves as a directed trustee of the Plan. As such, First Union has no investment discretion over the Plan's assets.

3. A variety of funds have been established under the Plan for the investment of the Plan assets, including Fund E, the Penske Corporation Stock Fund. These funds are mutual funds, with the exception of Fund E and the two subfunds that have been established with Fund E—the Penske Subfund and the LLC Subfund. Fund E is invested principally in Penske Stock, and is available for investment only with respect to amounts attributable to profit-sharing contributions (the Contributions) that were made under the Plan by participants prior to January 1, 1996. Participants may periodically reallocate amounts attributable to the Contributions (including amounts invested in Fund E) among any of the other funds, but they may not reallocate any amounts to Fund E. Furthermore, under Section 6.1 of the Plan, as currently drafted, any income derived or net proceeds received from the sales of assets in Fund E is invested among the other funds established in accordance with the participant's investment direction.

4. The LLC is in the business of the management, operation, acquisition, and disposition of companies engaged in transportation-related services, such as manufacturers and suppliers to the heavy-duty truck and automotive industries and on-line electronic commerce enterprises. The LLC was formed by Penske on April 13, 2000 as a Delaware limited liability company. Penske contributed $9,900 in cash and a trust maintained for the benefit of RSP contributed $100 in cash to the LLC on, in exchange for all of the LLC Interests. On May 1, 2000, Penske purchased the trust's Interests in the LLC for $100 in cash, so that Penske owned all of the Interests. This resulted in the LLC being a wholly owned subsidiary of Penske. On June 15, 2000, Penske made a *pro rata* distribution of the Interests, which are not publicly-traded, to all of Penske's shareholders of record as of June 14, 2000. The Plan, as a

shareholder of Penske Stock, also received a distribution of the Interests from Penske in proportion to its ownership interest in Penske Stock. As a result of the *pro rata* distribution of the Interests, the Plan received 5,601 Class B Voting Common Units in the LLC and 106,166 Class C Non-Voting Common Units in the LLC out of the total number of units issued—3,355,685 (treating the convertible preferred units as fully converted). Similarly, RSP received Interests in the LLC which corresponded with those received by the Plan. The Plan paid no fees or commissions to Penske in connection with the Distribution.

The Interests have been held on behalf of the Plan within Fund E in the LLC Subfund. Participants with accounts invested in Fund E have received information from Penske about the nature, risks and potential rewards of holding the Interests as an investment. This information was given in the form of an information statement (the Statement) provided by the employee benefits department of Penske. The Statement was sent only to participants in the Plan with accounts invested in Fund E.

5. Section 406(a)(1)(A) of the Act prohibits a fiduciary from causing a plan to engage in a transaction which the fiduciary knows (or should know) constitutes a sale or exchange of any property between the plan and a party in interest. Penske, as an employer any of whose employees are covered by the Plan, is a party in interest with respect to the Plan under section 3(14)(C) of the Act. The LLC is also a party in interest with respect to the Plan under section 3(14)(G) of the Act. Since 100% of this entity was owned directly by Penske and more than 50% of the LLC is currently owned indirectly by RSP, the LLC is a party in interest under section 3(14)(G) of the Code with respect to the Plan.

Because Penske believes that the LLC is an affiliate of Penske for purposes of section 407(d)(7) of the Act,[1] Penske represents that the Interests held by the Plan would constitute an ''employer security'' within the meaning of 407(d)(1) of the Act[2] but not a ''qualifying employer security'' under section 407(d)(5) of the Act[3] inasmuch as the Interests do not fall within any of the covered categories.

Therefore, Penske states that exemptive relief is needed with respect to the acquisition and continued holding of the Interests by the Plan to the extent there have been violations of sections 406(a), 406(b)(1) and (b)(2), and section 407(a) of the Act. In addition, Penske represents that the redemption of the Plan's Interests by the LLC violates section 406(a)(1)(A) and section 406(b)(1) and (b)(2) of the Act. Accordingly, Penske requests an administrative exemption from the Department.

If granted, the exemption will be effective as of June 15, 2000 with respect to the acquisition and holding by the Plan of the Interests. In addition, this exemption will be effective as of the date the notice granting the exemption is published in the **Federal Register** with respect to the redemption of the Plan's Interests by the LLC.

6. McDonald Investments Inc. (McDonald), a company which is customarily engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes, valued all of the Interests as of June 15, 2000. McDonald represents that it is independent of Penske, the LLC and RSP.

In connection with rendering this valuation, McDonald reviewed and analyzed, among other things, the following: (i) The historical financial information concerning the LLC's investments; (ii) certain other internal information, primarily financial in nature including projections concerning the business and operation of the LLC's investments furnished to it by the LLC's management for the purposes of the analysis; (iii) certain publicly-available information with respect to other companies that McDonald believed to be comparable to the LLC's investments and the trading markets for other comparable companies' securities; and (iv) certain publicly-available information concerning the nature and terms of other transactions that McDonald considered relevant to its inquiry. McDonald also met with certain officers and employees of Penske and the LLC to discuss the respective businesses and prospects of the LLC's investments, as well as other matters McDonald believed relevant to the valuation. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $7.3 million to $15.3 million, with a mid-point of $11.3 million. For purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $11.3 million was acceptable as the fair market value of the LLC as of June 15, 2000. As a result of the appraisal the per-unit of the Interest was valued at $3.37 ($11.3 million ÷ 3,355,685 units). Based upon this valuation, the Plan will receive a minimum of $376,654.79 (111,767 units × $3.37) as a result of the redemption.

7. The LLC was also valued by McDonald as of October 31, 2000. The second appraisal was based on the same criteria utilized in the first appraisal. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $2.9 million to $6.4 million, with a mid-point of $4.7 million.Therefore, for purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $4.7 million was acceptable as the fair market value of the LLC as of October 31, 2000. As a result of the appraisal the per-unit of the Interest was valued at $1.40 ($4.7 million ÷ 3,355,685 units).

8. The LLC was valued for a third time by McDonald as of December 31, 2000. This appraisal was based on the same criteria utilized in the two prior appraisals. McDonald concluded that the fair market value of the LLC, on an equity basis, was in a range of $5.8 million to $10.1 million, with a mid-point of $8 million. Therefore, for purposes of determining the redemption price for the Interests, McDonald represented that the midpoint price of $8 million was acceptable as the fair market value of the LLC as of December 31, 2000. As a result of the appraisal the per-unit of the Interest was valued at $2.38 ($8 million ÷ 3,355,685 units).

10. On the basis of the foregoing, within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for the greater of $3.37 per-unit (which represents the highest of the independent appraisals of the LLC) or the fair market value of the Interests on the date that the redemption occurs. The proceeds of the redemption will be reallocated among the other funds

[1] Section 407(d)(7) of the Act defines a corporation as an affiliate of an employer if it is a member of any controlled group of corporations (as defined in sectin 1563(a) of the Code, except that ''applicable percentage'' shall be substituted for ''80 percent'' wherever the latter percentage appears in such section) of which the employer maintains the plan is a member. For purposes of the preceding sentence, the term ''applicable percentage'' means 50 percent, or such lower percentage as the Secretary of Labora may prescribe by regulation.

[2] Section 407(d)(1) of the Act defines a ''qualifying employer security'' as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.

[3] Section 407(d)(5) of the Act defines a ''qualifying employer security'' as an employer security which is (a) stock; (b) a marketable obligation; or (c) an interest in a publicly-traded partnership, but only if such partnership is an existing partnership.

available for investment under the Plan pursuant to the participants' current investment elections for new Plan contributions. Penske states that the proposed redemption is in the interests of the Plan and its participants and beneficiaries because the redemption will be a one-time cash transaction allowing the Plan to divest itself of the Interests and reinvest the proceeds of the redemption in assets that will be diversified and generate higher rates of return.

11. In summary, the applicant represents that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Interests were acquired by the Plan pursuant to Plan provisions for individually-directed investment of participant accounts;

(b) The Plan's receipt and holding of the Interests occurred in connection with the Distribution;

(c) The Plan's acquisition of the Interests resulted from an independent act of Penske as a corporate entity, such that all holders of the Penske Stock, including the Plan, were treated in the same manner;

(d) Within 15 business days after the date the notice granting the final exemption is published in the **Federal Register**, the LLC will redeem the Interests held by the Plan for not less than $3.37 per-unit;

(e) The price received by the Plan for the Interests will not be less than the fair market value of the Interests on the date that the redemption occurs; and

(f) The Plan paid no fees or commission in connection with the acquisition and holding of the Interests nor will the Plan pay any fees or commissions in connection with the redemption of the Interests.

*For Further Information Contact:* Khalif Ford of the Department, telephone (202) 219–8883. (This is not a toll-free number).

**Development Company Funding Corporation Located in the District of Columbia**

[Application No. D–10926]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Transactions

A. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Trusts and Certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter of the Certificates and an employee benefit plan when the SBA, the Fiscal Agent, the Selling Agent, the Central Servicing Agent, the Trustee, the Underwriter, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Certificates by a plan in the secondary market for such Certificates; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Certificate on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. If the proposed exemption is granted, effective August 25, 2000, the restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between the Underwriter and a plan, when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Certificates is (a) an Obligor with respect to 5 percent or less of the fair market value of the 504 Program Loans underlying the Debentures related to that Series of Certificates, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Certificates in connection with the initial issuance of the Certificates, at least 50 percent of each Series of Certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Series is acquired by persons independent of the Restricted Group.

(iii) A plan's investment in each Series of Certificates does not exceed 25 percent of all of the Certificates of that Series outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Certificates representing an interest in a Trust containing assets sold or serviced by the same entity.[5] For purposes of this subparagraph (iv) only, an entity will not be considered to service assets contained in a Trust if it is merely a subservicer of that Trust.

(2) The direct or indirect acquisition or disposition of Certificates by a plan described in paragraph B.(1) in the secondary market for such Certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a Trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Trust Agreement; and

(2) The Trust Agreement is provided to, or described in all material respects in the offering circular or other disclosure document provided to the investing plans before they purchase Certificates issued by the Trust.[6]

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR section 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] The offering circular or other disclosure document must contain substantially the same information that would be disclosed in a prospectus if the offering of the Certificates were made in a registered public offering under the Securities Act

Continued

D. If the proposed exemption is granted, effective August 25, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or sanctions would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H), (I) of the Code), solely because of the plan's ownership of Certificates.

Section II. Conditions

The relief provided under Section I is available only if the following conditions are met:

A. The acquisition of Certificates by a plan is on terms (including the Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

B. The rights and interests evidenced by the Certificates are not subordinated to the rights and interests evidenced by other Certificates in the same Series;

C. The Certificates and Debentures are guaranteed as to the timely payment of principal and interest by the SBA, and are therefore backed by the full faith and credit of the United States;

D. The Trustee is not an affiliate of any other member of the Restricted Group.

Section III. Definitions

For purposes of this exemption:

A. ''Certificate'' means a certificate:

(1) That represents a beneficial ownership interest in a discrete pool of Debentures and all payments thereon, held in Trust by the Trustee pursuant to the Trust Agreement;

(2) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the discrete pool of Debentures held as part of such Trust; and

(3) That is issued by the Trustee as agent for the SBA and guaranteed by the SBA as to timely payment of principal and interest pursuant to section 505 of the Small Business Investment Act of 1958, as amended (the Small Business Investment Act).

B. ''Trust'' means the trust created pursuant to the Trust Agreement, under which, with respect to each Series of Certificates, the Trustee holds in Trust for the benefit of the certificate holders of the Series the following property:

(1) The discrete pool of Debentures related to the Series;

(2) A debenture guarantee agreement executed by the SBA pursuant to section 503 of the Small Business Investment Act pursuant to which the SBA guarantees timely payment of principal and interest on the Debentures related to the Series; and

(3) The certificate account maintained by the Central Servicing Agent for such Series into which the Central Servicing Agent deposits payments due in respect of the Debentures on each semiannual debenture payment date.

C. ''Debentures'' means debentures issued by a certified development company and guaranteed as to timely payment of principal and interest by the SBA pursuant to section 503 of the Small Business Investment Act.

D. ''504 Program Loans'' means loans made by a certified development company to a small business concern and funded with the proceeds of a Debenture pursuant to section 503 of the Small Business Investment Act.

E. ''SBA'' refers to the U.S. Small Business Administration.

F. ''Underwriter'' means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);[7] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the Certificates.

G. ''Fiscal Agent'' means the entity that has contracted with the SBA to assess the financial markets, arrange for the production of required documents, and monitor the performance of the Trustee and the Underwriter.

H. ''Selling Agent'' means the entity appointed by a certified development company to select Underwriters, negotiate the terms and conditions of Debenture offerings with the Underwriters, and direct and coordinate Debenture sales.

I. ''Central Servicing Agent'' means the entity that has entered into a master servicing agreement with the SBA to support the orderly flow of funds among borrowers, certified development companies and the SBA.

J. ''Trustee'' means an entity that is the trustee of the Trust.

K. ''Obligor'' means any person that is obligated to make payments under a Section 504 Loan related to a Debenture contained in the Trust.

L. ''Excluded Plan'' means any employee benefit plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Certificates means:

(1) Each Underwriter;

(2) The Fiscal Agent;

(3) The Selling Agent;

(4) The Trustee;

(5) The Central Servicing Agent;

(6) Any Obligor with respect to loans relating to Debentures included in the Trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Trust, determined on the date of the initial issuance of Certificates by the Trust;

(7) The SBA; or

(8) Any affiliate of a person described in (1)–(7) above.

N. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary that has investment management authority or renders investment advice with respect to assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to

of 1933. In the Department's view, the offering circular or other disclosure document must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[7] For a listing of the Underwriter Exemptions, see the description provided in footnote 1 of Prohibited Transaction Exemption 2000–58 (65 FR 67765, November 13, 2000).

the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The offering circular or other disclosure document is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to Sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Certificates) and optional contracts (which give one party the right but not the obligation to deliver Certificates to, or demand delivery of Certificates from, the other party).

S. ''Trust Agreement'' means that trust agreement by and among the SBA, the Fiscal Agent and the Trustee, as amended, establishing the Trust and, with respect to each Series of Certificates, the supplement to the trust agreement pertaining to such Series.

T. ''Series'' means any particular series of Certificates issued pursuant to the Trust Agreement that, in the aggregate, represent the entire beneficial interest in a discrete pool of Debentures held by the Trustee pursuant to the Trust Agreement.

*Summary of Facts and Representations*

1. The Small Business Administration (the SBA) is an agency established on July 30, 1953, pursuant to the Small Business Act. It is under the general direction and supervision of the President of the United States, and is not within or affiliated with any other agency or department of the federal government. The SBA was created to further Congressional policy that the government should aid, counsel, assist and protect the interests of small businesses to preserve free competitive enterprise and strengthen the country's economy.

The SBA was authorized by the Small Business Investment Act to establish a program (the 504 program) to provide financing to small businesses for projects that further one or more economic development objectives and meet certain eligibility criteria specified in the 504 program regulations. The 504 program is intended to foster economic development, create or preserve job opportunities, and stimulate growth of small businesses.

2. Under the 504 program, financing is provided to small businesses by certified development companies (CDCs). A CDC is generally a not-for-profit corporation or limited liability company that has been certified by the SBA, although a CDC certified by the SBA before January 1, 1987 may be a for-profit corporation. Each CDC must serve a designated area of operations identified by the CDC and approved by the SBA; there also may be one statewide CDC in a state, responsible for fostering economic development throughout the state and for providing loans under the 504 program in areas not adequately served by other CDCs. SBA regulations prescribe the number of members and the interests that must be represented by the members, the composition and activities of the board of directors and the staffing requirements of the CDC. They also impose an application process for certification as a CDC, including a public notice and comment period, and a probationary period.

In addition to marketing the 504 program, a CDC may furnish other financial and technical assistance to small businesses, or may assist them in obtaining such assistance. A CDC must generate at least two 504 program loan approvals every fiscal year, and its loan portfolio must meet certain standards of job creation or job preservation prescribed in regulations. CDCs submit annual and interim reports, as well as other information, to the SBA.

3. A small business applies for 504 program assistance to the CDC serving the area in which the project is located. If the SBA approves the project, permanent financing is arranged generally consisting of at least a 10% contribution from the small business; a loan from the CDC for up to 40% of the project costs and certain administrative costs, collateralized by a second lien on the project property; and a private sector loan for the balance, collateralized by a first lien on the project property. The minimum contribution from the small business is 15% if the borrower has operated for two years or less or if the project involves a limited or single purpose building or structure and is 20% if both conditions are met. Interim financing for everything except the borrower's contribution is often obtained from the private sector lender that will participate in the permanent financing.

The CDC's contribution to the project financing is raised by the CDC's issuance of a debenture. Under authority granted in 15 U.S.C. 697(a), the SBA guarantees the timely payment of all principal and interest as scheduled on this debenture; the full faith and credit of the United States is pledged to the payment of these guaranteed amounts.[8]

4. The term of both the underlying loan and the debenture is either 10 or 20 years. The interest rate of the loan and of the debenture are set by the SBA and approved by the Secretary of the Treasury. The loan underlying the debenture is generally for a minimum of $50,000, although it may, for good cause shown, be as small as $25,000. The total 504 program assistance to a borrower and its affiliates may not exceed $750,000 (or $1,000,000 in the case of projects meeting certain public policy goals). The amount of the underlying note and of the debenture equals the amount of the underlying loan plus administrative costs, including the SBA guarantee fee, a funding fee to cover the cost of the public issuance of securities and the trustee, the CDC processing fee, closing costs, and the underwriter's fee.

The underlying loan is secured by a junior lien on project property, which is comprised of one or more long term fixed assets, such as land, buildings, machinery, and equipment, acquired or improved with 504 program financing for use in business operations. The debentures are not secured. In its discretion, the SBA may permit a debenture to be subordinated to other obligations of the CDC, but not to debt incurred by the CDC to obtain funds to loan to the borrower to be used as the borrower's contribution to the project financing.

An event of default under the 504 program note may require automatic acceleration or may permit forbearance of acceleration while a cure is attempted, depending upon the terms of the note. Automatic acceleration may be required upon the appointment of a receiver or liquidator for the borrower, the filing of a petition by or against the borrower under federal or state bankruptcy or insolvency law, the making of an assignment for the benefit of the borrower's creditors, or the failure by the borrower to comply with certain SBA regulations; however, the SBA may postpone acceleration if the SBA determines that timely payment is likely in the future. In the case of discretionary defaults, the SBA's policy is to seek to resolve the default, while making scheduled payments on the related debenture pursuant to its guarantee. If

[8] A small percentage of debentures are issued to fund the acquisition of property by a CDC that the CDC then leases to a small business concern. The lease payments are structured so as to be sufficient to service and retire the debenture. In the event of an automatic event of default on a lease, the lease may be terminated, but the SBA is not required to accelerate the related debenture so long as the CDC or the SBA continues to pay principal and interest when due on the debenture.

the note is accelerated, the debenture that funded it is automatically accelerated, and the SBA pays 100% of the principal balance, plus interest to the payment date, pursuant to its guarantee. The SBA generally recovers its guarantee payments from the CDC, although, except in the case of fraud, negligence, or misrepresentation by the CDC, its recovery is limited to the amount the CDC has received on the loan and to the collateral.

If the 504 program loan is prepaid, the corresponding debenture is prepaid with interest and any applicable premium. If the debenture is in a pool, as discussed below, the investors in the pool are paid pro rata, and the SBA's guarantee of the pool is proportionately reduced. If the entire pool is prepaid, the SBA may redeem the certificates backed by the pool. The payment of any prepayment premium to the trustee is not subject to the SBA guarantee, although the distribution of any prepayment premium is guaranteed. Recovery of any acquisition premium paid by an investor to acquire a participation certificate in the secondary market also is not guaranteed.

5. The debentures are issued under section 503 of the Small Business Investment Act, added in 1980 by P.L. 96–302. Until June 1989, the debentures were usually sold to the Federal Financing Bank, an instrumentality of the United States under the general supervision of the Secretary of the Treasury. However, in 1986, section 505, authorizing the creation of trusts that consist solely of guaranteed debentures and that issue certificates guaranteed by the SBA as to timely payment of principal and interest, was added to the Small Business Investment Act by Public Law 99–272.

Each debenture bears interest at a stated fixed rate per annum, and is a self-amortizing debt instrument calling for level payments of principal and interest at semiannual intervals over its term to maturity. A debenture may be prepaid in whole, but not in part, on any semiannual payment date for a specified prepayment price. The prepayment price may include a premium over the outstanding principal amount of the debenture. The premium declines with the passage of time and is eliminated after one-half of the stated term to maturity for the debenture has elapsed.

A selling agent for the CDCs agrees to sell a specified amount of SBA-guaranteed debentures (the debenture pool) to the underwriters under a Debenture Purchase, Pooling and Exchange Agreement. All debentures within a debenture pool have identical stated interest rates, payment dates, and terms to maturity. The underwriters assign the debenture pool to the trustee in exchange for participation certificates.

The trustee issues the participation certificates as a series of the trust established by the 1986 trust agreement, as amended, pursuant to a supplement to the trust agreement. The supplement sets out the payment terms for the debentures and certificates. Each series of certificates relates to a discrete debenture pool and is issued pursuant to a discrete supplement to the trust agreement.

Each certificate represents an undivided beneficial ownership interest in each debenture in the related debenture pool and is entitled to a ratable share of all payments made on each debenture in that debenture pool. Thus, the interest rate, payment terms, and maturity date of a certificate will correspond to those of the debentures in the related pool.

With respect to each series of certificates, the certificates and the debentures in the related debenture pool are issued simultaneously. Each debenture pool is closed upon the simultaneous issuance of the series of certificates and the related debentures. The trust does not hold any assets that are not associated with a particular series.

Certificates issued under this program have a term of 10 or 20 years, must have a face value of at least $25,000, and are issued in registered form and transferred only by entry on the central registry maintained by the trustee. The statute and regulations governing the 504 program do not provide for issuance of subordinated certificates.

The SBA agrees to issue its guarantee on the certificates. The Department of the Treasury approves the negotiated sale price and coupon on the certificates. The underwriters sell the certificates to investors and the proceeds, less an underwriting commission, are distributed to the CDC's selling agent, acting through a servicing agent, which transfers the funds to the CDC to fund the 504 program loans.

The certificates are not rated by a rating agency because of the SBA guarantee, which applies to both the certificates and the debentures that serve as collateral for the certificates, and which is backed by the full faith and credit of the United States. Because of this guarantee, the Applicant represents that the only risks to an investor in the participation certificates are the risk that prepayment of the certificate may affect its yield, and the de minimis risk that the United States, acting through the SBA, may default on its obligation.

Participation certificates issued under the 504 program will prepay if any debenture included in the related pool (1) is accelerated or terminated in connection with an event of default under the related 504 program note or notes or (2) is prepaid at the option of the related CDC, usually in connection with the prepayment of the related 504 program note or notes. Each offering circular for the participation certificates contains tables which disclose prepayment experience for the debentures in connection with accelerations and prepayments since the second half of 1986.

The acquisition of certificates by employee benefit plans will be on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party.

7. As of February 16, 2000, there had been 161 issues of 20-year certificates and 65 issues of 10-year certificates. Offerings of 20-year certificates have been made monthly since November 1986, and the aggregate amount of such certificates sold as of February 16, 2000 was $10,453,821,000. Ten-year certificates were first offered in December 1986; they were offered quarterly from January 1987 until January 1995, and have been offered bi-monthly since January 1995; the aggregate amount of such certificates sold as of February 16, 2000 was $558,669,000.

8. Regulations issued under the Small Business Investment Act require the SBA and CDC to appoint a selling agent to select underwriters, negotiate the terms of debenture offerings with the underwriters, and direct and coordinate debenture sales; regulations likewise require the appointment of a fiscal agent to assess the financial markets, arrange for the production of documents required for offering certificates, and monitor the performance of the trustee and the underwriters. Development Company Funding Corporation (DCFC) has been appointed as fiscal agent for the SBA under a Fiscal Agency Agreement with the SBA dated as of August 12, 1999 (superseding agreements dated as of December 1, 1986 and September 30, 1988) and as selling agent for CDCs that issue debentures which DCFC sells to underwriters pursuant to a Selling Agency Agreement with the SBA dated as of August 12, 1999 (superseding agreements dated as of December 1, 1986 and September 30, 1988). DCFC is a District of Columbia not-for-profit

corporation that was created to facilitate 504 program transactions. DCFC shares some of its facilities and staff with the National Association of Development Companies, a not-for-profit trade organization. It is paid by the SBA for its services as fiscal agent, and is paid its necessary expenses for staff and overhead, net of other income, by the SBA for its services as selling agent. Payments to DCFC of its fees as fiscal agent and selling agent are made from the master reserve account, described below.

9. The regulations provide for the designation by the SBA of a central servicing agent to support the orderly flow of funds among the borrowers, CDCs and SBA. SBA has engaged Colson Services Corp. (Colson) to act as central servicing agent, receiving and disbursing funds wired by the underwriters, and servicing payments on the debentures. Colson collects a monthly servicing fee from the borrower of each 504 program loan.

Colson was awarded the contract to act as central servicing agent through a competitive bidding process. Colson is required by regulation to provide a fidelity bond or insurance in an amount that fully protects the government, and the master servicing agreement between Colson and the SBA requires that Colson carry a fidelity bond or similar insurance in an amount commensurate with the level of funds in its possession, but not less than $10 million. In addition, the master servicing agreement requires Colson to maintain a standard Banker's Blanket Bond insurance policy in an amount ''customary and sufficient'' to protect against loss caused by actions of Colson, its employees or agents.

10. The master servicing agreement requires Colson to maintain certain accounts to hold funds that are in Colson's custody in connection with the 504 program. The master servicing agreement specifies the accounts to be maintained and the payments to be made, and imposes timing and other performance requirements. Colson maintains accounts required under the master servicing agreement at J.P. Morgan Chase & Co., which recently purchased Colson. The master servicing agreement limits the investment of funds in these accounts to debt obligations issued or guaranteed by the U.S. government and money market funds that hold these types of investments. Investment earnings are sufficient to pay the trustee and investment management fees charged in connection with the account, and a fee to Colson for record-keeping services that Colson provides for the accounts. Investment earnings in excess of these fees are disbursed semiannually to the CDCs.

Colson maintains a master reserve account through which all funds related to the 504 program loans and the debentures flow. The master reserve account is funded by the guarantee fee and a funding fee collected from the borrower of a 504 program loan, and by principal and interest payments on 504 program loans. Interest on loan payments that accrues in the account between the date of receipt of each monthly payment and its disbursement by the trustee to certificateholders must be paid by Colson to the CDC servicing the loan, at the direction of the SBA.

The master servicing agreement requires Colson to deliver periodic status reports to the SBA, and requires independent audits of Colson's financial statements and operations each year. It also provides for a contracting officer to administer the contract on behalf of SBA and for a contracting officer's technical representative to monitor all technical aspects of and to assist in administering the contract. SBA and its authorized representatives have the right of access and inspection of Colson's facilities and records relating to the operations of the 504 program. Colson may forfeit its right to its fees if, in the determination of the SBA, it has not submitted required reports or performed required services, unless the failure is beyond its control and without its fault. In addition, SBA may terminate the contract for default by Colson, including Colson's failure to perform its obligations in a timely manner, as well as Colson's insolvency or the filing of a petition in bankruptcy by or against Colson if the petition is not dismissed or withdrawn within 90 days.

11. The regulations also require appointment of a trustee to issue and transfer the certificates, maintain registries of the debentures and the certificates, hold the debentures for the benefit of the SBA and the certificateholders, receive payments on the debentures and disburse payments on the certificates. None of the administrative fees paid by the borrower (including the SBA guarantee fee, funding fee, the CDC processing fee, closing costs and the underwriter's fee) are paid out of the trust. The trustee, as holder of a debenture guarantee agreement with the SBA with respect to any pool of debentures, has the right to enforce the SBA's guarantee for the benefit of the holders of the certificates in the related series. Harris Trust Company of New York (Harris Trust) was appointed as trustee and entered into a trust agreement dated as of December 1, 1986 with the SBA and with DCFC as fiscal agent. Effective May 8, 2000, The Bank of New York succeeded Harris Trust as trustee. Under the trust agreement, as amended, the trustee is compensated by the SBA from time to time as shall be agreed.

As a condition of the exemption, the trustee may not be an affiliate of the underwriter, fiscal agent, selling agent, central servicing agent, any obligor with respect to loans relating to debentures included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust (determined on the date of the initial issuance of certificates by the trust), the SBA, or any of their affiliates.

12. Each agent must provide a fidelity bond or insurance sufficient to fully protect the interest of the government, and must furnish the SBA with access to all books, records and other documents relating to SBA-guaranteed debentures.

13. In connection with the original issuance of participation certificates, an offering circular is furnished to all investors, including investing plans. The participation certificates are exempt from the requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. However, the SBA, like most other government agencies that issue certificates or debt securities, seeks to conform to market convention, and therefore complies, to the extent possible, with the disclosure requirements generally applicable to offerings of participation certificates. Therefore, the participation certificates are issued pursuant to offering circulars that, in general, contain:

(a) Information concerning the payment terms of the participation certificates, and any material risk factors with respect to the participation certificates;

(b) a description of the SBA guarantee;

(c) identification of the trustee;

(d) a description of the SBA 504 program and the debentures held by the trust;

(e) a description of the servicing arrangements set forth in the trust agreement, including a description of periodic statements that are provided to or made available to investors by the trustee;

(f) a description of the events that constitute events of default under the governing agreements and a description of the trustee's and the investors' remedies incident thereto;

(g) a general discussion of the principal Federal income tax consequences of the purchase,

ownership and disposition of the participation certificates by a typical investor;

(h) a description of the underwriters' or placement agents' plan for distributing the participation certificates to investors; and

(i) information about the scope and nature of the secondary market, if any, for the participation certificates. Reports indicating the amount of payments of principal and interest are provided to investors as frequently as distributions are made to investors.

No information about the characteristics of the borrowers of the underlying collateral is included; investors generally evaluate the credit quality of the collateral solely on the basis of the SBA's full faith and credit guarantee.

Under the authorizing legislation, the SBA must require disclosure by a seller, prior to any sale, of ''information on the terms, conditions, and yield'' of the participation certificates; regulations add the requirement to provide information on the premium and any other characteristics not guaranteed by the SBA. (15 U.S.C. 697b(f)(1)(C), 13 CFR 120.941.) Thus, each seller, whether in the initial offering or the secondary market, must inform its purchaser of the economic terms and risks of the investment, as modified by the price at which each sale is made.

14. The underwriters are permitted, but not required, to engage in certain transactions that may stabilize the price of the participation certificates. In general, it is the policy of many underwriters to attempt to make a market for securities for which they are the lead or co-managing underwriter.

15. The participation certificates are generally priced at a spread above the interest rate on Treasury notes of comparable maturity. The spread reflects the risk of prepayment. Historically, the spread has been similar to that of certain comparable guaranteed governmental mortgage-backed securities.

16. The Applicant represents that the participation certificates are an extremely high-quality investment, benefitting from an SBA guarantee, backed by the full faith and credit of the United States, on both the certificates and on the debentures that constitute the collateral for the certificates. The certificates are acceptable as security for the deposit of public moneys subject to the control of the United States, and as collateral for Treasury Tax and Loan Accounts. National banks, and, if permitted by state law, state banks that are members of the Federal Reserve System may deal in, underwrite and purchase the certificates for their own account without limitation. The certificates are legal investments for federal savings and loan associations, federal savings banks, and federal credit unions. They are legal investments for surplus and reserve funds of Federal Home Loan Banks to the same extent as they are legal investments for fiduciary and trust funds under the laws of the state in which the Federal Home Loan Bank is located. In the discretion of each Federal Reserve Bank, they may be used as security for advances to depositary institutions by Federal Reserve Banks. Under the laws of many states, they are legal for investment by savings banks, savings and loan associations, credit unions, insurance companies, trustees and other fiduciaries.

17. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The decision to acquire certificates will be made by a plan fiduciary after receipt of full and detailed disclosure of all material features of the trust and the certificates, including all applicable fees and charges.

(b) The transactions may easily be audited by a plan fiduciary and all the records necessary to review the transactions will be kept for six years. No further review by the Department is required.

(c) The debentures and the certificates are guaranteed as to principal and interest by the United States of America.

(d) Each series of certificates relates to a discrete debenture pool, which pool is closed upon the simultaneous issuance of the series of certificates and the related debentures. The trust does not hold any assets that are not associated with a particular series.

(e) All actions by the SBA, the fiscal agent and the trustee with respect to the trust, the assets of the trust, the certificates and certificateholders will be governed by the trust agreement, which will be available to plan fiduciaries for their review prior the plan's investment in certificates.

*Notice to Interested Persons*

The Applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Karen Lloyd of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

**J.P. Morgan Chase & Co. (Morgan Chase) and its Affiliates (Collectively, the Applicants) Located in New York, New York**

[Application Number D–10998]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[9]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed purchase or sale by employee benefit plans (the Plans), other than Plans sponsored and maintained by the Applicants, of publicly-traded debt securities (the Debt Securities) issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the Debt Securities.

This proposed exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The Debt Securities are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the Debt Securities is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to the Applicants in

[9] For purposes of this exemption, references to Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.

connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[10]

(e) The Applicants agree to notify Plan investors in the prospectus (the Prospectus) for the Debt Securities that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the Debt Securities.

(f) The Debt Securities do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the Debt Securities, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such Debt Securities, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the Debt Securities is based;

(3) A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the Debt Securities are issued;

(5) The date on which the Debt Securities will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the Debt Securities may be redeemed;

(12) The exchange or market where the Debt Securities are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the Debt Securities are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the Debt Securities are delisted from any nationally-recognized securities exchange, the Applicants will apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to the Applicants. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The Debt Securities are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the Debt Securities is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a ''market disruption event'' (the Market Disruption Event) that is described in the Prospectus for the Debt Securities.

(l) The Debt Securities are based on an Index that is—

(1) Created and maintained[11] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities (Under either circumstance, the Applicants may not unilaterally modify the composition of the Index, including the methodology comprising the rate of return.),

(ii) Meets the requirements for an Index in Rule 19b-4 (Rule 19b-4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange.

(m) The Applicants do not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs(B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

[10] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[11] For purposes of this exemption, the term ''maintain'' means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants.

*Summary of Facts and Representations*

1. Morgan Chase is a financial holding company incorporated under Delaware law in 1968 and headquartered in New York City. As of December 31, 2000, after giving effect to the merger described below, Morgan Chase was the second largest banking institution in the United States, with approximately $715 billion in assets and approximately $42 billion in stockholders' equity. On December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation. Upon completion of the merger, its name was changed to ''J.P. Morgan Chase & Co.'' (i.e., Morgan Chase). The merger was accounted for as a pooling of interests. Morgan Chase is a global financial services firm with operations in over 60 countries, and has as its principal bank subsidiaries: The Chase Manhattan Bank (Chase Bank) and Morgan Guaranty Trust Company of New York (Morgan Guaranty), each of which is a New York banking corporation headquartered in New York City; and Chase Manhattan Bank USA, National Association, headquartered in Delaware. The principal non-bank subsidiary of Morgan Chase is its investment bank subsidiary, J.P. Morgan Securities Inc. (J.P. Morgan Securities). Chase Bank is expected to merge with Morgan Guaranty in late 2001.

2. The activities of Morgan Chase will be internally organized, for management reporting purposes, into five major businesses:

- Investment Banking, which includes securities underwriting financial advisory, trading, mergers and acquisitions advisory, and corporate lending and syndication businesses;
- Investment Management and Private Banking, which includes an asset management business, including mutual funds; institutional money management and cash management businesses; and a private bank, which provides wealth management solutions for a global client base of high net worth individuals and families;
- Treasury and Securities Services, which provides information and transaction processing services, and moves trillions of dollars daily in securities and cash for its wholesale clients. Treasury and Securities Services includes custody, cash management, trust and other fiduciary service businesses;
- J.P. Morgan Partners, which is one of the world's largest and most diversified private equity investment firms, with total funds under management in excess of $20 billion; and
- Retail and Middle Market Banking, which serves over 30 million consumers, small business and middle-market customers nationwide. Retail and Middle Market Banking offers a wide variety of financial products and services, including customer banking, credit cards, mortgage services and consumer finance services, through a diverse array of distribution channels, including the internet and branch and ATM networks.

3. The Plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and/or subject to section 4975 of the Code. For purposes of this proposed exemption, the Plans will not consist of plans that are sponsored and maintained by the Applicants for their own employees. In the case of the Applicants' in-house plans, Morgan Chase represents that the acquisition and holding of the Debt Securities by such plans would be covered under the statutory exemption that is provided under section 408(e) of the Act.[12]

4. The Applicants represent that broker-dealers routinely need additional capital in order to maintain inventories of securities for their market-making and other business activities. As a result, the Applicants maintain a continuous need to borrow funds from various institutional and individual investors for use in their business operations. In response to this need, certain of the Applicants may from time to time issue (the Issuers) various high-quality, publicly-offered debt securities (i.e., the Debt Securities), rated in one of the three highest generic rating categories by nationally recognized rating firms, offering varying levels of risk and potential return. Among the debt securities offered by the Applicants are publicly-offered, unsecured, SEC-registered Debt Securities, with terms that are no longer in duration than nine (9) years. The Debt Securities will be U.S. dollar-denominated so that no foreign currency conversions will be required in the calculation of the rate of return. Further, the Debt Securities will offer varying levels of risk and rates of return. The Debt Securities would be listed on at least one major stock exchange, and they would be issued in denominations of $10 per principal unit, with the minimum purchase being one unit.

The Debt Securities may be offered on a variety of terms and formulas under which rates of return are objectively determined in accordance with certain Indexes by the calculation agent. A registered broker-dealer Applicant would act as calculation agent. The Applicants represent that since small Plans will likely invest in the Debt Securities, the formulas used to calculate the rates of return will be designed to be understood by the average investor and clearly described in the ''plain English'' summary of the Debt Securities in the Applicants' prospectus.

5. The Applicants represent that their activities are subject to various levels of oversight and regulation by the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission, and other federal and state regulatory agencies. The Applicants also represent that their activities are subject to the oversight of self-regulatory organizations such as the NYSE and the AMEX. The Applicants further represent that J.P. Morgan Securities, as a registered broker-dealer and member of the NYSE, is subject to the Net CapitalRule 15c3–1 of the 1934 Act, which specifies the minimum net capital requirement of a broker-dealer.

6. Due to the affiliation between an Issuer and J.P. Morgan Securities or its Affiliates, as a service provider to the Plans, the Applicants represent that they are likely to be parties in interest, as defined in section 3(14)(B) or (H) of the Act, with respect to a high percentage of Plans that purchase, sell, or hold these Debt Securities regardless of whether the Debt Securities are purchased directly from the Applicants.[13] Thus, the Applicants represent that an Issuer may be a party in interest to a Plan solely because of its affiliation with a service provider to the Plan, and as the counterparty to the Plan in a transaction where the Plan holds a Debt Security issued by an Affiliate. Further, other Affiliates may be service providers to Plans on account of their roles as trustees, custodians, investment advisors, or broker-dealers for such Plans. These relationships would make an Issuer a party in interest to those Plans and would create potential prohibited transactions in the event

[12] The Department expresses no opinion herein on whether the acquisition and holding of the Debt Securities by the Applicants' in-house plans are covered under the provisions of section 408(e) of the Act. In this regard, interested persons should refer to the conditions contained in section 408(e), as well as the definitions of the terms ''qualifying employer security'' (see section 407(d)(5) of the Act) and ''marketable obligations'' (see section 407(e) of the Act).

[13] In this regard, the Applicants represent that PTCE 75–1 does not directly address transactions where, as here, there is a continuing extension of credit as a result of a sale to a plan by a broker-dealer of debt securities issued by the broker-dealer's affiliates.

such Plans acquire and hold the Debt Securities.[14]

The Applicants are requesting an administrative exemption to enable Plans to invest in the Debt Securities, under the terms and conditions described herein, and to avoid liability for prohibited transactions resulting from investment by Plans in the Debt Securities.

7. The Applicants believe that while Part II of PTCE 75–1 provides relief for principal transactions between a broker-dealer and a Plan, and would cover a purchase of the broker-dealer affiliates' securities by such Plans (if the conditions required therein were met), it is questionable whether that class exemption would cover the continuing extension of credit related to the holding of any Debt Securities by a Plan.[15]

The Applicants note that some independent Plan fiduciaries have expressed concern regarding the application of PTCE 75–1 to broker-dealer sales of broker-affiliated debt to Plans either as a part of an original issue of the securities or in the secondary market. Moreover, the Applicants represent that PTCE 96–23 (61 FR 15975, April 10, 1996)[16] is unavailable to participant-directed, defined contribution Plans and other small Plans because these Plans, due to their size, are unlikely to have INHAMs responsible for making investment decisions relating to the acquisition, holding and disposition of securities in which the Plans invest.

Similarly, the Applicants note that while PTCE 84–14[17] minimizes the risk of inadvertent prohibited transactions for Plans whose assets are managed by a QPAM, they believe it is unlikely that participant-directed, defined contribution Plans or small Plans would incur the expense of a QPAM for the purchase and continued holding of the Debt Securities. The Applicants also believe that the additional cost of a QPAM for a small Plan with a small investment would not be cost-effective. The Applicants further explain that this cost would be uneconomical here because the QPAM would be required to continue its services for the entire period during which the Debt Securities are held by the Plan since the potential prohibited transaction is not just a sale or exchange under section 406(a)(1)(A) of the Act, but is also an extension of credit under section 406(a)(1)(B) of the Act. Accordingly, the Applicants state that the absence of a QPAM would preclude small Plans from being able to purchase the Debt Securities without creating the risk of a prohibited transaction.

8. The Applicants propose to continue offering the Debt Securities to non-Plan investors and maintain that these investors will continue to constitute a substantial market for such securities. However, for each Plan investor, the Applicants represent that the terms of the Plan's investment in the Debt Securities will be at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's-length transaction at the time the Debt Securities are acquired by the Plan. Additionally, the Applicants represent that no Plan will pay the Applicants any fees or commissions in connection with transactions involving the Debt Securities, except for the mark-up for a principal transaction permitted under PTCE 75–1.

In addition to the aforementioned requirements, the Applicants represent that a Plan's investment in the Debt Securities will be restricted to those Plans for which the Applicants have no discretionary authority and do not provide investment advice with respect to the investment in the Debt Securities. In this regard, the decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants. Moreover, the Applicants represent that the Prospectus for each of the Debt Securities that are offered to the Plans will contain a recommendation that no more than 15 percent of a Plan's assets should be invested in the Debt Securities at the time such security is acquired by a Plan.[18]

9. The Debt Securities will be rated in one of the three highest generic rating categories by a nationally-recognized rating firm at the time of acquisition by a Plan. There will be no triggering events or early amortization events if the Applicants' credit rating drops below a certain level established by a rating agency. Throughout the term of any of the Debt Securities, the Plans will be able to access the latest bid and asked price quotations for all of the Applicants' Debt Securities by calling a broker or any electronic service with a recognized price quotation delivery system. If a Plan wishes to terminate any Debt Securities investment prior to maturity, such investor may do so by selling the Debt Security on the open market at the prevailing market price. However, the Issuer may not unilaterally terminate the Debt Securities prior to maturity unless the

[14] In ERISA Advisory Opinion 88–09A (April 15, 1988), a bank that sponsored self-directed master and prototype IRAs requested an opinion from the Department as to whether purchases of stock issued by the parent corporation of the bank directly from such parent by the self-directed IRAs would violate section 4975 of the Code.

Section 4975 of the Code prohibits, in part, the sale or exchange of property between a plan and a disqualified person (4975(c)(1)(A)) and the use by or for the benefit of a disqualified person of the income or assets of a plan (4975(c)(1)(D)). Section 4975(e)(2) of the Code defines the term ''disqualified person'' to include a plan fiduciary and a person providing services to a plan.

ERISA Advisory Opinion 88–09A concluded that, although the bank is a disqualified person with respect to the IRAs by reason of the provision of services, the corporate parent of the bank is not a disqualified person with respect to the IRAs solely by reason of its ownership of the bank. In this regard, interested persons should contrast section 3(14)(H) of the Act with section 4975(e)(2)(H) of the Code. The question of whether the corporate parent is a disqualified person under any other provision of section 4975(e)(2) of the Code would require an examination of the particular facts and circumstances. The Advisory Opinion further concluded that, to the extent that the corporate parent is not a disqualified person with respect to the IRAs, purchases of stock from the parent by the bank on behalf of the IRAs, at the direction of the IRA participant, would not involve transactions described in section 4975(c)(1)(A) of the Code. However, while the corporate parent of such bank may not be a disqualified person with respect to the IRAs, purchases of parent stock by the IRAs would raise issues under section 4975(c)(1)(D) of the Code if a transaction was part of a broader overall agreement, arrangement or understanding designed to benefit disqualified persons.

[15] The Department is providing no opinion herein as to whether any principal transaction involving Debt Securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[16] PTCE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager (the INHAM). An INHAM is an entity which is generally a subsidiary of an employer sponsoring the plan. It is also a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[17] PTCE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a qualified professional asset manager (the QPAM), provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under the Act.

[18] In this regard, the Applicants propose to include substantially the following statement in the Prospectus for each of the Debt Securities, under a heading entitled ''Employer-Sponsored Plan Considerations'':

These [Debt Securities] Securities are being sold to Plans pursuant to an exemption issued by the Department of Labor. In accordance with the terms of that exemption, the Issuer is required to inform such Plans that no more than 15 percent of plan (or individual participant) assets, at the time of acquisition, should be invested in the Debt Securities. Please note, however, that it is the responsibility of the person making the investment decision to determine whether the purchase is a prudent investment for the plan (or participant-directed account).

Debt Securities are callable at a specific price which will be disclosed in the Prospectus. Assuming the Debt Securities are callable, the Applicants represent that there will be no loss of principal.

10. The rate of return for the Debt Securities may be fixed or variable. The prospectus or prospectus supplement covering the Debt Securities would set forth the annual interest rate for fixed rate Securities, and, for variable rate Securities, the formula to be applied to determine the interest payable at maturity. The formula will include identification of the specified Index for the Debt Securities. Such Index may be either (a) created and maintained by an entity that is unrelated to the Applicants or (b) created by the Applicants, but maintained by an unrelated entity.

(a) *Index Created and Maintained by an Entity Unrelated to the Applicants.* This Index, which will be created by an entity that is unrelated to the Applicants, will consist of a standardized and generally-accepted index of securities, such as the Nikkei 225 Index Tokyo Stock Exchange or the Standard & Poor's 500 Index. In addition, this Index will be maintained by such unrelated entity. In other words, all calculations relating to the securities in the Index, as well as the rate of return of the Index, will be made by an entity other than the Applicants.

(b) *Index Created by the Applicants, but Maintained by an Unrelated Entity.* This Index will be created by the Applicants. However, it must be maintained by an entity that is unrelated to the Applicants, such as the stock exchange on which the Debt Security is listed. In addition, the Index will consist either of standardized and generally-accepted Indexes or it will be an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities. Under either circumstance, the Applicants will not be permitted to make any modifications to the composition of the Index, including the methodology comprising the rate of return, unilaterally.

Further, the Index will meet the requirements for an Index in accordance with Rule 19b–4 of the 1934 Securities Act, which imposes regulatory standards on the entity maintaining the Index. Under Rule 19b–4, a self-regulatory organization, such as a securities exchange, is required to adopt trading rules, procedures and listing standards for the product classes relating to any security that the exchange proposes to list. In addition, the self-regulatory organization must maintain a surveillance program for a class of securities. If the SEC has not approved the self-regulatory organization's rules, procedures and standards, the self-regulatory organization must make a filing with the SEC prior to listing the security. According to the Applicants, this procedure provides adequate safeguards so that any Debt Securities that are created by the Applicants will meet the listing and trading standards approved by the self-regulatory organization.

Finally, the Index Value of the Index will be publicly-disseminated through an independent pricing service, such as Reuters or Bloomberg, or through a national securities exchange.

11. Price quotations with respect to the Debt Securities will be available on a daily basis from market reporting services, such as Bloomberg or Reuters, and the daily financial press, such as The Wall Street Journal. In the event the Debt Securities are delisted, the Issuer(s) will apply for trading through the NASDAQ, which requires that there be independent market-makers establishing a market for the securities in addition to the Issuer(s). In the event there are no independent market-makers, the Applicants represent that the exemption will no longer be considered effective.

12. The terms of each of the Debt Securities will be set forth with specificity. Therefore, in addition to the description of the formula for computing the rate of return, the Prospectus will include, but will not be limited to, the following information:

- A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;
- The specified Index or Indexes on which the rate of return on the Debt Securities is based;
- A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;
- The date on which the Debt Securities will be issued;
- The date on which the Debt Securities will mature and the conditions of such maturity;
- The initial date on which the value of the Index is calculated;
- Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;
- The ending date on which interest will be determined, calculated and paid;
- Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities will be entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);
- All details regarding the methodology for measuring performance;
- The terms under which the Debt Securities may be redeemed;
- The exchange or market where the Debt Securities are traded or maintained; and
- Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

Aside from the Prospectus, the Applicants do not contemplate making any ongoing communications to the investors in the Debt Securities except to the extent required under applicable securities laws.

13. With respect to variable rate Debt Securities, the Applicants represent that the interest rate will be objectively determined. Where any of the Applicants acts as ''Calculation Agent'' for determining applicable rates of return, such calculation will be made using a formula fully disclosed in the prospectus or prospectus supplement relating to the Debt Security. Following the issuance of such Debt Security, the Applicants will retain no authority to affect the determination of such interest rate absent a Market Disruption Event. The determination that a Market Disruption Event may have occurred can have the effect of eliminating the affected trading day from calculation of the value of the underlying Index. The Calculation Agent is responsible for determining whether such Event has, in fact, occurred. Where the variable rate of a Debt Security is tied to a basket of equity securities, for example, a ''Market Disruption Event'' is typically defined as any of the following events, with certain exceptions: [19]

(a) the suspension or material limitation of trading in 20% or more of the underlying stocks which then comprise the Index, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading on the NYSE or any other applicable organized U.S. exchange. For purposes of this definition, limitations on trading during

[19] For purposes of determining whether a Market Disruption Event has occurred, a limitation on the hours in a trading day and/or number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant exchange.

significant market fluctuations imposed pursuant to NYSE Rule 80B (or any applicable successor or similar rule or regulation promulgated by any self-regulatory organization or the SEC) shall be considered ''material.''

(b) the suspension or material limitation, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading (whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise) in (A) futures contracts related to the Index which are traded on the Chicago Mercantile Exchange or any other major U.S. exchange, or (B) options contracts related to the Index which are traded on any major U.S. exchange.

(c) the unavailability, through a recognized system of public dissemination of transaction information, for more than two hours of trading or during the one-half hour period preceding the close of trading, of accurate price, volume or related information in respect of 20% or more of the underlying stocks which then comprise the Index or in respect of futures contracts related to the Index, options on such futures contracts or options contracts related to the Index, in each case traded on any major U.S. exchange.

14. The Applicants represent that the principal amount of the Debt Securities that are the subject of this exemption, if granted, will be protected regardless of the performance of the applicable Index. Although the return on a Debt Security may go up or down in the same direction as the performance of the applicable Index, the interest rate floor is set at zero. Thus, even where the value of the applicable Index decreases, there will be no invasion of principal if the Debt Securities are held until maturity.[20] However, if a Plan must sell the Debt Securities on the open market prior to their maturity, the market price will reflect the market's perception of the potential yield on such securities based on the current yield and interest rates for other debt securities of the same duration. This market price may result in a loss of principal value of the investment in the Debt Securities in the same fashion as would occur for other debt securities.

15. The Applicants represent that they will exercise no discretion with respect to the Indexes. Further, the Applicants represent that they will not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise these Indexes. The securities of the Applicants may comprise part of the Index (e.g., Morgan Chase's common stock is included in the S&P 500 Index, which is one of the Indexes that may be used in the Applicants' variable rate Debt Securities). In addition, the Applicants may reserve the right to purchase or sell positions in the Index, or in all or certain of the assets by reference to which the Index is calculated (Underlying Assets), or derivatives relating to the Index. The Applicants do not believe, however, that their hedging activity will have a material impact on the value of the Index, the Underlying Assets, or any derivative or synthetic instrument relating to the Index. The Applicants will maintain written records of all of the Debt Securities transactions for a period of six years.

16. The Applicants represent that the Debt Securities may be included among assets acquired by a Plan to comprise the underlying portfolio of a ''synthetic'' guaranteed investment contract (Synthetic GIC), whereby the Plan's beneficial interest in one or more debt instruments is combined with a guarantee of future value. In this regard, the Applicants represent that they will not be the issuer, guarantor, or ''wrapper'' provider in connection with a Synthetic GIC. The Applicants represent that they are not requesting any relief for extensions of credit to such Plans and the Plan Participants, other than extensions of credit resulting from such Plan's holding of the Debt Securities. Accordingly, the Applicants are not requesting specific exemptive relief with respect to any additional prohibited transactions that may relate to any Synthetic GICs.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Debt Securities will be made available by the Applicants in the ordinary course of their business to customers which are not Plans.

(b) The Applicants will not have any discretionary authority or control, or provide any ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to the assets of Plans which are invested in the Debt Securities.

(c) The Plans will pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under PTCE 75–1.

(d) The decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants.

(e) In connection with a Plan's acquisition of any of the Debt Securities, the Applicants will disclose to the Independent Plan Fiduciary, or, if applicable, the Plan Participant, in the Prospectus, all of the material terms and conditions concerning the Debt Securities.

(f) A Plan will acquire the Debt Securities on terms that are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction.

(g) The Debt Securities will be rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of such security's acquisition by the Plan.

(h) The rate of return for the Debt Securities will be objectively determined and the Applicants will retain no authority to affect the determination of such return, other than in connection with a Market Disruption Event that is described in the Prospectus for the Debt Securities.

(i) The Index will be: (1) Created and maintained by an entity that is unrelated to the Applicants and consist of a standardized and generally-accepted Index; or (2) created by the Applicants, but maintained by an entity that is unrelated to the Applicants, and (i) will consist either of standardized and generally-accepted Indexes or will be an Index comprised of publicly-

[20] The Applicants have provided the following example to illustrate this principle by describing the return at maturity on each $10 principal investment in the Debt Securities that are the subject of this proposed exemption:

- Where the value of the applicable Index increases by 50 percent, the Plan is entitled to receive $15 at maturity ($10 principal plus $5 interest) because the rate of return moves in the same direction as the growth in the applicable Index;
- Where the value of the applicable Index remains unchanged during the applicable period, the Plan is entitled to receive $10 at maturity ($10 principal plus $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index; and
- Where the value of the applicable Index decrease by 50 percent, the Plan is entitled to receive $10 at maturity ($10 principal and $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index but in no event drops below zero.

While the foregoing examples are simplistic, it should be noted that for some of the Debt Securities, such as those tied to the Standard & Poor's 500 Index, the interest payments shown above may be reduced on a daily basis by an adjustment factor (the Adjustment Factor), equal to a stated percent per year. On the maturity date of the Debt Securities, the annual application of the Adjustment Factor will reduce the Plan investor's overall interest payments. This information will be disclosed prominently in the Prospectus.

traded securities that are not issued by the Applicants, are designated in advance, and listed in the Prospectus for the Debt Securities,(ii) will meet the requirements for an Index as set forth in SEC Rule 19b–4, and (iii) the Index Value for such Index will be publicly-disseminated through an independent pricing service or a national securities exchange.

*Notice to Interested Persons*

The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

*For Further Information Contact:* Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Wagner, Doxey and Company Money Purchase Plan (the Plan) Located in San Francisco, California**

[Application No. D–11003]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain improved real property (the Property) by the individual account of Warren L. Wagner (the Account) in the Plan, to Mr. Wagner, who is a disqualified person with respect to the Plan,[21] provided that the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) the Account pays no commissions nor other expenses relating to the sale; (c) the Account receives an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser; (d) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner reimburses the Account for the fair market rental value of the Property with respect to his past and present use of such Property, including a reasonable rate of interest for the period from the date such amounts were due to the Account to the date of payment; and (e) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner files Form 5330 with the Internal Revenue Service (the Service) and pays all applicable excise taxes due by reason of the above prohibited transactions.

*Summary of Facts and Representations*

1. The Plan, which is a defined contribution money purchase pension plan sponsored by Wagner, Doxey and Company (the Company), provides for mandatory employer contributions only. The Company is a partnership that originally was a registered broker-dealer in the business of trading government securities. However, in November 1999, the Company ceased its broker-dealer activities, and Mr. Wagner and his partner Robert J. Doxey, who are the only Plan participants, limited their activities to managing their own investments. Mr. Wagner is a trustee of the Plan. The Plan provides for individually directed accounts. As of December 31, 2000, the fair market value of all the assets of the Plan was $1,966,977. As of that date, Mr. Wagner's Account had assets equal to $1,062,939.03.

2. The Property consists of a three-bedroom condominium located at 30 West Lake Blvd., #112, Tahoe City, California. It is in a suburban condominium development known as Tahoe Tavern. The Property has 1,552 square feet. The applicant represents that the Property is not adjacent to, nor close to, any other real property owned by Mr. Wagner.

3. The Property was acquired by the Account on June 22, 1998 from McClain Johnston and Annabelle D. Johnston, who are unrelated parties, for investment purposes. The Account paid cash in the amount of $377,230.72 (including fees and commissions) for the Property. The applicant represents that all expenses relating to the Property since its acquisition have been paid by the Account, including taxes, insurance, association, and property management fees, totalling $74,056.40. The Property has also been rented out to unrelated parties for vacations through the property management services of Tahoe Tavern and has produced income totalling $28,980.00 for the Account.

4. The applicant states that Mr. Wagner made personal use of the Property in 1998, 1999, and 2000, and that he currently occupies the Property.[22] On June 15, 2001, Mr. Wagner made a lump sum payment in the amount of $46,790.00 to the Account for the fair market rental value of the Property with respect to his past use of such Property, through June, 2001. This amount was determined based on the rental value of similar condominiums in Tahoe Tavern during the relevant time periods, provided by the property manager. Assuming that rent was to be paid to the Account in advance on a quarterly basis, Mr. Wagner will pay an additional $3345.69 in interest, based on the average Federal Funds Rate, for the period from the date rent was due to the date of payment, i.e., June 15, 2001. Further, concurrently with filing an exemption application with the Department, Mr. Wagner also filed Form 5330 with the Service for Plan years 1998, 1999, and 2000 and paid all applicable excise taxes that were due, a total of $5,404.50, by reason of the past prohibited transactions. Finally, within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will reimburse the Account, with interest, using the same methodology described above, with respect to his present use of the Property until the date of the proposed sale, as well as filing Form 5330 with the Service and paying any additional excise taxes that are due for Plan year 2001.

5. The Property has been appraised by Ossi Korkeila of Korkeila & Associates, located in Truckee, California, a qualified, independent appraiser certified in the State of California. Relying on the market data approach, Mr. Korkeila concluded that the fair market value of the Property was approximately $750,000, as of

[21] Because Warren L. Wagner and Robert J. Doxey, who are partners, are the only participants in the Plan, the Plan is not within the jurisdiction of Title I of the Act, pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[22] Mr. Wagner used the Property during the following periods and paid the following rental amounts.

1998: 9/27 to 9/29—three days @ $160.00 per day = $480.00; 10/2 to 10/4—three days @ $160.00 per day = $480.00; 11/5 to 11/7—three days @ $160.00 per day = $480.00; Total; $1440.00 (as corrected upon recomputation).

1999: 5/14 to 5/16—three days @ $185.00 per day = $555.00; 5/21 to 5/23—three days @ $185.00 per day = $555.00; 5/27 to 5/28—two days @ $185.00 per day = $370; 6/12 to 6/26—two weeks @ $2065.00 per week = $4130.00; 8/29 to 12/31—four months and three days @ $7380; Total: $12,990.00.

2000: 1/1 to 12/31 @ $1800.00 per month; Total: $21,600.00.

2001: Mr. Wagner currently uses the Property and has paid rent for the period from 1/1 to 6/30 @ $1800.00 per month = $10,800.00.

September 26, 2000. Mr. Korkeila examined three recent sales of comparable properties in the local real estate area in making his determination.

6. Mr. Wagner proposes to purchase the Property for cash from his own Account for an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, based on an updated independent appraisal. The Account will pay no commissions nor other expenses relating to the sale.

The applicant represents that the Property was originally purchased by the Account solely for investment purposes, in light of the Property's significant appreciation and income-generating potential. However, due to an abrupt change in both his career plans and personal life, namely, the cessation of his broker-dealer securities business and the need to move from San Francisco to Tahoe City for family reasons, Mr. Wagner now desires to purchase the Property himself for use as a personal residence in retirement.

In addition, the applicant represents that the exemption will be in the best interests of the Account because it will enable the Account to quickly sell the Property without paying any brokerage commissions or other transaction costs and to reinvest the sale proceeds in other investments that will achieve greater diversification.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Account will pay no commissions nor other expenses relating to the sale; (c) the Account will receive an amount that is the greater of $750,000, or the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser; (d) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will reimburse the Account for the fair market rental value of the Property with respect to his past and present use of such Property, including a reasonable rate of interest for the period from the date such amounts were due to the Account to the date of payment; (e) within 30 days of publication in the **Federal Register** of the notice granting this proposed exemption, Mr. Wagner will file Form 5330 with the Service and pay all applicable excise taxes due by reason of the above prohibited transactions; and (f) the Account will be divested of an illiquid asset and achieve greater diversification of assets.

*Notice to Interested Persons*

Because the only Plan assets involved in the proposed transaction are those in Mr. Wagner's Account, and he is the only participant to be affected, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of July, 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 01–17146 Filed 7–9–01; 8:45 am]

BILLING CODE 4510–29–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–312]**

## Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 50.54 and 10 CFR 73.55 and an associated amendment to Facility Operating License No. DPR–54, issued to the Sacramento Municipal Utility District (the licensee), for the Rancho Seco Nuclear Generating Station, a permanently shutdown nuclear reactor facility located in Sacramento County, California.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would eliminate the security plan requirements from the 10 CFR part 50 licensed site after the spent nuclear fuel has been transferred to the 10 CFR part 72 licensed Independent Spent Fuel Storage Installation (ISFSI).

The proposed action is in accordance with the licensee's application for a license amendment and exemption dated February 20, 2001.

*The Need for the Proposed Action*

Sections 50.54 and 73.55 of Title 10 of the Code of Federal Regulations require that licensees establish and maintain physical protection and security for activities involving nuclear fuel within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because there will no longer be any nuclear fuel in the 10 CFR part 50 licensed facility to protect against radiological sabotage or diversion after the transfer of the spent nuclear fuel to the Rancho Seco ISFSI. Subpart H of 10 CFR part 72 establishes physical protection and relies on 10 CFR 73.51 to

define the requirements for physical protection of spent nuclear fuel stored in an ISFSI under a specific license issued pursuant to 10 CFR part 72. The Rancho Seco ISFSI, which is located adjacent to the 10 CFR part 50 licensed site, has a separate NRC approved security plan to protect the spent nuclear fuel stored there from radiological sabotage and diversion as promulgated under 10 CFR part 72, subpart H. The proposed action will allow the licensee to conserve resources for decommissioning activities.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from security requirements will not have any adverse environmental impacts. There will be minor savings of energy and vehicular use associated with the security force no longer performing patrols, checks, and normal security functions.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Rancho Seco Generating Station.

*Agencies and Persons Consulted*

In accordance with its stated policy, on June 18, 2001, the staff consulted with the California State official, Frank Hauck of the Radiological Preparedness Unit, regarding the environmental impact of the proposed action. The State official had no comments.

*Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of July 2001.

For the Nuclear Regulatory Commission.

**Stephen Dembek,**

*Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–17037 Filed 7–9–01; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request; Review of a Reinstated Information Collection: OF–311

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an information collection, voluntary commercial garnishment application form (OF–311). The application is intended to be completed by the creditors of Federal employees. The application will facilitate the processing of a wide variety of commercial garnishment orders issued by various State and local jurisdictions. The application will provide information about commercial garnishment orders and will facilitate the processing of commercial garnishments by Federal agencies in a uniform manner that otherwise would not be possible.

OPM anticipates that approximately 100 Forms OF–311 will be completed annually for OPM employees. OPM estimates that each form takes approximately 10 minutes to complete. The annual estimated burden is 17 hours. OPM anticipates, however, that many other Federal agencies will also be suggesting that creditors complete the Form OF–311.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have a practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, e-mail to mbtoomey@opm.gov, or by FAX at 202–418–3251. Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received on or before September 10, 2001.

**ADDRESSES:** Send or deliver comments to:James S. Green, Associate General Counsel, Office of General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7553, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Jill Gerstenfield, Attorney, Office of the General Counsel, (202) 606–1700.

U.S. Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–17148 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–48–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: OPM 1530

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. OPM 1530, Report of Medical Examination of Person Electing Survivor Benefit Under the Civil Service Retirement System, is used to collect sufficient information from the required medical examination regarding an annuitant's health. This information is used to determine whether the insurable interest survivor benefits election can be allowed.

Approximately 500 OPM Forms 1530 will be completed annually. We estimate it takes approximately 90 minutes to complete the form. The annual burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received on or before August 9, 2001.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540, and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–17147 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–50–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–51

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 25–51, Civil Service Retirement System (CSRS) Survivor Annuitant Express Pay Application for Death Benefits, will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant.

Approximately 34,800 RI 25–51 forms are completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual estimated burden is 17,400 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received on or before August 9, 2001.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540, and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–17149 Filed 7–9–01; 8:45 am]

BILLING CODE 6325–50–P

## RAILROAD RETIREMENT BOARD

### Proposed Collection; 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) will publish period summaries of proposed data collections.

*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.

*Title and purpose of information collection:* Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185. Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into ''buy-in agreements'' with the Secretary of Health and Human Services for the purpose of enrolling certain groups of needy people under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380–F is voluntary. One response is received from each respondent.

Minor editorial changes are proposed to RRB Form RL–380–F. The completion time for Form RL–380–F is estimated at 10 minutes per response. The RRB estimates that approximately 600 responses are received annually.

*Additional Information or Comments:* To request more information or to obtain a copy of the information

collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01–17216 Filed 7–9–01; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 22–28498]**

## Application and Opportunity for Hearing; Allied Waste North America, Inc.

July 2, 2001.

The Securities and Exchange Commission gives notice hereby that Allied Waste North America, Inc. has filed an application pursuant to section 304(d) of the Trust Indenture Act of 1939 requesting that the Commission exempt from the requirements of section 314(d) of the 1939 Act the 8⅞% Senior Notes due 2008 under an indenture dated December 23, 1998, and supplemented by an indenture dated January 30, 2001, between Allied Waste North America, Inc. and U.S. Bank Trust National Association. The 8⅞% Senior Notes due 2008 under the indenture will be issued as part of an exchange offer registered on Allied Waste North America's registration statement on Form S–4, File No. 333–61744. The exchange offer will be made to institutional purchasers of similar securities in unregistered transactions relying on Rule 144A of the Securities Act of 1933.

Section 304(d) of the 1939 Act, in part, authorizes the Commission to exempt conditionally or unconditionally any indenture from one or more provisions of the 1939 Act. The Commission may provide an exemption under section 304(d) if it finds that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the 1939 Act.

Section 314(d) requires the obligor to furnish to the indenture trustee certificates or opinions of fair value upon any release of collateral from the lien of the indenture. The application requests that the indenture be exempted from the provisions of section 314(d) because section 314(d) is not intended to apply to indentures that do not contain the provisions creating the security interest.

In its application, Allied Waste North America, Inc. alleges:

(1) The notes to be issued under the indenture are secured by agreements that are external to the indenture;

(2) Decisions regarding whether collateral is maintained or released are made by a party other than the indenture trustee;

(3) Neither the indenture trustee nor the holders of the indenture securities have any control over these decisions; and

(4) The collateral securing the indenture securities also secures other debt.

Allied Waste North America, Inc., has waived notice of a hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. Any interested persons should look to the application for a more detailed statement of the matters of fact and law. The application is on file in the Commission's Public Reference Section, File Number 22–28498, 450 Fifth Street, NW., Washington, DC 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those request to the Commission no later than August 7, 2001. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. At any time after August 7, 2001, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–17132 Filed 7–9–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44506; File No. SR–NASD–2001–40]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Non-Liability SelectNet Messages in the Nasdaq National Market System

July 3, 2001.

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 June 21, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''),[3] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(5) thereunder.[5] Nasdaq has designated the proposal as a change to an existing order entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. This designation renders the proposed rule change, as amended, immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4720(c), ''Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers,'' to allow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 21, 2001, Nasdaq amended its proposal to indicate that the NASD, through its subsidiary, Nasdaq, filed the proposed rule change. *See* letter from Thomas P. Moran, Associate General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 20, 2001 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(5).

members to send a SelectNet preferenced (*i.e.,* directed) order to a Nasdaq National Market Execution System (''NNMS'' or ''SuperSOES'')[6] market maker if the order is designated as a non-liability order that is entered at a price that is inferior to the displayed quote to which the preferenced order is directed. Nasdaq plans to implement the proposed change upon the commencement of SuperSOES trading, which currently is scheduled to begin on July 9, 2001. The text of the proposed rule change appears below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4720. SelectNet Service

(a) No Change

(b) No Change

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers

No member may direct a SelectNet preferenced order to a Nasdaq National Market Execution System (''NNMS'') market maker (as defined in NASD Rule 4701) including that market maker's Agency Quote (as defined in NASD rule 4613) unless that order is designated as:

(i) *a non-liability order that is entered as* an ''All-or-None'' order (''AON'') and is at least one normal unit of trading (i.e., 100 shares) in excess of the displayed quote to which the referenced order is directed; or

(ii) *a non-liability order that is entered* as a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed[.] *; or*

(iii) *a non-liability order that is entered at a price that is inferior to the displayed quote to which the preferenced order is directed.*

The prohibition*s* of this paragraph shall not apply to preferenced orders sent by a UTP Specialist to an NNMS market maker or to preferenced orders sent by an NNMS market maker to a UTP Specialist. For purposes of this rule a ''UTP Specialist'' shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq/NMS/UTP Plan'').

* * * * *

[6] The Commission approved the NNMS, a new platform for trading Nasdaq National Market (''NNM'') securities, on January 14, 2000. *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000) (order approving File No. SR–NASD–99–11) (''SuperSOES Order'').

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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*

Currently, NASD Rule 4720(c) prohibits the entry of preferenced SelectNet orders to NNMS market makers unless those orders are designated by the sending party as either an ''All-or-None'' or ''Minimum Acceptable Quantity'' order that is at least one normal unit of trading (*i.e.,* 100 shares) in excess of the displayed quote to which the preferenced order is directed. In response to input from market participants that desire greater flexibility in sending non-liability SelectNet orders in a SuperSOES environment, Nasdaq has determined to amend NASD Rule 4720(c) to provide an additional alternative method for sending non-liability messages to NNMS market makers. Specifically, Nasdaq proposes to adopt NASD Rule 4720(c)(iii), which will allow NNMS participants to enter preferenced SelectNet orders to NNMS market makers if the preferenced orders contain prices that are inferior to the quoted bids and/or offers to which they are directed. For example, if a SuperSOES market maker is quoting 20.00 bid and 20.03 offer, the proposed rule change would allow a market participant to preference that market maker with either an order to sell at 20.01 or more, or an order to buy at 20.02 or less. Because these orders are not priced at levels that would obligate the receiving market maker to execute them under current firm quote standards, the NNMS market maker could choose to either ignore the orders or negotiate with the sending party to reach an agreement that would allow a trade to take place.

Nasdaq notes that the proposed alternative method of sending non-liability SelectNet messages is consistent with the Nasdaq rules approved previously by the Commission[7] that generally limit SelectNet to a negotiation function when accessing market maker quotes.[8] Nasdaq adopted the limitation to reduce potential dual liability for market makers who under Nasdaq's current system may be forced to provide share amounts in excess of their displayed quote when they contemporaneously receive a liability SelectNet message and an execution through Nasdaq's Small Order Execution System.

Based on the above, Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[9] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq 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*

Written comments were neither solicited nor received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq represents that the proposed rule change would effect a change in an existing order entry or trading system that: (1) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any

[7] *See* SuperSOES Order, *Supra* note 6.

[8] Market makers and electronic communication networks (''ECNs'') will continue to be allowed to send liability SelectNet messages at the displayed price and size of the quotes of those ECNs that do not agree to become full participants in NNMS and provide automatic executions for orders received from NNMS participants. *See* SuperSOES Order, *supra* note 6. In addition, unlisted trading privilege (''UTP'') exchange specialists will continue to send SelectNet preferenced liability orders to NNMS market makers and NNMS market makers will continue to send SelectNet preferenced liability orders to UTP exchange specialists. *See* NASD Rule 4720(c).

[9] 15 U.S.C. 78o–3(b)(6).

significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. Accordingly, the proposal, as amended, has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(5) thereunder. At any time within 60 days of the filing of a such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–40 and should be submitted by July 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–17133 Filed 7–9–01; 8:45 am]

**BILLING CODE 8010–01–M**

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44504; File No. SR–NASD–2001–35]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposal Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Interval Delay Between Executions in the Nasdaq National Market Execution System

July 2, 2001.

On May 10, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4710, ''Participant Obligations in NNMS,'' to: (i) Eliminate the interval delay between executions against the same market maker at the same price level in the Nasdaq National Market Execution System (''NNMS'' or ''SuperSOES''); [3] and (ii) decrement a market maker's displayed quotation when the sum of the number of shares executed against a displayed quotation as a result of odd lot orders and the portion of mixed lot orders in excess of a round lot equals one normal unit of trading. On May 24, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 5, 2001.[5] No comments were received regarding the proposal, as amended.

On June 5, 2001, Nasdaq filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended, on an accelerated basis.

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 association [7] and, in particular, the requirements of section 15A of the Act [8] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to eliminate the interval delay between executions against a market maker's quotation at the same price level for all transactions in SuperSOES is consistent with section 15A(b)(6) of the Act [9] because it may minimize the risk of orders queuing within SuperSOES, thereby helping to ensure the efficient and orderly operation of SuperSOES.[10] In addition, the Commission believes that the prompt execution of orders in SuperSOES should facilitate the price discovery process, to the benefit of all market participants. The Commission expects Nasdaq to carefully monitor the effect on the Nasdaq market and on market participants of eliminating the interval delay between executions in SuperSOES.

The Commission also finds that the proposed change in the decrementation feature of SuperSOES will facilitate the maintenance of a fair and orderly market by providing more accurate information about the size of market maker's displayed quotations, and by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved the NNMS, a new platform for trading Nasdaq National Market (''NNM'') securities, on January 14, 2000. *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3897 (January 25, 2000) (order approving File No. SR–NASD–99–11). Nasdaq plans to implement SuperSOES on July 9, 2001.

[4] *See* Letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated May 22, 2001 (''Amendment No. 1''). In Amendment No. 1, Nasdaq revised the text of NASD Rule 4710(b)(1) to replace a reference to an ''NNMS security'' with a reference to ''NNM security.''

[5] *See* Securities Exchange Act Release No. 44365 (May 29, 2001), 66 FR 30252.

[6] *See* Letter from Johm M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated June 4, 2001 (''Amendment No. 2''). In Amendment No. 2, the Nasdaq added ''the sum of'' to the proposed rule text of NASD Rule 4710(b)(1)(C)(ii) to clarify the operation of the revised decrementation feature of SuperSOES. This is a technical amendment and is not subject to notice and comment.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] In response to market participants' concerns that significant order flow could potentially produce queuing within the system, Nasdaq previously filed proposals with the Commission that revised the interval delay parameter in SuperSOES to: (i) Reduce the interval delay between executions against a market maker's quotation in Nasdaq 100 Index securities from five seconds to two seconds; and (ii) eliminate the interval delay between executions against a market maker's quotation during the first day of trading of securities of initial public offerings and secondary offerings. *See* Securities Exchange Act Release Nos. 43720 (December 13, 2000), 65 FR 79909 (December 20, 2000) (notice of filing and immediate effectiveness of File No. SR–NASD–00–67); and 44142 (April 2, 2001), 66 FR 18331 (April 6, 2001) (order approving File No. SR–NASD–01–03). According to Nasdaq, market participants support the current proposal to eliminate the interval delay for all transactions in SuperSOES to further minimize the risk of queuing within the system.

helping market makers to manage their quotations.

Nasdaq seeks to implement the proposed changed with the planned implementation of SuperSOES on July 9, 2001. To provide market participants with adequate notice of the changes and to allow sufficient time for broker-dealers and service bureaus to modify their electronic systems to conform to the proposed changes, Nasdaq has requested that the Commission find good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposal, as amended. As discussed more fully above, the Commission believes that the proposed changes are designed to facilitate the efficient and orderly operation of the Nasdaq market. The Commission also believes that it is important to provide market participants with adequate time to modify their electronic systems to conform to the proposed changes. Accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act [11] to approve the proposed rule change, as amended, on an accelerated basis, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2001–35), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–17134 Filed 7–9–01; 8:45 am]

**BILLING CODE 8010–01–M**

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of action subject to intergovernmental review.

**SUMMARY:** The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 36 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2002, subject to the availability of funds. Eleven states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

**DATES:** A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding on or before August 9, 2001 to the SBDC.

**ADDRESSES:**

**Addresses of Relevant SBDC State Directors**

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481.

Ms. Patricia Murphy, Acting State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 322–1502.

Mr. Malcolm Barnes, Executive Director, Howard University.

Dr. Bruce Whitaker, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–9155.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3840.

Mr. Jerry Cartwright, State Director, University of West Florida, 2600 6th St., NW., Room 125, Washington, DC 20059, (202) 806–1550.

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762.

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.

Ms. Debbie Bishop, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204 and, 19 West Garden Street, Pensacola, FL 32501, (850) 595–6060.

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515.

Mr. Mark Petrilli, State Director, Department of Commerce and, Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856.

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (317) 264–2820 x17.

Mr. John Massaua, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103 (207) 780–4420.

Mr. Scott Daugherty, State Director, University of North Carolina, 5 West Hargett Street, Suite 600, Raleigh, NC 27601–1348, (919) 715–7272.

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (580) 745–7577, (603) 862–4879.

Ms. Carol Lopucki, State Director, Small Business Development Center, Grand Valley State University, 401 West Fulton Avenue, Third Floor, Grand Rapids, MI 49504, (616) 336–6310.

Mr. Wally Kearns, State Director, University of North Dakota, P.O. Box 7308, Grand Forks, ND 58202, (701) 777–3700.

Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–7794.

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219.

Mr. John Lenti, State Director, University of South Carolina, College of Business Administration, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Mr. Albert Laabs, State Director, Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 324, Nashville, TN 37217–2833, (615) 366–3931.

Mr. Robert Hamlin, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111.

Mr. Wade Druin, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5287.
Ms. Carolyn Clark, State Director, Washington State University, 601 West First Avenue, Spokane, WA 99202–3899, (509) 358–7765.
Dr. Anita Williams, Acting Director, University of Guam, P.O. Box 5061, UOG Station, Mangilao, GU 96923, (671) 735–2553.

**FOR FURTHER INFORMATION CONTACT:** Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, D.C. 20416.

**SUPPLEMENTARY INFORMATION:**

### Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

### Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

### SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

### SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

### SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) locate service centers so that they are as accessible as possible to small businesses;

(b) open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) maintain lists of private consultants at each service center.

Dated: July 2, 2001.

**Johnnie L. Albertson,**

*Associate Administrator for Small Business Development Centers.*

[FR Doc. 01–17170 Filed 7–9–01; 8:45 am]

BILLING CODE 8025–01–P

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Generalized System of Preferences (GSP); Notice of the Results of the 2001 GSP Reviews and Designation of Georgia

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of GSP changes.

**SUMMARY:** This notice announces recent changes in the GSP program, including the disposition of the 2001 De Minimis Waiver and Redesignation Reviews, termination of GSP eligibility for products that exceeded the GSP competitive need limitations (CNLs). and the designation of Georgia as beneficiary developing country.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

**SUPPLEMENTARY INFORMATION:** The GSP program is provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). Each year, the Trade Policy Staff Committee conducts a review to consider changes in the GSP program. In the 2001 De Minimis Waiver and Redesignation Reviews, the appraised import values during 2000 of each GSP-eligible article were reviewed to determine whether particular articles from particular GSP beneficiary developing countries exceeded the 2000 GSP CNLs.

The President's decisions concerning the GSP changes summarized in this notice are reflected in a proclamation issued on June 29, 2001. Unless otherwise specified, the changes in the GSP program summarized in this notice are effective with respect to goods entered on or after July 1, 2001.

The President granted waivers of the CNLs to India for several articles. These articles are listed in Annex I to this notice. The effective date of these waivers will be determined by the USTR.

The President redesignated certain countries' GSP eligibility for certain articles that had previously exceeded the applicable GSP CNLs, but which fell below the CNLs in 2000 ($95 million or 50 percent of total U.S. imports of the article). These countries and articles are listed in Annex II to this notice.

The President granted de minimis waivers to certain countries for certain articles that exceeded the 50 percent import share CNL, but for which the aggregate appraised value of the imports of that article was below the 2000 de minimis level of $15 million. These countries and articles are listed in Annex III to this notice.

The President terminated certain countries' GSP eligibility for certain articles that exceeded the GSP CNLs in 2000. These countries and articles are listed in Annex IV to this notice.

The President designated Georgia as beneficiary developing country.

**Jon Rosenbaum,**

*Chairman, GSP Subcommittee, Trade Policy Staff Committee.*

BILLING CODE 3190–01–M

ANNEX I: COMPETITIVE NEED LIMIT (CNL) WAIVERS GRANTED FOR GSP ITEMS AND 2000 TRADE

| HTSUS | Partner | Imports | Share | Description |
|---|---|---|---|---|
| 7113.19.25 | India..... | 33,226,340 | 47.2% | Gold mixed link necklaces and neck chains |
| 7113.19.29 | India..... | 25,957,265 | 2.8% | Gold necklaces and neck chains (o/than of rope or mixed links) |
| 7113.19.50 | India..... | 559,536,155 | 15.1% | Precious metal (o/than silver) articles of jewelry and parts ther |
| 7418.19.10 | India..... | 7,777,771 | 50.4% | Copper, table, kitchen or other household articles and parts ther |
| 9405.50.30 | India..... | 31,859,579 | 67.9% | Non-electrical lamps and lighting fixtures nesoi, of brass |

ANNEX II: GSP ITEMS GRANTED REDESIGNATION AND 2000 TRADE

| HTSUS | Partner | Imports | Share | Description |
|---|---|---|---|---|
| 0708.90.15 | India [1/] ..... | 24,573 | 21.6% | Lentils, fresh or chilled, shelled or unshelled |
| 0713.90.60 | India [1/] ..... | 25,073 | 15.3% | Dried leguminous vegetables nesi, shelled, if entered for consump |
| 0713.90.80 | India [1/] ..... | 65,786 | 27.3% | Dried leguminous vegetables nesi, shelled, if entered Sept. 1 thr |
| 0802.31.00 | India [1/] ..... | 0 | 0.0% | Walnuts, fresh or dried, in shell |
| 0910.10.40 | India [1/] ..... | 175,370 | 28.0% | Ginger, ground |
| 1006.30.10 | India [1/] ..... | 31,921 | 4.5% | Rice semi-milled or wholly milled, whether or not polished or gla |
| 1403.90.40 | India [1/] ..... | 1,093,773 | 45.4% | Piassava, couch-grass and other vegetable materials nesi, of a ki |
| 1701.11.05 | India [1/] ..... | 0 | 0.0% | Cane sugar, raw, in solid form, w/o added flavoring or coloring, |
| 1701.91.05 | India [1/] ..... | 0 | 0.0% | Cane/beet sugar & pure sucrose, refined, solid, w/added coloring |
| 1806.10.65 | India [1/] ..... | 0 | 0.0% | Cocoa powder, o/90% by dry wt of sugar, nesoi, subject to add US |
| 2001.90.45 | India [1/] ..... | 324,753 | 37.4% | Mangoes, prepared or preserved by vinegar or acetic acid |
| 2101.20.32 | India [1/] ..... | 0 | 0.0% | Preparations with a basis of extract, essences or concentrates or |
| 2516.22.00 | India [1/] ..... | 46,176 | 20.7% | Sandstone, merely cut into blocks or slabs of a rectangular (incl |
| 2516.90.00 | Rep. of South Africa.. | 3,172,105 | 40.1% | Porphyry, basalt and other monument. or build. stone (except gran |
| 3920.63.20 | India [1/] ..... | 0 | 0.0% | Nonadhesive plates, sheets, film, foil and strip, noncellular, no |
| 3920.93.00 | India [1/] ..... | 0 | 0.0% | Nonadhesive plates, sheets, film, foil and strip, noncellular, no |
| 4104.39.20 | India [1/] ..... | 18,862 | 1.2% | Buffalo leather, without hair on, parchment-dressed or prepared a |
| 4104.39.50 | India [1/] ..... | 0 | 0.0% | Upper & sole leather of bovine (ex. buffalo) or equine animals, p |
| 4106.12.00 | India [1/] ..... | 35,297 | 23.6% | Goat or kidskin leather, w/o hair on, not incl. chamois, patent, |
| 4106.19.20 | India [1/] ..... | 0 | 0.0% | Wet blues of goat or kidskin leather, without hair on, not incl. |
| 4106.19.30 | India [1/] ..... | 26,245 | 3.2% | Goat or kidskin leather, without hair on, not incl. chamois, pate |
| 4106.20.30 | India [1/] ..... | 263,696 | 10.8% | Goat or kidskin leather, w/o hair on, excluding leather of headin |
| 5007.90.30 | India [1/] ..... | 4,368,983 | 47.9% | Woven silk fabrics, containing 85 percent or more by weight of si |
| 5209.51.30 | India [1/] ..... | 70,754 | 22.6% | Printed plain weave certified hand-loomed fabrics of cotton, cont |
| 5307.20.00 | India [1/] ..... | 1,394,318 | 26.0% | Yarn of jute or other textile bast fibers (including flax, true h |
| 5702.49.15 | India [1/] ..... | 1,592,902 | 49.9% | Carpets and other textile floor coverings of pile construction, w |
| 5904.91.00 | India [1/] ..... | 0 | 0.0% | Floor coverings consisting of a coating applied on a textile back |
| 6302.99.10 | India [1/] ..... | 3,766 | 7.8% | Toilet and kitchen linen of textile materials nesoi, containing 8 |
| 6814.90.00 | India [1/] ..... | 885,237 | 48.6% | Worked mica and articles of mica, nesoi, whether or not on a supp |
| 7113.20.21 | India [1/] ..... | 0 | 0.0% | Base metal clad w/gold rope necklaces and neck chains |
| 7113.20.29 | India [1/] ..... | 150,756 | 12.7% | Base metal clad w/gold necklaces and neck chains, nesoi |
| 7904.00.00 | Rep. of South Africa.. | 868,484 | 28.0% | Zinc, bars, rods, profiles and wire |
| 8540.12.10 | India [1/] ..... | 375,318 | 38.1% | Cathode-ray television picture tubes incl. video monitor, monochr |
| 8606.30.00 | India [1/] ..... | 0 | 0.0% | Railway or tramway self-discharging freight cars (o/than tank car |

[1/] The implementation of the redesignation of India for eligibility under the GSP for this HTSUS is a date to be determined and announced by the United States Trade Representative (USTR) in the Federal Register.

ANNEX III: GSP COUNTRIES GRANTED A de MINIMIS WAIVER AND 2000 TRADE

| HTSUS | Partner | Imports | Share | Description |
|---|---|---|---|---|
| 0305.20.20 | Russia..... | 226,800 | 75.0% | Sturgeon roe, dried, smoked, salted or in brine |
| 0410.00.00 | Indonesia..... | 4,895,199 | 52.7% | Edible products of animal origin, nesi |
| 0712.90.70 | Egypt..... | 360,994 | 57.6% | Dried fennel, marjoram, savory and tarragon nesi, whole, cut, s |
| 0802.50.20 | Turkey..... | 828,890 | 97.3% | Pistachios, fresh or dried, in shell |
| 0802.50.40 | Turkey..... | 296,059 | 88.9% | Pistachios, fresh or dried, shelled |
| 0813.30.00 | Chile..... | 4,881,255 | 52.5% | Apples, dried |
| 0813.40.10 | Thailand..... | 1,309,050 | 97.8% | Papayas, dried |
| 0904.20.76 | India [1/] ..... | 5,853,232 | 51.9% | Fruits of the genus capsicum, ground, nesoi |
| 1102.30.00 | Thailand..... | 2,670,409 | 68.7% | Rice flour |
| 1301.90.40 | Brazil..... | 104,000 | 69.3% | Turpentine gum (oleoresinous exudate from living trees) |
| 1604.15.00 | Chile..... | 7,088,679 | 51.8% | Prepared or preserved mackerel, whole or in pieces, but not min |
| 1605.90.10 | Thailand..... | 4,211,543 | 57.8% | Boiled clams in immediate airtight containers, the contents of |
| 1702.90.35 | Brazil..... | 1,546,825 | 55.7% | Invert molasses |
| 1901.20.02 | Turkey..... | 3,942 | 100.0% | Mixes for bakers wares, o/25% butterfat, not retail, subject to |
| 2002.90.40 | Morocco..... | 534,737 | 67.3% | Tomatoes in powder, prepared or preserved otherwise than by vin |
| 2008.99.28 | Turkey..... | 550,800 | 60.6% | Figs, otherwise prepared or preserved, nesi |
| 2008.99.35 | Thailand..... | 3,370,340 | 88.4% | Lychees and longans, otherwise prepared or preserved, nesi |
| 2008.99.45 | Philippines..... | 65,922 | 55.9% | Papaya pulp, otherwise prepared or preserved, nesi |
| 2103.90.74 | Croatia..... | 797,645 | 66.5% | Mixed condiments and mixed seasonings (described in add US note |
| 2603.00.00 | Philippines..... | 5,380 | 51.7% | Copper ores and concentrates |
| 2811.29.50 | Brazil..... | 8,389,920 | 57.2% | Other inorganic oxygen compounds of nonmetals, nesoi |
| 2819.10.00 | Kazakhstan..... | 9,178,773 | 67.1% | Chromium trioxide |
| 2840.11.00 | Turkey..... | 668,048 | 93.2% | Anhydrous disodium tetraborate (refined borax) |
| 2840.19.00 | Turkey..... | 183,849 | 98.8% | Disodium tetraborate (refined borax) except anhydrous |
| 2841.61.00 | Czech Republic..... | 1,585,467 | 53.7% | Potassium permanganate |
| 2841.90.20 | Kazakhstan..... | 2,080,522 | 70.7% | Ammonium perrhenate |
| 2909.50.40 | Indonesia..... | 3,332,881 | 61.0% | Odoriferous or flavoring compounds of ether-phenols, ether-alco |
| 2912.13.00 | Czech Republic..... | 2,500 | 100.0% | Butanal (Butyraldehyde, normal isomer) |
| 2917.19.10 | Hungary..... | 1,645,506 | 79.2% | Ferrous fumarate |
| 2918.21.10 | Brazil..... | 6,532,700 | 56.7% | Salicylic acid and its salts, suitable for medicinal use |
| 2918.90.35 | Romania..... | 914,229 | 52.2% | Odoriferous or flavoring compounds of carboxylic acids with add |
| 2929.10.30 | Poland..... | 27,496 | 100.0% | 3,4-Dichlorophenylisocyanate |
| 2931.00.25 | Brazil..... | 2,414,205 | 55.4% | Pesticides of aromatic organo-inorganic (except organo-sulfur) |
| 2933.40.08 | Hungary..... | 198,520 | 91.0% | 4,7-Dichloroquinoline |
| 2933.59.10 | Hungary..... | 12,000 | 100.0% | Aromatic or modified aromatic herbicides of heterocyclic compou |
| 2938.10.00 | Brazil..... | 1,048,822 | 54.0% | Rutoside (Rutin) and its derivatives |
| 3801.10.10 | Brazil..... | 5,675,060 | 61.4% | Artificial graphite plates, rods, powder and other forms, for m |
| 4106.20.60 | India [1/] ..... | 1,979,524 | 54.5% | Goat or kidskin leather, w/o hair on, excluding leather of head |
| 4202.22.35 | Philippines..... | 159,548 | 74.9% | Handbags with or without shoulder strap or without handle, with |
| 4202.29.20 | Philippines..... | 336,320 | 70.4% | Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leath |
| 4302.20.60 | Brazil..... | 317,090 | 65.8% | Heads, tails, paws and other pieces or cuttings of dressed or t |
| 4412.13.25 | Brazil..... | 4,810,764 | 98.2% | Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face |
| 4412.14.25 | Brazil..... | 4,041,968 | 88.9% | Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood, |
| 4412.99.45 | Brazil..... | 1,485,479 | 53.4% | Plywood nesoi, softwood outer plies, no trop. hard wood ply, no |
| 4602.10.23 | Philippines..... | 7,769 | 73.9% | Articles of a kind normally carried in the pocket or in the han |
| 5208.31.20 | India..... | 313,687 | 94.6% | Dyed plain weave certified hand-loomed fabrics of cotton, conta |
| 5208.32.10 | India..... | 506,597 | 95.6% | Dyed plain weave certified hand-loomed fabrics of cotton, cont. |
| 5208.41.20 | India..... | 759,756 | 90.1% | Plain weave certified hand-loomed fabrics of cotton, 85% or mor |
| 5208.42.10 | India..... | 1,149,255 | 93.3% | Plain weave certified hand-loomed fabrics of cotton, 85% or mor |
| 5209.31.30 | India..... | 1,967,434 | 88.8% | Dyed, plain weave certified hand-loomed fabrics of cotton, cont |
| 5209.41.30 | India..... | 1,495,199 | 96.1% | Plain weave certified hand-loomed fabrics of cotton, cont. 85 |
| 5607.30.20 | Philippines..... | 4,012,600 | 87.7% | Twine, cordage, rope and cables of abaca or other hard (leaf) f |
| 5702.39.10 | India [1/] ..... | 406,817 | 57.9% | Carpets and other textile floor coverings of pile construction, |
| 5702.99.20 | India [1/] ..... | 7,845,575 | 60.8% | Carpets & other textile floor coverings, not of pile constructi |

| | | | | |
|---|---|---|---|---|
| 7113.20.25 | India [1/] ..... | 402,464 | 62.3% | Base metal clad w/gold mixed link necklaces and neck chains |
| 7202.21.10 | Macedonia (Skopje).. | 3,047,746 | 79.3% | Ferrosilicon containing by weight more than 55% but not more th |
| 7202.99.10 | Brazil..... | 545,549 | 99.5% | Ferrozirconium |
| 7403.12.00 | Russia..... | 8,159,622 | 99.8% | Refined copper, wire bars |
| 8112.91.50 | Chile..... | 10,070,966 | 86.2% | Rhenium, unwrought; rhenium, powders |
| 8112.99.00 | Chile..... | 6,020,784 | 61.1% | Gallium, hafnium, indium, niobium, rhenium, and thallium, artic |
| 8528.12.80 | Thailand..... | 2,006,115 | 96.8% | Color television reception apparatus nesoi, video display diago |
| 9303.30.40 | Czech Republic..... | 140,000 | 88.6% | Rifles (o/than muzzle-loading), for sport, hunting or target-sh |
| 9614.20.60 | Turkey..... | 158,445 | 91.1% | Smoking pipes and bowls, wholly of clay, and other smoking pipe |

ANNEX IV : GSP COUNTRIES EXCEEDING COMPETITIVE NEED LIMITS (NEW EXCLUSIONS) AND 2000 TRADE

| HTSUS | PARTNER | IMPORTS | SHARE | DESCRIPTION |
|---|---|---|---|---|
| 2909.19.14 | Brazil..... | 127,503,264 | 9.0% | Methyl tertiay-butyl ether. (MTBE) |
| 2924.21.16 | Brazil..... | 11,126,131 | 68.3% | Aromatic ureines and their derivatives pesticides, nesoi |
| 4012.90.45 | Sri Lanka (Ceylon).. | 14,589,001 | 64.7% | Interchangeable tire treads and tire flaps, of natural rubber, ne |
| 7113.19.29 | Turkey..... | 105,474,631 | 11.6% | Gold necklaces and neck chains (o/than of rope or mixed links) |
| 7403.11.00 | Russia..... | 104,891,985 | 5.8% | Refined copper cathodes and sections of cathodes |
| 7403.11.00 | Kazakhstan..... | 97,957,700 | 5.4% | Refined copper cathodes and sections of cathodes |
| 7604.10.50 | Russia..... | 51,051,201 | 75.0% | Aluminum (o/than alloy), bar and rods, other than with a round cr |
| 8414.51.00 | Thailand..... | 132,578,033 | 17.2% | Table, floor, wall, window, ceiling or roof fans, with a self-con |

[1/] The implementation of the redesignation of India for eligibility under the GSP for this HTSUS is a date to be determined and announced by the United States Trade Representative (USTR) in the Federal Register.

[FR Doc. 01–17236 Filed 7–9–01; 8:45 am]

BILLING CODE 3190–01–C

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending June 29, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2001–9997.
*Date Filed:* June 25, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC12 USA–EUR 0119 dated 22 June 2001. Expedited TC12 North Atlantic USA-Europe Resolutions 002e, 015h, 054s (except between USA and Austria, Belgium, Germany, Italy, Netherlands, Scandinavia, Switzerland). Intended effective date: 1 August 2001.

*Docket Number:* OST–2001–10000.
*Date Filed:* June 25, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC3 0503 dated 22 June 2001. Mail Vote 132—Resolution 010g. TC3 Special Passenger Amending Resolution between Japan and Russia (in Asia) R1–R7. Intended effective date: 1 July 2001.

*Docket Number:* OST–2001–10021.
*Date Filed:* June 27, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC3 0504 dated 26 June 2001. Mail Vote 129—Resolution 010d. TC3 Special Passenger Amending Resolution between China and Japan R1–R8. Intended effective date: 1 August 2001.

*Docket Number:* OST–2001–10029.
*Date Filed:* June 28, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC12 USA–EUR 0123 dated 29 June 2001. Mail Vote 134—Resolution 072cc. TC12 North Atlantic Excursion Fares from USA to Austria, Belgium, Germany, Italy, Netherlands, Scandinavia, Switzerland. Intended effective date: 1 August 2001.

*Docket Number:* OST–2001–10030.
*Date Filed:* June 28, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC COMP 0828 dated 26 June 2001. Mail Vote 128—Resolution 010c. TC2/12/23 Special Passenger Amending Resolution from Mozambique. Intended effective date: 1 July 2001.

*Docket Number:* OST–2001–10038.
*Date Filed:* June 29, 2001.
*Parties:* Members of the International Air Transport Association.
*Subject:* CTC COMP 0359 dated 29 June 2001. Mail Vote 133—Resolution 033k (amending). Special Cargo Currency Conversion Resolution—euro. Intended effective date: 15 July 2001.

**Dorothy Y. Beard,**
*Federal Register Liaison.*

[FR Doc. 01–17228 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 29, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2001–10010.

*Date Filed:* June 26, 2001.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 17, 2001.

*Description:* Application of MEDjet International, Inc. pursuant to 49 U.S.C. 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail on a worldwide basis.

**Dorothy Y. Beard,**
*Federal Register Liaison.*

[FR Doc. 01–17227 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2001–10031]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0043 and 2115–0076

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Plan Approval and Records for Load Lines, and (2) Security Zones, Regulated Navigation Areas, and Safety Zones. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.

**DATES:** Comments must reach the Coast Guard on or before September 10, 2001.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2001–10031], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for these requests. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2001–10031], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

**Information Collection Request**

1. *Title:* Plan Approval and Records for Load Lines.

*OMB Control Number:* 2115–0043.

*Summary:* Collecting this information helps the Coast Guard ensure that certain vessels are not loaded deeper than appropriate for safety. Vessels over 150 gross tons or 79 feet in length engaged in commerce on international or coastwise voyages by sea must obtain Load Line Certificates.

*Need:* Sections 5501 to 5516 of Title 46, U.S.C., provide the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. 46 CFR Part E—Load Lines—contains the relevant rules.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden is 1,916 hours a year.

*2. Title:* Security Zones, Regulated Navigation Areas, and Safety Zones.

*OMB Control Number:* 2115–0076.

*Summary:* The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

*Need:* Parts 6 and 165 of Title 33, CFR, give the Coast Guard Captain of the Port (COTP) the authority to designate security zones in the U.S. for as long as he or she deems necessary to prevent damage or injury. 33 U.S.C. 1223 authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. 33 U.S.C. 1225 authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

*Respondents:* Federal, State, and local government agencies, vessels, and facilities.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden is 417 hours a year.

Dated: July 2, 2001.

**V.S. Crea,**

*Director of Information and Technology.*

[FR Doc. 01–17109 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. PE–2001–50]**

## Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and deposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief for specified requirements of 14 CFR. 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.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before July 31, 2001.

**ADDRESSES:** Send comments on any petition 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–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, 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.

Dated: Issued in Washington, DC, on July 5, 2001.

**Gary A. Michel,**

*Acting, Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA–2001–9266.

*Petitioner:* Evergreen Air Venture Museum.

*Section of 14 CFR Affected:* 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).

*Description of Relief Sought:* To allow Evergreen to operate North American P–51 Mustang, North American T–28 Trojan, North American SNJ–5, Chance Vought (Goodyear Company) FG–1 Corsair, and Grumman TBM–1C Avenger Torpedo Bomber aircraft with limited, experimental, or standard category airworthiness certificates for the purpose of carrying passengers on local flights in return for donations. The FAA notes that these aircraft differ significantly from the Boeing B–17G, for which Evergreen already holds an exemption.

[FR Doc. 01–17243 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. PE–2001–51]**

## Petitions for Exemption; Summary of 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 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. 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:** Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, 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 July 5, 2001.

**Gary A. Michel,**

*Acting, Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions**

*Docket No.:* FAA–2001–9812.

*Petitioner:* Red Baron Flyers, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

*Description of Relief Sought/ Disposition:* To permit RBFI to conduct local sightseeing flights at Houston County Airport for the Houston County Airport's Annual Fly-In during June 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

*Grant, 06/19/2001, Exemption No. 7547.*

*Docket No.:* FAA–2001–9627.

*Petitioner:* Plainwell Pilots' Association.

*Section of 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

*Description of Relief Sought/ Disposition:* To permit PPA to conduct local sightseeing flights in the vicinity of Plainwell, Michigan, in July 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

*Grant, 06/18/2001, Exemption No. 7546.*

*Docket No.:* FAA–2001–8742 (previously Docket No. 15078).

*Petitioner:* U.S. Department of Justice, Drug Enforcement Administration.

*Section of 14 CFR Affected:* 14 CFR 91.117(a), (b) , and (c), 91.159(a), and 91.209(a)(1) and (b).

*Description of Relief Sought/ Disposition:* To permit DEA to conduct air operations in support of drug law enforcement and drug traffic interdiction.

*Grant, 06/15/2001, Exemption No. 5506C.*

*Docket No.:* 29661.

*Petitioner:* Experimental Aircraft Association, Small Aircraft Manufacturers Association and National Association of Flight Instructors.

*Section of 14 CFR Affected:* 14 CFR 91.319(a)(1) and (2).

*Description of Relief Sought/ Disposition:* To amend Exemption 7162 by (1) revising Condition No. 1 to include experimental aircraft certificated under § 21.191(c) and (d), and to clarify the maintenance requirements for these aircraft; (2) revising Condition No. 4 to include ground transition training in the required training syllabus; and (3) adding a condition requiring EAA, SAMA, and NAFI members to receive permission from their association before conducting flight training under Exemption No. 7162.

*Partial Grant, 06/18/2001, Exemption No. 7162A.*

*Docket No.:* FAA–2001–9364.

*Petitioner:* Ms. Jacqueline A. Julio.

*Section of 14 CFR Affected:* 14 CFR 121.311(b).

*Description of Relief Sought/ Disposition:* To permit Ms. Jacqueline A. Julio to be secured by a personal safety belt and held on her caregiver's lap while on board an aircraft although she has reached her second birthday.

*Grant, 06/18/2001, Exemption No. 5195E.*

*Docket No.:* FAA–2001–9864.

*Petitioner:* Crescent City Airport Day Committee.

*Section of 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

*Description of Relief Sought/ Disposition:* To permit CCADC to conduct local sightseeing flights at the Crescent City, California, airport for the annual Airport Day Scholarship Fundraising airlifts during July 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

*Grant, 06/21/2001, Exemption No.* 7551.

*Docket No.:* FAA–2001–9438.

*Petitioner:* Aberdeen Flying Service.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Aberdeen to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 06/21/2001, Exemption No.* 7550.

*Docket No.:* FAA–2001–8937 (previously Docket No. 27130).

*Petitioner:* Era Aviation, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Era to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 06/21/2001, Exemption No. 5718D.*

*Docket No.:* FAA–2001–8870 (previously Docket no. 26160).

*Petitioner:* Massachusetts Institute of Technology.

*Section of 14 CFR Affected:* 14 CFR 91.319(c).

*Description of Relief Sought/ Disposition:* To permit MIT to operate certain single-engine and multiengine aircraft certificated in the experimental category, over densely populated areas or in congested airways.

*Grant, 06/18/2001, Exemption No. 5210F.*

*Docket No.:* FAA–2001–9923.

*Petitioner:* EAA Chapter 597.

*Section of 14 CFR Affected:* 14 CFR 135.251, 235,255, 135.353, and appendixes I and J to part 121.

*Description of Relief Sought/ Disposition:* To permit EAA Chapter 597 to conduct local sightseeing flights at Howard Nixon Memorial Airport, Chesaning, Michigan, in support of Chesaning Sportplane Association and the Young Eagles program during July 2001 and September 2001, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

*Grant, 06/27/2001, Exemption No. 7553.*

*Docket No.:* FAA–2001–8753 (previously Docket No. 28891).

*Petitioner:* Eagle Helicopters, Inc., dba Kachina Aviation.

*Section of 14 CFR Affected:* 14 CFR 133.19(a)(3) and 133.51.

*Description of Relief Sought/ Disposition:* To permit Kachina to conduct external-load operations in the United States using its Canadian-registered rotorcraft.

*Grant, 06/27/2001, Exemption No. 6638B.*

*Docket No.:* FAA–2001–9976 (previously Docket No. 24427).

*Petitioner:* United States Ultralight Association, Inc.

*Section of 14 CFR Affected:* 14 CFR 103.1(a) and (e)(1) through (e)(4).

*Description of Relief Sought/ Disposition:* To permit individuals authorized by USUA to give instruction in powered ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power

in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.

*Grant, 06/27/2001, Exemption No. 4274I.*

[FR Doc. 01–17244 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than September 10, 2001.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0524. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations,5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. (c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Radio Communications.

*OMB Control Number:* 2130–0524.

*Abstract:* The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule establishes safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 685 railroads.

*Frequency of Submission:* On occasion; annually.

Reporting Burden:

| CFR section | Respondent universe (railroads) | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 220.8—Waivers | 685 | 2 letters | 60 minutes | 2 | $78 |
| 220.25—Instruction of Employees | 685 | 70,000 sessions | 30 minutes | 35,000 | 1,120,000 |
| —Sub. Yrs.-Instr. | 685 | 12,540 sessions | 30 minutes | 6,270 | 200,640 |
| —Operational Testing of Empl. | 685 | 100,000 tests | 15 minutes | 25,000 | 800,000 |
| 220.35—Testing Radio/Wireless Communication Eq. | 685 | 780,000 tests | 30 seconds | 6,500 | 208,000 |
| 220.61—Transmission of Mandatory Dir. | 685 | 7,200,000 directives | 1.5 minutes | 180,000 | 5,760,000 |

| CFR section | Respondent universe (railroads) | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| —Marking Man. Dir. | 685 | 624,000 marks | 15 seconds | 2,600 | 83,200 |

*Total Responses:* 8,786,542.

*Estimated Total Annual Burden:* 255,372 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on July 5, 2001.

**Kathy A. Weiner**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 01–17245 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2001–10044; Notice 1]**

### Reliance Trailer Co., LLC; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Reliance Trailer Co., LLC, of Spokane, Washington (''Reliance''), for an exemption of two years from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. Reliance asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

**Why Reliance Says That It Needs an Exemption.**

In February 2001, Reliance acquired the assets of SturdyWeld, another Washington company, in order to commence manufacture of ''trailers built to mate with asphalt paving equipment.'' This appears to be a horizontal discharge trailer that is used in the road construction industry to deliver asphalt and other road building materials to the construction site.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Reliance's trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. Reliance argued that installation of the rear impact guard will prevent its trailers from connecting to the paver and performing their mission. Thus, its trailers will no longer be functional.

**Reliance's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith to Comply with Standard No. 224**

Reliance is a small volume manufacturer whose total production in the 12-month period preceding its petition was 268 trailers. In the absence of an exemption, Reliance says that ''considering the over $2 million paid for the [SturdyWeld] Division and if we are able to sell the over $1 million inventory, but have to shut this operation down, we would probably lose over $1 million.'' Its cumulative net income after taxes for the fiscal years 1998, 1999, and 2000 was $150,793.

Reliance apparently learned of its compliance problem after producing 26 of the trailers in question. It has determined that these trailers fail to comply with Standard No. 224, and has notified NHTSA pursuant to 49 CFR Part 573. It has also filed a petition for a determination that the noncompliance is inconsequential to safety. Reliance has also discovered that ''this is a nationwide, yet unsolved, problem,'' citing three manufacturers of similar trailers who have received temporary exemptions from Standard No. 224, Beall Trailers, Red River Manufacturing, and Dan Hill Associates.

The petition discusses ''possible alternative means of compliance'' which ''will include the analysis of moveable, replaceable or retractable under-rides. To date these concepts are very difficult to maintain due to the nature of the paving material.'' After discussion with its customers, Reliance ''will proceed to design, build and test prototype designs to meet the regulations and allow dumping asphalt into paving equipment.'' It believes that it will comply by the end of a two-year exemption period.

**Reliance's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent with Objectives of Motor Vehicle Safety**

Reliance argues that an exemption would be in the public interest and consistent with traffic safety objectives because the trailers ''represent about 80% of the output of the 38 employees'' of the SturdyWeld division, and, ''if this petition is denied, the operation will be closed and those people will be out of jobs.'' An exemption would allow it ''to continue to provide equipment needed by road building industries to expand and develop'' the national transportation system.

The trailers will be built in small quantities. ''Typical hauls are short'' with a minimal amount of time traveling on highways compared with most freight trailers,'' which ''diminishes the exposure for these vehicles.'' Reliance knows of no rear end collisions and consequent injuries with its type of trailer.

**How You May Comment on Reliance's Application**

If you would like to comment on Reliance's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: August 9, 2001.

**Authority:** 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on July 5, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01–17229 Filed 7–9–01; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on July 31, 2001, of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: July 5, 2001.

**Donald V. Hammond,**

*Acting Under Secretary.*

[FR Doc. 01–17218 Filed 7–9–01; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0546]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Cemetery Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2001.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0546'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Gravesite Reservation Survey (2-year), VA Form Letter 40–40.

*OMB Control Number:* 2900–0546.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* In the past, the survey was conducted annually. VA Form Letter 40–40 will be sent biennially (once every two years on a 24-month rotating basis) to individuals holding gravesite set-asides in national cemeteries to ascertain their wish to retain their set-aside, or wish to relinquish it. The collection of information is necessary to assure that gravesite set-asides are not wasted. Some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside for them. Without this information, unused set-asides would exist which could be used by other veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at pages 18852–18853.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 3,000 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Recordkeeping only.

*Estimated Number of Respondents:* 18,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to ''OMB Control No. 2900–0546'' in any correspondence.

By direction of the Secretary.

Dated: June 27, 2001.

**Barbara H. Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 01–17138 Filed 7–9–01; 8:45 am]

BILLING CODE 8320–01–U

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0587]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Acquisition and Materiel Management, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2001.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 8l0 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0587'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual (previously 852.210–70).

*OMB Control Number:* 2900–0587.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* VAAR clause 852.211–70, Service Data Manual, is used when VA purchases technical medical equipment and devices or mechanical equipment. The clause requires the contractor to furnish both operator's manual and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth requirements and minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contractor price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operating and cleaning. The repair manual will be used by VA equipment repair staff to repair equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on April 11, 2001, at pages 18853–18854.

*Affected Public:* Business or other for profit, individuals or households, and not-for-profit institutions.

*Estimated Annual Burden:* 2,500 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 15,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0587'' in any correspondence.

By direction of the Secretary.

Dated: June 27, 2001.

**Barbara H. Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 01–17139 Filed 7–9–01; 8:45 am]

**BILLING CODE 8320–01–U**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0589]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Acquisition and Materiel Management, Department of Veterans Affairs

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Acquisition and Materiel Management, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 9, 2001.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0589'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Veterans Affairs Acquisition Regulation (VAAR) Provision 852.270–3, Shellfish.

*OMB Control Number:* 2900–0589.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* VAAR Provision 852.270–3, Shellfish, requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller. The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 27, 2001, at page 16704.

*Affected Public:* Business or other for profit, individuals or households, and not-for-profit institutions.

*Estimated Annual Burden:* 17 hours.

*Estimated Average Burden Per Respondent:* 1 minute.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0589'' in any correspondence.

Dated: June 28, 2001.

By direction of the Secretary.

**Barbara H. Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 01–17140 Filed 7–9–01; 8:45 am]

**BILLING CODE 8320–01–U**

# Corrections

Federal Register

Vol. 66, No. 132

Tuesday, July 10, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6986–1]**

### Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

*Correction*

In rule document 01–15142 beginning on page 32760, in the issue of Monday, June 18, 2001, make the following correction:

On page 32762, in Table 1, under the heading ''Description'', in the second line, ''it'' should read ''if''.

[FR Doc. C1–15142 Filed 7–9–01; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2001–9993]**

### Requested Adminstrative Waiver of the Coastwise Trade Laws

*Correction*

In notice document 01–16308, beginning on page 34516, in the issue of Thursday, June 28, 2001 make the following correction:

On page 34516, in the second column, under the heading **DATES:,** in the second line ''June 30, 2001'' should read ''July 30, 2001''.

[FR Doc. C1–16308 Filed 7–9–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 10, 2001

# Part II

# Department of the Interior

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Final Determinations of Critical Habitat for Wintering Piping Plovers; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AG13**

# Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for Wintering Piping Plovers

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), designate 137 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas as critical habitat for the wintering population of the piping plover (*Charadrius melodus*). This includes approximately 2,891.7 kilometers (km) (1,798.3 miles (mi)) of mapped shoreline and approximately 66,881 hectares (ha) (165,211 acres (ac)) of mapped area along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

The population of piping plovers that breeds in the Great Lakes States is listed as endangered, while all other piping plovers are threatened species under the Endangered Species Act of 1973, as amended (Act). All piping plovers are considered threatened species under the Act when on their wintering grounds. Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the piping plover wintering habitat are those habitat components that are essential for the primary biological needs of foraging, sheltering, and roosting, and only those areas containing these primary constituent elements within the designated boundaries are considered critical habitat. The primary constituent elements are found in coastal areas that support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

**DATES:** This final rule is effective August 9, 2001.

**ADDRESSES:** The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Ecological Services Field Office, TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. You may view the complete file for this rule, by appointment, during normal business hours at the above address. Copies of the final economic analysis and information regarding this critical habitat designation are available on the Internet at http://plover.fws.gov.

**FOR FURTHER INFORMATION CONTACT:** Allan Strand, Acting Field Supervisor, at the above address (telephone 361/994–9005; facsimile 361/994–8262; email winterplovercomments@fws.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

### *Description*

The piping plover (*Charadrius melodus*), named for its melodic mating call, is a small, pale-colored North American shorebird. It weighs 43–63 grams (1.5–2.25 ounces) and is 17–18 centimeters (cm) (about 8 inches) long (Haig 1992). Its light sand-colored plumage blends in well with beaches and sand flats, part of its primary habitat. During the breeding season, the legs are bright orange, and the short stout bill is orange with a black tip. There are two single dark bands, one around the neck and one across the forehead between the eyes. Plumage and leg color help distinguish this bird from other plovers. In winter, the bill turns black, the legs remain orange but pale, and the black plumage bands on the head and neck are lost. Chicks have speckled gray, buff, and brown down, a black beak, orange legs, and a white collar around the neck. Juveniles resemble wintering adults and obtain their adult plumage the spring after they fledge (Prater *et al.* 1977).

### *Range and Biology*

Piping plovers breed in three discrete areas of North America: The Northern Great Plains, the Great Lakes, and the Atlantic Coast. The Northern Great Plains population historically bred from Alberta to Ontario, Canada, south to Kansas and Colorado. While Great Lakes breeding sites once ranged throughout the Great Lakes region, recent nesting records are limited to Michigan and Wisconsin. Atlantic Coast breeding sites are found from Newfoundland, Canada, south to North Carolina. Generally, piping plovers favor open sand, gravel, or cobble beaches for breeding. Breeding sites are generally found on islands, lake shores, coastal shorelines, and river margins.

Piping plovers winter in coastal areas of the United States from North Carolina to Texas. They also winter along the coast of eastern Mexico and on Caribbean islands from Barbados to Cuba and the Bahamas (Haig 1992). The international piping plover winter censuses of 1991 and 1996 located only 63 percent and 42 percent of the estimated number of breeding birds, respectively (Haig and Plissner 1993, Plissner and Haig 1997). Of the birds located on the United States wintering grounds during these two censuses, 89 percent were found on the Gulf Coast and 8 percent were found on the Atlantic Coast. Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree. Therefore, the source breeding population of a given wintering individual cannot be determined in the field unless it has been banded or otherwise marked.

Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. Migration is poorly understood, but most piping plovers probably migrate non-stop from interior breeding areas to wintering grounds (Haig 1992). However, concentrations of spring and fall migrants have been observed along the Atlantic Coast (USFWS 1996).

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1990b; Drake 1999a, 1999b). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1995), that they peck from on top or just beneath the surface. Foraging usually takes place on moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers can be found roosting, preening, bathing, in aggressive encounters (with other piping plovers and other species), and moving among available habitat locations (Zonick and Ryan 1996).

The habitats used by wintering birds include beaches, mud flats, sand flats, algal flats, and washover passes (areas where breaks in the sand dunes result in an inlet). Individual plovers tend to return to the same wintering sites year after year (Nicholls and Baldassarre 1990b, Drake 1999a). Wintering plovers are dependent on a mosaic of habitat

patches, and move among these patches depending on local weather and tidal conditions. One study by Drake (1999a) monitored the movement of 48 piping plovers in south Texas, for one season. She found, using 95% of the documented locations, that these birds had a mean home range of 1,262 ha (3,117 ac). Drake (1999) also noted that the mean linear distance moved per individual bird was 3,294 m (2 mi) for the fall through the spring of 1997–1998.

In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites. Northward migration peaks in late March, and by late May most birds have left the wintering grounds (Eubanks 1994).

*Population Status*

In recent decades, piping plover populations have declined drastically, especially in the Great Lakes area. In the early 1900s, uncontrolled hunting drove them nearly to extinction. Protective legislation helped them to recover by 1925, and populations reached a high in the 1930s (USFWS 1994). These numbers soon plummeted, and numbers continued to decline in the 1940s and 1950s as shoreline development expanded, resulting in the loss of plover breeding habitat. River flow alteration, channelization, and reservoir construction have also led to loss of breeding habitat.

In 1973, the piping plover was placed on the National Audubon Society's Blue List of threatened species. By that time, the Great Lakes population of piping plovers had been extirpated from shoreline beaches in Illinois, Indiana, Ohio, New York, Pennsylvania, Minnesota, and Ontario, Canada, and only a few birds continued to nest in Wisconsin (Russell 1983) and Michigan. The Canadian Committee on the Status of Endangered Wildlife in Canada designated the piping plover as ''Threatened'' in 1978 and elevated the species'' status to ''Endangered'' in 1985 (Canadian Wildlife Service 1989). At the time the species was listed under the Act in 1985, the Great Lakes population numbered only 17 known breeding pairs, and the breeding areas had been reduced from sites in eight States to only northern Michigan (Stucker and Cuthbert, unpublished data). In recent years, the Great Lakes population has gradually increased and expanded to the south and west as a result of intensive conservation measures. Recent increases in the Atlantic Coast breeding population have also been attributed to intensive management of nesting beaches. While overall the Atlantic Coast population is increasing, increases are regionally variable with some areas experiencing declining populations. Breeding census results show a marked decline of the population breeding in the Northern Great Plains of the United States (Plissner and Haig 1997).

Overall winter habitat loss is difficult to document; however, a variety of human-caused disturbance factors have been noted that may affect plover survival or utilization of wintering habitat (Nicholls and Baldassarre 1990a, Haig and Plissner 1993). These factors include recreational activities (motorized and pedestrian), inlet and shoreline stabilization, dredging of inlets that can affect spit (a small point of land, especially sand, running into water) formation, beach maintenance and renourishment (renourishing the beach with sand that has been lost to erosion), and pollution (e.g., oil spills) (USFWS 1996). The peer-reviewed, revised recovery plan for the Atlantic piping plover population recognizes the need to protect wintering habitat from direct and indirect impacts of shoreline stabilization, navigation projects, and development. Adult survivorship over the wintering period plays a significant role in maintaining current populations and in accomplishing increases in population levels required to achieve recovery.

**Previous Federal Actions**

On December 30, 1982, we published a Notice of Review in the **Federal Register** (47 FR 58454) that identified vertebrate animal taxa being considered for addition to the List of Threatened and Endangered Wildlife. The notice included the piping plover as a Category 2 Candidate species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a listing at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November 1984, we published a proposal to list the piping plover as endangered (Great Lakes breeding population) and threatened (all other piping plovers, including all birds on non-breeding areas) in the **Federal Register** (49 FR 44712).

The proposed listing was based on the decline of the species and the magnitude of existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants. On December 11, 1985, we published the final rule (50 FR 50720), listing the piping plover as endangered in the Great Lakes watershed (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario, Canada) and as threatened elsewhere within its range. The listing includes piping plovers breeding in Canada, with their status under the Act determined by whether they breed in the watershed of the Great Lakes (endangered) or elsewhere (threatened). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. We did not designate critical habitat for the species at that time.

In 1986, two U.S. recovery teams were appointed to develop recovery plans for the piping plovers breeding in the Atlantic Coast States and those breeding in the Great Lakes/Northern Great Plains region. We published those plans in 1988 (USFWS 1988a, 1988b). In 1994, we began to revise the plan for the Great Lakes/Northern Great Plains plovers by developing and distributing for public comment a draft that included updated information on the species. More recently, we decided that the recovery of these two regional populations would benefit from separate recovery plans that would direct separate recovery programs. Separate recovery plans for the Great Lakes and Northern Great Plains piping plovers are presently under development. The recovery plan for the Atlantic Coast-breeding plovers was revised in 1996 (USFWS 1996). We exchange observers and coordinate recovery activities with two Canadian recovery teams, with a strong focus on protection of the wintering habitat shared by piping plovers breeding in both countries.

In December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the Great Lakes population of the piping plover. Defenders filed a second, similar lawsuit for the Northern Great Plains piping plover population in 1997. These lawsuits were subsequently combined (*Defenders of Wildlife et al.* v. *Bruce Babbitt et al.,* Consolidated Cases Civil No. 1:96–CV–02695AER and Civil No. 1:97–CV00777AER). In February 2000, the court issued an order directing us to publish a proposed critical habitat designation for the Great Lakes population of the piping plover by June 30, 2000. Publication of a proposal for nesting areas of the Northern Great Plains population of piping plover by May 31, 2001, was also ordered. Since we cannot distinguish the Great Lakes and Great Plains birds on their wintering grounds, we felt it was appropriate to propose critical habitat for all U.S.-wintering piping plovers collectively. Further, we determined

that the appropriate course of action would be to propose critical habitat for all U.S.-wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population. A subsequent order, after requesting the court to reconsider its original order relating to final critical habitat designation, directed us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the Northern Great Plains population by March 15, 2002. On May 7, 2001, we published a notice in the **Federal Register** (66 FR 22983) announcing a 60-day delay, until June 29, 2001, in making our final determination of critical habitat for the wintering piping plover. The notice explained that we needed additional time to complete our analyses required under section 4(b)(2) of the Act.

We published our proposed designation of critical habitat for wintering piping plovers in the **Federal Register** on July 6, 2000 (65 FR 41782), and requested comments on the proposal by September 5, 2000. We held 10 public hearings and 10 public meetings on the proposed rule in Wilmington, North Carolina, on July 17, 2000; Savannah, Georgia, on July 19, 2000; Tallahassee, Florida, on July 21, 2000; Fort Myers, Florida, on July 24, 2000; Mobile, Alabama, on July 26, 2000; Baton Rouge, Louisiana, on July 27, 2000; Galveston, Texas, on July 31, 2000; Corpus Christi, Texas, on August 2, 2000; McAllen, Texas, on August 4, 2000; and South Padre Island, Texas, on November 14, 2000. We held additional public meetings in Morehead City, North Carolina, on August 16, 2000; in Manteo, North Carolina, on August 17, 2000; Marco Island, Florida, on October 10, 2000; and Rio Hondo, Texas, on August 23, 2000.

On August 30, 2000 (65 FR 52691), we published a notice in the **Federal Register** extending the public comment period to October 30, 2000, and announced the availability of the draft economic analysis. On October 27, 2000 (65 FR 64414), we again published a notice in the **Federal Register** extending the public comment period until (November 24), 2000, and provided notice of a tenth public hearing on the proposed rule. On February 22, 2001 (66 FR 11134), we reopened the comment period until March 1, 2001, to allow for additional comments to be incorporated into the record and allow for us to base our final decision on the best scientific and commercial information available.

**Summary of Comments and Recommendations**

As mentioned above, we requested all interested parties to submit comments or information that might bear on the designation of critical habitat for wintering piping plovers (65 FR 41782). We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties and invited them to comment. In addition, we published newspaper notices inviting public comment and announcing the public hearings in the following newspapers—Wilmington *Morning Star* in North Carolina; Charleston *Post and Courier* in South Carolina; Savannah *Morning News* in Georgia; Florida *Times Union*, Tallahassee *Democrat*, Fort Myers *News Press*, Key West *Free Press, St. Petersburg Times*, Panama City *News Herald*, and Pensacola *News Journal* in Florida; *Mobile Register*, Alabama; Biloxi *The Sun Herald*, Mississippi; New Orleans *Times Picayune* and Baton Rouge *The Advocate* in Louisiana; and the Houston *Chronicle*, Galveston *Daily News, Port Arthur News, Texas City Sun, Brownsville Herald*, Corpus Christi *Caller-Times, The Monitor* (distributed from Rio Grande City to South Padre Island), and the *Facts* (Brazosport) in Texas.

We held 10 public hearings on the proposed rule (see ''Previous Federal Action'' section above for dates and locations). Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We received a total of 6,013 comments (counting both written and oral comments) from individuals, agencies, and organizations, plus one petition containing 537 signatures. Of these comments, 5,800 commenters and the petition were specific to the designation proposed for Marco Island, Florida. Of the Marco Island comments, 44 commenters and 537 signatories to the petition favored the designation as proposed, 5,736 opposed designation on Marco Island, and 20 supported a revised designation or only provided information relative to the proposal. There were 213 commenters who were not specific to Marco Island. Of those, 85 favored the designation, 94 opposed it, and 34 did not state a position but provided information.

We reviewed all comments received for substantive issues and new data regarding critical habitat and wintering piping plovers. Some comments resulted in changes between the proposed and final designations, and those comments are discussed in the ''Summary of Changes From the Proposed Rule'' section of this document. We address the rest of the substantive comments in the following summary. For readers' convenience we have assigned comments to major issue categories. Repeated or very similar comments are combined into single comments and responses.

*Issue A: General Biological Comments*

A number of commenters touched on biological issues surrounding the piping plover.

*Comment 1:* The Service's Southeast Region Home Page cites habitat loss due to navigation, dredging, and shoreline stabilization and replenishment projects as major contributors to the species' decline. That statement is unsupported in the literature. Piping plovers are extremely mobile and thrive in a changing environment. The cited activities do not adversely impact wintering piping plovers.

*Our Response:* We disagree with the statement made by the commenter. The commenter is referring to our website at http://plover.fws.gov, that describes the life history and threats of the piping plover throughout its range. Dredging projects and shoreline manipulations in wintering areas can have an effect on the bird's food base, and result in permanent habitat loss and direct disturbance of individual birds. We already consult with Federal agencies that fund or carry out projects involving dredging, beach nourishment, and other shoreline stabilization activities, most notably with the Army Corps of Engineers, because of the effect of such projects on piping plover habitat. The purpose of many shoreline stabilization projects is the prevention of overwash processes (the method by which sediment (sand) is transported across a barrier island) that form inlets and perpetuate sand and mud flats. As sand and mud flats are identified as critical habitat for the plover, there is a connection between these activities and the formation and maintenance of habitat for the plover. Zonick's (2000) dissertation similarly highlights the importance of preserving ''washover pass'' habitat in Texas. Zonick (2000) found that washover passes are used by piping plovers both as feeding and roosting areas. Washover areas are created by the flow of water through the primary dune line with deposition of sand on the barrier flats, marsh, or into the lagoon, depending on the storm magnitude and the width of the beach. Additionally, the peer-reviewed revised recovery plan for the Atlantic piping plover population recognizes the need to protect wintering habitat from direct and indirect impacts of shoreline stabilization, navigation projects, and

development. In general, through our consultations with other Federal agencies, we have found that these activities can be timed and designed to minimize effects on piping plovers.

*Comment 2:* Army Corps of Engineers projects are designed to avoid and minimize impacts to listed species and, where feasible, features to promote species conservation are included in projects. Corps of Engineers dredged material disposal benefits plovers by providing foraging habitat. These benefits should have been discussed in the proposal.

*Our Response:* We stated in the proposed rule that ''Several of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types used less commonly by piping plovers (e.g., dredge spoil sites).'' Nicholls (1989) documented that piping plovers were observed on spoil areas 6 percent of the time and on sandflats 27 percent of the time. Her survey coverage included 2,705 km (1,680 mi) of coastline along portions of nine states from Virginia to Texas. Spoil sites do not seem to be the preferred habitat for the piping plover, although when more suitable habitat is lacking, spoil sites do create some habitat for these birds. We appreciate the Corps' efforts to promote species conservation through design feature modification of projects.

*Comment 3:* Project delays related to the critical habitat designation for wintering piping plovers, when added to already-narrow windows imposed by protection of other threatened and endangered species such as sea turtles, seabeach amaranth, and beach mice, may affect the Corps of Engineers' ability to conduct mission-related activities.

*Our Response:* Since the species was listed in 1986, the Corps of Engineers has been subject to the consultation requirements of the Act, including analyzing the potential effects on the species habitat. Timing of projects has been considered in consultations conducted under the jeopardy standard since listing, and, in general, we have found that projects can be timed and designed to minimize effects on piping plovers.

*Comment 4:* The causes for piping plover declines are unclear, but it is likely any declines are a result of threats to breeding areas rather than wintering habitat. Threats to wintering habitat are not discussed, nor are any declines in habitat acreage documented. Accordingly, how can the designation possibly benefit wintering piping plovers?

*Our Response:* Historically, plovers were decimated by unregulated hunting. The major present-day threats are largely on breeding areas, but wintering habitats are also essential to the conservation of this species. Adult survivorship over the wintering period plays a significant role in maintaining current populations and in accomplishing increases in population levels required to achieve recovery. In the face of current and foreseeable continued coastal development and increased recreational use, less suitable habitat may be available each year for piping plover recovery. Therefore, we have designated the areas that have consistent plover use and best meet the biological needs of the species. The amount of wintering habitat included in this designation appears sufficient to support future recovered populations, and the existence of this habitat is essential to the conservation of this species. In addition, the designation benefits species conservation by alerting public and private entities to the importance of wintering habitat.

*Comment 5:* Comments were received that questioned the relative use of a specific area compared to the overall population abundance. Of the 50 percent of piping plovers accounted for in the 1996 census, only 8 percent were documented on the Atlantic Coast. How can the Atlantic Coast be considered essential to the species' conservation?

*Our Response:* We have determined that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species. There are an estimated 32 pairs remaining of the endangered Great Lakes breeding population of piping plovers. Current data shows that Atlantic Coast sites are even more important to the Great Lakes piping plovers than those on the Gulf Coast. Of the 39 individuals from the Great Lakes population sighted on the wintering ground between 1993 and spring of 2000, 26 (67%) were in South Carolina, Georgia, or the Atlantic Coast of Florida (Wemmer 2000). Thus, we consider the Atlantic Coast to be essential to the recovery of the piping plover.

*Comment 6:* In basing the critical habitat designation on observational data, the proposal is biased toward areas most frequently visited by bird watchers and other beach users. Meanwhile, many areas with restricted access but likely containing excellent habitat were not proposed. Given that situation and the fact that 50 percent of wintering plovers are unaccounted for, how can the Service say the proposed areas are essential for this species?

*Our Response:* We believe the effect of observational bias is minimal because ornithologists and birders are persistent about seeking out birds. Data we received from state biologists documented surveys of the entire coastlines in many states. Some geographic data provided from the 1991 and 1996 International Censuses show that a large area of the coastline is not used by the birds. Only sites where plovers have been observed were included in the critical habitat designation.

*Comment 7:* One-hundred-forty-seven areas are proposed as critical habitat. How could failure to designate any one of these areas lead to extinction of the piping plover?

*Our Response:* The criterion for critical habitat designations is not whether the sites are essential to prevent extinction; it is whether the sites are essential to the conservation of the species and may require special management consideration or protection. Conservation means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary (i.e., recovered). Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

There are an estimated 32 pairs remaining of the endangered Great Lakes breeding population of piping plovers and data show that this population uses both the Atlantic and Gulf Coasts (USFWS 1999; Wemmer 2000). Therefore, identification of essential habitat should not rule out any sites where piping plovers consistently over-winter, since these sites may be used by the highly endangered Great Lakes population. We have determined that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species.

*Comment 8:* The Service should define ''wintering.'' Does the designation include migrating piping plovers?

*Our Response:* We define ''wintering'' as areas used by birds during the non-breeding season. Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July.

This designation did not distinguish migrating birds; however, some areas designated as wintering habitat are also used by migrating and breeding birds in North Carolina and South Carolina. Migration is poorly understood, but it appears that inland birds may fly non-stop to Gulf coast sites (Haig 1992). It is believed that the Atlantic population follows a narrow strip along the Atlantic coast during spring and fall migration with some crossover to Gulf Coast wintering areas (USFWS 1996).

*Comment 9:* The international censuses provide only a snapshot of mid-winter distribution and abundance, but tell little about seasonal variation in habitat use and plover movements. While many plovers appear relatively sedentary, observations at certain sites in North Carolina (McConnaughy *et al.* 1990) and Texas (Eubanks 1994) have reported large numbers during or prior to migration. These staging and migratory stopover areas may be particularly critical for migratory shorebirds (Myers 1983; Skagen and Knopf 1993) and should be included as critical habitat.

*Our Response:* As stated above, migration is poorly understood, but it appears that inland birds may fly non-stop to Gulf Coast sites (Haig 1992). Based on McConnaughy's study, some areas are used as staging or stopover areas, and we have included those areas in the designation when we have survey data to support consistent piping plover use. It is believed that the Atlantic population follows a narrow strip along the Atlantic coast during spring and fall migration from the Gulf coast (USFWS 1996). The sites that McConnaughey *et al.* (1990) documented in North Carolina as having relatively high numbers of plovers observed during migration are within the designated critical habitat units. The sites identified by Eubanks (1994) in Texas are not consistently used and were not included in the designation.

*Comment 10:* The Louisiana coast is remote and not subject to extensive human presence. Further, there is no documentation that Louisiana supports a significant portion of the wintering plover population. Designation of over 1 million acres can only be considered excessive.

*Our Response:* We agree that human development is not as great a threat along Louisiana's coasts as it is in other areas within the plover's wintering range. We disagree however, that there is no documentation that Louisiana supports a significant portion of the wintering plover population. The International Piping Plover Surveys have consistently identified Louisiana as having the second highest numbers of wintering piping plovers after Texas. Since publication of the proposed rule we were able to conduct surveys in the remote deltas of Louisiana, where access is difficult. Based on the results of these surveys, we refined our critical habitat designation to the maximum extent possible to include only those areas having documented use by piping plovers. This has resulted in less acreage being designated in Louisiana.

*Comment 11:* No data were presented to show that piping plovers exhibit site fidelity and cannot simply move to other areas if an area is destroyed.

*Our Response:* Johnson and Baldassarre (1988) found relatively high site fidelity for plovers wintering in the Mobile Bay area in Alabama. The revised recovery plan for the piping plover Atlantic coast population noted several reports of banded birds returning year after year to the same wintering sites on both the Atlantic and Gulf coasts (S. Bogert, pers. comm. 1988; T. Below, National Audubon Society, pers. comm. 1988; T. Eubanks, pers. comm. 1989; Zonick and Ryan 1993; J. Fussell, pers. comm. 1995). Wemmer (2000) presents information on intra- and inter-year site fidelity for Great Lakes plovers, which documents one bird that has been observed during 9 of 11 winters since 1988 at Marco Island, Florida.

*Comment 12:* Comments have been received expressing concerns with the size of designated areas. Most think that the designated areas are too large; a few think that the units are not large enough, thereby not allowing for changes that occur during known dynamic coastal processes.

*Our Response:* As described in the ''Methods'' section of this rule, in the proposed rule, a single buffer distance was set for all units in all states (500 m (1,640 ft)). This buffering methodology resulted in areas of water (deeper than mean lower low water (MLLW)) and areas of dense vegetation being included in the designation, which are not utilized by piping plovers. MLLW is defined as the average of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. In the final rule, we abandoned this methodology for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover. This change in methodology results in smaller units of designated critical habitat than that of the proposed rule. We also removed developed areas from mapped units where possible. (See our response to comments under ''Issue G: Mapping and Primary Constituent Elements.'').

In order to capture the dynamic nature of the coastal habitat and the intertidal areas used by the piping plover, we have textually described each unit as including the area extending out from the landward boundaries to the MLLW. Designating specific locations for critical habitat for the piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Thus, to best insure that areas considered essential to the piping plover will remain in the designation over time, our textual unit descriptions will constitute the definitive determination as to whether an area is within the critical habitat boundary. Our textual unit descriptions describe the geography of the area using reference points, include the areas from the landward boundaries to the MLLW, which encompasses intertidal areas that are essential foraging areas for piping plovers, and may describe other areas within the unit that are utilized by the piping plover and contain the primary constituent elements (e.g., upland areas used for roosting and wind tidal flats used for foraging).

*Comment 13:* Requests have been made to modify specific units in order to avoid areas where existing and future projects are planned or may occur.

*Our Response:* Critical habitat is designated on the basis of scientific data, but areas may be excluded on the basis of economic impact or any other relevant impact if the Secretary determines that the benefits of exclusion outweigh the benefits of specifying such areas as critical habitat. We may not exclude areas if such exclusion will result in the extinction of the species. While the final Economic Analysis identifies some impacts following this critical habitat designation, this consultation activity is largely attributable to the listing. This is based on the fact that all the designated critical habitat units have documented use by piping plovers and planned projects are currently subject to the regulatory provisions of section 7(a)(2) and section 9 of the Act due to the listing of the piping plover. See the ''Economic Analysis'' and the ''Exclusions Under 4(b)(2) of the Act'' sections of this rule.

*Comment 14:* Many commenters have asked why we do not designate areas that are not heavily used and inaccessible by man, therefore more ideal for piping plovers.

*Our Response:* We have designated areas with consistent documentation of piping plover use. This includes both areas heavily used and inaccessible by man. Many inaccessible areas do not have the primary constituent elements needed by plovers. Piping plovers choose areas that meet their physical and biological needs. Plovers exhibit a certain amount of site fidelity and were using many of these places before they became developed.

*Comment 15:* Commenter states that literature (Nicholls Baldassarre 1990b) seems to suggest that people and off-road vehicles preclude piping plovers from occupying wintering sites. There are beaches where piping plovers and beach users successfully cohabit. Studies cited in the recovery plan do not provide conclusive scientific data on whether or not human-caused impacts influence wintering piping plovers.

*Our Response:* Section 4 of the Act requires us to base our critical habitat designations on the best available scientific information. We note that there are several studies documenting the effects of human presence on the behavior of birds. Bird species vary in their response to human disturbances (pedestrian and vehicular) (Rodgers and Smith 1997). On the breeding grounds piping plovers elicit a significantly higher response to humans than to potential predators or non-predator species (Flemming *et al.* 1988). Rodgers and Smith (1997) documented that shorebirds are more easily flushed than other species of coastal birds. This may be because shorebirds on the wintering grounds are migrant species that rarely interact with humans. Elliott and Teas (1996) evaluated direct and indirect measures of the effects of human disturbance on piping plovers in Texas. Piping plovers (breeding and wintering) not encountered by humans spend more time foraging and less time in active nonforaging behavior (Elliott and Teas 1996; Burger 1991). Zonick and Ryan (1996) documented in Texas that beach vehicular density and piping plover abundance were negatively associated. On the breeding grounds, the effects of people have caused increased shifts in habitat use and decreased foraging time with more time devoted to alertness (Burger 1991; Staine and Burger 1994).

Increased human disturbance increases energy expenditure by birds and reduces their food intake (Belanger and Bedard 1990). Whether this is enough to affect their maintenance of fat reserves for long-range migration or to maintain adequate body temperatures under cooler winter conditions is unknown. If the level of disturbance is high enough, piping plovers may be forced to move to less optimal habitat (Elliott and Teas 1996). We do not know what effect foraging in marginal areas has on the piping plover's ability to survive the winter, and successfully reach the breeding grounds, or on reproductive success once on the breeding grounds. Studies on the breeding grounds that may apply on the wintering grounds show that piping plovers that have diverse habitats available for foraging can more easily cope with space competition and human disturbances than those with fewer habitats (Burger 1994).

Since the piping plover was listed in 1986, no beach closures have occurred due to the presence of piping plovers in their wintering range, although in the breeding range (e.g., Plymouth, Massachusetts), partial beach closures have occurred to protect chicks and adult piping plovers prior to the chicks fledging. Additionally, as stated in our response to B.18, we believe that the effect of normal human presence on piping plovers in their wintering habitat does not have serious consequences at the population level, and we do not expect this designation to affect recreational beach use.

*Comment 16:* Several commenters suggested that certain units (Yent Bayou, Marco Island, Unit TX–34 (San Luis Pass), and Rollover Bay and surrounding areas) are not essential to the conservation of the species and should not be designated as critical habitat.

*Our Response:* As required under the Act, we designated critical habitat essential for the conservation of the species based on the best scientific data available. We identified areas throughout a broad geographic coverage along the coast that contained the primary constituent elements and where occurrence data indicated a consistent use by piping plovers. The essential features found on the designated areas may require special management consideration or protection to ensure their contribution to the species' recovery. We believe that the designated areas are sufficient, and are needed to support piping plovers when recovered. We have addressed these areas specifically in ''Issue B: Site-specific Biological Comments.''

*Comment 17:* One commenter questioned the need to designate critical habitat in areas where the piping plover does not breed.

*Our Response:* This designation is for wintering habitat only. Piping plovers spend up to 10 months (83 percent of their lifetime) of each year on the wintering grounds. It is, therefore, important to insure their biological and physical needs are met on the wintering grounds. See also response to A.4.

*Comment 18:* Several commenters requested that vast areas of open sandy beaches, open water, and heavily vegetated dunes not be designated critical habitat and questioned why the designation includes areas up to 100 meters offshore.

*Our Response:* We disagree with the statement that ''vast'' areas of open sandy beaches have been designated as critical habitat. Areas with documented piping plover use have been designated. These areas are used by piping plovers because they contain the primary constituent elements and are essential to the conservation of the species. The primary constituent elements are found in geologically dynamic coastal areas that support intertidal beaches and flats and associated dune systems and flats above annual high tide (i.e., sandy beaches). Because areas used by piping plovers are ephemeral habitats, we must consider their changing nature over time. As explained in the ''Methods'' section, we abandoned the buffering methodology used in the proposed rule and the revised textual unit descriptions are now the definitive source of determining unit boundaries. This change has resulted in critical habitat units that are significantly scaled down in size from what was presented in the proposed rule. We also believe that we have captured the ephemeral nature of the habitat within these unit descriptions, by including areas to MLLW.

*Comment 19:* While there may be some sites within the piping plover's range that are very remote or logistically difficult to survey, only sites with documented occurrence of the species should be designated as critical habitat.

*Our Response:* Since the initial proposal, we obtained data on piping plover occurrences in critical habitat areas where the primary constituent elements were present but where we had no piping plover occurrence data because the areas were logistically difficult to survey. We have subsequently refined our designation to include only those areas that contain the primary constituent elements essential for the conservation of the species and for that we have known piping plover occurrences. See the ''Summary of Changes From the Proposed Rule'' section and our response to A.10.

*Issue B: Site-specific Biological Comments*

A number of commenters spoke to specific geographical areas of the designation.

*Comment 1:* Several commenters have recommended the inclusion of

additional areas in the critical habitat designation and have submitted data supporting consistent use of these areas by piping plovers. The areas that fall under these criteria in South Carolina include Port Royal Mud Flats, Beaufort County. Areas in Florida include Dog Island, Franklin County; Big Hickory Island, Lee County; north tip of Anna Maria Island, Manatee County; high marsh and salt pans inland of Bunche Beach, Lee County (adjacent to Unit FL–25); Cape Haze/Gasparilla Sound State Buffer Preserve, Charlotte County; and northeast end of Spanish Harbor Keys ''Horseshoe Pit,'' Monroe County. In Alabama, Gulf State Park was recommended for inclusion.

*Our Response:* We appreciate receiving the additional information. We will continue to monitor and collect new information and may revise the critical habitat designation in the future if sufficient new information supports a change. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition (see response to E.5). Should new information become available to support the need to designate critical habitat in other areas, we will consider amending this designation.

*Comment 2:* Other areas have been recommended for inclusion, based on presence of primary constituent elements; however, no significant data on plover occurrence was presented by commenters. Such areas recommended in North Carolina include expansion of units 6 and 7 to include all of the northern and southern Core Banks area. South Carolina areas are Fripp Island (habitat has been riprapped), Morse Creek, and St. Phillips Island, Beaufort. The areas in Florida include the South tip of Amelia Island, Nassau County; high marsh and salt pans of Charlotte Harbor State Buffer Preserve, Charlotte County; Passage Key National Wildlife Refuge, Manatee County; north end of Longboat Key, Sarasota County; Ft. Pickens, Santa Rosa County; Little Sabine, Santa Rosa County; Choctawhatchee Bay, Okaloosa County; Cape St. George, Franklin County; St. Marks National Wildlife Refuge, Piney Island, Wakulla County; Aucilla Wildlife Management Area, Steinhatchee Area, Taylor County; Cedar Key and area, Levy and Dixie Counties; Chassahowitzka National Wildlife Refuge, Homosassa Island, Citrus County; Siesta and Casey Keys, Sarasota County; Mouth of Peace River, Charlotte County; Pine Island and Pine Island National Wildlife Refuge, Mound Key, Carl Johnson Park, Lovers Key State Recreation Area, and Delnor Wiggins Pass, Lee County; Rookery Bay National Estuarine Sanctuary and Kice Island, Collier County; north end of Key Largo and other Keys in general, Monroe and Dade Counties; Hobe Sound National Wildlife Refuge and Blowing Rocks Preserve, near Jupiter Inlet, Martin County; Hutchinson Island, south of Ft. Pierce, St. Lucie County; Sebastian Inlet State Park, Pelican Island National Wildlife Refuge, Indian River County; Spessard Holland County Park, Brevard County; Canaveral National Seashore, Brevard and Volusia Counties; Anastasia State Recreation Area, St Augustine Beach to Ft. Matanzas Inlet, St. Johns County; Midnight Pass, Sarasota County; Sand Key, Pinellas County; St. Andrews State Recreation Area, Bay County; and Port Charlotte Beach State Recreation Area, Charlotte County. One area, Sand Island, was requested for inclusion in Mississippi. In Alabama, the area known as Alabama (also known as Florida) Point and Bon Secour National Wildlife Refuge were suggested for inclusion.

*Our Response:* No data were provided to support the designation of the above areas as critical habitat. Many of these sites have been monitored as part of piping plover and other shorebird surveys. No consistent use by piping plovers was recorded.

*Comment 3:* One commenter noted that observations of piping plovers occurred in the following areas during the international censuses, but that the areas were not included in the designated units in Texas—Rachel Site, east of Whites Point, Nueces Bay, Nueces County, 1991; Tule Lake, Nueces County, 1996; Redfish Bay area, Nueces County, 1991, 1996; Aransas Pass/Port Aransas causeway, Nueces County, 1991, 1996; Aransas National Wildlife Refuge, Calhoun and Aransas Counties, 1991; Aransas Bay/St Charles Bay reefs, Aransas County, 1991; Copano Bay bridge, Aransas County, 1991; Texas Point to McFaddin National Wildlife Refuge, Jefferson County, 1996 and Christmas Bird Counts.

*Our Response:* We appreciate receiving the additional information. For the following reasons we did not include these areas in the designation. The Rachel Site, east of Whites Pt. in Nueces County was not surveyed in 1996, nor is there indication of any surveys taken that show piping plovers have been seen at this site. The area has the potential habitat for piping plovers, but there has been no data reported to support designation of critical habitat. Six piping plovers were found in St. Charles Bay in 1991, but the site was not visited in 1996, and we did not include the area in the designation based upon a lack of documentation of consistent use. Although piping plovers were present on the margins of spoil islands at the Aransas National Wildlife Refuge in Calhoun and Aransas Counties in 1991, none were found at either site during the 1996 census, therefore we did not include this area in the designation because we lacked documentation of consistent use. Only one bird was found in both the 1991 and 1996 censuses on the Port Aransas causeway. This area was not included due to these low numbers, plus the fact that much of the area is made up of emergent marsh or mangroves and the primary constituent elements are not present for the piping plover. There are no data to support the presence of piping plover at the Copano Bay bridge site, and there is not much habitat available for the bird except in extreme low tide events. The Texas Pt. to McFaddin National Wildlife Refuge in Jefferson County is a very highly erosive narrow stretch of beach, and it is likely that very few birds would be present. The area of Tule Lake in Nueces County was not censussed in 1991, but 8 birds were found in 1996. This site is highly developed all around, and we determined that the characteristics of this area do not provide for the long-term essential needs of the piping plover. Redfish Bay in Nueces County supported 83 birds in 1991 and 20 birds were seen in 1996. Thus, this site could have been proposed for critical habitat designation. However, in order to include areas in this final rule, we would have to include them in our proposed designation and allow the public an opportunity to comment on their inclusion. As we stated in our response to Comment B.1 above, we may revise the critical habitat designation in the future if sufficient new information supports a change. Furthermore, areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition.

*Comment 4:* One commenter requested to see the data upon which Yent Bayou (unit FL–10) was chosen as critical habitat for piping plover because their data do not support such a designation. Yent Bayou is a good site

for many shorebirds, but not for piping plover.

*Our Response:* We do not agree with the commenter. The 1996 International Census documented 11 birds; Sprandel *et al.* (1997) documented 12 during the winter of 1993–94; Climo (1998) visited Yent Bayou 21 times between 1993 and 1996 and saw an average of 5.1 piping plovers per visit.

*Comment 5:* At a public workshop, the Service failed to present scientific data supporting the inclusion of any portion of Marco Island in a critical habitat designation. There is no peer-reviewed published scientific literature to indicate that Florida or Marco Island beaches are essential to plover recovery.

*Our Response:* Although we did not present data at the workshop, designation of unit FL–27 at Marco Island was based on ample documentation that shoals at the north end of the island are regularly used by piping plovers. Individuals with expertise in plover biology wrote the piping plover recovery plans. The revised Atlantic Coast and Great Lakes populations recovery plans were peer-reviewed and they specifically mention Marco Island as essential for conservation of the plover. We have also reviewed available information from the 1991 and 1996 International Censuses (including field reports and notes) and the often-substantial data from local birders and ornithologists. Other publications used to evaluate Florida habitat included a ''Winter Shorebird Survey'' published by the Florida Game and Fresh Water Fish Commission (Sprandel *et al.* 1997), a thesis titled ''A landscape-level analysis of piping plover (Charadrius melodus) winter habitat'' by Lisa Climo (1998), and a thesis titled ''Distribution and other ecological aspects of piping plovers (*Charadrius melodus*) wintering along the Atlantic and Gulf Coasts' by Janice Nicholls (1989). While it would always be desirable to have more data, the critical habitat designations are based on the best scientific data available.

*Comment 6:* Marco Island is unlike other beaches proposed to be designated as critical habitat in that it is completely developed.

*Our Response:* With the reduction of the FL–27 (Marco Island) unit's size from the proposed rule, much of the highly developed areas are no longer included in the designation. We believe the new boundaries fully cover the areas regularly used by piping plovers and allow for the movement of sand bars and tidal flats. In general, if the primary constituent elements are present and we make a determination that the area is essential for the conservation of the species, the degree of development is irrelevant to critical habitat designations, except to the extent that there might be economic or other impacts that could outweigh the benefits of designating critical habitat. The final Economic Analysis did not identify economic impacts at Marco Island that suggested that this area should be excluded.

*Comment 7:* Marco Island is the northernmost of the Ten Thousand Islands. Virtually all of the other islands cannot be developed, so they would make ideal plover habitat without interfering with human use of beaches on Marco Island. Why was Marco Island (unit FL–27) proposed for designation as critical habitat, while other populated areas, such as Naples, Florida, were not nor were isolated beaches, such as at Keewaydin Island or the 50 miles of the Gulf coast south of Marco Island?

*Our Response:* The entire coastline of Lee and Collier Counties, including Marco Island and the Ten Thousand Islands, has been surveyed for shorebirds for many years. Naples lacks an inlet like Big Marco Pass, and the Ten Thousand Islands generally lack beaches or mud flats suitable for these birds. We have been provided reports of piping plovers using several sites near Marco Island, but do not have evidence of regular, repeated use that would indicate that they are essential to the conservation of the species. There is ample evidence that the critical habitat units designated in this rule are regularly used by piping plovers, and that other areas, including the coast south of Marco Island, are not.

*Comment 8:* Designating Marco Island beachfront as critical habitat will encourage the Service to create conditions favorable to the plover. This will encourage the plover to become established in an artificially created area in contrast to its long-term interest of using areas of lesser human presence.

*Our Response:* While the proposed rule included Marco Island's developed beachfront, nearly all of that developed beachfront has been excluded from the final rule based on data received during the comment period showing that piping plovers do not use that part of the beach. With regard to artificially created habitat, designation will not automatically require creation of wintering habitat for piping plovers. However, if it is possible to improve wintering habitat constituent elements as part of a Federal project, we will likely recommend such an action.

*Comment 9:* Piping plover habitat at Marco Island consisting of the intertidal area is ephemeral, has undergone significant changes over the last decade as a result of coastal processes and will, consistent with prior history, eventually degrade to the point where foraging habitat for the plover may no longer exist.

*Our Response:* Almost all piping plover wintering habitats are dynamic, consisting of beaches and flats that erode, accrete, or change position over time. We have included in our textual unit descriptions, the definitive legal source on unit boundaries, areas to the MLLW to insure that this critical habitat designation adequately captures the shifting primary constituent elements of critical habitat.

*Comment 10:* The scientific literature has shown that, on the wintering grounds, piping plovers generally are restricted to sand flats and intertidal areas, not beaches such as on the majority of Marco Island. The proposed critical habitat unit FL–27 at Marco Island includes large areas, mostly beaches, that are not used by wintering piping plovers. The unit should be reduced in size to cover only the sand flats and intertidal areas at Sand Dollar Island and Tigertail Beach at the north end of the island.

*Our Response:* The comment refers to the heavily developed portion of Marco Island's beach south of Tigertail Beach, that we now know is used little, if at all, by piping plovers. This area was removed from the FL–27 critical habitat unit.

*Comment 11:* One commenter noted that the boundaries of unit FL–27 at Marco Island extend far beyond the boundaries of a Critical Wildlife Area designated by the Florida Fish and Wildlife Conservation Commission to conserve shorebirds, especially breeding ones. Two other commenters provided data on piping plover use of the Marco Island area and aerial photographs.

*Our Response:* We used the survey information and aerial photographs in adjusting the boundaries of the FL–27 critical habitat map unit. The southern boundary is now at the southern limit of sandbar formation since 1952. This southern boundary coincides with the southern boundary of the Critical Wildlife Area. The revised northern border of the critical habitat map unit includes isolated sand bars that are forming from just north of Sand Dollar Island to Coconut Island, but excludes Hideway Beach. The landward boundary does not extend inland from the vegetation line because this part of the island appears to be accreting. The seaward boundary extends only far enough to cover areas with sandbars. We believe the new boundaries fully cover the areas regularly used by piping

plovers and for the expected movement of sand bars and tidal flats.

*Comment 12:* A few commenters stated that the NC–10 unit needs to reflect the continuity of habitat at this site. The narrative does a good job of describing the site, which includes the sandy shoal islands within the inlet. But the designated areas on the map leave out the sandy shoal islands within the inlet. The map should be drawn as one contiguous unit.

*Our Response:* The sandy shoal islands referred to are northeast of the inlet. Trying to include all sandy shoals visible would have made NC–10 extremely large. We believe that NC–10 as described in the unit description is sufficient for conservation of the species in this area. Piping plovers still have protection under the Act whether they are within critical habitat or not.

*Comment 13:* What effect will the final designation have on vehicular access to areas that already allow beach driving within critical habitat units?

*Our Response:* Only actions involving a Federal agency are regulated by critical habitat. On non-Federal lands, beach driving is not regulated under the Act unless take of a listed animal is involved. Take of a listed animal could be authorized by an incidental take permit (ITP) from the Service. An ITP would be required regardless of critical habitat if take is involved. The issuance of the ITP is a Federal action and the decision to issue the ITP will include an evaluation of the effects to critical habitat. In most cases, measures to avoid and minimize harm would be incorporated in a habitat conservation plan that includes driving.

For lands under Federal control (National Park Service, Air Force, etc.) the managing agency is responsible for ensuring that their actions do not jeopardize the continued existence of, or destroy or adversely modify critical habitat, of listed species. Often times, the managing agency is able to control impacts to listed species from beach driving by redesigning routes and beach access points, and by temporarily closing off specific areas during critical seasons.

*Comment 14:* The critical habitat designations for North Carolina, South Carolina, Georgia, and Florida are conservative overall, as fairly discrete sites were selected. However, it seems a more comprehensive approach was taken for the selection of sites along a majority of the Gulf Coast from Alabama to Texas.

*Our Response:* Based on comments received, we have refined our critical habitat designation to the maximum extent possible to include only those areas that have documented consistent use by piping plovers and removed all areas that do not have consistent use documentation. This was done in order to ensure consistency in the designation of critical habitat units for all States. The configuration of habitat units differs across the wintering range as a result of basic differences in beach morphology throughout the South Atlantic and Gulf of Mexico.

*Comment 15:* It would be more cost-effective for the Service to designate all critical habitat for the Perdido Key and Choctawhatchee beach mice as critical habitat for the piping plover, since those species are already being monitored.

*Our Response:* Designating critical habitat for piping plovers based on the existence of critical habitat and monitoring for another listed species does not meet our requirements under 50 CFR 424.12(b). In this case, critical habitat must be based upon a consideration of the physical and biological features essential to the conservation of the piping plover.

*Comment 16:* One landowner in Louisiana voiced concern that his/her property was within proposed critical habitat boundaries even though it does not contain piping plover habitat.

*Our Response:* We recognize that not all parcels of land within the initially proposed critical habitat designation contain the habitat components essential to piping plover conservation. Since the initial proposal, we have refined our critical habitat maps to exclude, to the maximum extent possible, those specific areas that are not currently believed to contain the constituent elements of piping plover habitat. Areas that do not contain the primary constituent elements, but are included in the textual unit descriptions, are not, by definition, considered critical habitat.

*Comment 17:* Coastal land loss in Louisiana is more important than development in affecting critical habitat; the Service should shift its focus to fighting coastal land loss.

*Our Response:* We agree that coastal land loss is a major factor affecting piping plover wintering habitat. We represent the Department of the Interior on the Louisiana Coastal Wetlands Conservation and Restoration Task Force. That Task Force oversees planning, evaluation, funding, and implementation of projects funded under the Coastal Wetlands Planning, Protection and Restoration Act. The projects approved to date by the Task Force are expected to protect and restore nearly 95,000 net acres of coastal wetlands in Louisiana. That, however, does not relieve us of our obligation to designate critical habitat for the piping plover.

*Comment 18:* The designation of piping plover critical habitat on Grand Isle, Louisiana, could adversely impact the economy by curtailing recreational uses and limiting development of homes and businesses on the island.

*Our Response:* We have refined our critical habitat unit description since the initial proposal to include only those areas of Grand Isle that contain the primary constituent elements. On Grand Isle, that habitat is found seaward of the hurricane protection levees. We do not anticipate the development of homes or business in that area. We believe that the effect of normal human presence on piping plovers in their wintering habitat does not have serious consequences at the population level, and we do not expect this designation to affect recreational beach use.

*Comment 19:* Uninhabited barrier islands near Grand Isle, Louisiana, provide ideal habitat for piping plovers. The Service should work with local agencies to restore those islands rather than designate critical habitat on Grand Isle.

*Our Response:* We agree that some of those islands contain piping plover habitat; however, we are required to designate critical habitat based on the biological or physical constituent elements essential to the conservation of the species. The portions of those islands (including Grand Isle) that met those criteria and where survey data indicated consistent use by piping plovers were included in critical habitat.

*Comment 20:* Beach maintenance activities conducted by the Harrison County Development Commission (HCDC), Mississippi, are important in the overall protection of the seawall and U.S. Highway 90, and in maintaining sufficient habitat for piping plovers. HCDC supports the critical habitat designation provided it would not prohibit them from carrying out their mandate to maintain the beach in Harrison County, Mississippi.

*Our Response:* We agree that beach maintenance activities are important for the protection of seawalls, highways, and piping plovers. In general, we have found that beach nourishment activities can be timed and designed to minimize effects on piping plovers. We do not expect this designation to affect those beach maintenance activities.

*Comment 21:* At TX–12 (adjacent to Naval Air Station), the polygon provided by the Service for the critical habitat area appears to include a small part of the airfield.

*Our Response:* It was impossible to map all sites exactly within the time constraints directed by the court to publish the proposed designation. Only those areas within the textual unit descriptions that contain the essential elements necessary to support the piping plover are considered critical habitat.

*Comment 22:* We recommend that only land portions of South Bay be included in Texas Unit 1 and that the interior of the Boca Chica peninsula be excluded. Designation of the entire bay area as critical habitat seems excessive.

*Our Response:* Only those land portions in South Bay that have the piping plover primary constituent elements are considered critical habitat. If portions of the land masses that have been designated change, either due to natural events such as gradual accretion or erosion or storm events, or man-made causes such as the placement of dredge material, then these changing areas will be considered critical habitat when the primary constituent elements are present. The Boca Chica peninsula is an ever-changing land mass with accretion and erosion rates that cannot be fixed on a map. Therefore, only those areas on the peninsula that contain the primary constituent elements (i.e., support the piping plover for roosting and feeding) will be considered critical habitat.

*Comment 23:* We recommend including less of the interior area of South Padre Island (TX unit 3). Known use of these islands by piping plovers appears to be concentrated on the beach areas and exposed flats of both islands. The inclusion of interior areas appears to be inconsistent with the shore areas designated elsewhere along the coast.

*Our Response:* There are areas of the interior of South Padre Island where piping plovers have been sighted. We included interior areas that are not sand, mud, or algal flats, because piping plovers use flats for foraging and sparsely vegetated areas for roosting purposes, and these areas are also needed for roosting during storms and strong winds.

*Comment 24:* We recommend including less of the interior area of San Jose Island (TX Unit 18). Known use of these islands by piping plovers appears to be concentrated on the beach areas and exposed flats of both islands. The inclusion of interior areas appears to be inconsistent with the shore areas designated elsewhere along the coast.

*Our Response:* San Jose Island is composed of a variety of habitats that support the piping plover. Although there are portions that do not contain all of the primary constituent elements needed by the plover, aerial photographs indicate that piping plover habitat is present on San Jose Island. Most of the designated inland areas on San Jose Island (TX 15 and TX18) are relict hurricane washover passes, known to be preferred piping plover habitat. Thus, it is suitable bayside habitat that is somewhat lacking in this portion of the Texas Coast, and we have included it in the designation. See our response to B. 23 above for a discussion on the importance of interior habitat.

*Comment 25:* It appears that potential habitat in south and east sides of Galveston Bay has not been included, and should be.

*Our Response:* No specific sites were suggested. However, potential piping plover habitat exists on the south and east sides of Galveston Bay, as well as along the shorelines, flats, beaches, and disposal areas throughout Galveston and other Texas bays. Although piping plovers are occasionally seen at many of these sites, we have not designated areas unless they have consistent piping plover use. Five sites on the upper Texas Coast (TX–36, TX–35, TX–34, TX–31, and TX–27) have accounted for well over 90 percent of sightings during the previous three International Piping Plover Winter Censuses and these areas are included in the final designation.

*Comment 26:* The piping plovers that occur on the Sunset Lake Park area and other natural resources and public use values are already protected by an existing conservation easement. The Sunset Lake Park is already uniquely protected and preserved as a park under this easement and the park use designation by the City. The Act and Migratory Bird Treaty Act (MBTA) and the Sunset Lake Conservation Easement already provide adequate protection while enabling other compatible park recreational uses. Critical habitat designation will not help focus conservation activities for the species at Sunset Lake anymore than is already available for this public park operated under the existing easement.

*Our Response:* The conservation easement for Sunset Lake protects the body of the lake and the improvements to the natural wildlife habitat and sightseeing amendments. The area outside of the lake proper where piping plovers have recently been sighted is in the highway right-of-way adjacent to the lake. Highway reconstruction or improvements may cause direct or indirect impacts to this important habitat. The highway right-of-way is outside of the conservation easement. In addition, the easement does not provide adequate special management for the piping plover which can only be adequately provided by a legally operative plan that addresses the maintenance and improvement of the primary constituent elements important to the species, and manages for the long-term conservation of the species (i.e., implements conservation management strategies and provides for periodic monitoring). Therefore, the existing special management is insufficient to satisfy the requirements of the definition of critical habitat. Additionally, the publicity and heightened awareness of a rare bird's presence should help to support Sunset Lake's Conservation Plan by bringing additional bird-watchers and wildlife enthusiasts to the area, potentially creating an increase in economic value of the Sunset Lake.

It is also important to note that a critical habitat designation has no effect on situations where a Federal agency is not involved. For example, only private actions that involve Federal funding or a Federal permit, and where the Federal agency determines that the proposed action may affect a listed species or its critical habitat require consultation.

The protection of the piping plover under the MBTA does not in any way obviate our duties under the Act with respect to designating critical habitat.

*Comment 27:* Nothing in the data indicates that piping plovers were recorded from the vegetated portions of Unit TX–34. Data supporting the designation of vegetated areas within the critical habitat proposal does not exist. We request the Service to reconsider its proposed designation of Unit TX–34.

*Our Response:* TX–34 (San Luis Pass flats and contiguous beach) is considered one of five important piping plover aggregation sites on the upper Texas Coast. Past winter surveys have found upwards of 20 wintering birds there. Curt Zonick's (1993) study entitled ''Ecology and Conservation of Wintering Piping Plovers and Snowy Plovers,'' ranked San Luis Pass second of eight important Texas sites in density and fourth in population (average of 33.7 piping plovers). Sparsely vegetated areas as described in the ''Primary Constituent Elements'' section of this rule are used by the piping plover as roosting habitat in this unit.

*Comment 28:* Based on the habitat assessment performed on October 12, 2000, a review of 1995 and 1997 color aerial photographs, and U.S. Geological Survey (USGS) 7.5 minute quadrangle maps, most of Unit TX–34 does not contain the primary constituent elements essential for the conservation of wintering piping plovers. At least 17 percent (250 ac) of the unit is vegetated and does not provide foraging, roosting,

or resting habitat. Additionally, the majority of the beach within the proposed unit is very narrow and does not provide optimum habitat. The majority of the unit north of Highway 3005 consists of open water and should not be considered a primary constituent element of critical habitat.

*Our Response:* See our response to Comment B.27 above. Only those areas within the unit boundary, as described in the regulatory section of this rule, that provide the primary constituent elements for the piping plover are considered critical habitat. The critical habitat boundaries, as described in the regulatory section of this rule, stop landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

*Comment 29:* The biological information obtained for Unit TX–34 does not provide sufficient information supporting the designation of critical habitat for piping plover. Only 2 percent of the piping plover sightings during the 1991 and 1996 Texas mid-winter surveys were recorded from the San Luis Pass area.

*Our Response:* While piping plover counts during winter survey periods have indeed been low, it should be noted that winter censuses have occurred for the most part during extreme low tidal events when both beach and tidal pass counts along the entire upper Texas Coast were very low. Other informal counts at this site, including a 1992 Service field study on file at our Clear Lake Field Office, and Curt Zonick's definitive 1991–93 study (see our response to Comment B.27 above) show clearly that this site is consistently used.

*Comment 30:* Since the northern Gulf beaches of Unit TX–34 are very narrow, and since Zonick and Ryan (1996) demonstrated a positive correlation between beach width and piping plover densities, these areas should not be included in the critical habitat proposal.

*Our Response:* Only those beaches shown to be consistently used by piping plovers, according to previous wintering bird censuses, are included in the designation.

*Comment 31:* A very commendable job has been done in setting aside critical habitat areas along the long coast of Texas, but we note what appears to be the significant omission of any area near the mouth of the Sabine River at the Texas-Louisiana State Line. There should be some appropriate beach and dune area between the Bolivar Peninsula and the Sabine River. While the west bank of the Sabine is marshland, we understand that there is a good area for plovers at or near Sea Rim State Park where, for example, plovers were found in both 1997 and 1998.

*Our Response:* While potential habitat exists along this extensive beach area, and while piping plovers are occasionally seen along this stretch of beach, winter counts and other studies have failed to show consistent use here.

*Comment 32:* Several commenters requested that Rollover Bay and the surrounding area not be designated as critical habitat for the piping plover. They feel that Rollover Bay is inconsistent with the Service's criteria for critical habitat. Rollover Bay and Pass is a major recreational area for the citizens of Texas and other States to enjoy fishing, boating, crabbing, and wading. Thousands of visitors come to Rollover Bay and Pass annually. The Intracoastal Waterway also crosses Rollover Bay. From time to time, the Army Corps of Engineers dredges sand from the waterway to renourish the beaches of Bolivar Peninsula, in order to keep the waterway open. This is done normally during the winter months. At this time the Texas General Lands Office (TGLO) and Galveston County are planning to dredge sand from Rollover Bay to renourish the beaches at Gilchrist and Caplin. This project will be one of the first major nourishment projects in Texas history. This project is vital to the above two communities. The Bolivar Peninsula Beaches are used during the winter months for citizens to drive and walk along hunting sea shells. This is also vital to the economy of their communities. Eight miles west of Rollover Bay there are 37 miles of beaches, and between High Island and Sabine Pass, thousands of acres of wetlands, and wildlife refuges that can be designated as critical habitat for the piping plover. They would not be disturbed by the public there because there is no highway for the public to get there. Highway 87 has been closed off and on for the past 18 years and completely for the last 11. We urge the Service to designate that area as critical habitat for the wintering piping plovers.

*Our Response:* We acknowledge that the Rollover Bay and surrounding area are heavily used recreation areas and currently the site of important beach habitat restoration activities. The 1991 coast wide survey by Texas Parks and Wildlife (Performance Report, Project No. 9.1 Piping Plover and Snowy Plover Winter Habitat Status Survey (Mitchell, Zonick, and Withers)) identified the Rollover Bay flats as holding a moderate winter population of piping plovers, an average of 12 birds (11, 14, and 12) for 3 survey trips. The average of 1990 through 1996 Audubon Christmas Bird Count circles that included the Rollover Bay area was 13 birds. The 1991, 1996, and 2001 International Piping Plover Censuses found very low numbers of birds along the beaches between Bolivar Flats and High Island, but these surveys were done by driving and did not cover the Rollover Bay area. In summary, the Rollover Bay site (TX–37) holds a moderate but consistent wintering piping plover population. It is the only site shown to consistently hold wintering birds along the Texas coast east of Bolivar Flats (TX–36), and should be rated probably the sixth most important upper Texas coast wintering site. It should be noted that past section 7 consultations involving beach restoration in general, and this site in particular, have supported beach restoration activities as improving the quality of piping plover habitat in the long term by preserving and protecting eroding beach habitat. We have not previously found that normal beach recreation activities would significantly affect piping plovers or their habitat in these types of areas, and we do not anticipate that normal recreation would be restricted as a result of this designation.

*Comment 33:* Commenters note that some areas of the Gulf coast were not proposed despite the fact that they are not developed and that they have all of the primary constituent elements of critical habitat. For example, the area between Rollover Pass, Texas, and the Louisiana/Texas state line appears to meet the requirements for piping plover wintering habitat. Similarly, the Gulf of Mexico shoreline on the last few miles of the western end of the Ft. Morgan peninsula, the shoreline of the Bon Secour National Wildlife Refuge's Perdue Unit, and other stretches of shoreline along the peninsula appear to meet the requirements for critical habitat. They question why these and similar shoreline areas have not been included in the proposed critical habitat designation. They assert that where census data are inadequate to prove consistent use by the wintering piping plover, the habitat in question contains the physical and biological features essential to the species, and the Service should include the area in the designation of critical habitat.

*Our Response:* We, and most ornithologists, assume that areas consistently holding aggregations of this species are essential to the conservation of the piping plovers. Therefore, this designation was primarily based on areas of consistent use that contain one or more of the primary constituent elements. We did not consider it in the

best long-term conservation interests of the piping plover to designate critical habitat where it is only infrequently known to occur. However, should new information become available to support the need to designate critical habitat in other areas, we will consider amending this designation.

*Comment 34:* Commenters request that the Service take under consideration the designation of portions of Long Island, Texas, located in Cameron County, Texas, as critical habitat for the piping plover. They feel that their close proximity to the current designated area and the physical and biological features of their island warrant serious consideration.

*Our Response:* While potential habitat exists along this extensive area, and while piping plovers are occasionally seen, survey counts and other studies have failed to show consistent populations here and we have not been able to conclude that these areas are essential to the conservation of the species.

*Comment 35:* The burden should be placed on the Service to prove to the land owners that their property is piping plover habitat and then negotiate with them the protection of the area. Almost the entire island from Gulf to Bay, including upland areas in the middle of South Padre Island, was designated as critical habitat. That is not fair or correct.

*Our Response:* The South Padre Island community encourages protection of wildlife areas. We do not expect any additional burdens placed on landowners, or the need for negotiation for protection of the area. Only private activities with Federal sponsorship that may affect the piping plover or its critical habitat require the Federal agency to consult with us. Although the piping plover's feeding habitat is located on mud, sand, and algal flats, upland areas with sparse vegetation offer the birds roosting habitat which is also important for its survival.

*Comment 36:* The spoil island area in Ingleside Cove was not included for consideration. It meets the criteria listed in the **Federal Register** for wintering piping plovers: intertidal beaches and flats, sand and/or mud flats with no or very sparse emergent vegetation. Piping plovers have been sighted in the spoil island area in Ingleside Cove Wildlife Sanctuary for many years, and it is possible that they may winter on the uninhabited spoil islands that border the Cove. Is the area around Ingleside Cove considered designated critical habitat for wintering piping plovers? These plovers have been sighted in Ingleside Cove Wildlife Sanctuary for many years, and commenters have felt that they may winter on the uninhabited spoil islands that abut the Cove.

*Our Response:* We have not collected any data that indicate piping plovers use this area, and since the proposed designation was based on known scientific surveys for consistent usage by the birds, we did not propose that area as critical habitat. We will, however, attempt to survey this site in the future.

*Comment 37:* The Cayo del Grullo arm of Baffin Bay and the tidal flats along Highway 48 from Highway 100 to where it intersects at Highway 48 were left out of the critical habitat designation. Plovers can be seen feeding near Vattman Creek near Kaufer-Hubert Memorial Park.

*Our Response:* Based on surveys performed in these areas, piping plovers do not use the areas consistently, and since the proposed designation was based on consistent use from known scientific surveys, we did not propose these areas for designation.

*Comment 38:* One commenter asked if the flats in Alazan Bay are used by piping plovers.

*Our Response:* We have not located any data to indicate that piping plovers use this area, and because the proposed designation was based on known scientific surveys for consistent use by the birds, we did not designate this area as critical habitat.

*Comment 39:* One commenter asked about Powderhorn Lake in Calhoun County. The Service owns the Whitmire Unit of Aransas National Wildlife Refuge. Those flats are used by lots of shorebirds.

*Our Response:* We have not located any data to indicate that piping plovers use this area, and because the proposed designation was based on known scientific surveys for consistent use by the birds, we did not designate this area as critical habitat.

*Comment 40:* Many residents of Padre Island oppose making the area of Pt. Aransas down to Pt. Mansfield nesting grounds for this or any bird species.

*Our Response:* This rule is issued to designate critical habitat for the wintering population of piping plovers, not nesting piping plovers, as these birds nest in the northern parts of the United States and Canada.

*Issue C: National Environmental Policy Act (NEPA) Compliance*

Some commenters expressed concern about our alleged failure to comply with NEPA.

*Comment 1:* The Service did not adequately comply with the requirements of the National Environmental Policy Act (NEPA). The decision to forego preparation of an Environmental Assessment (EA) and an Environmental Impact Statement (EIS) is based on reasons published in the **Federal Register** in 1983. Much has happened since 1983, and an EIS is required to properly analyze the full range of impacts of the designation, including social and economic effects. Contrary to species listings, where only the status of the species can be considered, critical habitat designation requires consideration of the economic and other relevant impacts of the designation. The commenters believe such considerations should be subject to a formal public process such as NEPA.

*Our Response:* The commenter is correct that we determined, for the reasons stated in a **Federal Register** notice published on October 25, 1983 (48 FR 49244), that neither an EA nor an EIS is required for actions taken under section 4(a) of the Act, including designation of critical habitat. We believe that the reasons for this determination remain valid despite the passing of nearly 18 years since our original determination. In addition, the economic impacts of the designation were analyzed in the Final Economic Analysis and considered in making this final determination. Finally, the public involvement and notification requirements under both the Endangered Species Act and Administrative Procedure Act provide ample opportunity for public involvement in the process.

*Comment 2:* Council on Environmental Quality Regulations (50 CFR 1502.21) state that no material may be incorporated by reference unless it is reasonably available for inspection by potentially interested parties within the time allowed for comment. The **Federal Register** document (48 FR 49244) referenced in the Service's determination that an EA or EIS is not necessary is not reasonably available.

*Our Response:* That document, as well as any other information supporting this designation, is available by following the instructions provided under the **FOR FURTHER INFORMATION CONTACT** section in both the proposed and final rules. We believe this easily-reachable source meets the requirements on the availability of supporting information.

*Comment 3:* According to a decision in *Catron County Board of Commissioners* v. *United States Fish and Wildlife Service,* 75 F3d 1429 (10th Cir. 1996) and *Oregon Natural Resources Council* v. *Lyns,* 882 F2d 1417 (9th Cir. 1989), the Service must prepare an EA on critical habitat

designation. In *Catron County,* the court noted that the Acts' procedures do not displace the NEPA requirements when critical habitat is proposed. The Service should follow *Catron County,* rather than *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), because the piping plover wintering critical habitat includes state and private lands, not just Federal land.

*Our Response:* The Service acknowledges that the Tenth Circuit Court of Appeals determined in *Catron County* that NEPA requirements apply to designation of critical habitat. However the Ninth Circuit Court of Appeals held in *Douglas County* v. *Babbitt* that NEPA does not apply to the Service's designation of critical habitat because Congress intended that the Act's critical habitat procedures displace the NEPA procedures, NEPA is inapplicable to actions that do not change the physical environment, and the application of both NEPA and the Act's requirements would frustrate both statutes. The Ninth Circuit did not limit its decision to cases involving only Federal lands, holding instead that the public notice provisions and opportunities for comment under the Act's provisions were adequate to serve the NEPA function. Our current practice is to require NEPA compliance for designation of critical habitat only where the critical habitat designation is located within the Tenth Circuit (the states of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming). That is not the case here. The decision in *Oregon Natural Resources Council* v. *Lyng* dealt with a U.S. Forest Service timber sale and is not applicable to the critical habitat designation issue.

*Comment 4:* While there may be some overlap between the requirements of the ESA and NEPA, NEPA requires Federal agencies to look at the short- and long-term effects of their actions, as well as cumulative effects, which the ESA does not. The public and other Federal agencies have raised legitimate concerns that can only be properly analyzed through the NEPA process.

*Our Response:* We disagree that NEPA is required for this action. We believe we have fully considered the relevant impacts of designation, as required by the ESA, and have found that these impacts are too insignificant to warrant a detailed analysis under NEPA.

*Issue D: Legal Issues*

Numerous commenters raised issues pertaining to compliance with the Act or with other laws and regulations (excluding NEPA issues).

*Comment 1:* Critical habitat may conflict with the public policy of the State of Texas, that stresses the need for open access to beaches for use by the public. Is this proposal subject to review by the Texas Coastal Management Program? There is potential for conflict between the designation and the Texas Open Beaches Act.

*Our Response:* The designation of critical habitat is not a listed activity in the Coastal Management Plan for Texas, and therefore is not subject to consistency review. The Coastal Coordination Council does have the opportunity to look at impacts to federally listed species and their critical habitat when reviewing permit applications and other projects.

*Comment 2:* In Texas, a mineral owner has unquestioned right to use as much of the surface as may be necessary to explore for oil, gas, and other minerals. The Federal Government should not pass laws that usurp State laws without providing just compensation to those affected.

*Our Response:* As stated in the proposed and final rules, we do not expect critical habitat designation to result in restrictions beyond those that resulted from the species' listing. We, therefore, see no conflict with existing State laws governing mineral exploration.

*Comment 3:* The court order does not require the Service to designate wintering habitat for the piping plover, only that critical habitat be designated for the Great Lakes and Great Plains populations.

*Our Response:* The commenter is correct in that the court ordered us to designate critical habitat for the Great Lakes and Great Plains populations of piping plover. As discussed throughout this rule, critical habitat includes those areas essential to a species' conservation. Piping plovers spend up to 10 months a year on the wintering grounds. Wintering grounds provide for an essential part of the species' life cycle. Without adequate conservation of wintering habitat, recovery of the species would be limited.

*Comment 4:* For the proposed rule, the Service drew broad boundaries and then excluded areas (e.g., buildings) within those areas. The only way to exclude areas from critical habitat is through 4(b)(2) of the Act, that requires an affirmative determination that the benefits of excluding an area outweigh the benefits of including it as critical habitat. No such cost-benefit analysis was provided in the proposal.

*Our Response:* Areas designated as critical habitat must meet the legal definition of critical habitat provided in this final rule. One prong of the definition is that an area must contain the physical or biological features essential to the conservation of the species concerned. Human-made structures do not contain such features and therefore do not meet the definition of critical habitat.

*Comment 5:* Critical habitat designation will provide opportunities for third parties to sue in order to stop activities like recreational use of the beach. In *Palila* v. *Hawaii Department of Land and Natural Resources,* 639 F. 2d. 495 (9th Cir. 1981), the court issued a mandatory injunction to eliminate the State's use of critical habitat in a way that was preventing the use of the habitat by the palila.

*Our Response:* The primary authority for third parties to sue to enjoin activities that harm endangered and threatened species is found in the citizen suit provision of the Act, 16 U.S.C. 1540(g)(1), that authorizes anyone to file suit to enjoin violations of the Act. Section 9 of the Act, 16 U.S.C. 1538(a)(1)(B) makes it unlawful for any person to ''take'' an endangered or threatened species. The Service's regulations define ''take'' as including actions that are likely to lead to the death or injury of threatened or endangered wildlife. *Palila* v. *Hawaii Department of Land and Natural Resources* was a citizen suit brought to enjoin the State of Hawaii from ''taking'' an endangered species by allowing goats to destroy the species' habitat. Neither section 7 consultation nor the designation of critical habitat were the basis of the suit. We do not expect that the designation of critical habitat for the wintering population of piping plover will increase the possibility of third party suits to enjoin use of beaches for recreational purposes.

*Comment 6:* In *Bennett* v. *Spear,* 520 U.S. 154, 169, 117 S.Ct. 1154 (1997), the Supreme Court cautioned that the requirement that the Service use the best scientific information available serves to ''ensure that the Act is not implemented haphazardly, on the basis of speculation or surmise.'' Although the cited case involved section 7 consultation, the same caution should be exercised in actions under section 4, such as designating over 1,600 miles of shoreline based on inconclusive or unavailable data.

*Our Response:* We disagree that the critical habitat designation is based on inconclusive or unavailable data. The Act requires that our decisions be based on the best scientific and commercial information available. All areas chosen have documented consistent use by piping plovers and are limited to areas within the designated units that currently contain the principal

biological and physical features essential to the piping plover. In addition, an estimated 32 pairs remain of the endangered Great Lakes breeding population of piping plovers. Data show that this population uses both the Atlantic and Gulf Coasts (USFWS 1999; Wemmer 2000). Additional areas are likely used by Great Lakes piping plovers, as most birds have not been accounted for in winter. Therefore, identification of essential habitat should not rule out any sites where piping plovers consistently over-winter until the wintering distribution of the Great Lakes population can be more accurately defined (USFWS 1999). Based on these numbers, as well as other supporting site data, we have concluded that most sites with consistent occurrence of piping plovers should be designated as critical habitat in order to provide for the recovery of the species.

*Comment 7:* Commenters called into question our conclusion that the designation will not have significant takings implications under the Fifth Amendment to the U.S. Constitution. They claim the Service needs to address takings implications as per the Supreme Court's rulings in such cases as *Lucas* v. *South Carolina Coastal Commission,* 505 U.S. 1003 (1992); *Penn Central Transportation Company* v. *City of New York,* 438 U.S. 104 (1978);. *Pennsylvania Coal Company* v. *Mahon* 260 U.S. 393 (1922); and *Dolan* v. *City of Tigard,* 512 U.S. 374 (1994); *Nollan* v. *California Coastal Commission,* 483 U.S. 825 (1987).

*Our Response:* As discussed in our responses to economic comments, the economic analysis found that designation of critical habitat would have no significant economic effect above that already imposed by listing. The primary effect of critical habitat designation on private property is to identify areas important for the conservation of the species. In addition, if a Federal action occurs on those private lands, such as issuance of a Clean Water Act section 404 permit, the Federal action agency would be required to consult with us pursuant to section 7 of the Act if that action may affect the piping plover, regardless of whether that habitat is officially designated critical habitat. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to ensure that the landowner's project can be completed without jeopardizing the species or adversely modifying critical habitat. Therefore, we do not believe that designation of critical habitat will cause a property owner to be deprived of such a substantial use of the property as to amount to a Fifth Amendment taking.

*Comment 8:* Failure to properly consider the effects of the designation through a Takings Implication Assessment violates Executive Order 12630.

*Our Response:* Executive Order 12630 requires that Federal actions that may affect the value or use of private property be accompanied by a takings implication assessment. For the reasons discussed above, we have complied with the requirements of the Executive Order.

*Comment 9:* The Regulatory Flexibility Act requires that agencies consider the effects of their actions on small businesses, small non-profit enterprises, and small local governments. If the action is expected to be significant, an initial regulatory flexibility analysis must be published with the proposed rule. If, as the Service did here, the agency certifies that the proposed rulemaking is not expected to be significant, it must publish with the certification a statement providing a factual basis for such a conclusion.

*Our Response:* The Regulatory Planning and Review section of the proposed rule (65 FR 41794) discussed our reasons for determining that this action will not have significant economic effects on the small entities listed by the commenter. We believe this constitutes a statement providing the factual basis for our determination.

*Issue E: Section 7 Consultation Issues*

A number of commenters, particularly Federal agencies, expressed concerns or had questions regarding the effects of designation on the section 7 consultation process.

*Comment 1:* An unclear and ambiguous definition of what constitutes adverse modification of critical habitat will result in varying interpretations under section 7. The Service needs to more clearly define adverse modification and allow review by Federal agencies in order to assess the impact of designation on agency programs.

*Our Response:* Section 4(b)(8) of the Act requires that we provide, in any proposed or final rule to designate critical habitat, a "* * * brief description and evaluation of those activities * * * which * * * may adversely modify [critical] habitat, or may be modified by such designation." In the proposed rule, in the section titled "Effects of Critical Habitat Designation" (65 FR 41792), we provided a relatively detailed discussion of the types of programs that have typically undergone section 7 consultation since the species was listed under the Act. We identified the action agencies and programs conducting such actions, and stated our belief that actions likely to adversely modify critical habitat would likely also jeopardize the continued existence of the species. We then provided a discussion of the types of activities that we foresee may adversely modify critical habitat.

We acknowledge the commenter's implication that specific standards should be given to properly advise citizens and Federal agencies as to what programs may be affected by critical habitat designation, but find such specificity impossible given the wide variety of projects and ecological conditions occurring throughout the designation area. In addition, the fact that we expect few or no restrictions to be imposed through the consultation process beyond those that have existed since the species was listed reinforces our belief that our discussion was adequate to meet the requirements of section 4(b)(8) of the Act.

*Comment 2:* The Service has represented that no additional impacts will result from critical habitat designation beyond those already in place through the listing of the species and required consultation under section 7 of the Act. This is premised on the argument that the prohibition of jeopardy for listed species is nearly identical to the prohibition against adverse modification of critical habitat. In addition, the commenter cites 64 FR 31871–31872 as an example where the Service has previously acknowledged that the adverse modification standard (for projects affecting critical habitat) is not identical to the jeopardy standard (for projects affecting listed species). Finally, the Service requires that an analysis for a critical habitat consultation be conducted independently from an analysis under the jeopardy standard.

*Our Response:* With regard to the commenters' contention that we have previously acknowledged the difference between jeopardy and adverse modification, the citation provided by the commenter is from our *Notice of Intent To Clarify the Role of Habitat in Species Conservation* (June 14, 1999; 64 FR 31871–31874). On cited page 31872, we stated "According to our interpretation of the regulations, by definition, the adverse modification of critical habitat consultation standard is nearly identical to the jeopardy consultation standard." We also stated "For almost all species, the adverse modification and jeopardy standards are the same * * * It should be noted that while the jeopardy and adverse

modification standards achieve similar results, the context of the analyses differ i.e., jeopardy analyses examine effects to the species while the adverse modification analyses examine effects to the habitat that supports the species. When addressing impacts to occupied habitat, effects to the habitat supporting the species will result in parallel effects to the species. If these effects rise to the level of adversely modifying designated critical habitat, then it is anticipated that these effects would also be sufficient to result in a jeopardy determination. We did acknowledge that in cases where unoccupied habitat is involved there may be additional consultation requirements because of critical habitat designation. However, we consider all designated wintering piping plover critical habitat units to be ''occupied'' in the sense that, when the primary constituent elements are present during the appropriate season, those features will be used by piping plovers at least occasionally.

Finally, the commenter is correct that our analysis of a project's effects on critical habitat and the analysis for the project's effects on the species are conducted independently (50 CFR 402). However, this has no bearing on our position that the results of the two analyses will essentially be the same under the jeopardy and adverse modification standards. This has been borne out as, after many years of conducting section 7 consultation, there have been no instances in recent times where a project was determined unlikely to jeopardize the continued existence of a species while at the same time deemed likely to destroy or adversely modify its critical habitat.

*Comment 3:* The final rule should include a clause that excludes previously authorized Federal project areas from the definition of primary constituent elements. Federal agencies are legally obligated to conduct these actions when an agreement between the agency and non-Federal sponsors exists. These types of projects should be ''grandfathered'' from the critical habitat designation.

*Our Response:* Federal actions that have already undergone section 7 consultation on the effects of the action on piping plovers, and that were determined unlikely to jeopardize the continued existence of the species, must undergo further consultation on the projects' effects to critical habitat only in instances—(1) where the project has not already been completed, and (2) where the Federal agency still has the discretion within its legal authority to modify the project should it be determined likely to adversely modify critical habitat. Where a project has been completed, or where the action agency has no discretion to modify the project, no further consultation would be necessary.

In cases where a previously consulted-upon action could still be modified within the agency's legal authority, and where that project may affect critical habitat, reinitiation of consultation is required (50 CFR 402.16). However, given that such a project would have already received a non-jeopardy biological opinion from us, and since actions unlikely to jeopardize the continued existence of the species would also usually be unlikely to adversely modify critical habitat, the project would likely proceed without additional constraints.

The Service has only had one jeopardy opinion issued for the piping plover wintering population since its listing in 1986. The proposed project was in Texas and was not undertaken for various reasons.

*Comment 4:* The Service should work with affected Federal agencies and others whose programs depend upon Federal funding or permits to develop general guidelines that can be used to expedite the consultation process. In this way the effects of designation will be minimized, especially if and when these guidelines are incorporated into project designs.

*Our Response:* We agree with this recommendation and are prepared to work with local interests in developing guidelines to guide and expedite the section 7 consultation process. We invite interested agencies and individuals to contact their local Service offices to begin this programmatic consultation approach.

*Comment 5:* Commenters have asked how the final designation will affect Federal and non-Federal projects currently under consideration for authorization within critical habitat units.

*Our Response:* All landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as ''harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct.'' Take is further defined by regulation to include ''significant habitat modification or degradation that actually kills or injures wildlife,'' which was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt,* 515 U.S. 687 (1995).

All Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. ''Jeopardize the continued existence of'' means to engage in an action that 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). Because we designated only areas within the geographic range occupied by the piping plover, any activity that would result in an adverse modification of the plover's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the plover both within and outside designated critical habitat.

The consultation process will change only to the extent that Biological Assessments must consider the effect of the project on critical habitat. However, we already need to consider the effect of the project on habitat (in the absence of critical habitat designation) based on the listing of the piping plover. Therefore, we anticipate that the additional workload burden created by critical habitat will not result in different outcomes of the jeopardy and adverse modification standards.

*Issue F: Public Involvement/ Coordination*

Several commenters expressed concerns about the adequacy of the opportunity for public input and other coordination issues.

*Comment 1:* All landowners within the area affected by the designation should have been notified.

*Our Response:* Given the wide-ranging nature of this designation, the thousands of landowners involved, and the amount of time available to complete the designation due to court order, contacting each individual landowner within the proposed area was not possible. However, we went well beyond the general notification requirements of the Act and the Administrative Procedure Act. This included notification of all State and local governments; mailings to over 898 interested parties; publication of notices in 23 newspapers; issuance of press releases for each public hearing and comment period reopening; and other informational materials. Given that we received over 6,000 letters of comment on the proposal, we believe that we adequately publicized the proposed action. We regret any instances where

interested parties may have been unaware of the proposed designation, but believe these instances are few.

*Comment 2:* The Service is attempting to implement critical habitat without giving landowners adequate time to review the information.

*Our Response:* The initial public comment period on this action was open from July 6, 2000, through September 5, 2000 (60 days). When the draft economic analysis of the proposal was completed, we extended the comment period until October 30, 2000 (65 FR 52691), and again until November 24, 2000 (65 FR 64414), for a total extension of 80 days. Finally, we reopened the comment period for 7 additional days (66 FR 11134) to accept further public comment on any and all aspects of the proposal and associated economic analysis. The public therefore had 147 days of open comment period on the proposed rule, and 87 days of open comment period on the draft economic analysis. The Act requires that a minimum of 60 days be allowed for comment on a critical habitat proposal. Thus, we exceeded the statutory requirement.

*Comment 3:* Some commenters felt that there were too few public hearings held, some questioned the geographic distribution of the hearing sites, and some were concerned that the hearings were poorly publicized or that too short a notice was given.

*Our Response:* The Act requires that at least one public hearing be held on a proposed designation of critical habitat if requested within 45 days of publication of a proposed rule. As described previously, in anticipation of the public's interest in the proposed designation we announced in the proposal that we would hold 9 public hearings. We added a tenth public hearing, that we announced in the **Federal Register** and local newspapers (for a complete discussion on the public hearings and our efforts at publicizing them please see the beginning of this ''Summary of Comments and Recommendations'' section). While we would have preferred to conduct more public hearings, budgetary, workforce, and time constraints prohibited us from doing so. Nonetheless, we far exceeded the requirement that one public hearing be held if requested. Further, given the large geographic distribution of wintering piping plovers and the resulting large area proposed as critical habitat, we chose our hearing locations to spread the sites as evenly as possible throughout the eight affected States. Once requested, four additional public meetings were held after the initial public meetings and hearings.

We disagree that the public hearings were poorly publicized, as we conducted extensive outreach prior to the hearing (see the discussion in F.1). We acknowledge, however, that notification of the Wilmington, North Carolina, and Savannah, Georgia, hearings was less than desired. Regulations (50 CFR 424.16(c)(3)) require 15 days notification prior to public hearings being held, but the Wilmington and Savannah hearings were publicized only 11 and 13 days, respectively, before they were held. While we regret this short notification, since only one hearing is required to meet our statutory obligations under the Act, we did not violate our regulatory requirements.

Finally, it is important to note that a public hearing is one part of the public participation opportunities provided under the Act and Administrative Procedure Act. Written comments receive equal consideration as oral comments, and we far exceeded the public comment period requirements in allowing ample time for submission of written comments. In addition, we were ordered by the court to complete the proposed and final designation in a 10-month period. Thus we could not have extended the comment period any longer and met the court deadline of April 30, 2001.

*Comment 4:* The proposed rule does not describe the type and level of coordination that has occurred with State wildlife agencies; their views should have been included in the proposal.

*Our Response:* We have long recognized the roles of States in management of listed species and their habitats, and coordinate with States to the extent practicable. The Act at (4)(b)(5)(A)(ii)) requires that States be given notification of, and opportunity to comment on, proposed listing actions. However, we generally coordinate with States during the proposal development process, as we did here.

Our biologists coordinated with the appropriate State agencies from all eight affected States in developing piping plover distribution information along the coast by meeting with them personally and soliciting their input prior to the proposed rule and/or during the comment periods. We incorporated their input and expertise into the proposed and final rules.

*Comment 5:* Why were persons with known experience in piping plovers not contacted for information prior to publication of the proposed rule? As a result of the Service's failure to seek local expertise, important areas were left out of the designation.

*Our Response:* It is our judgement that information collected pre-proposal was sufficient for a thorough and comprehensive designation to support all three populations of piping plovers when recovered. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibitions, as determined on the basis of the best available information at the time of the action. In developing the proposed and final rules, we coordinated with biologists in the appropriate State agencies from the eight affected States (see response to F.4).

*Issue G: Mapping and Primary Constituent Elements*

A number of commenters expressed concerns about map quality, the broad extent of the designation, the definition of the primary constituent elements, and other issues surrounding spatial aspects of the designation.

*Comment 1:* The critical habitat units are non-specific in that they include lands that do not contain the primary constituent elements. This will result in unnecessary section 7 consultations and add an unnecessary administrative burden to government agencies and private entities included within the mapped boundaries.

*Our Response:* While it would be ideal if we could map only areas that currently contain the primary constituent elements, there are three primary reasons why we were unable to do so. First, we are unaware of the existence of sufficient data with which to conduct the precise mapping requested by the commenters. Second, even if the data were available, the large extent of the species' range would render such fine-scale mapping impractical, especially given workforce and time limitations. Most importantly, the coastal areas inhabited by the piping plover are so highly dynamic that any map of currently suitable habitat would rapidly become obsolete.

For the reasons cited above, we mapped the critical habitat boundaries on a relatively coarse scale, and identified the areas within those boundaries that are essential to the species by describing those habitat features (primary constituent elements) essential to the plover's life-history requirements. In this way, critical habitat designation will accommodate the dynamic nature of the habitat, changing through time as the primary constituent elements form in one area while disappearing in another. We

believe that this approach is the only scientifically credible way to ensure that the critical habitat designation is compatible with the species' habitats' naturally ephemeral character. As suggested by one commenter, to ensure that interested persons understand that critical habitat is found only in areas where the primary constituent elements are present, our final critical habitat maps are footnoted to that effect. This is consistent with our regulations at 50 CFR 17.94(c), that indicate the management of critical habitat focuses only on the biological or physical constituent elements within the defined area of critical habitat.

Finally, as stated in both the proposed and final rules, section 7 consultation on piping plover critical habitat will only be required when a proposed Federal action may affect the primary constituent elements. Thus, no consultation will be necessary if those habitat features are not present, since consultation is triggered by a determination on the part of the Federal action agency that their proposed activity may affect piping plovers or their critical habitat. Our Ecological Services Field Offices (see contact information under ''Effects of Critical Habitat Designation'' section) will gladly work with Federal agencies and landowners to help determine whether piping plover habitat occurs on their property.

*Comment 2:* Including an area as critical habitat because it may support the primary constituent elements in the future violates the criteria specified in regulations at 50 CFR 424.12(b). This approach also circumvents the rulemaking requirements under the Act and the Administrative Procedure Act.

*Our Response:* The referenced regulation speaks to the definition of the primary constituent elements and lists the types of life-history requirements that may be included in critical habitat. One of those life-history requirements is ''(1) Space for individual and population growth, and for normal behavior.'' We believe the designation reflects this life-history requirement, in that critical habitat units were developed to take into account the shifting nature of primary constituent elements in coastal systems. That is compatible with piping plovers' normal behavior of shifting use areas based on tide, weather, food supply, etc. (Drake 1999a). Thus, we believe the designation accurately reflects the intent of 50 CFR 424.12(b).

We also dispute the contention that this approach violates the rulemaking requirements of the Act or Administrative Procedure Act. The proposed rule and this final rule notify the affected public of the boundaries of the critical habitat designation and of the fact that the essential physical and biological features important to the piping plover are dependent upon a dynamic coastal system that changes through time. As explained above and throughout the proposed and final rules, we can think of no other approach consistent with the dynamic nature of the species' habitat.

*Comment 3:* Regulations at 50 CFR 17.94(c) state that the Service must focus on the biological or physical elements within the critical habitat area that are essential to the conservation of the species and that are known to require special management considerations or protection. Designation of such broad geographical areas expands the ''best available information'' requirement to render moot the fact that the data must be ''available'' and the presence of constituent elements ''known''.

*Our Response:* Regulations at 50 CFR 17.94(c) require that those constituent elements ''known to require special management considerations or protection'' be listed with the description of critical habitat. As stated in our response to G.2, critical habitat units were developed to take into account the shifting nature of primary constituent elements. We believe we have used the best information available and made a biologically sound designation based on the ephemeral nature of piping plover habitat.

*Comment 4:* Additional explanation of what constitutes the primary constituent elements would aid the general public in recognizing the species' critical habitat.

*Our Response:* We believe the primary constituent elements were well-described in the proposed rule. Further, we received information from state and county biologists who have documented the use of salterns (also called salinas, salt flats, salt barrens, and salt pans) by piping plovers in southwest Florida. They are bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water (Myers and Ewel 1990). We have added the term ''salterns'' to the description of primary constituent elements.

*Comment 5:* Critical habitat units should be mapped in sufficient detail to exclude developed areas. Merely excluding these areas verbally is inadequate.

*Our Response:* In the final rule we excluded a number of larger developed areas from the mapped units. We did this to the extent practicable given the available information and time to complete the mapping effort. We could not exclude every structure, road, or other feature from the critical habitat boundaries. However, these areas are not included by definition.

*Comment 6:* The designation should be revised to exclude developed and other areas that do not currently contain the primary constituent elements. By including non-habitat areas within the designation, the Service will not be able to distinguish which areas are habitat, and merit protection, and those areas that do not support plovers. This may result in adverse activities proceeding because the Service will not be able to distinguish between those areas adversely affected before the designation from those occurring after the designation.

*Our Response:* We believe we can assess whether an action area is habitat for piping plovers, much as we have done over the 15 years that the species has been listed. We will use aerial photographs and local records to determine the extent of development at the time of this critical habitat designation. When an action agency is contemplating an action, it is up to that agency to determine whether or not that action may affect a listed species or its critical habitat. If the agency determines its action may affect a listed species' habitat, it then initiates section 7 consultation. We then evaluate the effects of the action on the species or its critical habitat.

*Comment 7:* The Service should clarify that not all human-made structures are excluded from critical habitat. Some areas, such as renourished beaches, may benefit plovers if done correctly.

*Our Response:* We agree that not all human-made structures are excluded from critical habitat. Only those areas (whether human-made or natural) containing the primary constituent elements are considered critical habitat. We agree that beach renourishment is an example of human-made habitat that may benefit piping plovers. Habitat restoration and creation projects including beach nourishment, barrier island restoration, and islands created using dredged material may benefit plovers and such sites have been included in the critical habitat designation.

*Comment 8:* Areas should not be excluded from critical habitat merely because they are ''developed sites.'' Just because an area is already degraded does not preclude its designation if it is essential to the species' recovery.

*Our Response:* The proposed designation constitutes our assessment

of the wintering habitat needed to support a recovered piping plover population. In arriving at this designation we included areas that have documented consistent use. We mapped around developments adjacent to or directly on the beaches and only excluded developments that do not contain any primary constituent elements. For example, Grand Isle is a barrier island in Louisiana that is highly developed. Christmas bird count data indicate consistent use by plovers. We only mapped from the hurricane protection levee gulfward. The developed areas are currently from the levee landward.

*Comment 9:* One commenter suggested we add such terms as ''bridges, piers, and aids to navigation'' to the list of ''developed sites.''

*Our Response:* We elected not to list every conceivable type of ''developed site'' because such a list would be extensive and we would risk leaving out some type of development. Thus we believe that the appropriate course is to remain fairly general on this issue and allow the Federal action agencies the flexibility to determine which areas do or do not contain the primary constituent elements.

*Comment 10:* In the text of the rule, the Service excludes areas from critical habitat that do not contain the primary constituent elements, but fails to do so in the language amending 50 CFR 17.95.

*Our Response:* This assertion is incorrect, as the discussion on non-inclusion of non-suitable areas is given at the end of the regulatory section of the proposed rule (see 65 FR 41812), after the legal descriptions for the Texas units. However, in order to make this language more obvious and so that it clearly pertains to the entire designation, we have moved this discussion to the beginning of the regulatory portion of this final rule.

*Comment 11:* Verbally excluding areas from critical habitat is counter to regulations at 50 CFR 17.94(a), that require that critical habitat areas be defined by surveyable landmarks found on standard topographic maps of the area.

*Our Response:* This commenter is likely referring to 50 CFR 17.94(b), which states that critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area. As stated above and elsewhere in this final rule, piping plover habitat is composed of highly dynamic areas that can change quite rapidly, and are thus by their nature ephemeral. Thus, we defined the critical habitat boundaries textually using visual references found on Digital Orthophoto Quarter Quads (DOQQs) (i.e., digital aerial photography) and reference locations found on published maps. For the piping plover designation, we believe that textual unit descriptions, as described in the ''Methods'' section of this rule, will provide for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover and will allow the public to better determine the critical habitat boundaries. The textual unit descriptions allow us to capture the dynamic nature of the coastal habitat by describing each unit as including the area extending out from the landward boundaries to the MLLW. In this way we can include in the designation intertidal areas that are essential foraging areas for piping plovers. Our textual unit descriptions may also describe important areas within the unit that are utilized by the piping plover, such as wind-tidal flats, and areas that contain the primary constituent elements.

*Comment 12:* One commenter suggested that the critical habitat boundaries not be fixed, but rather be flexible so as to take into account the ever-changing nature of the coastal areas and account for shifts in the locations of important piping plover habitat features.

*Our Response:* As stated and described in the ''Methods'' section of this final rule, we believe the needed flexibility is provided in the textual unit by unit descriptions that account for the dynamic nature of plover habitat. These unit descriptions are being published in the regulatory section of this rule as the definitive source for determining the critical habitat boundaries. We recognize that important plover habitat may form over time in areas outside the designated boundaries and if it is determined to be warranted, the critical habitat designation could be revised through the rulemaking process in the future.

*Comment 13:* Some commenters expressed concern that the Universal Transverse Mercator System (UTM) coordinates published in the proposed rule resulted in boundaries that were in error. The final rule should be written to ensure that the UTM coordinates are consistent with the written descriptions of the critical habitat units.

*Our Response:* The coordinates we reported were generated by the Geographic Information System (GIS) software that was used to create the units. A GIS is a mapping software that links information about where things are with information about the area. Unlike a paper map, a GIS map can combine many layers of information and tools to analyze that information. The coordinates printed in the **Federal Register** were created from the text files that were generated from the GIS. During this process potential errors may have occurred due to the interpretive process of the coordinates. One known error was the reporting of Florida coordinates. We reported Florida coordinates to be UTM coordinates, when in actuality they were the map projection coordinates used within the State of Florida (Albers projection).

Another error was identified after the unit coordinates were published. This error occurred in the North Carolina data. The datum of the source imagery DOQQs (i.e., digital aerial photography) we obtained was reported inaccurately. The imagery was reported as North American Datum 1927 (NAD27), when it was actually North American Datum 1983 (NAD83). By utilizing the on-the-fly projection capability of the GIS software, the data was projected to NAD27 and all line work was digitized. This introduced an error in the data that shifted the features up to 500 meters. We have resolved this problem in this final rule. As noted within this rule, our textual unit descriptions are the definitive source for determining the legal boundaries of the critical habitat designation. Thus, we will not be publishing UTMs or Latitude Longitude coordinates as part of this final rule.

*Comment 14:* Some commenters pointed out that there were various errors in the legal descriptions. For example, the legal description for unit FL–27, when plotted, did not match the **Federal Register** maps. As such, landowners within erroneously described units were not properly notified of the designation, and critical habitat should therefore be re-proposed.

*Our Response:* See response to G.13. Due to an inadvertent error, the detailed maps we made were not published in the proposed rule; only the index maps were published. However, verbal unit descriptions were published, as well as who to contact for more information. Detailed maps were available to the public on the web at *http://southeast.fws.gov.* Legal notices were published in major newspapers announcing the public hearings and included contact information and the website address. In addition, site-specific maps were available at the public hearings. Thus, we believe that the public had ample opportunity to determine whether an area was included in the designation, based on the verbal unit descriptions, and to comment on the proposal.

*Comment 15:* The maps in the proposed rule were of insufficient detail for landowners to determine whether their property is within the critical habitat boundaries. The final maps should correct this.

*Our Response:* We acknowledge that there was a problem with the maps as published in the proposed rule. Through an inadvertent error, the more detailed maps provided for publication were not included in the proposed rule. However, due to **Federal Register** constraints of page size, even more detailed maps may not provide enough resolution to allow some individual landowners the ability to determine whether their property is in or out of a critical habitat unit. Thus, the maps published in the **Federal Register** are intended for general guidance only, while the textual unit descriptions should be used for definitive determinations.

*Comment 16:* It is difficult to determine from the maps published with the proposed rule the exact boundaries of the critical habitat units. In some areas it appears that highways were used as boundaries, and it is difficult to tell whether highway rights-of-way are within the critical habitat units. The final rule should explicitly exclude highway rights-of-way.

*Our Response:* We did not explicitly exclude highway rights-of-way in this final designation, because some rights-of-way containing the primary constituent elements may be essential to piping plover conservation. Unit map boundary lines as printed in the **Federal Register** cannot be used to determine whether a project would be affecting the species or adversely modifying its critical habitat. The textual unit descriptions should be used for definitive determinations as to whether an area is within the designated critical habitat boundary. Federal agencies will need to determine whether actions they fund, authorize, or carry out may affect wintering piping plovers or their critical habitat.

*Comment 17:* Only the 86 percent of the proposal that is public land should be designated.

*Our Response:* In selecting areas to propose as critical habitat, we did not consider land ownership per se, but rather selected areas based on whether or not they were essential as indicated by recorded consistent plover use or areas where the habitat conditions indicated probable use by plovers. Areas for which habitat conditions indicated probable plover use in Louisiana, were confirmed for occupancy this winter.

The Act does not allow exclusion of areas based on land ownership unless we determine under section 4(b)(2) of the Act that the benefits of excluding an area from the designation outweigh the benefits of including the area as critical habitat. See the Exclusions Under 4(b)(2) of the Act'' section of this rule for a further discussion of this issue.

*Comment 18:* The proposed rule incorrectly characterized Unit TX–34 as comprising almost entirely State-owned lands. In fact, the gulf beach is privately owned to the mean high-tide line, and the proposed area includes upland areas that are privately owned. Further, the area on the southernmost end of Galveston Island includes 300 acres of privately owned land, that were inaccurately portrayed on the map. The map of Unit TX–34 is woefully outdated.

*Our Response:* As described in the proposed rule, Unit TX–34 includes gulf beach and sand flats that belong to the State of Texas, and of which 57% is in the floodtide delta. The area is described as only including the delta to the northwest of the causeway, and the beach to the northeast of the causeway. Both sides of the San Luis Pass experience extremely high levels of erosion averaging 10.2 m (33.8 ft) per year on the Galveston Island side, and 18 m (60.1 ft) per year on the Follet's Island side (Morton 1989). As a result, maps of this dynamic area are out of date before they are published. We have described the area in narrative form, and mapped the area using aerial photography dated 1995.

*Comment 19:* Latitude and longitude information should be given to facilitate inclusion in the GIS of Federal, State, and local agencies.

*Our Response:* Because the source data DOQQs imagery used to map critical habitat were projected, we chose to report the legal descriptions in the proposed rule in projected values and not latitude and longitude. We believed that this methodology will facilitate overlaying the data in any GIS with the source imagery. However, in this final rule the definitive source for determining the precise legal boundaries of the designation are the textual unit descriptions.

*Issue H: Best Information/Science*

A number of commenters questioned the accuracy of the information on which the proposal was based and whether or not we used the best scientific and commercial information available.

*Comment 1:* The Service should follow the scientific decision-making process used for all Federal water and related land resource studies. This requires six significant steps-(1) identify and inventory problems and opportunities; (2) inventory and forecast conditions; (3) formulate alternative plans; (4) evaluate alternative plans; (5) compare alternative plans; (6) select a plan. The proposal does not explain how the Service went through this process.

*Our Response:* Please see our ''Methods'' discussions in the proposed and final rules, that explain the process we went through in arriving at this final designation. Although the process does not precisely mirror the one suggested by the commenter, we believe that our approach was a logical and rational approach to meeting the mandates of the Act. The Act requires that our decisions be based on the best scientific and commercial information available, and does not require ''reasonable scientific certainty.''

*Comment 2:* The proposal provides very limited information on the criteria and data used to determine the areas proposed as critical habitat. For example, there was no discussion of the data upon which the Service relied in concluding that the proposed areas contain the primary constituent elements, particularly in areas where plovers have not been recorded. More supporting data should be provided.

*Our Response:* We refer you to the ''Methods'' sections of the proposed and final rules. In those discussions, we provide information on the data considered throughout this process. While those discussions only summarize the data used, we welcome interested individuals to contact us if they wish to review the detailed supporting information in our files. Additional survey data this winter confirmed that all units are occupied.

The only areas included in the proposed rule that did not have survey data showing that they are used by plovers were the Mississippi River and the Wax Lake Outlet Deltas. We included those areas because of the high probability of use by plovers due to the broad expanse of mudflats known to exist in the river deltas. Those areas are remote and difficult to access and thus had not been surveyed. We have surveyed these areas since the proposed rule (Mississippi River Delta in December 2000, and the Wax Lake Outlet Delta during the February International Piping Plover Survey). Forty plovers were found on a few small dredged material islands in the Mississippi River Delta, none were found in the Wax Lake Outlet Delta. Those areas of the Mississippi Delta where no plovers were observed were not included and the entire Wax Lake Outlet Delta was likewise not included in the final rule. Additionally, during the International Census in February

2001, 40 piping plovers were observed on the same dredged material islands in the Mississippi River Delta. Although we do not have data to document use of these areas from previous wintering seasons, based on studies indicating that plovers exhibit a certain amount of site fidelity (see our response to Comment A.11 above), and the large numbers of plovers observed at these sites, we have included these areas in the designation because of the virtual certainty that they are consistently used. As we have stated, this designation is based on the best scientific and commercial information available, as required by the Act. We welcome any additional data on the piping plover and its habitat.

*Comment 3:* Critical habitat should be designated only in areas where the species is present. Some areas have been proposed where there are no data to show that the piping plover occurs there.

*Our Response:* In the proposed rule, we acknowledged that ''In some areas, adequate census data are not available to provide reliable presence or absence information for the plover. These areas are in remote locations where censuses are logistically difficult. However, the physical and biological features essential to piping plovers are known to be at least sporadically present in these dynamic areas, and our belief that these areas support piping plovers when essential habitat features are present is biologically sound'' (65 FR 41785).

The only areas included in the proposed rule that did not have data on piping plover presence were the Mississippi River and the Wax Lake Outlet Deltas. These areas were surveyed twice since the proposed rule. For the final rule, we have included those areas that contain piping plover habitat and for which we had documented use by piping plovers. See response to H.2.

*Comment 4:* The Service should provide the population data upon which this proposal is based. The Service should also census each proposed area and designate only those areas with high plover concentrations as critical habitat.

*Our Response:* As stated in the proposed rule, the data upon which the designation is based are available by contacting our Corpus Christi, Texas, Ecological Services Field Office (see **ADDRESSES** section). Inclusion of all the survey data in the proposed or final rules would be impracticable.

We agree that areas of high plover concentrations indicate that the areas are important to wintering piping plovers. But areas with low, yet consistent numbers are also important. This is true particularly for the endangered Great Lakes population. This population has approximately 32 pairs remaining, which winter in locations throughout the southeast, thereby making each critical habitat unit important to the survival and recovery of that endangered population. Plover use patterns may shift through time, both within and among seasons and years.

*Comment 5:* The designation should be delayed until plover activity is studied in detail.

*Our Response:* In this case, the court determined that we had failed to abide by the requirements of the Act for designating critical habitat when prudent and determinable and ordered us to complete the critical habitat determination. We did so using the best scientific and commercial information available, as required by the Act (4(b)(2)). While it is always preferable to have more information on virtually every listed species, the Act does not allow for indefinite delays until such information is acquired. Nonetheless, we will continue to use the best information available as we continue the species' recovery process, and may revise the critical habitat designation in the future if appropriate and necessary.

*Comment 6:* Has the Service considered less drastic alternatives such as designating only preserved areas or less developed areas, and regulating only those activities that are troublesome to the plover?

*Our Response:* As described in both the proposed and final rules, the intent of the critical habitat designation is to include all areas believed essential for the species' conservation, which includes its recovery. It is our biological conclusion that merely designating ''preserved'' areas or areas not subject to habitat threats would not be sufficient to provide for the species' eventual recovery. We did, however, avoid a number of developed areas within the range of the plover, designating only those areas we believe necessary for the species' conservation.

As to the regulatory effects of the designation, we will only formally review actions under section 7 consultation when Federal actions are likely to adversely affect the species or its habitat. In these cases we recommend that consultation be conducted regardless of whether the habitat is officially designated as critical. As indicated in the Final Economic Analysis, we believe that little if any incremental regulatory or economic effects above the listing will result from this designation.

*Comment 7:* Based on population numbers and the proposed acreage, the Service has allotted 600 acres per bird. Why does a 6-inch tall, 2-ounce bird need so much habitat?

*Our Response:* The actual area of critical habitat, as defined by the primary constituent elements, is considerably less than the coarse acreage included within the proposed boundaries. Critical habitat is designated to identify areas essential to the conservation of the species, including identifying sufficient habitat to achieve recovery. Further, wintering piping plovers do not simply ''occupy'' a certain static location, but rather move throughout an area as its needs (e.g., foraging, roosting, refuge from high winds or severe storms) change from day to day and over time as a result of the tides, weather, and other factors.

*Issue I: Definition of Critical Habitat*

Numerous commenters expressed concerns that the areas designated were either not essential to the conservation of the species, not in need of special management considerations or protection, or otherwise inconsistent with the statutory requirements for selecting areas to designate as critical habitat.

*Comment 1:* Why is critical habitat being designated in otherwise protected areas, such as State lands, national seashores, refuges, or parks? Managers should have the opportunity to implement management actions that would avoid the additional regulatory burden of critical habitat designation.

*Our Response:* As implied by this commenter, areas not in need of special management do not meet the definition of critical habitat and are therefore not included in a critical habitat designation. We use the following three criteria to determine if a management plan provides adequate special management or protection: (1) A current plan/agreement must be complete and provide sufficient conservation benefit specific to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, i.e., provide for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would no longer meet the definition of critical habitat.

Given the amount of time allowed to prepare the proposed designation, the wide distribution of wintering piping plovers, and the myriad of landowners and land managers within the species' range, we were unable to do a

comprehensive evaluation of all management plans that could potentially meet the criteria listed above. Although we did identify areas that have the potential for having a management plan, primarily Federal lands, and evaluated those plans if one was completed for the area. In the proposed rule we also solicited information on reasons why any area should or should not be considered critical habitat (65 FR 41793). The ensuing public comments included several instances where commenters believed certain areas are currently managed compatibly with the species and should therefore be excluded from the final designation. Those suggestions are addressed under the ''Site-specific Comments'' portion of this ''Summary of Comments and Recommendations'' section. We received no information that indicated that any of the public land management plans met our three criteria; therefore, no lands were excluded based on ''not [being] in need of special management protection.'' We did, however, exclude the Padre Island National Seashore based on section 4(b)(2) of the Act. Please refer to the ''Exclusions Under 4(b)(2) of the Act'' section of this rule.

We also note that we encourage management plans compatible with the conservation of threatened and endangered species, and that critical habitat designation neither discourages such voluntary actions nor adds significant regulatory burden. Management that does not adversely affect listed species or their critical habitat is not required to undergo formal section 7 consultation.

*Comment 2:* The piping plover already receives substantial protections, such as under sections 7 and 9 of the Act. Why is additional protection necessary? The Service has repeatedly claimed that they expect no adverse economic impacts beyond those attributable to listing. If this is so, why not abandon this designation? Why subject landowners to uncertainty and additional bureaucracy?

*Our Response:* We agree that protections afforded listed species under sections 7 and 9 are substantial, and that critical habitat designation usually adds only marginal protections above those already afforded listed species. Under section 7, Federal agencies are required to utilize their authorities to further the conservation of species and the ecosystems upon which they depend. Federal agencies are prohibited from implementing actions likely to jeopardize the continued existence of a species or to destroy or adversely modify a listed species' designated critical habitat. Regulations implementing the requirements of section 7 (50 CFR 402.02) define ''jeopardize the continued existence'' (of a species) and ''destruction or adverse modification'' (of critical habitat) so similarly that the two prohibitions are nearly identical, thus resulting in little additional protection through critical habitat designation.

Section 9 of the Act also provides substantial protection to listed species by prohibiting any person (as opposed to section 7 that involves only Federal agencies) from such activities as taking listed species without proper permits, as well as controlling transportation, selling, and importing or exporting listed species. Critical habitat is not protected under section 9, so no effect on strictly non-Federal activities are added through critical habitat designation.

Despite the little additional regulatory benefit critical habitat may provide listed species, section 4(a)(3) of the Act requires that critical habitat be designated for species listed as threatened or endangered unless such designation would not be prudent. Further, we believe designation of critical habitat for wintering piping plovers may be of some benefit. A critical habitat designation benefits species conservation by identifying important areas and by describing the features within those areas that are essential to conservation of the species, and alerting public and private entities to the areas' importance. Although the designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions, it does help focus Federal, State, and private conservation and management efforts in such areas. Designating critical habitat may also provide some educational or informational benefits.

*Comment 3:* When the Service listed the piping plover in the 1980's it did not designate critical habitat because it was believed unnecessary. Some commenters questioned why we now believe critical habitat designation is prudent.

*Our Response:* Section 4(a)(3) of the Act states that when a species is added to the endangered species list, we must designate critical habitat to the maximum extent prudent and determinable. The 1985 final listing rule for the piping plover did not include a critical habitat designation, not because it was unnecessary, but because it was not determinable and so it was deferred for one year. We did not make a prudency determination or designate critical habitat by the end of that year. Because of this omission, in December 1996, Defenders of Wildlife (Defenders) filed a lawsuit against the Department of the Interior and the Service for failing to designate critical habitat for the piping plover. As a result of the lawsuit, the court ordered us to publish a proposed critical habitat designation for the piping plover in the breeding area in the Great Lakes by June 30, 2000, with a final rule by April 30, 2001. We were also ordered to designate critical habitat for the Great Plains population by May 31, 2001, with a final rule by March 15, 2002. We have no evidence of vandalism or other threats that may occur based on disclosing the location of this species. Thus, we determined that the appropriate course of action would be to propose critical habitat for all US wintering piping plovers on the same schedule required, under court order, for the Great Lakes breeding population.

*Comment 4:* The Service has disregarded the prohibitions in section 3(5)(C) of the Act against designating the entire geographical area that could be occupied by the piping plover.

*Our Response:* We did not designate the entire geographical area that can be occupied by wintering piping plovers. In fact, the censuses upon which we based our initial identification of potential critical habitat areas have detected less than half the piping plover numbers known from their breeding areas. One may infer that at least some piping plovers winter in areas other than those designated as critical habitat. Areas that were not included in critical habitat include many sites where plovers have been documented at least once, but records do not indicate a consistent use. For example, in Florida we did not include the South tip of Amelia Island, Nassau County; high marsh and salt pans of Charlotte Harbor State Buffer Preserve, Charlotte County; and Passage Key National Wildlife Refuge, Manatee County. Additional sites are listed in Comments B.2 and B.3. A piping plover may be observed at any given time at any location along the Gulf and Atlantic coasts. We included in this designation only the areas essential for the conservation and recovery of the species as supported by consistent use by piping plovers.

*Comment 5*: Critical habitat for wintering piping plovers is not determinable because their biological needs are not sufficiently well known. Recovery plans for the species recommend significant research on wintering plovers; without such information it cannot be determined with reasonable scientific certainty which areas are essential to the species.

*Our Response*: We are required to designate critical habitat for species at the time they are listed under the Act to the extent prudent and determinable under section 4(a)(3). Regulations implementing the listing provisions of the Act state that critical habitat is not determinable when the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)(ii)). In cases where critical habitat is not determinable the regulations allow only a one-year extension. At the end of the extension critical habitat must be designated based on such data available at that time (50 CFR 424.17(b)(2)).

It has been over 15 years since the piping plover was listed under the Act, and a great deal of information has become available since the listing occurred. While we agree that more information would be preferable, we do not believe further delays in making this designation would be legally defensible under the statute and its regulations. In addition, the Act requires that our decisions be based on the best scientific and commercial information available, and does not require ''reasonable scientific certainty.''

*Comment 6:* A conclusion that areas identified during population surveys are essential to the plover population is speculative. Because a plover was sighted in an area does not make the area essential to the species' conservation.

*Our Response:* We agree that the mere sighting of one or more individuals of a species does not necessarily mean the area of the sighting is essential to the species' conservation. In fact, for most species it is difficult to know with certainty that a particular area is essential to its conservation. However, the Act clearly requires that we make such judgements based on the best scientific and commercial information available. The census data tell us that plovers occur in an area, from which we can infer that the animal derives some useful life-history benefit. We believe these occurrence data constitute the best available information upon which to base this designation. We also note that the commenter did not suggest an alternative approach to arriving at a biologically sound critical habitat designation. Other research has shown what type of habitat features are necessary to provide for the life-cycle needs of the species. Together, this information suggests to us which areas are essential for the conservation of the species.

*Comment 7:* Critical habitat should include only the minimum amount of habitat needed to avoid short-term jeopardy or habitat in need of immediate intervention.

*Our Response:* We disagree. The Act requires that areas designated as critical habitat be essential to the conservation of the species. The term ''conservation'' is defined as ''* * * the use of all methods and procedures necessary to bring any [listed] species to the point at which measures provided pursuant to this Act are no longer necessary * * *'' (i.e., the species is recovered and eligible for removal from the list of threatened and endangered species). Since the stated purpose of the Act includes ''* * * to provide a program for the conservation of such endangered species and threatened species * * *'', it is clear that Congress intended the provisions of the Act to be used for such conservation purposes rather than as stop-gap measures to prevent extinction.

*Comment 8:* The proposal contains 686 miles of privately owned shoreline. The Service justifies this by stating that shoreline development poses the biggest threat to plover habitat, especially along the Texas Coast. However, the regulatory basis for designation should be the evaluation of the habitat rather than the potential for development.

*Our Response:* As discussed above, the critical habitat designation is based on an evaluation of habitat and the survey data on piping plovers. This critical habitat designation for the wintering population of the piping plover includes areas that we know currently support the species. Areas described in the approved recovery plans (USFWS 1988, 1996) as essential to the conservation of the wintering population of the piping plover are being designated as critical habitat, if recent data support consistent use and the habitat remains suitable.

*Comment 9:* The Service designated areas that are inhabited by people and where plovers and people co-exist. Therefore critical habitat is unnecessary.

*Our Response:* We agree that piping plovers and people can co-exist in wintering areas. However, as explained in this final rule, critical habitat is not considered to be an optional process, and the fact that people use areas used by plovers does not provide sufficient justification for not designating critical habitat. We believe that the effect on plovers of normal human presence in their wintering habitat does not have serious consequences to the plover at the population level. See our response to Issue A.15 above.

*Issue J: Effects of Designation*

These comments involve issues related to the effects of designation on land management and habitat-modifying activities within the designated areas.

*Comment 1:* How will the proposed designation impact the future of Packery Channel? Will it have a minimal effect as discussed, or will it cause the Packery Channel opening to be shut down completely?

*Our Response:* We completed a Biological Opinion (BO) on August 1, 1994, for U.S. Army Corps of Engineers Permit Number 18344(01) Fish Trackers/Reopen Packery Channel Association. The BO included a ''finding of not likely to jeopardize the continued existence of the threatened and endangered populations of the piping plover'' based on the project design included in Permit 18344(01). Refer to Comment E.3 for the circumstances requiring Federal actions that have already undergone section 7 consultation to reinitiate that consultation.

*Comment 2:* Is it necessary to obtain a permit and contract an environmental consultant at the private landowner's expense, because the property that he/she wishes to build a house on is on the beachfront, upland area, or sand dune?

*Our Response:* Prior to procuring a consultant, we suggest that you contact the Service representative in your particular State (see the contact list in the ''Effects of Critical Habitat Designation'' section of this rule for the name and phone number of the person to contact). As discussed in comment E.5, all landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as ''harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in any such conduct.'' Take is further defined by regulation to include ''significant habitat modification or degradation that actually kills or injures wildlife.'' This definition was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt,* 515 U.S. 687 (1995).

All Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. ''Jeopardize the continued existence of'' means to engage in an action that 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). Because we designated only areas within the geographic range occupied by the piping plover, any activity that would result in an adverse modification of the plover's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the plover both within and outside designated critical habitat.

*Issue K: Economic Comments*

Numerous persons commented on the expected economic effects of the designation and on the draft economic analysis.

*Comment 1:* The designation of critical habitat on Padre Island National Seashore would restrict the ability to explore and develop mineral operations and cause a sizable economic impact if indeed these restrictions are upheld.

*Our Response:* As discussed in the ''Exclusions Under 4(b)(2) of the Act'' section of this rule, we considered the effects on exploration and development of mineral operations that would result from including Padre Island National Seashore in the final designation. Based on our analysis under section 4(b)(2), we concluded that the benefits of excluding Padre Island National Seashore were greater than the benefits of including, and therefore, we have excluded that area from the final designation.

*Comment 2:* Some commenters stated that the DEA was inadequate because it is based on the faulty assumption that the designation will not result in any greater burden than under the ''baseline'' of the listing of the plover. Relatedly, some commenters believed that we should have quantified the cost of designating the plover as an endangered species in our baseline calculations.

*Our Response:* The economic analysis does determine that there is a slight additional burden due to the designation of critical habitat for wintering piping plover and the economists attempted to quantify these costs in their analysis. See the ''Economics Analysis'' section of this rule.

While listing effects can be significant in some cases due to the prohibition on ''taking'' a listed species, Congress specifically directed the Service to base its listing decisions strictly on biological considerations. Economic effects caused by listing the wintering population of the piping plover as a federally protected threatened species, and by other statutes, are the baseline against which we evaluated, under section 4(b)(2) of the Act, the effects of the critical habitat designation.

*Comment 3*: Some commenters stated that they believed that the economic analysis should be completed before the rule is formally proposed.

*Our Response:* Given the nature of this rulemaking, we were unable to complete the economic analysis at the time we formally proposed this rule to the public. Both the proposed rule date and final rule date were established as a result of court rulings, that allowed less time than generally preferred by us to conduct a rulemaking. As a result, although we began the economic analysis before the rule was formally proposed, we were not able to complete it until later. Once we completed the economic analysis, we published in the **Federal Register** a Notice of Availability (65 FR 52691, August 30, 2000) and gave the public 90 days to comment on the analysis, along with other aspects of the rule. We have considered these comments and have produced a revised economic analysis, that we have submitted to OMB for review as part of this rulemaking package.

*Comment 4:* Some commenters believed that our economic analysis focused too narrowly on either current or near-term planned activities at the expense of longer-term planned activities.

*Our Response:* The revised analysis used a ten-year time horizon to identify likely current and planned activities that may be affected by critical habitat designation. We limited our analysis to a ten-year horizon because the estimation of future impacts becomes extremely speculative beyond that point. As stated in the analysis, our approach for estimating the potential effects of critical habitat designation followed four basic steps. First, the analysis identified land uses and activities likely to be affected by critical habitat designation. Second, the analysis looked at Federal nexuses that may allow certain land uses and activities conducted on critical habitat to be consulted on under section 7 of the Act. Third, out of the activities likely to occur on critical habitat having a Federal nexus, the analysis considered the likelihood that the Service would consult with the Federal agency under section 7 of the Act because such activities have the potential to adversely affect the plover or its critical habitat. Under this consideration, the analysis considered the likelihood that critical habitat designation would impose additional effects beyond listing, including effects on section 7 consultations and potential mitigation. Finally, the analysis also considered the potential for any further indirect effects resulting from the designation. While we believe the analysis did a credible job in identifying both current and planned future land use activities within proposed critical habitat, we also believe that to speculate about long-term, future activities on particular units, that are different than those currently being conducted or envisioned, adds little information of value to the decision-making process.

*Comment 5:* We received many comments concerning the impact that dredging and the disposal of dredged materials, along with beach nourishment, would have on critical habitat.

*Our Response:* Our revised economic analysis addresses this issue in greater specificity. In summary, we do not believe that beach nourishment activities, along with dredging and disposal activities, are likely to be impacted by this critical habitat designation. In the vast majority of cases we support beach nourishment activities as they benefit the wintering plover by providing them increased foraging habitat. Dredging and disposal activities have also not been significantly impacted by the presence of the plover, and we see no reason why critical habitat designation would alter this scenario.

*Comment 6:* We received several comments from citizens concerned specifically about the impact that critical habitat designation would have on Texas Gulf Coast activities including: (1) The exploration, development, and production of oil and gas reserves; (2) recreational use of coastal areas; (3) real-estate development projects for residential and commercial use; and (4) transportation of commodities on the Gulf Intracoastal Waterway. One economic study submitted by a commenter suggested that critical habitat designation could result in a total net present value cost over 30 years of $261 to $979 million to the Laguna Madre Environs economy.

*Our Response:* We believe that the above mentioned economic study submitted by BNP Petroleum Corporation overstates the effects that may result from this designation. The economic costs developed by the study's authors depend on two main assumptions. First, the authors assume that the critical habitat being designated for the wintering plover, contrary to our descriptions, consists of large areas of unoccupied territory lacking the necessary primary constituent elements needed to support the plover. As a result, the authors believe that delays will occur to future activities as project

proponents will need to enter into consultations with the Service, that will enviably lead to delays causing economic effects.

Regarding the first assumption, critical habitat, by definition, only includes those areas containing the primary constituent elements identified in the rule. We believe that all of these areas are currently occupied by the wintering plover and that Federal agencies are already required to ensure that the activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the plover. Federal agencies already must notify us of activities that may adversely affect the plover. Because we are only designating areas occupied by the plover and because any activities that may adversely modify critical habitat would also likely jeopardize the continued existence of the species, we do not believe that critical habitat designation will have any appreciable economic effect above current effects resulting from the listing of the plover in 1985.

The BNP study estimates impacts to the natural gas industry, which constitutes the majority of their study's effects, based on the key assumption that critical habitat designation could result in project delays between six months and two years arising from section 7 consultations. In a review of piping plover section 7 consultations in the Gulf Coast Sates where critical habitat is being designated, very few involved oil and gas exploration and production activities. Mostly this is because existing oil and gas production activity takes place offshore and is not on the beaches or flats occupied by plover and as a result these activities were not likely to adversely affect the species. Also, in many instances where oil and gas production activities affect the areas occupied by the plover, such as pipeline crossings and gathering stations for near shore production, either the environmental impacts to the plover were not significant enough to warrant a formal consultation or the activity lacked a Federal nexus. Although the permitting process for oil and gas exploration and production activities is complex and involves a myriad of Federal, State, and local requirements, a formal consultation is normally completed within 135 days. We therefore disagree with the study's authors that section 7 consultations can lead to significant project delays for the industry.

Also, as noted in the BNP study, future production in the Gulf Coast is likely to occur in very deep water (14,000 to 18,000 feet), well away from critical habitat areas. This makes it highly unlikely critical habitat would have any effect. Due to the distance future production areas are from the shoreline, products will most likely be barged into existing ports with offloading facilities because it will be uneconomical or technologically infeasible to connect deepwater platforms to the existing infrastructure of near-shore pipelines. As a result, critical habitat areas are highly unlikely to be affected by future industry activities. In addition, we do not believe that the oil and gas industry will be affected by any significant increase in section 7 consultations because of this rulemaking, and we disagree with the findings in their study.

That being said, the economic analysis prepared for the Service finds that the designation of critical habitat for the piping plover may result in additional section 7 consultation costs because future consultations would need to address critical habitat issues, in addition to the effects on the species, and would therefore require more time. Additionally, we acknowledge that some Federal agencies may initiate consultation more often than before, because critical habitat has increased their awareness of the species. Even though consideration of critical habitat is not likely to impose further project modifications beyond those required by the listing of the plover, project proponents may nonetheless incur costs above and beyond those attributable to the listing of the plover as a threatened species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities. Refer to the ''Exclusions Under 4(b)(2) of the Act'' section of this rule for our analysis under section 4(b)(2) of the Act.

Similarly, we do not believe that this rule will have a significant effect on the other three factors: (1) Recreational use of coastal areas; (2) real-estate development projects for residential and commercial use; and (3) transportation of commodities on the Gulf Intracoastal Waterway. First, we do not believe that recreational use of coastal areas will be affected because no such effects have been experienced since the plover was listed in 1985, combined with the fact that we are only designating occupied critical habitat. Furthermore, the plovers spend the wintering season foraging and roosting and then migrate north in the summer where they breed. Breeding areas in the north may experience partial or temporary closures during the breeding season to protect ground level nests but such effects are not expected to occur in the wintering areas affected by this rule because of the fact that the birds are mobile and not nesting during the wintering season. Furthermore, in a recent study that looked at the effect of beach closures in breeding areas, no significant economic effects were identified due to the availability of nearby beaches (Unsworth, et al., An Economic Analysis of Piping Plover Recovery Activities in the Atlantic Coast, 1998).

Our revised economic analysis also considered in greater detail the effect the rule could have on real-estate development projects. Using a conservative assumption that critical habitat designation could result in one to two and one-half percent of forgone future lot development due to project modifications resulting from critical habitat designation, the analysis found that total costs to developers over a ten-year time frame could range from about $1.5 million to $4.5 million. This represents less than one percent of the total estimated value of future planned housing in southern Texas. Furthermore, the revised analysis found no evidence to support the claim that the section 7 consultation process has resulted in significant time delay estimates as argued by the commenter.

Finally, the revised economic analysis also further considered the effect the rule could have on commodity transportation within the Gulf Intracoastal Waterway. The commenter was specifically concerned that the designation of critical habitat could result in the closure of the waterway because the Service could require disposal of dredged materials to be disposed further from the beach areas, which could become cost prohibitive. This scenario, however, is highly unlikely as dredging and disposal operations in the area have taken place continually since the plover was originally listed as an endangered species in 1985. Because this area is occupied by the plover, any effects on dredging and disposal activities in the future would occur regardless of critical habitat designation. However, with a single, unique exception that is addressed in the revised analysis, dredging and disposal activities have not been negatively impacted by the presence of the plover and consequently are not expected to be further impacted by critical habitat.

*Comment 7:* We received many comments from citizens of Marco Island, Florida concerned over the impact that critical habitat would have on their recreational beach-use activities

as well as spillover effects to their local housing values.

*Our Response:* As mentioned previously, we do not believe that recreational use of coastal areas will be significantly affected because recreational impacts since listing have been minimal and only habitat that is currently occupied by the wintering plover is being designated. Again, while beach closures, or more commonly beach restrictions, have occurred to protect the piping plover, these closures occur during breeding season in the summer. Plovers typically migrate north in the spring and summer seasons to breed and occupy areas outside of wintering habitat, which this rule addresses. Furthermore, in a recent study that looked at the possible effects of beach closures in breeding areas, no significant economic effects were identified due to the availability of nearby beaches (Unsworth, *et al.,* An Economic Analysis of Piping Plover Recovery Activities in the Atlantic Coast, 1998).

*Comment 8:* Many commenters expressed concern that the designation includes unoccupied habitat that does not contain the primary constituent elements necessary to support the plovers and that the DEA overlooked this effect.

*Our Response:* The determination of whether or not proposed critical habitat is within the geographic range occupied by the plovers is part of the biological decision-making process and lies beyond the scope of an economic analysis. For a discussion of the biological justification of why we believe the area being designated is within the geographical area occupied by the plover, see our responses to Issue A.

*Comment 9:* The Environmental Protection Agency (EPA) indicated that our economic analysis should evaluate Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

*Our Response:* Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. We do not believe that the designation of critical habitat for endangered and threatened species results in any changes to human health or environmental effects on surrounding human populations, regardless of their socioeconomic characterization. As such, we do not believe that Executive Order 12898 applies to critical habitat designations.

*Issue L: Critical Habitat and Habitat Conservation Plans (HCPs)*

In the proposed rule we requested input on alternative approaches to issuing any future incidental take permits under section 10(a)(1)(B) of the Act, and how that process may be influenced by critical habitat designation. Five alternatives were provided:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the piping plover, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

*Comment 1:* All who commented on this issue favor alternative 1, to retain critical habitat within any future HCP boundaries and use the section 7 consultation process to evaluate the effects of the HCP on critical habitat. Most commenters believed that alternatives 3 through 5 are illegal under the Act, and that alternative 2 would likely be illegal as well.

*Our Response:* We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. A detailed rationale for this determination can be found in the ''Exclusions Under 4(b)(2) of the Act'' section of this final rule.

We anticipate that any future HCPs in the range of wintering piping plovers will include it as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future

analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCP and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the piping plover.

In the event that future HCPs covering wintering piping plovers are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the species and appropriate management of those lands. If the piping plover is a covered species under future HCPs, the plans should provide for the long term conservation of the species. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the piping plover is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the piping plover as a covered species is ultimately approved, we may reassess the relevant critical habitat boundaries in light of the protection and management provided by the HCP. We may seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review. However, an HCP can proceed without a concurrent amendment to the critical habitat designation should all involved parties agree.

*Issue M: Other Comments*

*Comment 1:* The Service was ordered to designate critical habitat for piping plovers breeding in the Great Lakes and Great Plains states. How is the Service addressing the Atlantic Coast breeding population that might breed or winter in Great Lakes/Great Plains wintering locations?

*Our Response:* The wintering range of piping plovers from all three breeding populations overlaps the documented breeding range of the Atlantic Coast population in North Carolina and at one site in northern South Carolina. The designation of critical habitat for wintering and migrating piping plovers in this final rule, however, reflects the known distribution and habitat requirements of piping plovers during the non-breeding portion of their life-cycle, but provides the protection offered by critical habitat year-round. Outside of their breeding range, piping plovers are protected as a threatened species regardless of their originating breeding population, and this critical habitat designation encompasses wintering habitat essential to the conservation of piping plovers from all three breeding populations.

*Comment 2:* In order to comply with the Act the Service must designate critical habitat for breeding and migratory piping plovers on the Atlantic Coast.

*Our Response:* We are currently required to complete a significant number of listing-related actions, pursuant to court orders and judicially approved settlement agreements. Complying with these court orders and settlement agreements will require the Service to spend nearly all of its listing and critical habitat funding for fiscal year 2001, and a substantial amount in fiscal year 2002. We are currently working to prioritize our critical habitat workload within the Act's listing budget allocated by Congress. The priority for designating critical habitat for the Atlantic Coast breeding population of piping plovers relative to other species and pending litigation has not yet been determined. The other two peer reviewers did not respond.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent expert opinions from five persons who are familiar with this species to peer-review the proposed critical habitat designation. Three of these experts provided us with a written response generally supporting the designation and providing additional information, that we have incorporated into the rule as appropriate.

One of the reviewers stated her view that only sites with recorded plover use should be designated, and that the designation could be subsequently revised as new sites become known. However, she also stated her support for designating larger areas when at least some of these larger units have records of plover use. This is generally the approach we took. We sincerely appreciate the responses of these peer reviewers, and believe their input has provided a great deal of support for this designation.

**Critical Habitat**

Critical habitat is defined in section 3(5)(A) 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 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 threatened species to the point at which listing under the Act is no longer necessary. Thus, critical habitat areas should provide sufficient habitat to support the species at the population level and geographic distribution that are necessary for recovery.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, providing the exclusion will not result in the extinction of the species.

In order to be included in a critical habitat designation, the habitat must first be ''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)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. We are required to base our designations on what, at the time of designation, we believe to be essential to the species and in need of special management considerations or protection.

Our regulations state that, ''The Secretary shall designate as critical

habitat areas outside the geographic area presently occupied by the 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, we will not designate critical habitat in areas outside the geographic area occupied by the species, unless the best available scientific and commercial data demonstrate that the conservation needs of the species can not be met by a designation that is limited to areas 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 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires 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 should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

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, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted 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.

This critical habitat designation for the wintering population of the piping plover includes areas that we know currently support the species. Areas described in the approved recovery plans (USFWS 1988, 1996) as essential to the conservation of the wintering population of the piping plover are being designated as critical habitat, if recent data support consistent use and the habitat remains suitable. However, the recovery plans did not include the most recent comprehensive winter survey data and, therefore, the plans did not identify all possible areas essential to the survival and recovery of the species. Thus, we identified additional areas essential to the species' conservation, based upon unpublished data collected by state agencies, Christmas bird counts, individual birders, master's theses (Nicholls 1989, Climo 1998) and published data (Sprandel *et al.* 1997).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat by actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act from such activities on these lands.

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation.

*Primary Constituent Elements*

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements 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; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Nicholls and Baldassarre 1990b; Drake 1999a, 1999b). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Nicholls 1989; Zonick and Ryan 1995), which they peck from on top or just beneath the surface of moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers undertake various maintenance activities including roosting, preening, bathing, aggressive encounters (with other piping plovers and other species), and moving among available habitat locations (Zonick and Ryan 1996). The habitats used by wintering birds include beaches, mud flats, sand flats, algal flats, and washover passes (areas where breaks in the sand dunes result in an inlet). Individual plovers tend to return to the same wintering sites year after year (Nicholls and Baldassarre 1990b, Drake 1999a). Wintering plovers are dependent on a mosaic of habitat patches, and move among these patches depending on local weather and tidal conditions (Drake 1999b).

Based upon the behavioral characteristics of wintering piping plovers, we have determined that the primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features

necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are found in geologically dynamic coastal areas that support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide.

Important components (primary constituent elements) of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent unvegetated or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae for feeding of prey, sparsely vegetated backbeach (beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road) for roosting and refuge during storms, spits (a small point of land, especially sand, running into water) for feeding and roosting, salterns (bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water (Myers and Ewel 1990)) (biologists have documented use of salterns by piping plovers in southwest Florida) and washover areas for feeding and roosting. Washover areas are broad, unvegetated zones with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action. Several of these components (sparse vegetation, little or no topographic relief) are mimicked in artificial habitat types used less commonly by piping plovers, but that are considered critical habitat (e.g., dredge spoil sites).

These habitat components are a result of the dynamic geological processes that dominate coastal landforms throughout the wintering range of piping plovers. These geologically dynamic coastal regions are controlled by processes of erosion, accretion, succession, and sea-level change. The integrity of the habitat components depends upon daily tidal events and regular sediment transport processes, as well as episodic, high-magnitude storm events; these processes are associated with the formation and movement of barrier islands, inlets, and other coastal landforms. By their nature, these features are in a constant state of change; they may disappear, only to be replaced nearby as coastal processes act on these habitats. Given that piping plovers evolved in this dynamic system, and that they are dependent upon these ever-changing features for their continued survival and eventual recovery, our critical habitat boundaries incorporate sites that experience these natural processes and include sites that may lose and later develop appropriate habitat components.

In most areas, wintering piping plovers are dependent on a mosaic of sites distributed throughout the landscape. The annual, daily, and even hourly availability of the habitat patches is dependent on local weather and tidal conditions. For example, a single piping plover may leave a site if it becomes inundated by a high tide or storm event, or if high winds or cold temperatures make the site unsuitable for foraging or roosting. This bird will move to other patches within the landscape mosaic that might provide refuge from inclement weather conditions, or that simply provide a roosting site until conditions become favorable to resume foraging.

*Methods*

In determining areas that are essential to conserve the wintering population of piping plover, we solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. We used areas identified in approved recovery plans and current draft recovery plans to initially suggest important areas essential for the recovery of the species. These areas were then further evaluated using site-specific data, such as documented bird observations. To map areas essential to the conservation of the species, we used GIS (described in our response to comment G.3) and data on known piping plover wintering locations, digital aerial photographs and regional shoreline-defining electronic files. Sources of data providing these locations include two international piping plover censuses (conducted by State and Federal biologists and local birders) carried out in January of 1991 and 1996, published reports (a complete list of all references cited in this final rule are available upon request from the Corpus Christi Ecological Services Field Office, see **ADDRESSES** section), Christmas bird counts, and other data from surveys focusing on shorebird distribution and abundance.

We have included those areas along the coast for which occurrence data indicate a consistent use (observations over more than one wintering season) by piping plovers within this designation. The only areas included in the proposed rule that did not have survey data showing that they are used by plovers were the Mississippi River and the Wax Lake Outlet Deltas. We included those areas in the proposed rule because of the high probability of use by plovers due to the broad expanse of mudflats known to exist in the river deltas. However, adequate census data were not available to provide reliable presence or absence information for the plover until recently (U.S. Fish and Wildlife Service and Louisiana Department of Wildlife and Fisheries unpublished data, 2001), because these areas are remote and difficult to access and thus had not been surveyed. Since the proposed rule, we have surveyed these areas (Mississippi River Delta in December 2000; and the Wax Lake Outlet Delta during the February International Piping Plover Survey). Forty plovers were found on a few small dredged material islands in the Mississippi River Delta, none were found in the Wax Lake Outlet Delta. Those areas of the Mississippi Delta where no plovers were observed were not included (portions of LA–6) and the entire Wax Lake Outlet Delta (portions of Unit LA–2) was also not included in the final rule. This has resulted in less acreage being designated in Louisiana. Additionally, during the International Census in February 2001, 40 piping plovers were observed on the same dredged material islands in the Mississippi River Delta. Although we do not have data to document use of these areas over more than one wintering season, based on studies indicating that plovers exhibit a certain amount of site fidelity (see our response to Comment A.11 above.), and the large numbers of plovers observed at these sites, we consider it virtually certain that these areas are consistently used and have included them in the designation and consider these areas essential to the conservation of the species.

For the proposed rule, units and shorelines were mapped at variable scales (zoom factors) and with less detail. For the final rule, all units and shoreline were mapped at 1:5000 or larger (greater zoom) scale. In addition to the standardized mapping scale, the units and shoreline were mapped more precisely. This change in mapping technique and detail resulted in an increase in reported total mapped shoreline kilometers and miles for some states. This also resulted in increases in reported mapped shoreline distances by ownership for some states. It also affected the reported total and

ownership acreages, in some cases resulting in an apparent increased area while in others the result was an apparent decrease in area. However, the areas included in the critical habitat designation are the same areas that we verbally described in the unit-by-unit descriptions in the proposed rule, except for areas which we omitted in the final designation (as described below in the ''Summary of Changes From the Proposed Rule'' section).

In the proposed rule, a single buffer distance was set for all units in all states (500 m (1,640 ft)). Since this methodology resulted in areas of water (deeper than MLLW) and areas of dense vegetation being included in the designation, which are not utilized by piping plovers, we abandoned this methodology for a more precise means of defining the areas that contain the physical and biological features essential to the wintering piping plover. This change in methodology results in smaller units of designated critical habitat than that of the proposed rule. In order to capture the dynamic nature of the coastal habitat, and the intertidal areas used by the piping plover, we have textually described each unit as including the area extending out from the landward boundaries to the MLLW. MLLW, as defined in our response to comment A.12, is the mean of the lower low water height of each tidal day observed over the National Tidal Datum Epoch. While, MLLW is published information that can be determined through nautical charts, it is not currently available in a GIS version.

Designating specific locations for critical habitat for the piping plovers is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geo-physical alterations of beaches and shorelines. Thus, to best insure that areas considered essential to the piping plover are included in this designation, our textual unit descriptions will constitute the definitive determination as to whether an area is within the critical habitat boundary. Our textual unit descriptions describe the geography of the area using reference points, including the areas from the landward boundaries to the MLLW (which encompasses intertidal areas that are essential foraging areas for piping plovers) and describes areas within the unit that are utilized by the piping plover and contain the primary constituent elements (e.g., upland areas used for roosting and wind tidal flats used for foraging).

For the proposed rule, ownership was assigned to three classes within a unit (Federal, State, and private). Federal lands were those federally owned; State lands and waters were those State owned; and private were all non-Federal or non-State owned lands. For this final rule, we have 3 classes (Federal, State, and other) for mapped shoreline and 3 classes (Federal, State, and other) for mapped unit area. Assignment is as follows: Federal—federally owned lands, State—State owned lands, and Other—non-Federal or non-State owned lands. In the proposed rule, there were errors in the values reported in Table 2 for Alabama and Texas, which we have corrected.

In the final rule, to the maximum extent practicable, we mapped critical habitat in sufficient detail to exclude currently developed sites. However, we were unable to exclude all buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines, and similar structures. These areas do not contain primary constituent elements essential for piping plover conservation and are not considered critical habitat even though they are within the mapped critical habitat unit boundaries. The Service will continue to explore ways in which to identify areas within mapped critical habitat boundaries that are not considered critical habitat because they do not contain the primary constituent elements essential for piping plover conservation.

*Critical Habitat Designation/Land Ownership*

The critical habitat areas contained within the conservation units described below constitute our best evaluation of areas needed for the conservation of the wintering piping plover. We may revise critical habitat through a rulemaking process if new information becomes available in the future.

We calculated linear distances of critical habitat shoreline (in kilometers and miles) by ownership for each State (Table 1). In addition, State-level values of area in hectares and acres were calculated for the critical habitat units by ownership (Table 2). Ownership for both the shoreline and units were broken into three classes (Federal—Federally owned lands, State—State owned lands, and Other—non-Federal or non-State mapped lands). Assignment of ownership was based on existing digital State-level managed/protected lands geodataset (GIS data set) where possible. If no existing digital data were available, ownership was assigned based on other data sources.

TABLE 1.—APPROXIMATE SHORELINE DISTANCES OF DESIGNATED CRITICAL HABITAT FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN KILOMETERS (MILES)

| | Federal | State | Other | Total |
|---|---|---|---|---|
| NC | 1,24.9(77.4) | 44.9(27.8) | 33.5(20.8) | 203.3(126.0) |
| SC | 25.2(15.6) | 31.6(19.6) | 43.9(27.2) | 100.7(62.4) |
| GA | 52.3(32.4) | 42.7(26.5) | 39.7(24.6) | 134.7(83.5) |
| FL | 109.0(67.6) | 193.2(119.8) | 38.6(23.9) | 340.8(211.3 ) |
| AL | 16.1(10.1) | 21.8(13.6) | 38.5(24.0) | 76.4(47.7) |
| MS | 98.2(61.4) | 0.0(0.0) | 105.9(66.2) | 204.1(127.6 ) |
| LA | 143.2(89.5) | 236.1(147.6) | 168.6(105.4) | 547.9(342.5) |
| TX | 88.2(54.7) | 38.8(24.1) | 1,156.8(718.5) | 1,283.8(797.3) |
| Total | 657.1(408.7) | 609.1(379.0) | 1,625.5(1,010.6) | 2,891.7(1,798.3) |

TABLE 2.—APPROXIMATE LAND AREA OF DESIGNATED CRITICAL HABITAT UNITS FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN HECTARES (ACRES)

| | Federal [1] | State [1] | Other [1] | Total |
|---|---|---|---|---|
| NC | 5,614(13,866) | 2,062(5,093) | 938(2,318) | 8,614(21,277) |
| SC | 388(958) | 663(1,639) | 1,222(3,018) | 2,273(5,615) |
| GA | 1,734(4,285) | 1,437(3,551) | 1,333(3,294) | 4,504(11,130) |

TABLE 2.—APPROXIMATE LAND AREA OF DESIGNATED CRITICAL HABITAT UNITS FOR WINTERING PIPING PLOVER BY STATE (ROWS) AND OWNERSHIP (COLUMNS) IN HECTARES (ACRES)—Continued

| | Federal [1] | State [1] | Other [1] | Total |
|---|---|---|---|---|
| FL | 5,135(12,683) | 5,070(12,524) | 858(2,121) | 11,063(27,328) |
| AL | 294(726) | 292(722) | 600(1,481) | 1,186(2,929) |
| MS | 2,376(5,870) | 0.0(0.0) | 1,479(3,655) | 3,855(9,525) |
| LA | 3,042(7,515) | 3,246(8,019) | 3,812(9,416) | 10,100(24,950) |
| TX | 1,934(4,777) | 2,604(6,432) | 20,748(51,248) | 25,285(62,454) |
| Total | 20,517(50,680) | 15,374(37,980) | 30,990(76,551) | 66,881(165,211) |

[1] Approximate land mass values that do not include intertidal areas.

We have divided the lands designated as critical habitat into 142 critical habitat conservation units that contain areas with the primary constituent elements for the piping plover in the wintering range of the species. These units are found in all eight States where piping plovers winter. Below, we describe each unit in terms of its location, approximate size, and ownership. Due to data limitations (resolution & availability) intertidal zone (area between high and low tide) could not be mapped; therefore, the size of each unit is considered approximate. These unit descriptions can be found in the regulatory section at the end of this rule, and are the definitive source for determining the critical habitat boundaries.

*North Carolina (Maps Were Digitized Using 1993 DOQQs, Except NC–3 (1993 DRG)*

Unit NC–1: Oregon Inlet. 404 ha (997 ac) in Dare County. This unit extends from the southern portion of Bodie Island to the northern portion of Pea Island. It includes all land south of the Oregon Inlet Marina and Fishing Center to 0.50 km (0.31 mile) south of the junction of Highway 12 and SR 1257. This unit includes lands from MLLW on the Pamlico Sound across (and including all land) to MLLW on Atlantic Ocean shoreline. Any emergent sandbars south and west of Oregon Inlet are included.

Unit NC–2: Cape Hatteras Point. 465 ha (1149 ac) in Dare County. The majority of the unit is within Cape Hatteras National Seashore. This unit extends south from the Cape Hatteras Lighthouse to the point of Cape Hatteras and then extends west 6.4 km (4.0 mi) along Hatteras Cove shoreline. The unit includes lands from the MLLW on the Atlantic Ocean and stops landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

Unit NC–3: Clam Shoals. 28 ha (70 ac) in Dare County. The entire unit is owned by the State. This unit includes several islands in Pamlico Sound known as Bird Islands. This unit includes lands on all islands to the MLLW.

Unit NC–4: Hatteras Inlet. 516 ha (1273 ac) in Dare and Hyde Counties. The majority of the unit is surrounded by Cape Hatteras National Seashore, but is privately owned. This unit extends west from the end of Highway 12 on the western portion of Hatteras Island to 1.25 km (0.78 mi) southwest of the ferry terminal at the end of Highway 12 on Ocracoke Island. It includes all lands where constituent elements occur from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island are also included.

Unit NC–5: Ocracoke Island. 80 ha (197 ac) in Hyde County. The majority of this unit is within Cape Hatteras National Seashore. It includes the western portion of Ocracoke Island beginning 3.5 km (2.2 mi) west of the junction of Highway 12 and the local road (no name) extending west to Ocracoke Inlet. It includes all land from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Ocracoke Inlet are also included.

Unit NC–6: Portsmouth Island-Cape Lookout. 3187 ha (7873 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit includes all land to MLLW on Atlantic Ocean to MLLW on Pamlico Sound, from Ocracoke Inlet extending west to the western end of Pilontary Islands. This unit includes the islands of Casey, Sheep, Evergreen, Portsmouth, Whalebone, Kathryne Jane, and Merkle Hammock. This unit also extends west from the eastern side of Old Drum Inlet to 1.6 km (1.0 mi) west of New Drum Inlet and includes all lands from MLLW on Atlantic Ocean to MLLW on Core Sound.

Unit NC–7: South Core Banks. 552 ha (1364 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit extends south from Cape Lookout Lighthouse, along Cape Lookout, to Cape Point and northwest to the northwestern peninsula. All lands from MLLW on the Atlantic Ocean, Onslow Bay, and Lookout Bight up to where densely vegetated habitat, not used by the piping plover, begins and the constituent elements no longer occur are included.

Unit NC–8: Shackleford Banks. 716 ha (1769 ac) in Carteret County. The entire unit is within Cape Lookout National Seashore. This unit is in two parts: (1) The eastern end of Shackleford Banks from MLLW of Barden Inlet extending west 2.4 km (1.5 mi), including Diamond City Hills, Great Marsh Island, and Blinds Hammock; and, (2) The western end of Shackleford Banks from MLLW extending east 3.2 km (2.0 mi) from Beaufort Inlet. The unit includes all land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and any emergent sandbars within Beaufort Inlet. This unit is bordered by Onslow Bay, Shackleford Slue, and Back Sound.

Unit NC–9: Rachel Carson. 445 ha (1100 ac) in Carteret County. The entire unit is within the Rachel Carson National Estuarine Research Reserve. This unit includes islands south of Beaufort including Horse Island, Carrot Island, and Lennox Point. This unit includes entire islands to MLLW.

Unit NC–10: Bogue Inlet. 143 ha (354 ac) in Carteret and Onslow Counties. The majority of the unit is privately owned, with the remainder falling within Hammocks Beach State Park. This unit includes contiguous land south, west, and north of Bogue Court to MLLW line of Bogue Inlet on the western end of Bogue Banks. It includes the sandy shoals north and adjacent to Bogue Banks and the land on Atlantic Ocean side to MLLW. This unit also extends 1.3 km (0.8 mi) west from MLLW of Bogue Inlet on the eastern portion of Bear Island.

Unit NC–11: Topsail. 451 ha (1114 ac) in Pender County and Hanover County. The entire area is privately owned. This unit extends southwest from 1.0 km (0.65 mi) northeast of MLLW of New Topsail Inlet on Topsail Island to 0.53 km (0.33 mi) southwest of MLLW of Rich Inlet on Figure Eight Island. It includes both Rich Inlet and New Topsail Inlet and the former Old Topsail Inlet. All land, including emergent sandbars, from MLLW on Atlantic Ocean and sound side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. In Topsail Sound, the unit stops as the entrance to tidal creeks become narrow and channelized.

Unit NC–12: Figure Eight Island. 134 ha (331 ac) in New Hanover County. The majority of the unit is privately owned. This unit extends south from the western end of Beach Road on Figure Eight Island to the northern end of Highway 74 on Wrightsville Beach. The unit includes Mason Inlet and the sand and mudflats northwest of the inlet from MLLW on Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–13: Masonboro. 61 ha (150 ac) in New Hanover County. The entire unit is within the North Carolina National Estuarine Research Reserve. This unit extends 1.1 km (0.70 mi) south from the MLLW of Masonboro Inlet on Masonboro Island. This unit includes all lands along the Atlantic Ocean, Masonboro Inlet, and Masonboro Sound from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–14: Carolina Beach Inlet. 374 ha (924 ac) in New Hanover County. The majority of the unit is within Myrtle Grove Sound on Masonboro Island and is owned by the North Carolina National Estuarine Research Reserve. It extends 1.80 km (1.12 mi) west along the south shoreline of Wolf Island from the mouth of the Altamaja sound. This unit extends south from 3.2 km (2.0 mi) north of MLLW at Carolina Beach Inlet on Masonboro Island to 1.1 km (0.70 mi) south of MLLW at Carolina Beach Inlet on Carolina Beach. It includes land from MLLW on Atlantic Ocean across and including lands to MLLW on the western side of Masonboro Island, excluding existing dredge spoil piles. Emergent sand bars within Carolina Beach Inlet are also included.

Unit NC–15: Ft. Fisher. 790 ha (1951 ac) in New Hanover and Brunswick Counties. This unit is within Ft. Fisher State Recreation Area and Zeke's Island Estuarine Reserve. This unit extends south from Ft. Fisher Islands (from the rocks), south of the ferry terminal, to approximately 0.8 km (0.5 mi) south of MLLW at Corn Cake Inlet on Smith Island. It includes all land (including Zeke's Island) from MLLW on Atlantic Ocean across to MLLW on the eastern side of the Cape Fear River.

Unit NC–16: Lockwood Folly Inlet. 36 ha (90 ac) in Brunswick County. The entire unit is on Oak Island (formerly known as the Town of Long Beach) and is privately owned. This unit extends from the end of West Beach Drive, west to MLLW at Lockwood Folly Inlet, including emergent sandbars south and adjacent to the island. This unit includes land from MLLW on Atlantic Ocean across to MLLW adjacent to the Eastern Channel and the Intracoastal Waterway.

Unit NC–17: Shallotte Inlet. 120 ha (296 ac) in Brunswick County.The entire unit is privately owned. This unit begins just west of Skimmer Court on the western end of Holden Beach. It includes land south of SR 1116, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur to the MLLW along the Atlantic Ocean. It includes the contiguous shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along the Atlantic Ocean, Shallotte Inlet, and Intracoastal Waterway stopping north of Skimmer Court Road. The unnamed island and emergent sandbars to MLLW within Shallotte Inlet are also included.

Unit NC–18: Mad Inlet. 112 ha (278 ac) in Brunswick County. The entire unit is privately owned. This unit extends west 1.2 km (0.75 mi) from the end of Main Street (SR 1177) on western Sunset Beach to the eastern portion of Bird Island and includes the marsh areas north of western Sunset Beach shoreline. The shoreline area begins at MLLW on the Atlantic Ocean and continues landward to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

*South Carolina (Maps Were Digitized Using 1994 DOQQs)*

Unit SC–1: Waites Island-North. 75 ha (186 ac) in Horry County. This unit includes the northern tip of Waites Island from the MLLW at Little River Inlet and runs west along the Atlantic Ocean shoreline 2.0 km (1.25 mi) and includes land from the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The unit continues north and west of Little River Inlet stopping at Sheephead Creek, including land from MLLW to dense vegetation line. The majority of the unit is privately owned.

Unit SC–2: Waites Island-South. 58 ha (142 ac) in Horry County.This unit includes the southern tip of Waites Island from the MLLW at Hog Inlet and runs east along the Atlantic Ocean shoreline 0.80 km (0.50 mi) and includes MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It continues north and west of the Hog inlet, stopping at the first major tributary. Critical habitat includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Emerging sandbars within Hog Inlet and adjacent to the tip if eastern Cherry Grove Beach are also included from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur. The majority of this unit is privately owned.

Unit SC–3: Murrells Inlet/Huntington Beach. 135 ha (334 ac) in Georgetown County. The majority of the unit is within Huntington Beach State Park. This unit extends from the southern tip of Garden City Beach, just south of the groins (a rigid structure or structures built out from a shore to protect the shore from erosion or to trap sand) north of Murrells Inlet from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur stopping perpendicular with the southern end of Inlet Point Drive. It includes from MLLW south of Murrells Inlet to the northern edge of North Litchfield Beach approximately 4.5 km (3.0 mi). The unit includes the MLLW from the Atlantic Ocean up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The lagoon at the north end of Huntington Beach State Park is also included.

Unit SC–4: Litchfield. 11 ha (28 ac) in Georgetown County. This unit includes the southern tip of Litchfield Beach beginning 0.50 km (0.30 mi) north of Midway Inlet and stopping at the MLLW at Midway Inlet. It includes from the MLLW on the Atlantic Ocean shoreline across and including land to the MLLW on the back bayside. This unit is mostly privately owned.

Unit SC–5: North Inlet. 99 ha (245 ac) in Georgetown County. The majority of the unit is within Tom Yawley Wildlife Center Heritage Preserve. This unit extends from MLLW to 1.0 km (.62 mi) north of North Inlet on Debidue Beach. It includes shoreline on the Atlantic Ocean from MLLW to the MLLW on the western side of the peninsula. This unit also includes from the MLLW south of North Inlet 1.6 km (1.0 mi). It includes the shoreline on the Atlantic Ocean from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It includes shoreline running south and west of the inlet from the MLLW stopping at the MLLW at the first large tributary (no name).

Unit SC–6: North Santee Bay Inlet. 305 ha (753 ac) in Georgetown County. The majority of the unit is within the Tom Yawley Wildlife Center Heritage Preserve and the Santee-Delta Wildlife Management Area. This unit is at the North Santee Bay inlet and includes lands of South Island, Santee Point, Cedar Island, and all of North Santee Sandbar. This unit includes from MLLW at North Santee Bay Inlet running north along the Atlantic Ocean side of South Island 7.2 km (4.5 mi), stopping 0.60 km (0.4 mi) north of an unnamed inlet. It includes areas from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This unit includes the eastern side of Cedar Island adjacent to the North Santee Bay Inlet from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of North Santee Sandbar to MLLW is included.

Unit SC–7: Cape Romain. 315 ha (777 ac) in Charleston County.The majority of the unit is within Cape Romain National Wildlife Refuge. This unit includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the southern and southeastern most 1.9 km (1.2 mi) portion of Cape Island, the southernmost portion of Lighthouse Island from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, all of Lighthouse Island South to MLLW, and the southern side of the far eastern tip of Raccoon Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–8: Bull Island. 134 ha (332 ac) in Charleston County. The majority of the unit is within Cape Romain National Wildlife Refuge and land owned by the South Carolina Department of Natural Resources. This unit includes from Schooner Creek on north and south of the river to north of Price's Inlet on the southern portion of Bull Island along the Atlantic Ocean 1.6 km (1.0 mi) and south of Price's Inlet on the northeast tip of Capers Island Heritage Preserve 1.4 km (.86 mi) along the Atlantic Ocean. All areas begin at MLLW and extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–9: Stono Inlet. 495 ha (1223 ac) in Charleston County.Most of this unit is privately owned. It includes the eastern end of Kiawah Island (approximately 4.0 km (2.5 mi)) from MLLW on Atlantic Ocean running north to MLLW on first large tributary connecting east of Bass Creek running northeast into Stono River. It includes MLLW up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along Stono Inlet and River. All of Bird Key-Stono Heritage Preserve and all of Skimmer Flats to MLLW are included. The Golf course and densely vegetated areas are not included.

Unit SC–10: Seabrook Island. 117 ha (290 ac) in Charleston County.This unit runs from just 0.16 km (0.10 mi) north of Captain Sams Inlet to the southwest approximately 3.4 km (2.1 mi) along the Atlantic Ocean shoreline. It includes land areas from the MLLW on the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Most of this unit is privately owned.

Unit SC–11: Deveaux Bank. 130 ha (322 ac) in Charleston County. The entire unit is within Deveaux Bank Heritage Preserve. This unit includes all of Deveaux Island to the MLLW and is State-owned.

Unit SC–12: Otter Island. 68 ha (169 ac) in Colleton County.The majority of the unit is within St. Helena Sound Heritage Preserve. This unit includes the southern portion of Otter Island to the eastern mouth of Otter Creek. It includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The entire unit is State-owned.

Unit SC–13: Harbor Island. 50 ha (122 ac) in Beaufort County. The majority of the unit is State-owned. This unit extends from the northeastern tip of Harbor Island and includes all of Harbor Spit. It begins at the shoreline east of Cedar Reef Drive running south, stopping at the mouth of Johnson Creek. It includes the MLLW on the Atlantic Ocean and St. Helena Sound to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Harber Spit to MLLW is included.

Unit SC–14: Caper's Island. 238 ha (589 ac) in Beaufort County. Most of this unit is privately owned. This unit includes the southern-most 4.5 km (2.8 mi) along the Atlantic Coast shoreline of Little Caper's Island beginning at MLLW on south side of the inlet (un-named). It includes the MLLW on the Atlantic Ocean shoreline to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–15: Hilton Head. 43 ha (106 ac) in Beaufort County. The majority of this unit is State-owned. This unit includes the northeastern tip (Atlantic Ocean side) of Hilton Head Island and all of Joiner Bank. It begins at the shoreline east of northern Planters Row and ends at the shoreline east of Donax Road. It includes the MLLW of Port Royal Sound and the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Joiner Bank to MLLW is included.

*Georgia (Maps Were Digitized Using 1993–94 DOQQs)*

Unit GA–1: Tybee Island. 37 ha (91 ac) in Chatham County. The majority of the unit is privately owned. This unit extends along the northern tip of Tybee Island starting from 0.8 km (0.5 mi) northeast from the intersection of Crab Creek and Highway 80 to 0.7 km (0.41 mi) northeast from the intersection of Highway 80 and Horse Pen Creek. The unit includes MLLW on Savannah River and Atlantic Ocean to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit GA–2: Little Tybee Island. 719 ha (1776 ac) in Chatham County. The majority of the unit is within Little Tybee Island State Heritage Preserve. This unit extends just south of the first inlet to Wassaw Sound along the Atlantic Ocean coastline, extending north along the sound 1.7 km (1.1 mi). It includes habitat from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–3: North Wassaw Island. 108 ha (267 ac) in Chatham County. The

entire unit is within Wassaw National Wildlife Refuge. This unit includes the north-east tip of Wassaw Sound, 1.6 km (1.0 mi) along the inlet side and extending south along the Atlantic Ocean shoreline for 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–4: South Wassaw Island. 61 ha (151 ac) in Chatham County. The entire unit is within Wassaw National Wildlife Refuge. This unit extends from the last southern 1.6 km (1.0 mi.) on Atlantic Ocean side, around the southern tip of Wassaw Island, up to mouth of Odingsell River. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–5: Ossabaw Island. 434 ha (1072 ac) in Chatham County. entire unit is within Ossabaw Island State Heritage Preserve. This unit includes the northeastern tip from the mouth of the Bradley River east and 12 km (7.5 mi) south along the Atlantic Ocean shoreline to a point 0.4 km (0.25 mi) past the south-center inlet. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–6: St. Catherine's Island Bar. 54 ha (135 ac) in Liberty County. The entire unit is State owned and located east-northeast of St. Catherine's Island. This unit includes the entire St. Catherine's Island Bar to MLLW.

Unit GA–7: McQueen's Inlet. 215 ha (532 ac) in Liberty County. The majority of the unit is private land along the eastern-central coastline on St. Catherine's Island. This unit extends from McQueen's Inlet north approximately 3.5 km (2.2 mi) and south approximately 1.8 km (1.1 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–8: St. Catherine's Island. 60 ha (147 ac) in Liberty County. The majority of the unit is private land on the southern tip of St. Catherine's Island. This unit starts 1.2 km (0.75 mi) north of Sapelo Sound (along Atlantic Ocean shoreline) and stops inland at Brunsen Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–9: Blackbeard Island. 129 ha (319 ac) in McIntosh County. The entire unit is within the Blackbeard Island National Wildlife Refuge. This unit includes the northeastern portion of the island beginning just east of the mouth of the confluence of McCloy Creek and Blackbeard Creek and continuing east and running south along the Atlantic Ocean shoreline for 1.4 km (.90 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–10: Sapelo Island. 85 ha (210 ac) in McIntosh County. The entire unit is State-owned and within Sapelo Island. The unit extends south of Cabretta Tip approximately 0.2 km (0.13 mi) and north of Cabretta Tip 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–11: Wolf Island. 238 ha (590 ac) in McIntosh County. The majority of the unit is within Wolf Island National Wildlife Refuge and private lands just north of the Refuge. This unit includes the southeastern tip of Queen's island adjacent to the Doboy Sound and includes the eastern shoreline of Wolf Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–12: Egg Island Bar. 61 ha (151 ac) in McIntosh County. This unit is State owned and includes all of Egg Island Bar to the MLLW.

Unit GA–13: Little St. Simon's Island. 609 ha (1505 ac) in Glynn County. The majority of the unit is private land on Little St. Simon's Island. This unit includes the entire eastern coastline along Little St. Simon's Island. It begins 1.1 km (.70 mi) west of the northeast tip of Little St. Simon's Island and runs east and then south along the Atlantic Ocean shoreline stopping at the minor tributary (no name) on the southeast tip of Little St. Simon's Island north of Hampton Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Pelican Spit to MLLW is included when this sand bar is emergent.

Unit GA–14: Sea/St. Simon's Island. 191 ha (471 ac) in Glynn County. The majority of the unit is private land on the south tip of Sea Island and on the east beach of St. Simons Island. This unit extends north of Gould's Inlet (Sea Island) 2.5 km (1.54 mi) starting just south of the groin and extends south of Gould's Inlet (St. Simons Island) 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–15: Jekyll Island. 49 ha (121 ac) in Glynn County. The majority of the unit is within State lands on Jekyll Island. This unit includes the southern region of Jekyll Island beginning at the mouth of Beach Creek, running towards the tip of Jekyll Island and includes the shoreline running north along the Atlantic Ocean shoreline 1.9 km (1.20 mi) from the southern tip of Jekyll Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–16: Cumberland Island. 1454 ha (3591 ac) in Camden County. The majority of the unit is along Cumberland Island Wilderness Area and Cumberland Island National Seashore. This unit includes the majority of the eastern Atlantic Ocean shoreline of Cumberland Island. It begins .50 km (.31 mi) north of the inlet at Long Point, continues south along the Atlantic Ocean shoreline stopping 1.8 km (1.1 mi) west of the southern tip of Cumberland Island National Seashore. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

*Florida (Maps Were Digitized Using 1994–95 DOQQs)*

Unit FL–1: Big Lagoon. 8 ha (19 ac) in Escambia County. The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula and emerging sand and mudflats between 0.33 km (0.21 mi) west of the lookout tower along the shoreline and 0.24 km (0.15 mi) east of the lookout tower along the shoreline. Land along the shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All emerging sandbars to MLLW are included.

Unit FL–2: Big Sabine. 182 ha (450 ac) in Escambia County. The majority of the unit is owned by the University of West Florida. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment between 8.0 km (5.0 mi) and 11.6 (7.2 mi) east of the Bob Sike's Bridge. It begins 0.10 km (.06 mi) north of SR 399 to MLLW on the Santa Rosa Sound.

Unit FL–3: Navarre Beach. 48 ha (118 ac) in Escambia and Santa Rosa Counties. The majority of the unit is owned by Eglin Air Force Base and Santa Rosa Island Authority. This unit includes lands on Santa Rosa Island Sound side, between 0.09 and 0.76 mi

east of the eastern end of SR 399 to MLLW on Santa Rosa Sound side.

Unit FL–4: Marifarms in Bay County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit FL–5: Shell/Crooked Islands. 1789 ha (4419 ac) in Bay County.The majority of the unit is within Tyndall Air Force Base and St. Andrews State Recreation Area. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–6: Upper St. Joe Peninsula. 182 ha (449 ac) in Gulf County.The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula from the tip to 8.0 km (5.0 mi) south along the Gulf of Mexico from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–7: Cape San Blas. 158 ha (390 ac) in Gulf County.The entire unit is within Eglin Air Force Base. This unit includes the area known as the Cape between the eastern boundary of Eglin and mile marker 2.1, including the peninsula and all emerging sandbars. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–8: St. Vincent Island. 146 ha (361 ac) in Franklin County.The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western tip of St. Vincent Island that is adjacent to Indian Pass (0.80 km (0.50 mi) east of tip along Indian Pass, and 1.9 km (1.2 mi) from tip southeast along Gulf of Mexico). The unit also includes St. Vincent Point from the inlet at Sheepshead Bayou east 1.6 km (1.0 mi) to include emerging oysters shoals and sand bars and extends south 0.21 km (0.13 mi) of St. Vincent Point. The unit includes the southeastern tip of St. Vincent Island extending north 1.4 km (0.90 mi) and south and west 2.1 km (1.3 mi). The western tip of Little St. George Island 0.80 km (0.50 mi) from West Pass is included (state owned lands). All sections of this unit include land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–9: East St. George Island. 1433 ha (3540 ac) in Franklin County. The majority of the unit is within St. George State Park. This unit begins 5.3 km (3.3 mi) east of the bridge and extends to East Pass. Shell Point, Rattlesnake Cove, Goose Island, East Cove, Gap Point, and Marsh Island are included. This unit includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the Gulf of Mexico, East Pass and St. George Sound.

Unit FL–10: Yent Bayou. 153 ha (378 ac) in Franklin County. The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff. It includes the St. George Sound shoreline between 5.9 km (3.7 mi) and 9.5 km (5.9mi) east of SR 65. It includes from MLLW to where densely vegetated habitat or developed structures such as SR 65, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–11: Carabelle Beach. 56 ha (139 ac) in Franklin County. The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordan Bayou. It includes St. George Sound shoreline (south of US 98) 1.6 km (1.0 mi) southwest along US 98 from the Carrabelle River Bridge and extends 1.9 km (1.2 mi) east along the St. George Sound shoreline. It includes from MLLW to where densely vegetated habitat or developed structures such as US 98, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–12: Lanark Reef. 260 ha (643 ac) in Franklin County. The entire unit is State owned. This unit includes the entire island and emerging sandbars to MLLW.

Unit FL–13: Phipps Preserve. 42 ha (104 ac) in Franklin County. This unit includes all of Phipps Preserve (owned by The Nature Conservancy) and any emerging sandbars from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–14: Hagens Cove. 486 ha (1200 ac) in Taylor County. The majority of the unit is within Big Bend Wildlife Management Area. This unit includes all of Hagens Cove and extends from MLLW on north side of Sponge Point to MLLW on south side of Piney Point. The eastern boundary of this unit ends (0.20 mi) west of SR 361. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–15: Anclote Key and North Anclote Bar. 146 ha (360 ac) in Pasco and Pinellas Counties. The majority of the unit is within Anclote Key State Preserve. This unit includes all of North Anclote Bar to the MLLW and the north, south and western sides of Anclote Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–16: Three Rooker Bar Island. 76 ha (188 ac) in Pinellas County. The majority of the unit is within Pinellas County Aquatic Preserve. This unit includes all the islands and emerging sandbars of this complex to MLLW.

Unit FL–17: North Honeymoon Island. 45 ha (112 ac) in Pinellas County. The majority of the unit is within Honeymoon Island State Recreation Area. This unit includes from Pelican Cove north to the far northern tip of Honeymoon Island. It includes the western shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur or the MLLW on the eastern shoreline.

Unit FL–18: South Honeymoon Island. 28 ha (70 ac) in Pinellas County.The majority of the unit is private land. This unit includes the southern end (southern-most 0.32 km (0.20 mi) on western side) of Honeymoon Island and encompasses the far southeastern tip and includes any emerging islands or sandbars to Hurricane Pass. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–19: Caladesi Island. 120 ha (296 ac) in Pinellas County.The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–20: Shell Key and Mullet Key. 190 ha (470 ac) in Pinellas County. The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key island complex. It also includes the northwest portion of Mullet Key including the western shorelines from Bunces Pass extending south, stopping 1.4 km (.86 mi) north of Ft. Desoto County Park pier. It includes from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–21: Egmont Key. 153 ha (377 ac) Hillsborough County. The majority of the unit is within Egmont Key

National Wildlife Refuge. This unit includes the entire island to MLLW.

Unit FL–22: Cayo Costa. 175 ha (432 ac) in Lee County. The majority of the unit, including its northern and southern boundaries, is within Cayo Costa State Park, and nearly all of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit begins at the northern limit of sandy beaches at the northern end of the island, extends through Murdock Point, which at present has a sandbar and lagoon system, and ends at the former entrance to Murdock Bayou. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–23: North Captiva Island. 36 ha (88 ac) in Lee County.The unit is within the Cayo Costa CARL land purchase project. This unit includes the western shoreline extending from 0.80 km (0.50 mi) south of Captiva Pass to approximately Foster Bay. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–24: Captiva Island and Sanibel Island in Lee County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit FL–25: Bunche Beach. 187 ha (461 ac) in Lee County. This unit is mostly within a CARL Estero Bay acquisition project. Bunche Beach (also spelled Bunch) lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach), extending east from the Sanibel Causeway past the end of John Morris Road to a canal serving a residential subdivision. The unit also includes the western tip of Estero Island (Bodwitch Point, also spelled Bowditch Point), including Bowditch Regional Park, operated by Lee County and, on the southwest side of the island facing the Gulf, the beach south nearly to the northwesterly intersection of Estero Boulevard and Carlos Circle. It includes land from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur or, along the developed portion of Estero Island.

Unit FL–26: Estero Island. 86 ha (211 ac) in Lee County. The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline starting near Avenida Pescadora to near Redfish Road. The unit excludes south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–27: Marco Island. 245 ha (606 ac) in Collier County. Most of the unit is at the Tigertail Beach County Park. The unit's northern border is on the north side of Big Marco Pass, including Coconut Island and all emerging sand bars. On the south side of Big Marco Pass, the boundary starts at the north boundary of Tigertail Beach County Park and extends to just south of the fourth condominium tower south of the County Park. The placement of the southern boundary assures that the unit includes all of Sand Dollar Island, the changeable sandbar off Tigertail Beach. The western boundary includes all the sand bars in Big Marco Pass but excludes Hideaway Beach. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–28: Marquesas Keys. 2,937 ha (7,256 ac) in Monroe County. The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–29: Boca Grande/Woman/Ballast Keys. 56 ha (138 ac) in Monroe County. These Keys are east of the Marquesas Keys and west of Key West. Boca Grande and Woman Keys are within Key West National Wildlife Refuge. Ballast Key is privately owned. This unit consists only of sandy beaches and flats between the MLLW and to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–30: Bahia Honda/Ohio Keys. 372 ha (918 ac) in Monroe County. This unit comprises Bahia Honda Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–31: Lower Matecumbe Key. 19 ha (48 ac) in Monroe County. Part of the unit is at Anne's Beach park, an Islamorada village park. The remaining parts are at Sunset Drive (Lower Matecumbe Beach) and at Costa Bravo Drive (Port Antiqua Homeowners Beach) on the Florida Bay side of the island. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–32: Sandy Key/Carl Ross Key. 67 ha (165 ac) in Monroe County. This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–33: St. Lucie Inlet. 114 ha (282 ac) in Martin County. The unit includes a small area south of the jetty on the north shore of St. Lucie Inlet, from the jetty west 0.42 km (0.26 mi). While the two sides of the inlet are privately owned, the great majority of the unit is on public land in the Saint Lucie Inlet State Preserve, administered by Jonathan Dickinson State Park. It begins on the sandy shoreline south of Saint Lucie Inlet and extends along the Atlantic Ocean shoreline 2.6 km (1.6 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. The unit does not include sandbars within the inlet.

Unit FL–34: Ponce de Leon Inlet. 68 ha (168 ac) in Volusia County. The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit includes shoreline extending from the jetty north of Ponce de Leon Inlet west to the Halifax River and Inlet junction. It includes shoreline south of Ponce de Leon Inlet from the inlet and Halifax River junction, extending east and south along the Atlantic Ocean shoreline 1.2 km (.70 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–35: Nassau Sound-Huguenot. 950 ha (2347 ac) in Duval County. The majority of the unit is within Big Talbot Island State Park, Little Talbot Island

State Park, and the Timucuan Ecological and Historical Preserve. This unit includes all emergent shoals and shoreline east of Nassau River bridge and extends to the inlet of the St. John's River. Amelia Island and the northern 2.7 km (1.7 mi) shoreline along Talbot Island are not included. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–36: Tiger Islands. 53 ha (130 ac) in Nassau County. This unit is privately owned. This unit extends from the mouth of Tiger Creek and runs north along Tiger Island 0.8 km (0.5 mi) and south along Little Tiger Island 1.4 km (0.9 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. Emerging sandbars to MLLW are also included.

*Alabama (Maps Were Digitized Using 1992 DOQQs)*

Unit AL–1: Isle Aux Herbes. 227 ha (561 ac) in Mobile County. This unit includes the entire Isle Aux Herbes island where primary constituent elements occur to MLLW and is State-owned.

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands. 880 ha (2,174 ac) in Mobile County. This unit includes all of Dauphin Island where primary constituent elements occur from St. Stephens Street approximately 17.6 km (10.9 mi) west to the western tip of the island to MLLW and all of Little Dauphin and Pelican Islands to MLLW. The area is mostly privately owned but includes State and Federal lands.

Unit AL–3: Fort Morgan. 67 ha (166 ac) in Baldwin County. This area includes Mobile Bay and Gulf of Mexico shorelines within Bon Secour National Wildlife Refuge, Fort Morgan Unit. This unit extends from the west side of the pier on the northwest point of the peninsula, following the shoreline approximately 2.8 km (1.74 mi) southwest around the tip of the peninsula, then east to the terminus of the beach access road and is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The area is State-owned but is leased by the Federal Government.

*Mississippi (Maps Were Digitized Using 1992 and 1997 DOQQs)*

Unit MS–1: Lakeshore through Bay St. Louis. 41 ha (101 ac) in Hancock County. This unit extends from the north side of Bryan Bayou outlet and includes the shore of the Mississippi Sound following the shoreline northeast approximately 15.0 km (9.3 mi) and ending at the southeast side of the Bay Waveland Yacht Club. The landward boundary of this unit follows the Gulf side of South and North Beach Boulevard and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–2: Henderson Point. 34 ha (84 ac) in Harrison County. This unit extends from 0.2 km (0.12 mi) west of the intersection of 3rd Avenue and Front Street and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Pass Christian Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–3: Pass Christian. 77 ha (190 ac) in Harrison County. This unit extends from the east side of Pass Christian Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 10.5 km (6.5 mi) to the west side of Long Beach Pier and Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–4: Long Beach. 38 ha (94 ac) in Harrison County. This unit extends from the east side of Long Beach Pier and Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Gulfport Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–5: Gulfport. 39 ha (96 ac) in Harrison County. This unit extends from the east side of Gulfport Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.8 km (3.0 mi) to the west side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–6: Mississippi City. 62 ha (153 ac) in Harrison County. This unit extends from the east side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS, and includes the shore of the Mississippi Sound following the shoreline northeast approximately 7.9 km (4.9 mi) to the west side of President Casino. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–7: Beauvoir in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–8: Biloxi West in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–9: Biloxi East in Harrison County. Excluded. The proposed rule included this unit, but it was deleted for lack of evidence of regular use by piping plovers.

Unit MS–10: Ocean Springs West. 11 ha (27 ac) in Jackson County. This unit extends from U.S. 90 and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.9 km (1.2 mi) to the Ocean Springs Harbor inlet. The landward boundary of this unit follows the Bay side of Front Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–11: Ocean Springs East. 7 ha (17 ac) in Jackson County. This unit extends from the east side of Weeks Bayou and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.8 km (1.1 mi) to Halstead Bayou. The landward boundary of this unit follows the Bay side of East Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–12: Deer Island. 194 ha (479 ac) in Harrison County. This unit includes all of Deer Island, where primary constituent elements occur to the MLWW . Deer Island is privately owned.

Unit MS–13: Round Island. 27 ha (67 ac) in Jackson County. This unit includes all of Round Island to the MLWW and is privately owned

Unit MS–14: Mississippi Barrier Islands. 3,168 ha (7,828 ac) in Harrison and Jackson Counties. This unit includes all of Cat, East and West Ship, Horn, Spoil, and Petit Bois Islands

where primary constituent elements occur to MLLW. Cat Island is privately owned, and the remaining islands are part of the Gulf Islands National Seashore.

Unit MS–15: North and South Rigolets. 159 ha (393 ac) in Jackson County, MS, and 12 ha (30 ac) in Mobile County, AL. This unit extends from the southwestern tip of South Rigolets Island and includes the shore of Point Aux Chenes Bay, the Mississippi Sound, and Grand Bay following the shoreline east around the western tip, then north to the south side of South Rigolets Bayou; then from the north side of South Rigolets Bayou (the southeastern corner of North Rigolets Island) north to the northeastern most point of North Rigolets Island. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Approximately 4.4 km (2.7 mi) are in Mississippi and 2.9 km (1.8 mi) are in Alabama. Almost half the Mississippi shoreline length is in the Grand Bay National Wildlife Refuge.

*Louisiana (Maps Were Digitized Using 1998 DOQQs)*

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre. 2,650 ha (6,548 ac) in Cameron and Vermilion Parishes. This unit extends from the east side of Sabine Pass (Texas/Louisiana border) and includes the shore of the Gulf of Mexico from the MLLW following the shoreline east 25.7 km (16.0 mi) to the west end of Constance Beach [approximately 2 km (1.2 mi) east of the intersection of Parish Road 528 and the beach]; it extends from the east end of the town of Holly Beach [0.25 km (0.16 mi) east of the intersection of Baritarick Boulevard and the beach] following the shoreline approximately 97 km (60.3 mi) east to the eastern boundary line of Rockefeller Wildlife Refuge [3.4 km (2.1 mi) east of Rollover Bayou]; and it extends from the east side of Freshwater Bayou Canal following the shoreline east for approximately 15 km (9.3 mi) to 1.3 km (0.81 mi) east of where the boundary of Paul J. Rainey Wildlife Sanctuary (National Audubon Society) meets the shoreline. All three sections of this unit include the land from the seaward boundary of MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The shoreline in this unit is both state and privately owned.

Unit LA–2: Atchafalaya River Delta. 921 ha (2,276 ac) in St. Mary Parish, LA. This unit is located in the eastern portion of the State-owned Atchafalaya Delta Wildlife Management Area (WMA) and includes all exposed land and islands where primary constituent elements occur east and southeast of the main navigation channel of the Atchafalaya River to the MLLW. The islands located south and southeast of the deltaic splay, Donna, T-Pat, and Skimmer Islands and the un-named bird island, are also included in this unit. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–3: Point Au Fer Island. 195 ha (482 ac) in Terrebonne Parish. This unit includes the entire small island at the northwest tip of Point Au Fer Island to MLLW, then extends from the northwest tip of Point Au Fer Island following the shoreline southeast approximately 7.7 km (4.8 mi) to the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline [0.8 km (0.5 mi) southeast from Locust Bayou]. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This entire unit is privately owned.

Unit LA–4: Isles Dernieres. 795 ha (1,964 ac) in Terrebonne Parish. This unit includes the State-owned Isles Dernieres chain, including Raccoon, Whiskey, Trinity and East Islands. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–5: Timbalier Island to East Grand Terre Island. 2,321 ha (5,735 ac) in Terrebonne, Lafourche, Jefferson, and Plaquemines Parishes. This unit includes: all of Timbalier Island where primary constituent elements occur to the MLLW, all of Belle Pass West [the ''peninsula'' extending north/northwest approximately 4.8 km (3.0 mi) from the west side of Belle Pass] where primary constituent elements occur to MLLW; the Gulf shoreline extending approximately 11 km (6.8 mi) east from the east side of Belle Pass bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; all of Elmers Island peninsula where primary constituent elements occur to MLLW and the Gulf shoreline from Elmers Island to approximately 0.9 km (0.56 mi) west of Bayou Thunder Von Tranc bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; the Gulf shoreline of Grand Isle from the Gulf side of the hurricane protection levee to MLLW; and all of East Grand Terre Island where primary constituent elements occur to the MLLW.

Unit LA–6: Mississippi River Delta. 105 ha (259 ac) in Plaquemines Parish, LA. This unit is part of the State-owned Pass a Loutre Wildlife Management Area and includes un-named sand (spoil) islands off South Pass of the Mississippi River near Port Eads. The entire islands to MLLW are included in this unit.

Unit LA–7: Breton Islands and Chandeleur Island Chain. 3,116 ha (7,700 ac) in Plaquemines and St. Bernard Parishes, LA. This unit includes Breton, Grand Gosier, and Curlew Islands and the Chandeleur Island chain. Those islands are part of the Breton National Wildlife Refuge or are state owned. The entire islands where primary constituent elements occur to MLLW are included in this unit.

*Texas (Maps Were Digitized Using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)*

Unit TX–1: South Bay and Boca Chica. 2,920 ha (7,217 ac) in Cameron County. The boundaries of the unit are: starting at the Loma Ochoa, following the Brownsville Ship Channel to the northeast out into the Gulf of Mexico to MLLW, then south along a line describing MLLW to the mouth of the Rio Grande, proceeding up the Rio Grande to Loma de Las Vacas, then from that point along a straight line north to Loma Ochoa. The unit does not include densely vegetated habitat within those boundaries. It includes wind tidal flats that are infrequently inundated by seasonal winds, and includes the tidal flats area known as South Bay. Beaches within the unit reach from the mouth of the Rio Grande northward to Brazos Santiago Pass, south of South Padre Island. The southern and western boundaries follow the change in habitat from wind tidal flat, preferred by the piping plover, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include areas used for roosting by the piping plover. Portions of this unit are owned and managed by the Lower Rio Grande Valley National Wildlife

Refuge, the South Bay Coastal Preserve, Boca Chica State Park, and private citizens.

Unit TX–2: Queen Isabella Causeway. 2 ha (6 ac) in Cameron County. The area extends along the Laguna Madre west of the city of South Padre Island. The southern boundary is the Queen Isabella State Fishing Pier, and the northern boundary is at the shoreline due west of the end of Sunny Isles Street. The Queen Isabella causeway bisects this shore but is not included within critical habitat. The eastern boundary is the where developed areas and/or dense vegetation begins, and the western boundary is MLLW. This unit contains lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–3: Padre Island. 10,924 ha (26,983 ac) in Cameron, Willacy, Kenedy, and Kleberg Counties. This unit consists of four subunits:

(1) The southern boundary of this subunit is at Andy Bowie County Park in South Padre Island, and the northern boundary is the south boundary of PAIS. The eastern boundary is MLLW in the Gulf of Mexico, and the western boundary is MLLW in the Laguna Madre. Areas of dense vegetation are not included in critical habitat. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(2) The boundaries of this subunit extend from Rincon de la Soledad to the southeast point of Mesquite Rincon, continue from that point west to the Laguna Madre shoreline at its intersection with the King Ranch boundary, and from that point to Rincon de la Soledad. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(3) This subunit is within the Laguna Madre and extends from the western boundary of PAIS to the Gulf Intercoastal Waterway. Its northern boundary is a line extending westward from the northwest corner of PAIS, and its southern boundary is a line extending westward from the southern boundary of PAIS. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(4) This subunit extends along the gulf shore of Padre Island from the northern boundary of PIAS at the shore, north to the Nueces-Kleberg county line. The inland boundary is where dense vegetation begins, and the seaward boundary is MLLW. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Portions of this unit are owned and managed by TGLO, and private citizens with a significant portion being owned and managed by The Nature Conservancy on South Padre Island.

Unit TX–4: Lower Laguna Madre Mainland. 4,980 ha (12,307 ac) in Cameron and Willacy Counties. The southern boundary is an east-west line at the northern tip of Barclay Island, and the southern boundary is an east-west line 0.9 km (0.5 mi) south of the boundary of the City of Port Mansfield; the western boundary is the line where dense vegetation begins, and the eastern boundary is the Gulf Intercoastal Waterway. The unit includes bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated by seasonal winds. Portions of this unit are within the Laguna Atascosa National Wildlife Refuge, are TGLO-owned, or are privately owned. Beaches and interior wetlands may or may not be used each year because of varying water levels, storm events, or changes in beach characteristics and tidal regime. Water stages vary in this area with meteorological conditions. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–5: Upper Laguna Madre. 436 ha (1,076 ac) in Kleberg County. The southern boundary is the northern boundary of PAIS, and the northern boundary is the Kleberg/Nueces County line. The eastern boundary is the line where dense vegetation begins, and the western boundary is MLLW. This unit includes a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. It includes wind tidal flats and sparsely-vegtated upland areas used for roosting by the piping plover. These boundaries receive heavy use by large numbers of shorebirds, including piping plovers. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, and include upland areas used for roosting by the piping plover.

Unit TX–6: Mollie Beattie Coastal Habitat. 241 ha (596 ac) in Nueces County. This unit will be described as two subunits:

(1) Subunit is bounded on the north by Beach Access Road 3, on the east by the inland boundary of critical habitat Unit TX–7, on the south by Zahn road, and on the west by Zahn Road.

(2) The subunit is bounded on the north by Corpus Christi Pass, on the east by US 361, on the south by the north side of Packery Channel, and on the west by the Gulf Intercoastal Watersay.

Some of the uplands are privately owned and the remaining are owned and managed by the TGLO. This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes, and wind tidal flats that are infrequently inundated by seasonal winds. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach. 42 ha (104 ac) in Nueces County. This unit is along a stretch of Gulf beach 8.5 km (5.3 mi) long. It is bounded on the north by Fish Pass, on the east by MLLW, on the south by St. Bartholomew Avenue, and on the west by a line marking the beginning of dense vegetation. Portions of the unit are managed by the Texas Parks and Wildlife Department as part of Mustang Island State Park. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–8: Mustang Island Beach. 97 ha (239 ac) in Nueces County. This is a stretch of Gulf beach extending from Fish Pass to the Horace Caldwell Pier on Holiday Beach within the City of Port Aransas, TX. The landward boundary is beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–9: Fish Pass Lagoons. 130 ha (323 ac) in Nueces County. This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is the line indicating beginning of dense vegetation, and the bayside boundary is MLLW. It includes interior lagoons and wind tidal flats that are infrequently inundated by seasonal winds. This unit includes upland areas used for roosting by the piping plover.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. 87 ha (216 ac) in Nueces County. This unit encompasses Shamrock Island, an unnamed small sand flat to the north of Wilson's Cut, and a lagoon complex that extends 3.5 km (2.2 mi) to the southwest of Wilson's Cut. Critical habitat includes land to the line marking the beginning of dense vegetation down to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–11: Blind Oso. 2 ha (5 ac) in Nueces County. This unit is the flats of the Blind Oso, part of Oso Bay, from

Hans and Pat Suter Wildlife Refuge (owned and managed by the City of Corpus Christi) northeast to Corpus Christi Bay and then southeast along the edge of Texas A&M University—Corpus Christi. The landward boundaries extend to where densely vegetated habitat, not used by the piping plover, begins, and extends out from the landward boundaries to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi. 2 ha (6 ac) in Nueces County. This unit is along the shore of Oso Bay on flats bordered by Naval Air Station-Corpus Christi and Texas Spur 3 to a point 2.5 km (1.5 mi) south of the bridge between Ward Island and the Naval Air Station. The landward boundary is the line where dense vegetation begins, and the boundary in the Bay is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–13: Sunset Lake. 176 ha (435 ac) in San Patricio County. This unit is triangle shaped, with State Highway 181 as the northwest boundary, and the limits of the City of Portland as the northeast boundary. The shore on Corpus Christi Bay is the third side of the triangle, with the actual boundary being MLLW off this shore. This unit is a large basin with a series of tidal ponds, sand spits and wind tidal flats. This unit is owned and managed by the City of Portland within a system of city parks. Some of the described area falls within the jurisdiction of the TGLO. It includes two city park units referred to as Indian Point and Sunset Lake. Much of the unit is a recent acquisition by the city, and management considerations for the park include the area's importance as a site for wintering and resident shorebirds. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–14: East Flats. 194 ha (481 ac) in Nueces County. This unit is bordered on the north by dredge placement areas bordering the Corpus Christi Ship Channel, on the west by MLLW in Corpus Christi Bay, on the east by the limits of the City of Port Aransas, and on the south by an east-west line at the sourthern-most point of Pelone Island. It is also bisected by a navigation channel, which is not included in the critical habitat. A portion of this unit at the west end falls within State-owned (TGLO) intertidal lands. The remainder of the unit is privately owned. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–15: North Pass. 447 ha (1,106 ac) in Aransas County. The unit is bounded on north by North Pass, on the northwest by the line indicating MLLW, on the southwest by the northeast side of Lydia Ann Island, on the south by a line running due east from the northeast side of Lydia Ann Island, and on the southeast by the landward boundary of Unit. This unit is a remnant of a hurricane washover on the privately owned San Jose Island. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–16: San Jose Beach. 187 ha (463 ac) in Aransas County. This unit occupies a 33 km (20 mi) stretch of beach from the North Jetty of Aransas Pass at the south, to the confluence of Vinson Slough and Cedar Bayou at the north end of San Jose Island. The inland boundary is the line indicating the beginning of densely vegetated habitat, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–17: Allyn's Bight. 5 ha (14 ac) in Aransas County. This unit includes shoreline of San Jose Island on Aransas Bay from Allyn's Bight to Blind Pass, the channel between San Jose Island and Mud Island. The inland boundary is where the line of dense vegetation begins, and the bay-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–18: Cedar Bayou/Vinson Slough. 3,051 ha (7,539 ac) in Aransas County. Beginning at the confluence of Vinson Slough and Cedar Bayou, this unit's boundary follows the shore of Spalding Cove to Long Reef, then continues along a line extending (2.5 mi) southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of Unit TX–16. The unit boundaries extend landward to the line indicating the beginning of dense vegetation. This unit is a remnant of a hurricane washover area, and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. This area includes a small section of Matagorda Island National Wildlife Refuge with much of the remaining areas occurring on the privately owned island of San Jose. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–19: Matagorda Island Beach. 395 ha (976 ac) in Calhoun County. This stretch of beach along the Gulf of Mexico on Matagorda Island extends a distance of 60 km (36 mi) from Cedar Bayou on the southwest (where it abuts TX–18), to Pass Cavallo on the northeast. The inland boundary is the line indicating the beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds. The unit falls entirely within the boundary of the Matagorda Island National Wildlife Refuge.

Unit TX–20: Ayers Point. 397 ha (982 ac) in Calhoun County. This unit is an unnamed lake on Matagorda Island between Shell Reef Bayou and Big Brundrett Lake, with San Antonio Bay to the north. The unit boundary extends landward from the lake to the line where dense vegetation begins and where the constituent elements no longer occur and includes upland areas used for roosting by the piping plover. This unit includes marsh and flats at Ayers Point on Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–21: Panther Point to Pringle Lake. 863 ha (2,133 ac) in Calhoun County. This unit represents a narrow band of bayside habitats on Matagorda Island from Panther Point to the northeast end of Pringle Lake. The landward boundary is the line indicating where dense vegetation begins, and the bayward boundary is MLLW. The unit is entirely within Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–22: Decros Point. 450 ha (1,114 ac) at the Matagorda/Calhoun County line. This unit includes about 7.0 km (4.3 mi) of beach habitat around the island at the western tip of Matagorda Peninsula between the

natural opening to Matagorda Bay and the Matagorda Ship Channel. The upland boundary is the line where dense vegetation begins, and the seaward boundary is MLLW. The adjacent upland is privately owned. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–23: West Matagorda Peninsula Beach. 311 ha (769 ac) of shoreline in Matagorda County. This unit extends 40 km (24 mi) along the Gulf of Mexico from the jetties at the Matagorda Ship Channel to the old Colorado River channel. The inland boundary is the line indicating where dense vegetation begins, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–24: West Matagorda Bay/ Western Peninsula Flats. 756 ha (1,868 ac) in Matagorda County. This unit extends along the bayside of Matagorda Peninsula from 7.5 southwest of Greens Bayou to 2.5 km (1.6 mi) northwest of Greens Bayou. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–25: West Matagorda Bay/ Eastern Peninsula Flats. 232 ha (575 ac) in Matagorda County. This unit follows the bayside of Matagorda Peninsula from Maverick Slough southwest for 5 km (3 mi). The unit begins at Maverick Slough to the northeast and extends 5 km (3 mi) to the southwest, enclosing a series of flats along Matagorda Bay. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–26: Colorado River Diversion Delta. 5 ha (13 ac) in Matagorda County. This unit consists follows the shore of the extreme eastern northeast corner of West Matagorda Bay from Culver Cut to Dog Island Reef. The southeastern tidally emergent portion of Dog Island Reef is included within the unit. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The upland areas includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West. 295 (728 ac) of shoreline in Matagorda County. This unit extends along Gulf beach on the Matagorda Peninsula from the mouth of the Colorado River northeast along the peninsula 23 km (14 mi) to a point on the beach opposite Eidelbach Flats. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East. 129 ha (321 ac) in Matagorda County. This unit extends along the Gulf beach on the northeast end of Matagorda Peninsula from a point 0.8 km (0.5mi) southwest of FM 457 southwest 10 km (6 mi.) to the southwest side of Brown Cedar Cut. This unit abuts with Unit TX–29 to the north. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–29: Brown Cedar Cut. 119 ha (294 ac) in Matagorda County. This unit extends 2 km (1.2 m.) both southwest and northeast of the main channel of Brown Cedar Cut along the bayside of Matagorda Peninsula in East Matagorda Bay, and abuts unit TX–28 to the southeast. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The eastern boundary of TX–29 follows the change in habitat from mud flats preferred by the piping plover, to slightly vegetated dune system adjacent to TX–28. This unit includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–30: Northeast Corner East Matagorda Bay. 120 ha (297 ac) in Matagorda County. This is a unit bounded on the north by the Gulf Intercoastal Waterway, on the east by the northeast limit of Matagorda bay up the line where dense vegetation begins, on the south by the boundary of Unit TX–28, and on the west by MLLW. It is a system of flats associated with tidal channels. This unit includes upland areas used for roosting by the piping plover and lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–31: San Bernard NWR Beach. 166 ha (410 ac) in Matagorda and Brazoria Counties. This is a unit composed of Gulf beach, 8.0 km (5.0 mi), and extends from the mouth of the San Bernard River to a point along the beach 14.0 km (8.7 mi) to the southwest. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. 108 ha (269 ac) of shoreline in Brazoria County. This unit is a segment of Gulf beach between the Brazos River and the San Bernard River. This unit borders an area known as Wolf Island. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–33: Bryan Beach and Adjacent Beach. 157 ha (388 ac) in Brazoria County. The boundaries enclose a length of Gulf beach between the mouth of the Brazos River and FM 1495. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. A portion of this area is owned and managed by the Texas Parks and Wildlife Department. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–34: San Luis Pass. 110 ha (272 ac) near the Brazoria/Galveston County line. This unit extends along the Gulf side of Galveston Island from San Luis Pass to the cite of the former town of Red Fish Cove (USGS 1:24,000 map, San Luis Pass, Texas; 1963, photorevision 1974). The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. Approximately 57 percent of the unit includes flats in the floodtide delta that are State-owned and managed by the TGLO. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–35: Big Reef. 47 ha (117 ac) in Galveston County. This unit consists of beach and sand flats on the north, west, and east shore of Big Reef, down to MLLW. South Jetty is not included. The area is currently managed by the City of Galveston. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–36: Bolivar Flats. 160 ha (395 ac) in Galveston County. This unit extends from the jetties on the southwest end of the Bolivar Peninsula

to a point on the Gulf beach 1 km (0.6 mi) north of Beacon Bayou. It includes 5.0 km (3 mi) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. The area is leased from TGLO by Houston Audubon Society and managed for its important avian resources. The upland areas are used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–37: Rollover Pass. 6 ha (16 ac) in Galveston County. This unit consists of Rollover Bay on the bayside of Bolivar Peninsula. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. It includes flats on State-owned land managed by the TGLO. This unit captures the intertidal complex of the bay, and is bounded by the towns of Gilchrist to the east and the Gulf beach of the Bolivar Peninsula to the south. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

*Effects of Critical Habitat Designation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. For wintering piping plovers, we will conduct our destruction and adverse modification analyses over the entire critical habitat designation and on a unit basis, where appropriate. A consultation focuses on the entire critical habitat area designated unless the critical habitat rule identifies another basis for analysis, such as discrete units and/or groups of units necessary for different life-cycle phases, units representing distinctive habitat characteristics or gene pools, or units fulfilling essential geographic distribution requirements. In the case of the piping plover, we cannot always currently identify the breeding population origin of birds on the winter range. As we continue to collect information on banded birds, future additional information may allow us to analyze jeopardy and adverse modification on the basis of the identified population origin and individual units or groups of units. That is, some designated critical habitat units may fulfill essential geographic distribution requirements for the endangered Great Lakes breeding population of piping plover and therefore the adverse modification analysis may be appropriate at the unit or groups of units level. To be considered ''destruction or adverse modification,'' a modification of critical habitat must be of such magnitude that the effect appreciably reduces the value of the critical habitat for the survival and recovery of the listed species. 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) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) 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 must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

When 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 believes would avoid the likelihood of jeopardizing the continued existence of listed species or 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 in 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 with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (COE) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also 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 consultation.

Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines and similar structures. Since existing developed sites, such as those described above, do not contain the primary constituent elements, they are not included in the definition of critical habitat for the piping plover.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the wintering piping plover is appreciably reduced. We note that such activities would also likely jeopardize the continued existence of the species, and that any reasonable and prudent alternatives to remove jeopardy would be similar to those removing adverse modification. Thus, critical habitat designation is unlikely to appreciably affect the outcomes of section 7 consultations. However, we note that some Federal agencies may initiate consultation more

often than before because critical habitat has increased their awareness of the species.

Federal activities that have undergone previous section 7 consultation on the effects of the action on wintering piping plover habitat are listed below. The action agencies involved in these consultations have included the COE, U.S. Coast Guard, and other Department of Defense agencies, National Park Service, FHA, Minerals Management Service, Bureau of Land Management, and Federal Energy Regulatory Commission.

(1) Dredging and dredge spoil placement;

(2) Seismic exploration;

(3) Construction and installation of facilities, pipelines, and roads associated with oil and gas development;

(4) Oil and other hazardous material spills and cleanup;

(5) Construction of dwellings, roads, marinas, and other structures, and associated activities including staging of equipment and materials;

(6) Beach nourishment, cleaning, and stabilization (e.g., construction and maintenance of jetties and groins, planting of vegetation, and placement of dune fences);

(7) Certain types and levels of recreational activities, such as vehicular activity that impact the substrate, resulting in reduced prey or disturbance to the species;

(8) Stormwater and wastewater discharge from communities;

(9) Sale, exchange, or lease of Federal land that contains suitable habitat and that may result in the habitat being altered or degraded;

(10) Marsh and coastal restoration, particularly restoration of barrier islands and other barrier shorelines;

(11) Military missions; and

(12) Bridge or culvert construction, reconstruction, and stabilization.

With this designation of critical habitat for wintering piping plovers, we notify the COE, other permitting agencies, and the public that Clean Water Act section 404 nationwide permits and other authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements for critical habitat. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on piping plovers, and will continue to do so for the designated critical habitat.

Activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the piping plover is appreciably reduced. These activities may destroy or adversely modify critical habitat by:

(1) Significantly and detrimentally altering the hydrology of tidal flats;

(2) Significantly and detrimentally altering inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems;

(3) Introducing significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges);

(4) Significantly and detrimentally altering the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting);

(5) Reducing the value of a site by significantly disturbing plovers from activities such as foraging and roosting (including levels of human presence significantly greater than those currently experienced);

(6) Significantly and detrimentally altering water quality, that may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill); and

(7) Impeding natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 for Texas, and to the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 for all other States. If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, the following Fish and Wildlife Service personnel may be contacted:

Alabama: Darren LeBlanc (334/441–5181)

Florida: Northwest FL: Patty Kelly (850/769–0552, extension 228), North FL: Candace Martino (904/232–2580, extension 129), South FL: Dave Martin (561/562–3909 extension 230)

Georgia: Robert Brooks (912/265–9336, extension 25)

Louisiana: Debbie Fuller (337/291–3124)

Mississippi: Linda LaClaire (601/321–1126)

North Carolina: David Rabon (919/856–4520 extension 16)

South Carolina: Paula Sisson (843/727–4707, extension 18)

Texas: Loretta Pressly (361/994–9005, extension 228)

**Summary of Changes From the Proposed Rule**

For the proposed rule, shoreline was mapped at variable scales (zoom factors) and with less detail. For the final rule, all shoreline was mapped at 1:5000 or larger (greater zoom) scale. In addition to the standardized mapping scale, the shoreline was mapped more precisely. This change in mapping technique and detail resulted in an increase in reported total mapped shoreline kilometers and miles for some States. This also resulted in increases in reported mapped shoreline distances by ownership for some States.

In the proposed rule, a single buffer distance was set for all units in all States. For the final rule, this methodology was not used (see ''Methods'' section).

We have excluded Padre Island National Seashore from the proposed critical habitat designation, based upon a determination under section 4(b)(2) of the Act that the benefits of excluding the Seashore outweigh the benefits of its inclusion. Please refer to the ''Exclusions Under 4(b)(2) of the Act'' section of this rule for further explanation of this analysis.

*Unit-Specific Changes*

Below are descriptions of unit-specific changes. The changes stated below do not include those attributed to our more fine-scale mapping from the proposed rule. Based on the verbal unit descriptions provided in the proposed rule, we feel that the public had ample opportunity to comment on the unit areas below as we have finalized them in this rule.

*North Carolina*

NC–3 Clam Shoals

For the proposed rule, the Digital Orthophoto Quarter Quad (DOQQ) image for this unit was not available, so we estimated its location using a NC Atlas and Gazetteer. For the final rule we used a 1:100K Digital Raster Graphic (DRG) image. The correct version is located slightly outside of the bounds of the proposed map. This unit is entirely State-owned and its inclusion is supported by State biologists. This unit consists of small uninhabited islands that are relatively inaccessible by humans and used primarily by birds.

NC–5 Ocracoke Island

We removed the eastern 3.7 km (2.3 mi) of this unit when information was received orally during the comment period from Service biologists familiar with the area. Their observations and knowledge attest that piping plovers concentrate within one mile of the Ocracoke Inlet.

*Georgia*

GA–14 Sea/St. Simon's Island

We reduced this unit by approximately 360 m (1,200 ft) on the northern shoreline to exclude an existing seawall and groin.

*Florida*

FL–4 Marifarms

We deleted this unit based upon a lack of evidence of regular use by piping plovers.

FL–7 Cape San Blas

We removed 1 mile of shoreline due to specific site data provided by Eglin Air Force Base that documents no use of the western (mile markers 2.1–3.0) shoreline by piping plovers, yet consistent use on their remaining 2 miles of shoreline between 1 mile markers 0.0 and 2.0.

FL–12 Lanark Reef

Due to a mapping error, we inadvertently omitted the constituent elements on the eastern end of Lanark Reef. This unit extends outside of the area designated in the proposed rule by 0.45 km (0.28 mi) to capture emerging sandbars adjacent to Lanark Reef. This unit is entirely State-owned, and its inclusion is supported by State biologists. This unit consists of small uninhabited islands that are relatively inaccessible by humans and used primarily by birds.

FL–24 Captiva Island and Sanibel Island

We deleted this unit based on lack of evidence of regular use by piping plovers.

FL–26 Estero Island

We reduced this unit by 2.0 km (1.25 mi) after a meeting during the open comment period with State biologists who confirmed that piping plovers use the areas from the lagoon east to the inlet and not further to the west. We removed the area west of the lagoon located on Estero Island based on a lack of use by piping plovers.

FL–27 Marco Island

This area was reduced significantly. We received sufficient information during the comment period to document and confirm consistent piping plover use of Tigertail Beach County Park and Sand Dollar Island and its associated sand bars within Big Marco Pass. No data were supplied that documented the use of Hideaway beach or the private beach south of Tigertail Beach County Park. Thus these areas were removed from the designation based on a lack of use by piping plovers.

FL–35 Nassau Sound-Huguenot

Third Bird Island and the shoreline of Big Talbot Island were inadvertently omitted in the proposed rule map of FL–35. Data received prior to the proposed rule documented consistent use at these sites. The unit description in the proposed rule appropriately described this unit to include these areas.

FL–36 Tiger Islands

This unit was reduced by 2.6 km (1.6 mi) after we received data during the comment period that better defined the location used by piping plovers.

*Alabama*

Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands

We removed the eastern end of Dauphin Island, from St. Stephens Street to the eastern tip, due to lack of evidence of consistent use of this portion of the island by piping plovers.

*Mississippi*

Unit MS–7: Beauvoir

We deleted this unit based on a lack of evidence of regular use by piping plovers.

Unit MS–8: Biloxi West

We deleted this unit based on a lack of evidence of regular use by piping plovers.

Unit MS–9: Biloxi East

We deleted this unit based on a lack of evidence of regular use by piping plovers.

*Louisiana*

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre

We excluded three areas along the shoreline in the proposed unit based on a lack of evidence of regular use by piping plovers. Those areas included the shoreline between the west side of Constance Beach to the east side of Holly Beach, the shoreline from the eastern boundary of the Rockefeller Wildlife Refuge to the Freshwater Bayou Canal, and the shoreline from the west border of the Paul J. Rainey Wildlife Sanctuary east to the Vermilion parish line.

Unit LA–2: Atchafalaya River Delta

We excluded the Wax Lake Outlet Deltas lobe and the western portion of the Atchafalaya River Delta based on a lack of evidence of use by piping plovers.

Unit LA–3: Point Au Fer Island

We excluded the shoreline from the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline to the western side of East Bay Junop based on a lack of evidence of use by piping plovers.

Unit LA–5: Timbalier Island to East Grand Terre Island

The shoreline of East Timbalier Island, the shoreline from Bay Champagne to the west side of Elmers Island, the area between the hurricane protection levee and the bayside shoreline of Grand Isle, and the shoreline of Grand Terre Island were excluded due to lack of evidence of use by piping plovers.

Unit LA–6: Mississippi River Delta

We reduced this unit by 261,247 ha (645,280 ac) after the Service and the Louisiana Department of Wildlife and Fisheries surveyed for piping plovers in this area during December 2000. Piping plovers were located only on the sand islands off the South Pass of the Mississippi River during that survey effort. Plovers were documented using the same islands during the February 2001 International Piping Plover Survey. Thus, this unit consists only of those islands.

**Economic Analysis**

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. The economic impacts to be considered in a critical habitat designation are the incremental effects of the designation over and above the economic impacts attributable to listing of the species.

We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying those areas as critical habitat; however, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We utilized the economic analysis, and took into consideration all comments and information submitted during the public hearings and comment period, to determine whether areas should be

excluded from the final critical habitat designation.

An analysis of the economic effects of the proposed wintering plover critical habitat designation was prepared (Industrial Economics, Incorporated, 2001) and made available for public review (65 FR 52691; August 30, 2000). The economic analysis reflected the assumption that some additional impacts may be experienced as a result of critical habitat designation. The analysis uses a sampling of case studies provided by commenters as well as interviews with stakeholders with projects that had the requisite Federal nexus for our analysis. Estimates of the cost of an individual consultation were developed from a review and analysis of historical section 7 files from a number of Service field offices around the country. These files addressed consultations conducted for both listings and critical habitat designations. Cost figures were based on an average level of effort for consultations of low, medium, or high complexity, multiplied by the appropriate labor rates for staff from the Service and other Federal agencies. Thus, the cost estimates included the potential impact from all expected future consultations in the area proposed to be designated as critical habitat.

Economic effects caused by listing the wintering population of the piping plover as a federally protected threatened species, and by other statutes, are the baseline against which we evaluated the effects of the critical habitat designation. The final analysis, which reviewed and incorporated public comments, concluded that there would be some impacts as discussed below in the ''Exclusions Under 4(b)(2) of the Act'' section of the rule, but that they would not be significant beyond those already imposed by listing the wintering plover population as a threatened species.

The economic analysis revealed six activities that may be affected by the designation of wintering critical habitat for the piping plover because they occur within or near critical habitat areas. These activities are: (1) housing and commercial shoreline development; (2) dredging and disposal of dredged materials; (3) beach nourishment; (4) oil and gas exploration, (5) recreational visitation of shoreline, and (6) waterway operations. Additionally highway construction and disaster relief were also identified as activities that could be potentially affected due to the designation of some units.

Economic effects of critical habitat designation are only those effects that result from the designation. Since the listing of the wintering population of the piping plover as threatened in 1985, we have consulted on the above mentioned activities at one time or another. While the economic analysis considered the effect that critical habitat designation could have on these activities, any costs associated with these activities within critical habitat would most likely occur as a result of the listing, due to the occupied status of critical habitat. However, the analysis recognizes that, even in cases where consultations would be expected in the absence of critical habitat, there are scenarios that could involve additional consultation costs. For example, (1) some consultations that have already been ''completed'' may need to be reinitiated to address critical habitat if the project is not completed; and (2) consultations taking place after critical habitat designation may take longer because critical habitat issues will need to be addressed.

*Exclusions Under 4(b)(2) of the Act*

A draft analysis of the economic effects of the proposed wintering piping plover critical habitat designation was prepared and made available for public review (August 30, 2000; 65 FR 52691). We concluded in the final analysis, that included review and incorporation of public comments, that no significant economic impacts are expected from critical habitat designation above and beyond those already imposed by the listing of wintering piping plovers. A copy of the final economic analysis is included in our administrative record and may be obtained by contacting the Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances the benefits of excluding Habitat Conservation Plans (HCPs) from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that Federal activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo consultation. While this consultation may not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in very similar terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information

to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden that may result from critical habitat designation. These include the need for additional consultation with us and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the conservation of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to individually evaluate completed and legally operative HCPs in the range of wintering piping plovers to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

In the event that future HCPs covering the wintering piping plover are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the piping plover and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the piping plover as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

During the comment period for the proposed designation of critical habitat for the piping plover, BNP Petroleum Corporation submitted a detailed economic analysis, prepared by Milton L. Holloway, Ph.D., Resource Economics, Inc., Austin, Texas. Their analysis concluded that the designation will cause significant economic impacts because of large unoccupied areas being included in the designation, resulting in additional consultations with the Service and delays in proposed projects causing economic effects. They note as an example of such delays, oil and gas operators within critical habitat and the Plan of Operations permit process coordinated by the National Park Service, Padre Island National Seashore. The activities identified as being affected include (1) the exploration, development and production of oil and gas reserves, (2) recreational use of coastal areas, (3) real-estate development projects for residential and commercial use, and (4) transportation of commodities on the Gulf Intracoastal Waterway. They conclude that all landowners having potential habitat (upon initiation of a project) will need to go through the section 7 consultation process with the Service, thus, incurring additional costs to determine if plover habitat is present. Due to the uncertainty of the outcome of such consultations, they conclude that all property will be devalued as a result of the designation. They cite the citizen suit provisions of section 11 of the Act as a means by which property owners may be the target of potential violations of the Act, by opponents asserting that any activity in the area will lead to ''take'' of the species. They state that this potential for litigation will also result in the devaluation of property.

In the final Economic Analysis prepared for the Service by Industrial Economics, Inc., Cambridge, Massachusetts, there is recognition that the designation of critical habitat for the piping plover may result in additional section 7 consultation costs because future consultations would need to address critical habitat issues, in addition to the effects on the species, and would therefore require more time. Additionally, in the analysis and noted in this rule, we acknowledge that some Federal agencies may initiate consultation more often than before, because critical habitat has increased their awareness of the species. Even though consideration of critical habitat is not likely to impose further project modifications beyond those required by

the listing of the plover, project proponents may nonetheless incur costs above and beyond those attributable to the listing of the plover as a threatened species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities.

The Padre Island National Seashore (Seashore) has in place a General Management Plan/Development Concept Plan (USDI 1983) and a Final Oil and Gas Management Plan/ Environmental Impact Statement (USDI 2000), collectively referred to as the Plans. These Plans provide as general management direction that ''[n]atural process will be allowed to shape the barrier island with as little interference as possible.'' We feel that achieving these results will provide for the perpetuation of the primary constituent elements of the plover, since the piping plovers habitat is dependent upon natural processes that shape the coastal environment. Thus, we feel that the National Park Service has in place Plans that provide for adequate management and conservation of the piping plover on lands within the Seashore.

The operating standards in the Oil and Gas Management Plan/ Environmental Impact Statement for the Seashore include:

> All proposed Plans of Operation will be evaluated for potential impacts to special-status species. If the evaluation indicates a ''may affect'' situation (includes both beneficial and adverse impacts) on a federally-listed or proposed species, and the adverse impacts cannot be eliminated, consultation or conference with the U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service must be conducted.

Because Plans of Operation will be evaluated whether or not the activities occur within critical habitat, and piping plovers are present on the Seashore, we find that including the Seashore in critical habitat would provide no additional benefit to the species. In addition, we do not feel that a designation of critical habitat would result in any benefits from an increased awareness of the species presence on the part of Federal agencies and possibly an increased number of consultations. This is due to the fact that the Seashore has Plans in place requiring consultation with the Service when any activities that may affect a federally listed species are proposed within the boundaries of the Seashore.

We also find that exclusion of the Seashore from critical habitat would avoid the additional costs that may result from time delays in addressing critical habitat issues, in addition to the effects on the species. These costs might include the value of time spent in conducting section 7 consultations beyond those associated with the listing, and/or delays in implementing oil and gas activities.

Thus, based on the BNP Petroleum Economic Analysis and the one prepared for the Service, we find that the benefits of excluding the Padre Island National Seashore outweigh the benefits of its inclusion.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, or requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, contact the U.S. Fish and Wildlife Service (see contact information under the ''Effects of Critical Habitat Designation'' section of this final rule).

## American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Government'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. No tribal lands were proposed for designation as critical habitat, and no effects on tribal trust resources are anticipated from this designation.

## Required Determinations

### *Regulatory Planning and Review*

Under E.O. 12866 (58 FR 51735, October 4, 1993), we must determine whether this proposed regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The E.O. defines ''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 budgetary 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 E.O. 12866.

(a) While this rule is not expected to have an annual effect on the economy of $100 million or more, OMB has determined that this final rule is a ''significant regulatory action'' under E.O. 12866 because it may raise novel legal or policy issues.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species in addition to avoiding adversely modifying critical habitat. In some instances, the designation of critical habitat could result in an increase in section 7 consultations concerning Federal actions that may adversely modify critical habitat, and that may, in some instances, affect third party actions that rely on or are related to the Federal action subject to the consultation (i.e., Federal nexus). However, we do not believe this effect will result from this rulemaking because we are only designating areas that are currently occupied by the wintering population of the piping plover and, based upon our experience with the plover and its needs, we believe that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would also be considered as ''jeopardy'' under the Act, that would result in a section 7 consultation regardless of critical habitat designation.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of plover since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agencies actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are

currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) OMB has determined that his rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

| Categories of activities | Activities potentially affected by species listing only [1] | Additional activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal activities potentially affected [3]. | Activities such as removing or destroying piping plover wintering habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control); recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities; sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded. | None. |
| Private and other non-federal activities potentially affected [4]. | Activities such as removing or destroying piping plover habitat, whether by mechanical, chemical, or other means (e.g., construction, road building, dredging and other navigation projects, boat launch and marina construction or maintenance, beach nourishment, erosion control) and appreciably decreasing habitat value or quality (e.g., increased vehicular activity on sensitive habitats, increased predators, reduced water quality, modified hydrology) that require a Federal action (permit, authorization, or funding). | None. |

[1] This column represents the activities potentially affected by listing the piping plover as a threatened species (December 11, 1985; 50 FR 50720) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

*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) an agency must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. In the economic analysis, we determined that designation of critical habitat will not have a significant economic effect on a substantial number of small entities. Although small entities may carry out activities within designated critical habitat, many of these activities lack a Federal nexus and therefore their impacts on critical habitat do not need to be considered. For those actions requiring Federal funding or authority, we believe that the incremental impacts attributable to this rule are not significant for reasons explained above and in the revised economic analysis. Therefore, we are certifying that the designation of critical habitat for the wintering population of the piping plover will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

Our economic analysis demonstrated that designation of critical habitat will not 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.

*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.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This final rule will not ''take'' private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private lands could be affected by critical habitat designation. However, we expect no regulatory effect from this designation since all designated areas are considered occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the piping plover as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are

included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the piping plover.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas. We will continue to coordinate any future designation of critical habitat for wintering piping plovers with the appropriate State agencies. The designation of critical habitat for the piping plover is not expected to result in any additional restrictions to those currently in place and, therefore, no incremental impact on State and local governments and their activities are expected. 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, doing so 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 Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

*Energy Supply, Distribution or Use (Executive Order 13211)*

In accordance with Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' the Service asserts that this rule is not likely to have a significant adverse effect on the supply, distribution or use of energy. While this rule is not expected to have an annual effect on the economy or $100 million or more, OMB has determined that this final rule is a ''significant regulatory action'' under Executive Order 12866 because it may raise novel legal or policy issues. This rulemaking designates critical habitat for the piping plover and such designation does not impact the Nation's energy resources. This rulemaking does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited in this final rule are available upon request from the Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

**Author**

The primary authors of this final rule include Ecological Services staff from both the Service's Southwestern and Southeastern Regional and Field Offices.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Plover, piping'' under ''BIRDS'' to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | | * |
| Plover, piping | *Charadrius melodus* | U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf coasts, PR, VI), Canada, Mexico, Bahamas, West Indies. | Great Lakes, watershed in States of IL, IN, MI, NM, NY, OH, PA, and WI and Canada (Ont.). | E | 211 | 17.95(b) | NA. |
| Do | do | do | Entire, except those areas where listed as endangered above. | T | 211 | 17.95(b) | NA. |

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(b) by adding critical habitat for the piping plover (*Charadrius melodus*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

**§ 17.95 Critical habitat-fish and wildlife.**

* * * * *

(b) *Birds*.

* * * * *

**Piping Plover (*Charadrius melodus*) Wintering Habitat**

1. The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements include intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae. Adjacent non-or sparsely vegetated sand, mud, or algal flats above high tide are also important, especially for roosting piping plovers, and are primary constituent elements of piping plover wintering habitat. Such sites may have debris, detritus (decaying organic matter), or micro-topographic relief (less than 50 cm above substrate surface) offering refuge from high winds and cold weather. Important components of the beach/dune ecosystem include surf-cast algae, sparsely vegetated backbeach and salterns (beach area above mean high tide seaward of the permanent dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road), spits, and washover areas. Washover areas are broad, unvegetated zones, with little or no topographic relief, that are formed and maintained by the action of hurricanes, storm surge, or other extreme wave action.

2. Critical habitat does not include existing developed sites consisting of buildings, marinas, paved areas, boat ramps, exposed oil and gas pipelines and similar structures. Only those areas containing these primary constituent elements within the designated boundaries are considered critical habitat.

3. Below, we describe each unit in terms of its location, size, and ownership. These textual unit descriptions are the definitive source for determining the critical habitat boundaries. All distances and areas provided here are approximated. General location maps by State are provided at the end of each State's unit descriptions and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

*North Carolina* (Maps were digitized using 1993 DOQQs, except NC–3 (1993 DRG)

Unit NC–1: Oregon Inlet. 404 ha (997 ac) in Dare County

This unit extends from the southern portion of Bodie Island to the northern portion of Pea Island. It includes all land south of the Oregon Inlet Marina and Fishing Center to 0.50 km (0.31 mile) south of the junction of Highway 12 and SR 1257. This unit includes lands from MLLW on the Pamlico Sound across (and including all land) to MLLW on Atlantic Ocean shoreline. Any emergent sandbars south and west of Oregon Inlet are included.

Unit NC–2: Cape Hatteras Point. 465 ha (1149 ac) in Dare County

The majority of the unit is within Cape Hatteras National Seashore. This unit extends south from the Cape Hatteras Lighthouse to the point of Cape Hatteras and then extends west 6.4 km (4.0 mi) along Hatteras Cove shoreline. The unit includes lands from the MLLW on the Atlantic Ocean and stops landward where densely vegetated habitat, not used by the piping plover, begins and where constituent elements no longer occur.

Unit NC–3: Clam Shoals. 28 ha (70 ac) in Dare County

The entire unit is owned by the State. This unit includes several islands in Pamlico Sound known as Bird Islands. This unit includes lands on all islands to the MLLW.

Unit NC–4: Hatteras Inlet. 516 ha (1273 ac) in Dare and Hyde Counties

The majority of the unit is surrounded by Cape Hatteras National Seashore, but is privately owned. This unit extends west from the end of Highway 12 on the western portion of Hatteras Island to 1.25 km (0.78 mi) southwest of the ferry terminal at the end of Highway 12 on Ocracoke Island. It includes all lands where constituent elements occur from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Hatteras Inlet between Hatteras Island and Ocracoke Island are also included.

Unit NC–5: Ocracoke Island. 80 ha (197 ac) in Hyde County

The majority of this unit is within Cape Hatteras National Seashore. It includes the western portion of Ocracoke Island beginning 3.5 km (2.2 mi) west of the junction of Highway 12 and the local road (no name) extending west to Ocracoke Inlet. It includes all land from MLLW on the Atlantic Ocean across to MLLW on Pamlico Sound. All emergent sandbars within Ocracoke Inlet are also included.

Unit NC–6: Portsmouth Island-Cape Lookout. 3187 ha (7873 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit includes all land to MLLW on Atlantic Ocean to MLLW on Pamlico Sound, from Ocracoke Inlet extending west to the western end of Pilontary Islands. This unit includes the islands of Casey, Sheep, Evergreen, Portsmouth, Whalebone, Kathryne Jane, and Merkle Hammock. This unit also extends west from the eastern side of Old Drum Inlet to 1.6 km (1.0 mi) west of New Drum Inlet and includes all lands from MLLW on Atlantic Ocean to MLLW on Core Sound.

Unit NC–7: South Core Banks. 552 ha (1364 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit extends south from Cape Lookout Lighthouse, along Cape Lookout, to Cape Point and northwest to the northwestern peninsula. All lands from MLLW on the Atlantic Ocean, Onslow Bay, and Lookout Bight up to where densely vegetated habitat, not used by

the piping plover, begins and the constituent elements no longer occur are included.

Unit NC–8: Shackleford Banks. 716 ha (1769 ac) in Carteret County

The entire unit is within Cape Lookout National Seashore. This unit is in two parts: (1) The eastern end of Shackleford Banks from MLLW of Barden Inlet extending west 2.4 km (1.5 mi), including Diamond City Hills, Great Marsh Island, and Blinds Hammock; and, (2) The western end of Shackleford Banks from MLLW extending east 3.2 km (2.0 mi) from Beaufort Inlet. The unit includes all land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and any emergent sandbars within Beaufort Inlet. This unit is bordered by Onslow Bay, Shackleford Slue, and Back Sound.

Unit NC–9: Rachel Carson. 445 ha (1100 ac) in Carteret County

The entire unit is within the Rachel Carson National Estuarine Research Reserve. This unit includes islands south of Beaufort including Horse Island, Carrot Island, and Lennox Point. This unit includes entire islands to MLLW.

Unit NC–10: Bogue Inlet. 143 ha (354 ac) in Carteret and Onslow Counties

The majority of the unit is privately owned, with the remainder falling within Hammocks Beach State Park. This unit includes contiguous land south, west, and north of Bogue Court to MLLW line of Bogue Inlet on the western end of Bogue Banks. It includes the sandy shoals north and adjacent to Bogue Banks and the land on Atlantic Ocean side to MLLW. This unit also extends 1.3 km (0.8 mi) west from MLLW of Bogue Inlet on the eastern portion of Bear Island.

Unit NC–11: Topsail. 451 ha (1114 ac) in Pender County and Hanover County

The entire area is privately owned. This unit extends southwest from 1.0 km (0.65 mi) northeast of MLLW of New Topsail Inlet on Topsail Island to 0.53 km (0.33 mi) southwest of MLLW of Rich Inlet on Figure Eight Island. It includes both Rich Inlet and New Topsail Inlet and the former Old Topsail Inlet. All land, including emergent sandbars, from MLLW on Atlantic Ocean and sound side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. In Topsail Sound, the unit stops as the entrance to tidal creeks become narrow and channelized.

Unit NC–12: Figure Eight Island. 134 ha (331 ac) in New Hanover County

The majority of the unit is privately owned. This unit extends south from the western end of Beach Road on Figure Eight Island to the northern end of Highway 74 on Wrightsville Beach. The unit includes Mason Inlet and the sand and mudflats northwest of the inlet from MLLW on Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–13: Masonboro. 61 ha (150 ac) in New Hanover County

The entire unit is within the North Carolina National Estuarine Research Reserve. This unit extends 1.1 km (0.70 mi) south from the MLLW of Masonboro Inlet on Masonboro Island. This unit includes all lands along the Atlantic Ocean, Masonboro Inlet, and Masonboro Sound from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit NC–14: Carolina Beach Inlet. 374 ha (924 ac) in New Hanover County

The majority of the unit is within Myrtle Grove Sound on Masonboro Island and is owned by the North Carolina National Estuarine Research Reserve. It extends 1.80 km (1.12 mi) west along the south shoreline of Wolf Island from the mouth of the Altamaja sound. This unit extends south from 3.2 km (2.0 mi) north of MLLW at Carolina Beach Inlet on Masonboro Island to 1.1 km (0.70 mi) south of MLLW at Carolina Beach Inlet on Carolina Beach. It includes land from MLLW on Atlantic Ocean across and including lands to MLLW on the western side of Masonboro Island, excluding existing dredge spoil piles. Emergent sand bars within Carolina Beach Inlet are also included.

Unit NC–15: Ft. Fisher. 790 ha (1951 ac) in New Hanover and Brunswick Counties

This unit is within Ft. Fisher State Recreation Area and Zeke's Island Estuarine Reserve. This unit extends south from Ft. Fisher Islands (from the rocks), south of the ferry terminal, to approximately 0.8 km (0.5 mi) south of MLLW at Corn Cake Inlet on Smith Island. It includes all land (including Zeke's Island) from MLLW on Atlantic Ocean across to MLLW on the eastern side of the Cape Fear River.

Unit NC–16: Lockwood Folly Inlet. 36 ha (90 ac) in Brunswick County

The entire unit is on Oak Island (formerly known as the Town of Long Beach) and is privately owned. This unit extends from the end of West Beach Drive, west to MLLW at Lockwood Folly Inlet, including emergent sandbars south and adjacent to the island. This unit is includes land from MLLW on Atlantic Ocean across to MLLW adjacent to the Eastern Channel and the Intracoastal Waterway.

Unit NC–17: Shallotte Inlet. 120 ha (296 ac) in Brunswick County

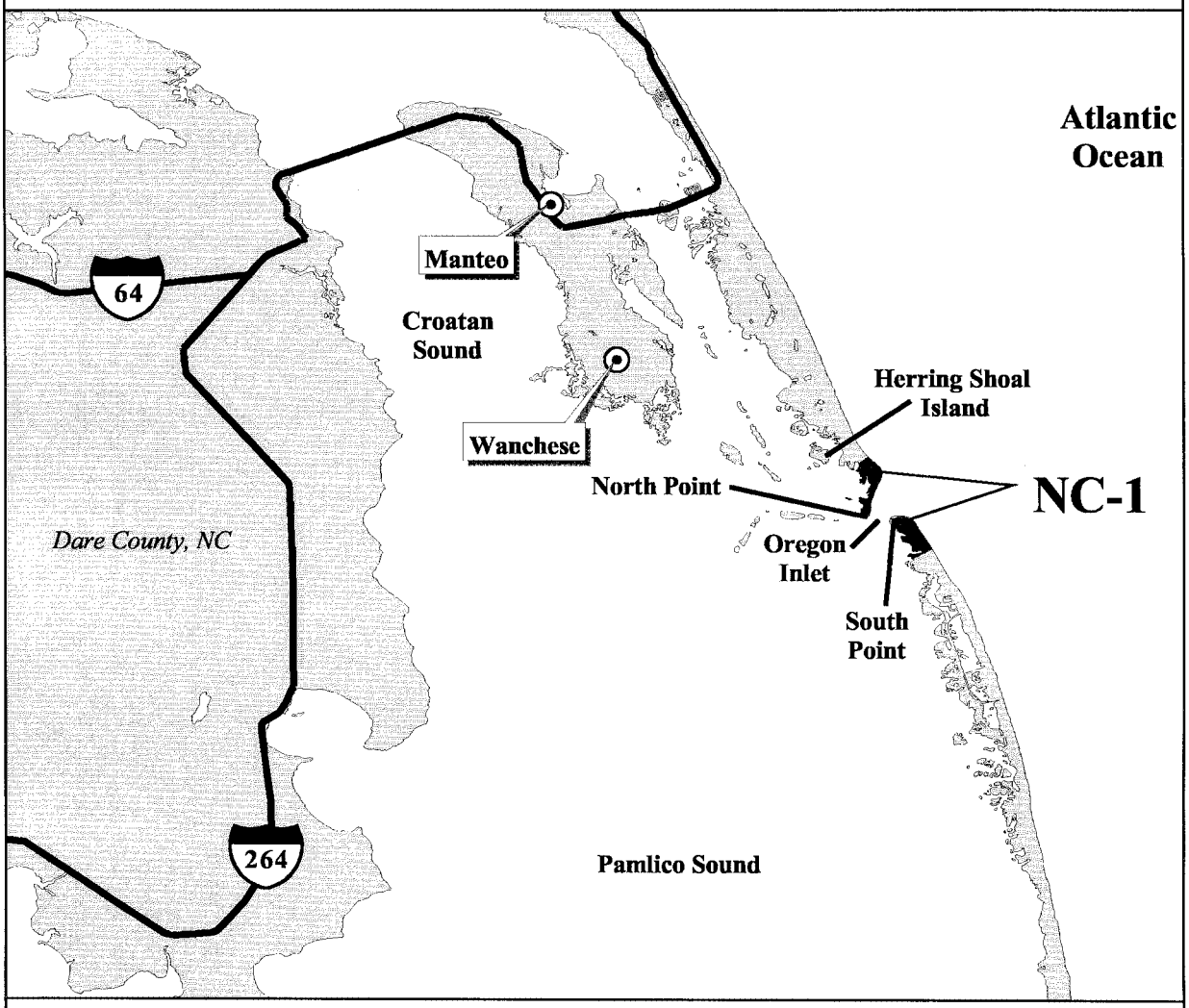
The entire unit is privately owned. This unit begins just west of Skimmer Court on the western end of Holden Beach. It includes land south of SR 1116, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur to the MLLW along the Atlantic Ocean. It includes the contiguous shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along the Atlantic Ocean, Shallotte Inlet, and Intracoastal Waterway stopping north of Skimmer Court Road. The unnamed island and emergent sandbars to MLLW within Shallotte Inlet are also included.

Unit NC–18: Mad Inlet. 112 ha (278 ac) in Brunswick County

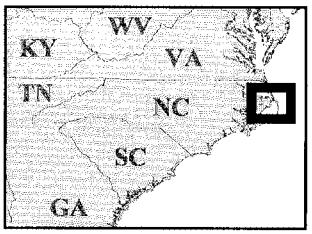
The entire unit is privately owned. This unit extends west 1.2 km (0.75 mi) from the end of Main Street (SR 1177) on western Sunset Beach to the eastern portion of Bird Island and includes the marsh areas north of western Sunset Beach shoreline. The shoreline area begins at MLLW on the Atlantic Ocean and continues landward to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

N

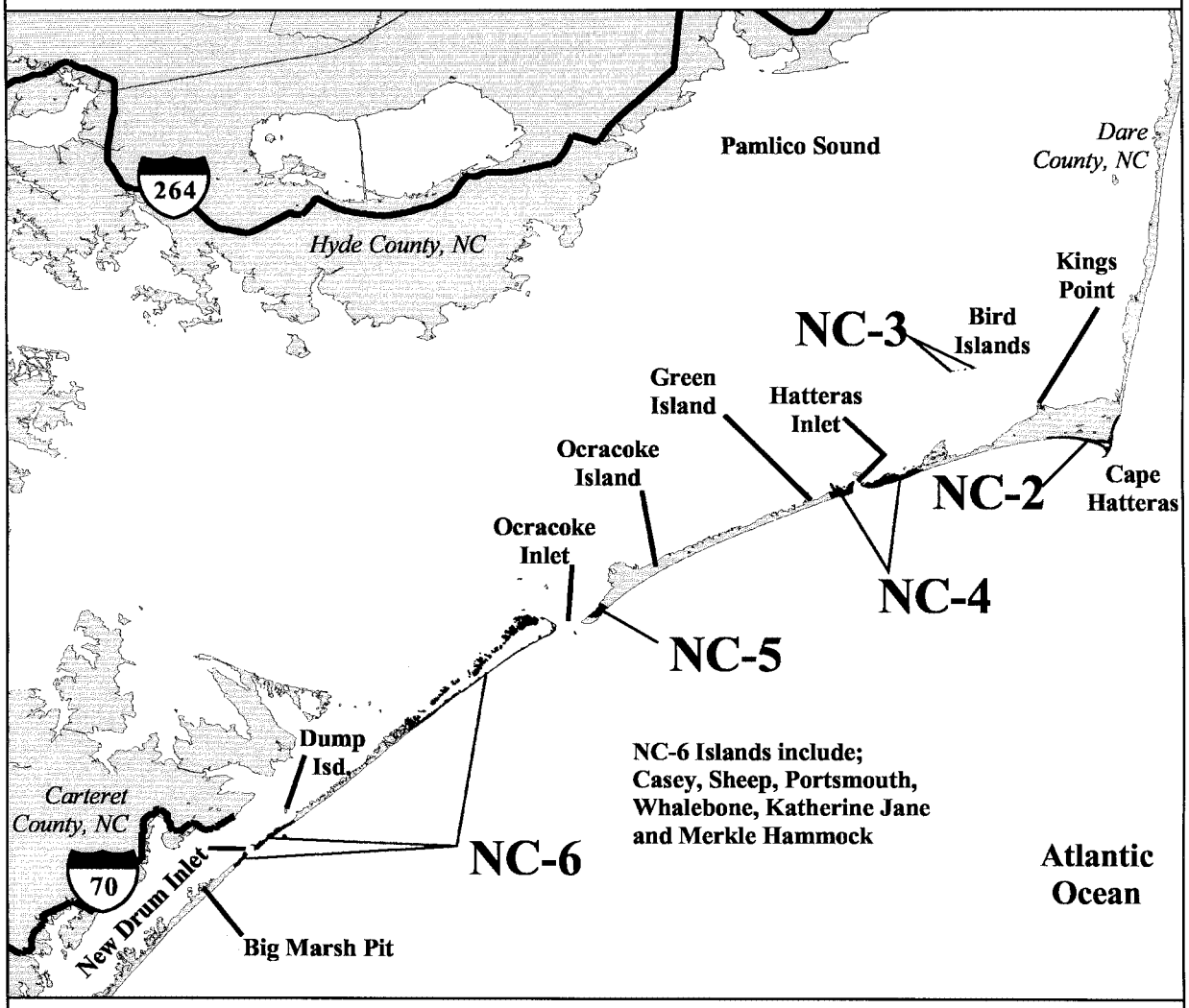
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# North Carolina Unit: 1

# General locations of the designated critical habitat for the Wintering Piping Plover.

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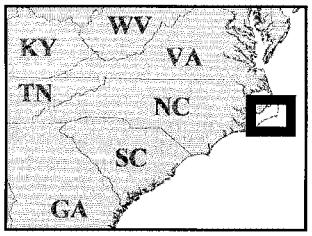



## Distance: Miles

0 9 18

N

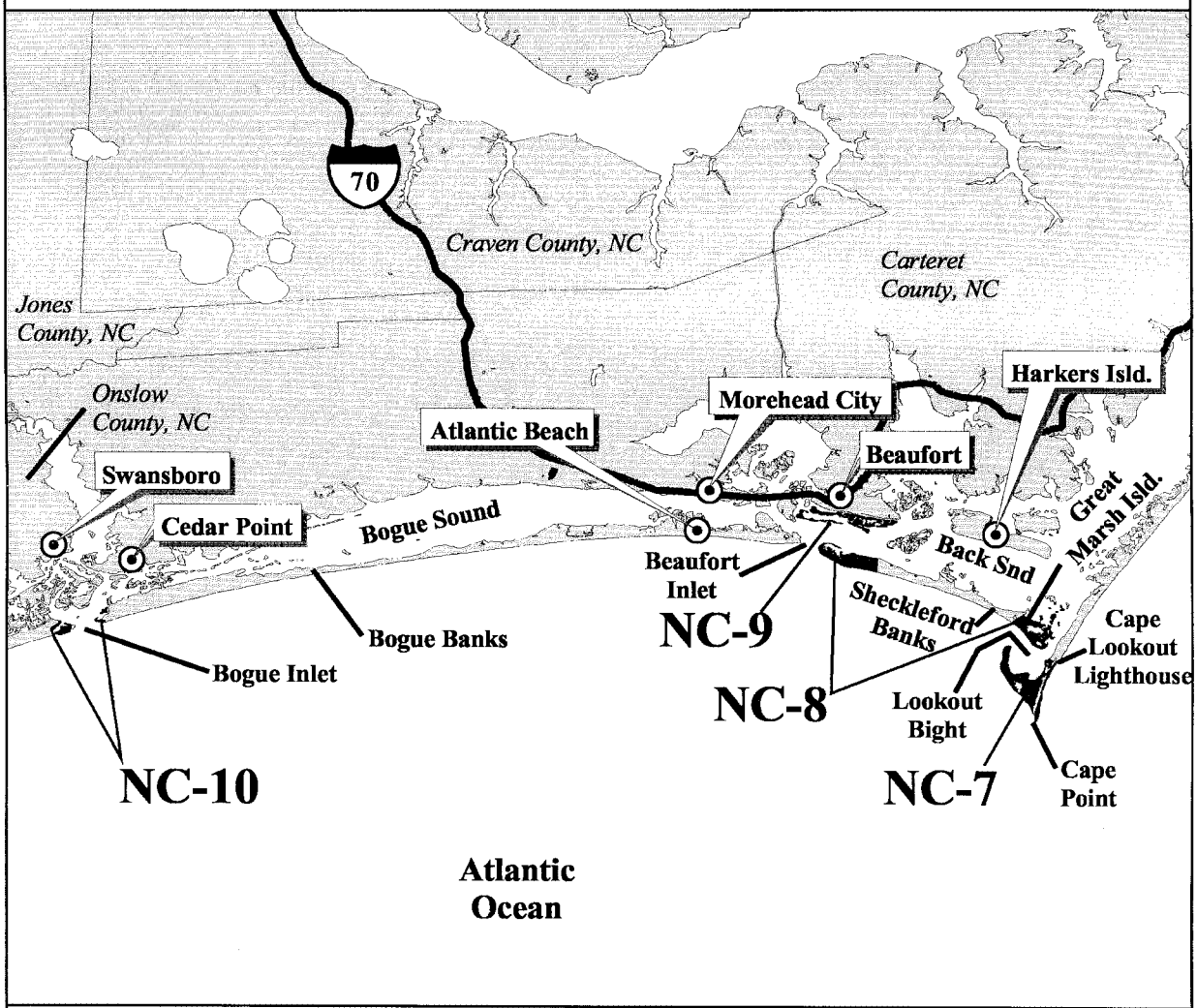
## Legend

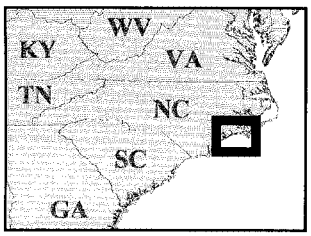
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# North Carolina Units: 2, 3, 4, 5 & 6

# General locations of the designated critical habitat for the Wintering Piping Plover.




**Distance: Miles**

0 6 12

N

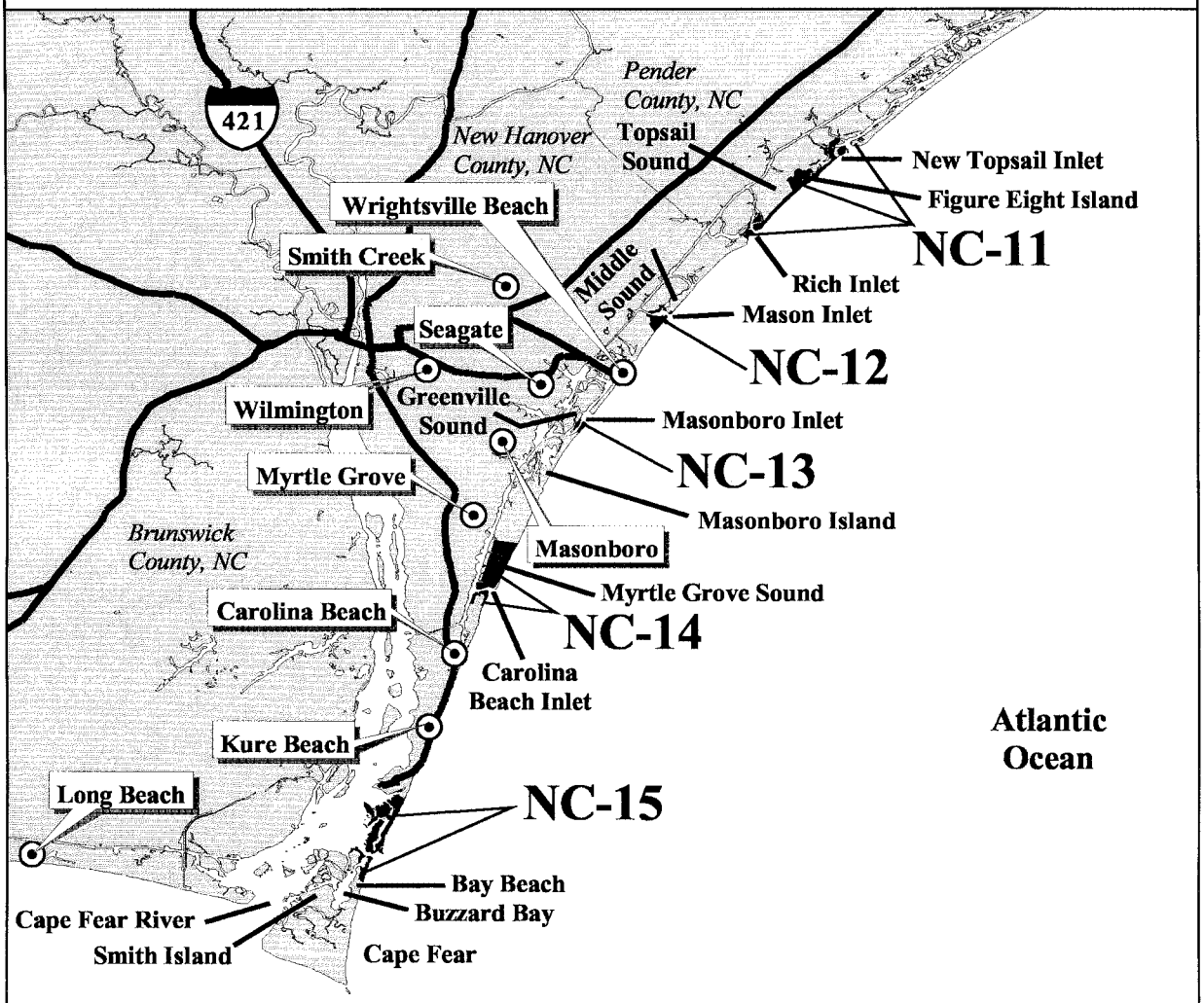
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

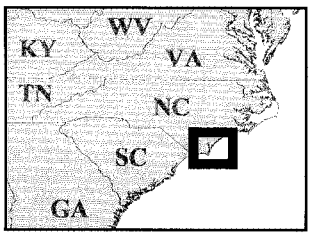
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# North Carolina Units: 7, 8, 9 and 10

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 6 12

## Legend

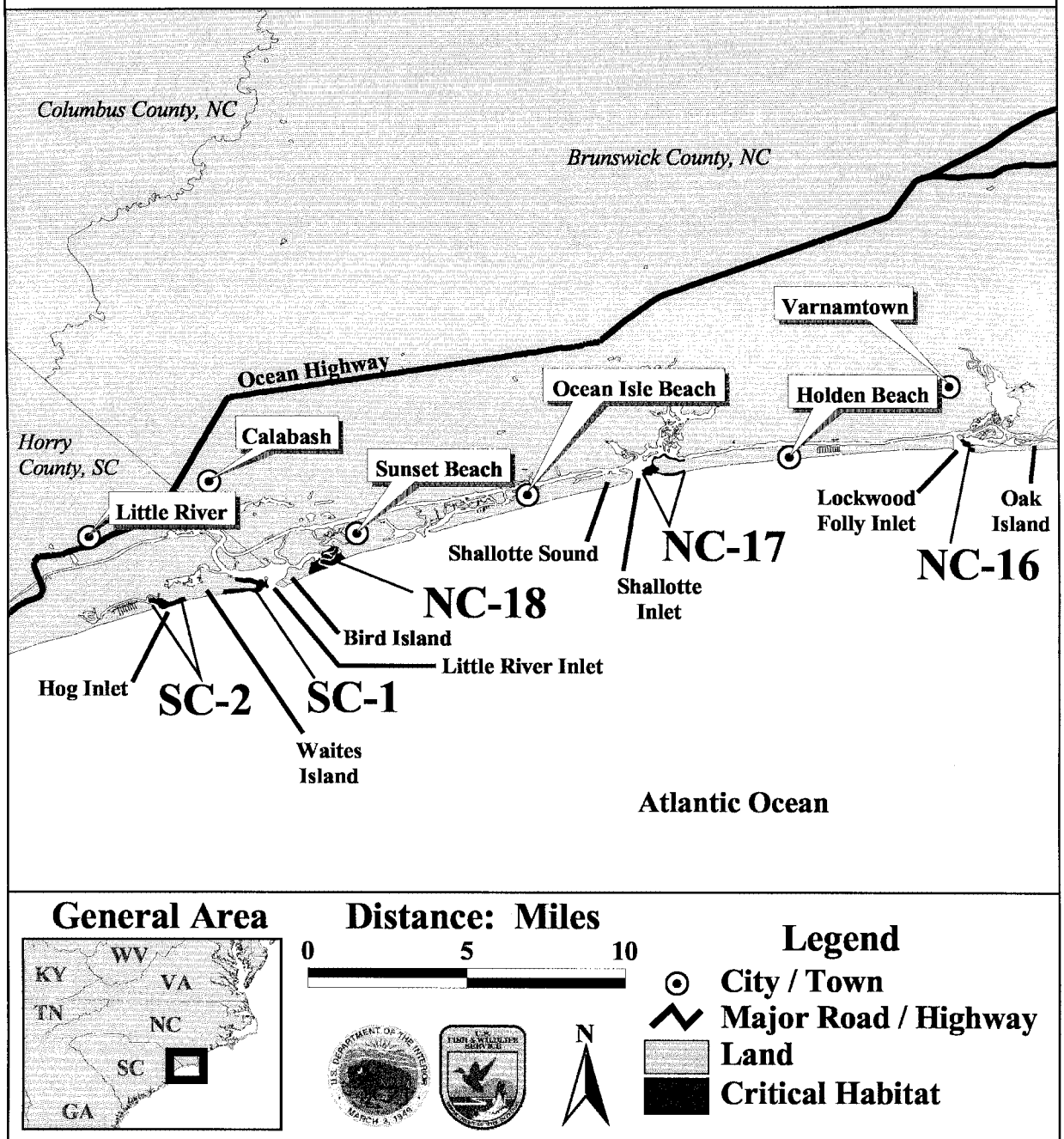
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# North Carolina Units: 11 to 15

# General locations of the designated critical habitat for the Wintering Piping Plover.




**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# NC Units: 16 to 18, SC Units: 1 & 2

BILLING CODE 4310–55–C

*South Carolina* (Maps were digitized using 1994 DOQQs)

Unit SC–1: Waites Island-North. 75 ha (186 ac) in Horry County

This unit includes the northern tip of Waites Island from the MLLW at Little River Inlet and runs west along the Atlantic Ocean shoreline 2.0 km (1.25 mi) and includes land from the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The unit continues north and west of Little River Inlet stopping at Sheephead Creek, including land from MLLW to dense vegetation line. The majority of the unit is privately owned.

Unit SC–2: Waites Island-South. 58 ha (142 ac) in Horry County

This unit includes the southern tip of Waites Island from the MLLW at Hog Inlet and runs east along the Atlantic Ocean shoreline 0.80 km (0.50 mi) and includes MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It continues north and west of the Hog Inlet, stopping at the first major tributary. Critical habitat includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Emerging sandbars within Hog Inlet and adjacent to the tip if eastern Cherry Grove Beach are also included from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur. The majority of this unit is privately owned.

Unit SC–3: Murrells Inlet/Huntington Beach. 135 ha (334 ac) in Georgetown County

The majority of the unit is within Huntington Beach State Park. This unit extends from the southern tip of Garden City Beach, just south of the groins (a rigid structure or structures built out from a shore to protect the shore from erosion or to trap sand) north of Murrells Inlet from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begins and where the constituent elements no longer occur stopping perpendicular with the southern end of Inlet Point Drive. It includes from MLLW south of Murrells Inlet to the northern edge of North Litchfield Beach approximately 4.5 km (3.0 mi). The unit includes the MLLW from the Atlantic Ocean up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The lagoon at the north end of Huntington Beach State Park is also included.

Unit SC–4: Litchfield. 11 ha (28 ac) in Georgetown County

This unit includes the southern tip of Litchfield Beach beginning 0.50 km (0.30 mi) north of Midway Inlet and stopping at the MLLW at Midway Inlet. It includes from the MLLW on the Atlantic Ocean shoreline across and including land to the MLLW on the back bayside. This unit is mostly privately owned.

Unit SC–5: North Inlet. 99 ha (245 ac) in Georgetown County

The majority of the unit is within Tom Yawley Wildlife Center Heritage Preserve. This unit extends from MLLW to 1.0 km (.62 mi) north of North Inlet on Debidue Beach. It includes shoreline on the Atlantic Ocean from MLLW to the MLLW on the western side of the peninsula. This unit also includes from the MLLW south of North Inlet 1.6 km (1.0 mi). It includes the shoreline on the Atlantic Ocean from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. It includes shoreline running south and west of the inlet from the MLLW stopping at the MLLW at the first large tributary (no name).

Unit SC–6: North Santee Bay Inlet. 305 ha (753 ac) in Georgetown County

The majority of the unit is within the Tom Yawley Wildlife Center Heritage Preserve and the Santee-Delta Wildlife Management Area. This unit is at the North Santee Bay inlet and includes lands of South Island, Santee Point, Cedar Island, and all of North Santee Sandbar. This unit includes from MLLW at North Santee Bay Inlet running north along the Atlantic Ocean side of South Island 7.2 km (4.5 mi), stopping 0.60 km (0.4 mi) north of an unnamed inlet. It includes areas from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This unit includes the eastern side of Cedar Island adjacent to the North Santee Bay Inlet from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of North Santee Sandbar to MLLW is included.

Unit SC–7: Cape Romain. 315 ha (777 ac) in Charleston County

The majority of the unit is within Cape Romain National Wildlife Refuge. This unit includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the southern and southeastern most 1.9 km (1.2 mi) portion of Cape Island, the southernmost portion of Lighthouse Island from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, all of Lighthouse Island South to MLLW, and the southern side of the far eastern tip of Raccoon Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–8: Bull Island. 134 ha (332 ac) in Charleston County

The majority of the unit is within Cape Romain National Wildlife Refuge and land owned by the South Carolina Department of Natural Resources. This unit includes from Schooner Creek on north and south of the river to north of Price's Inlet on the southern portion of Bull Island along the Atlantic Ocean 1.6 km (1.0 mi) and south of Price's Inlet on the northeast tip of Capers Island Heritage Preserve 1.4 km (.86 mi) along the Atlantic Ocean. All areas begin at MLLW and extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–9: Stono Inlet. 495 ha (1223 ac) in Charleston County

Most of this unit is privately owned. It includes the eastern end of Kiawah Island (approximately 4.0 km (2.5 mi)) from MLLW on Atlantic Ocean running north to MLLW on first large tributary connecting east of Bass Creek running northeast into Stono River. It includes MLLW up to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur along Stono Inlet and River. All of Bird Key-Stono Heritage Preserve and all of Skimmer Flats to MLLW are included. The Golf course and densely vegetated areas are not included.

Unit SC–10: Seabrook Island. 117 ha (290 ac) in Charleston County

This unit runs from just 0.16 km (0.10 mi) north of Captain Sams Inlet to the southwest approximately 3.4 km (2.1 mi) along the Atlantic Ocean shoreline. It includes land areas from the MLLW on the Atlantic Ocean to where densely

vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Most of this unit is privately owned.

Unit SC–11: Deveaux Bank. 130 ha (322 ac) in Charleston County

The entire unit is within Deveaux Bank Heritage Preserve. This unit includes all of Deveaux Island to the MLLW and is State-owned.

Unit SC–12: Otter Island. 68 ha (169 ac) in Colleton County

The majority of the unit is within St. Helena Sound Heritage Preserve. This unit includes the southern portion of Otter Island to the eastern mouth of Otter Creek. It includes the MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The entire unit is State-owned.

Unit SC–13: Harbor Island. 50 ha (122 ac) in Beaufort County

The majority of the unit is State-owned. This unit extends from the northeastern tip of Harbor Island and includes all of Harbor Spit. It begins at the shoreline east of Cedar Reef Drive running south, stopping at the mouth of Johnson Creek. It includes the MLLW on the Atlantic Ocean and St. Helena Sound to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Harber Spit to MLLW is included.

Unit SC–14: Caper's Island. 238 ha (589 ac) in Beaufort County

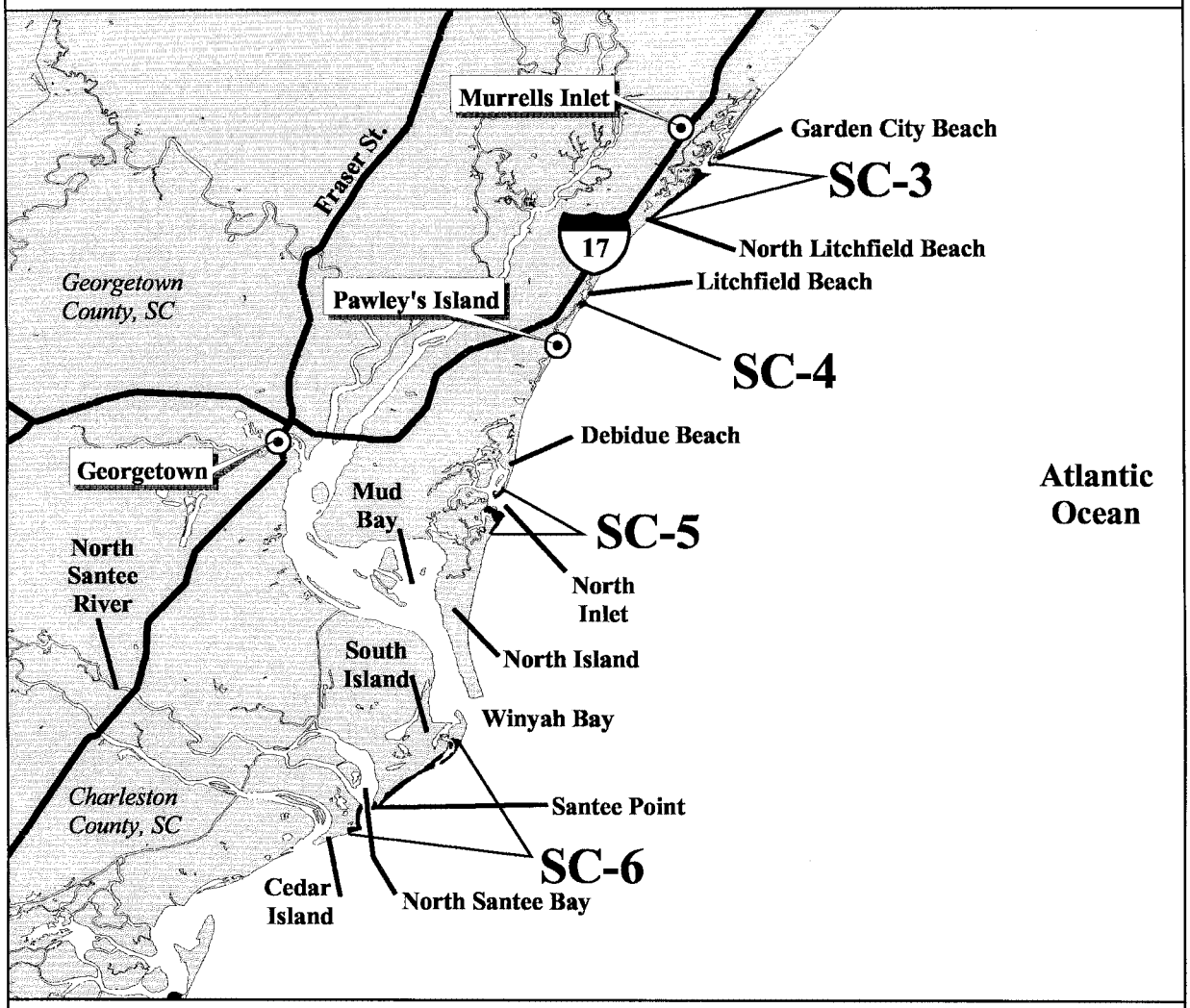
Most of this unit is privately owned. This unit includes the southern-most 4.5 km (2.8 mi) along the Atlantic Coast shoreline of Little Caper's Island beginning at MLLW on south side of the inlet (un-named). It includes the MLLW on the Atlantic Ocean shoreline to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit SC–15: Hilton Head. 43 ha (106 ac) in Beaufort County

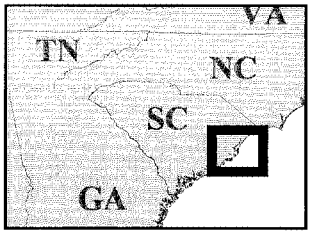
The majority of this unit is State-owned. This unit includes the northeastern tip (Atlantic Ocean side) of Hilton Head Island and all of Joiner Bank. It begins at the shoreline east of northern Planters Row and ends at the shoreline east of Donax Road. It includes the MLLW of Port Royal Sound and the Atlantic Ocean to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Joiner Bank to MLLW is included.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 6 12

N

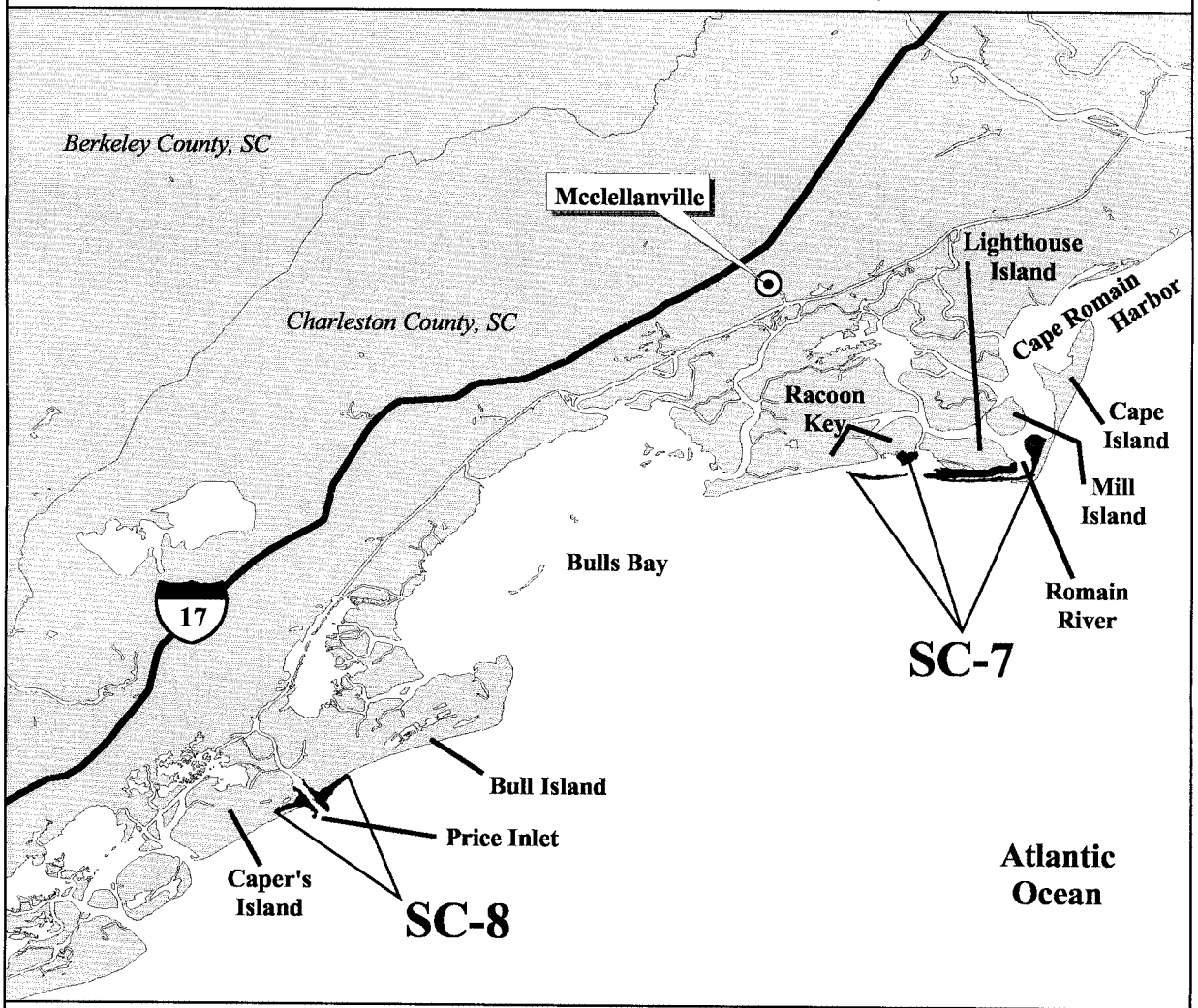
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# South Carolina Units: 3, 4, 5 and 6

# General locations of the designated critical habitat for the Wintering Piping Plover.

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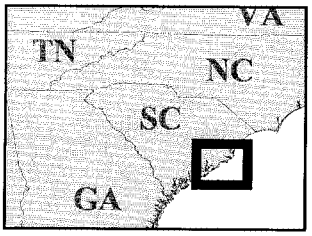



**Distance: Miles**

0 4 8

N

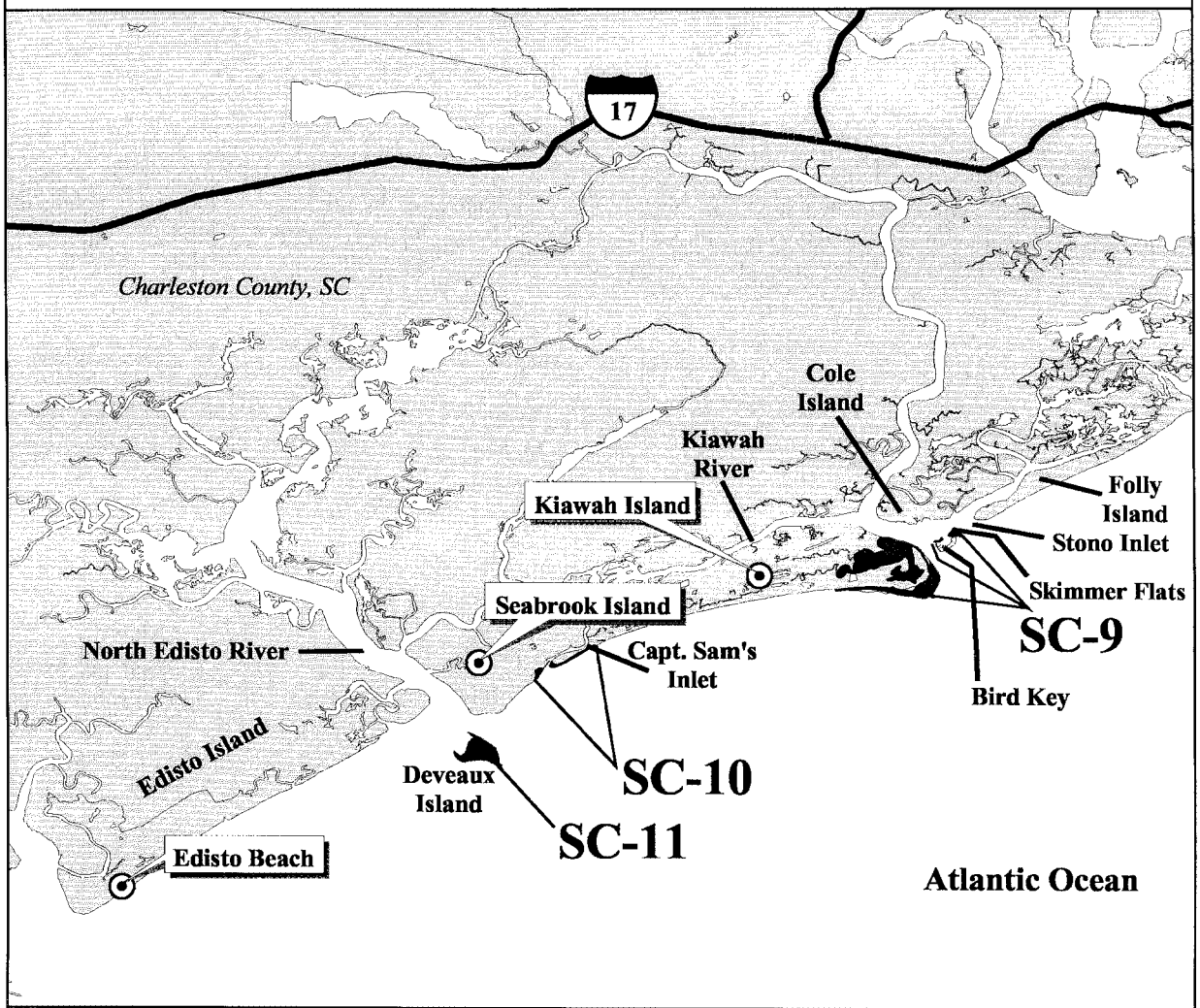
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

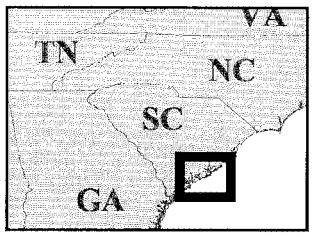
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# South Carolina Units: 7 and 8

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

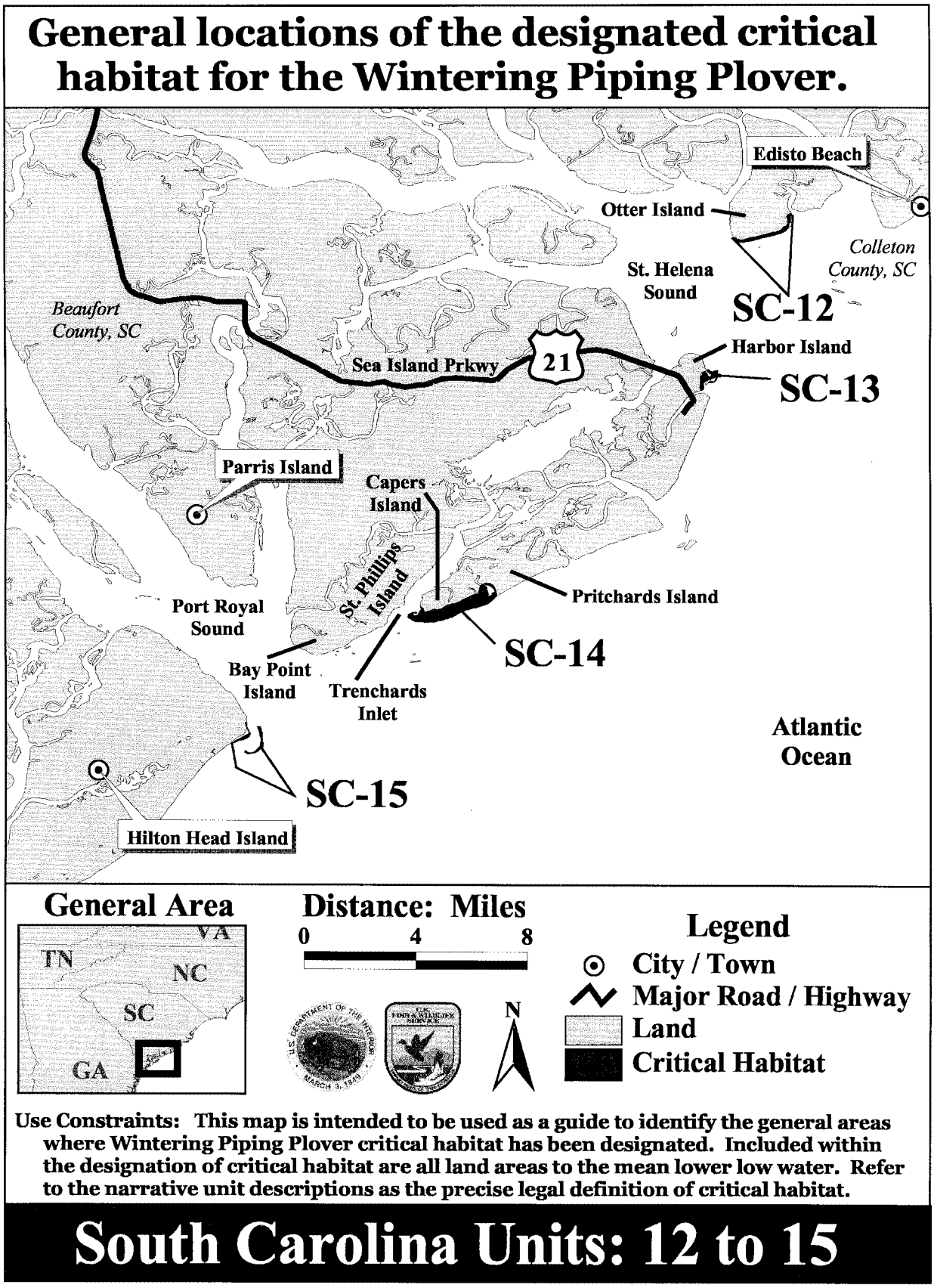
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# South Carolina Units: 9, 10 and 11




BILLING CODE 4310–55–C

*Georgia* (Maps were digitized using 1993–94 DOQQs)

Unit GA–1: Tybee Island. 37 ha (91 ac) in Chatham County

The majority of the unit is privately owned. This unit extends along the northern tip of Tybee Island starting from 0.8 km (0.5 mi) northeast from the intersection of Crab Creek and Highway 80 to 0.7 km (0.41 mi) northeast from the intersection of Highway 80 and Horse Pen Creek. The unit includes MLLW on Savannah River and Atlantic Ocean to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit GA–2: Little Tybee Island. 719 ha (1776 ac) in Chatham County

The majority of the unit is within Little Tybee Island State Heritage Preserve. This unit extends just south of the first inlet to Wassaw Sound along the Atlantic Ocean coastline, extending north along the sound 1.7 km (1.1 mi). It includes habitat from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–3: North Wassaw Island. 108 ha (267 ac) in Chatham County

The entire unit is within Wassaw National Wildlife Refuge. This unit includes the north-east tip of Wassaw Sound, 1.6 km (1.0 mi) along the inlet side and extending south along the Atlantic Ocean shoreline for 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–4: South Wassaw Island. 61 ha (151 ac) in Chatham County

The entire unit is within Wassaw National Wildlife Refuge. This unit extends from the last southern 1.6 km (1.0 mi.) on Atlantic Ocean side, around the southern tip of Wassaw Island, up to mouth of Odingsell River. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–5: Ossabaw Island. 434 ha (1072 ac) in Chatham County

The entire unit is within Ossabaw Island State Heritage Preserve. This unit includes the northeastern tip from the mouth of the Bradley River east and 12 km (7.5 mi) south along the Atlantic Ocean shoreline to a point 0.4 km (0.25 mi) past the south-center inlet. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–6: St. Catherine's Island Bar. 54 ha (135 ac) in Liberty County

The entire unit is State owned and located east-northeast of St. Catherine's Island. This unit includes the entire St. Catherine's Island Bar to MLLW.

Unit GA–7: McQueen's Inlet. 215 ha (532 ac) in Liberty County

The majority of the unit is private land along the eastern-central coastline on St. Catherine's Island. This unit extends from McQueen's Inlet north approximately 3.5 km (2.2 mi) and south approximately 1.8 km (1.1 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–8: St. Catherine's Island. 60 ha (147 ac) in Liberty County

The majority of the unit is private land on the southern tip of St. Catherine's Island. This unit starts 1.2 km (0.75 mi) north of Sapelo Sound (along Atlantic Ocean shoreline) and stops inland at Brunsen Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–9: Blackbeard Island. 129 ha (319 ac) in McIntosh County

The entire unit is within the Blackbeard Island National Wildlife Refuge. This unit includes the northeastern portion of the island beginning just east of the mouth of the confluence of McCloy Creek and Blackbeard Creek and continuing east and running south along the Atlantic Ocean shoreline for 1.4 km (.90 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–10: Sapelo Island. 85 ha (210 ac) in McIntosh County

The entire unit is State-owned and within Sapelo Island. The unit extends south of Cabretta Tip approximately 0.2 km (0.13 mi) and north of Cabretta Tip 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–11: Wolf Island. 238 ha (590 ac) in McIntosh County

The majority of the unit is within Wolf Island National Wildlife Refuge and private lands just north of the Refuge. This unit includes the southeastern tip of Queen's island adjacent to the Doboy Sound and includes the eastern shoreline of Wolf Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–12: Egg Island Bar. 61 ha (151 ac) in McIntosh County

This unit is State owned and includes all of Egg Island Bar to the MLLW.

Unit GA–13: Little St. Simon's Island. 609 ha (1505 ac) in Glynn County

The majority of the unit is private land on Little St. Simon's Island. This unit includes the entire eastern coastline along Little St. Simon's Island. It begins 1.1 km (.70 mi) west of the northeast tip of Little St. Simon's Island and runs east and then south along the Atlantic Ocean shoreline stopping at the minor tributary (no name) on the southeast tip of Little St. Simon's Island north of Hampton Creek. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All of Pelican Spit to MLLW is included when this sand bar is emergent.

Unit GA–14: Sea/St. Simon's Island. 191 ha (471 ac) in Glynn County

The majority of the unit is private land on the south tip of Sea Island and on the east beach of St. Simons Island. This unit extends north of Gould's Inlet (Sea Island) 2.5 km (1.54 mi) starting just south of the groin and extends south of Gould's Inlet (St. Simons Island) 1.6 km (1.0 mi). It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit GA–15: Jekyll Island. 49 ha (121 ac) in Glynn County

The majority of the unit is within State lands on Jekyll Island. This unit includes the southern region of Jekyll Island beginning at the mouth of Beach Creek, running towards the tip of Jekyll Island and includes the shoreline running north along the Atlantic Ocean shoreline 1.9 km (1.20 mi) from the southern tip of Jekyll Island. It includes land from MLLW to where densely vegetated habitat, not used by the piping

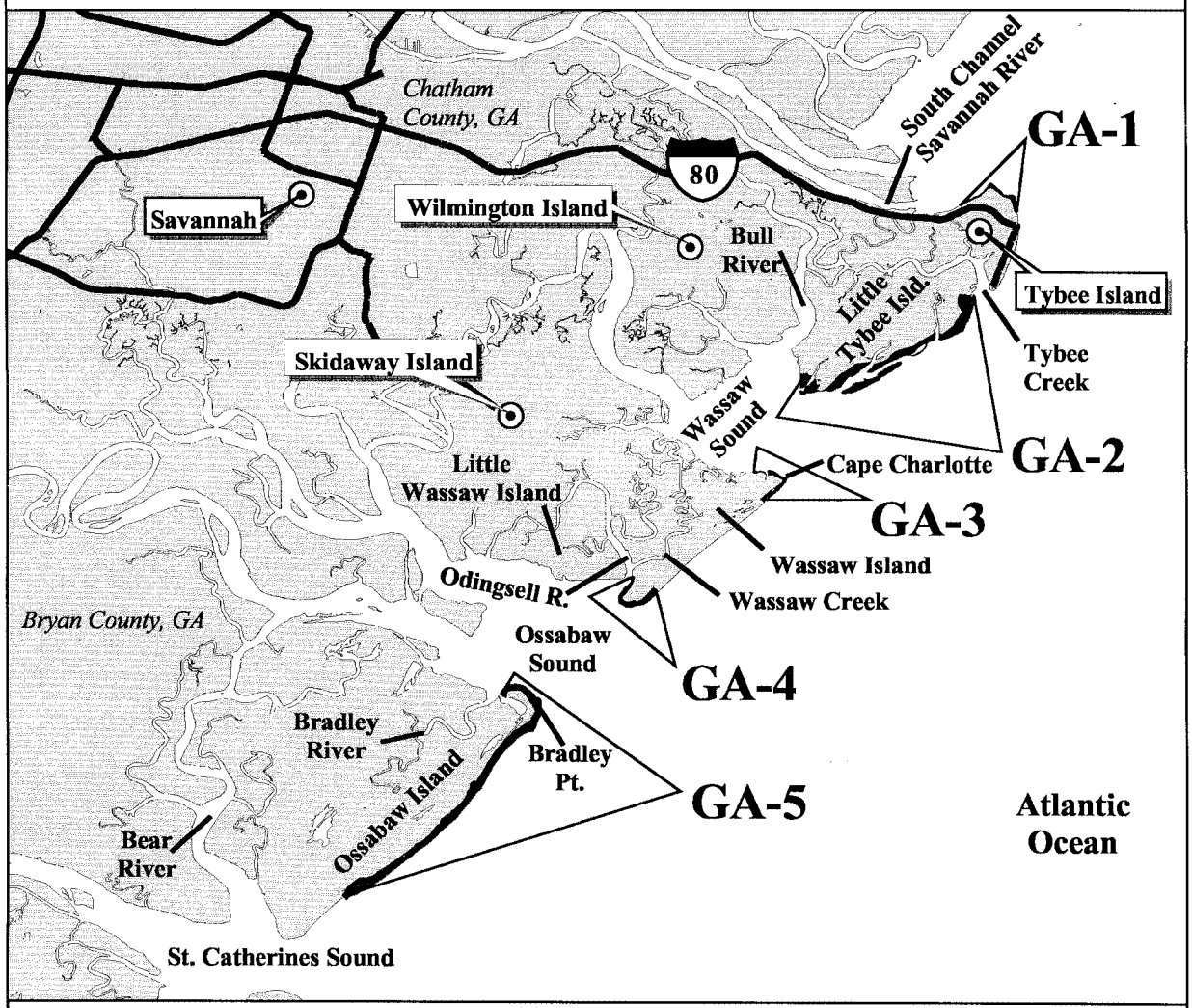
plover, begins and where the constituent elements no longer occur.

Unit GA–16: Cumberland Island. 1454 ha (3591 ac) in Camden County

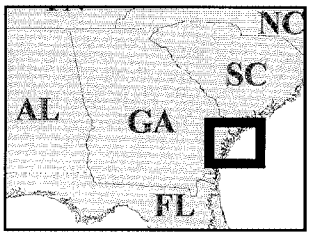
The majority of the unit is along Cumberland Island Wilderness Area and Cumberland Island National Seashore. This unit includes the majority of the eastern Atlantic Ocean shoreline of Cumberland Island. It begins .50 km (.31 mi) north of the inlet at Long Point, continues south along the Atlantic Ocean shoreline stopping 1.8 km (1.1 mi) west of the southern tip of Cumberland Island National Seashore. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 4 8

N

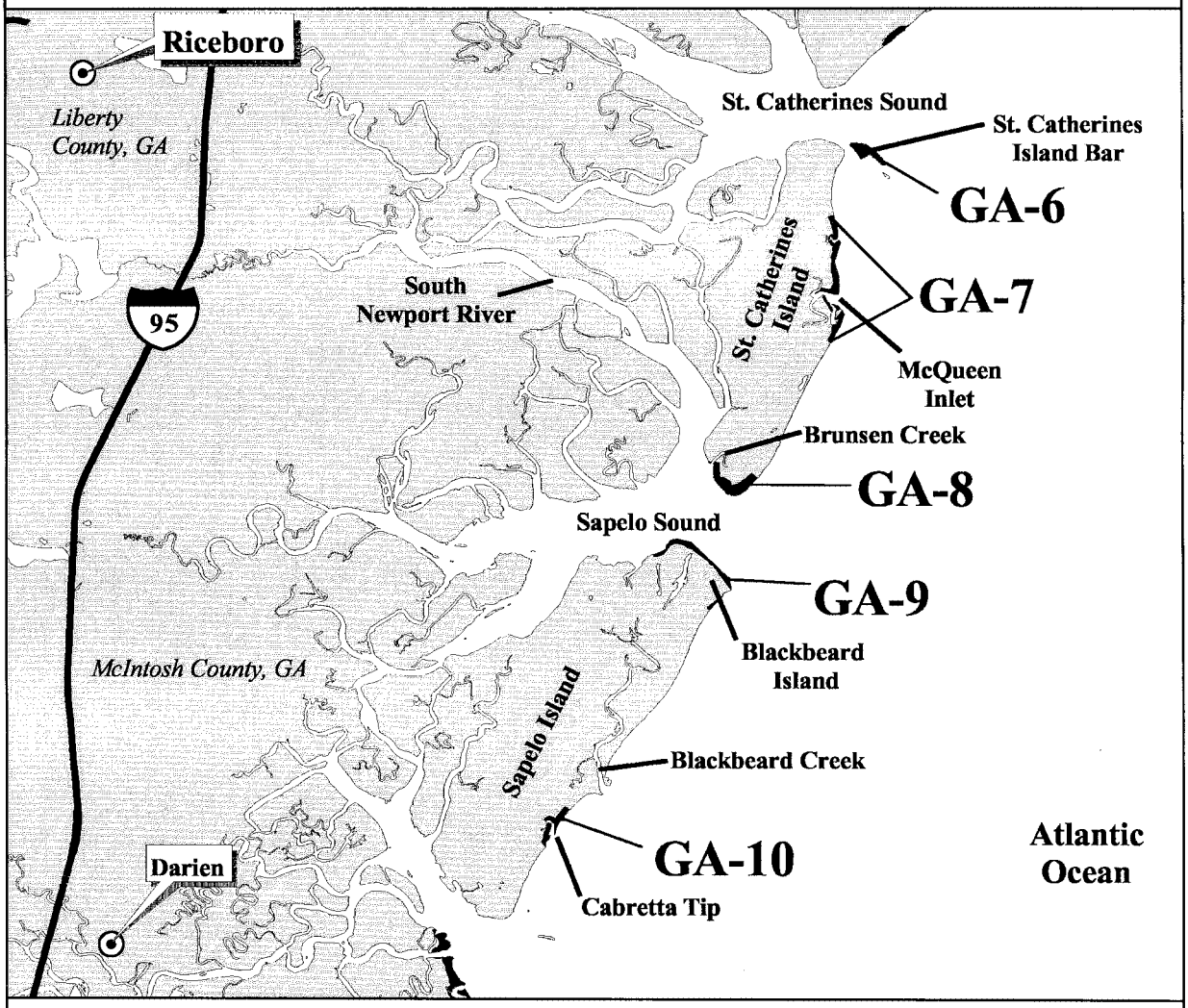
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

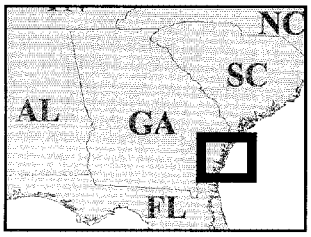
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Georgia Units: 1, 2, 3, 4 and 5

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

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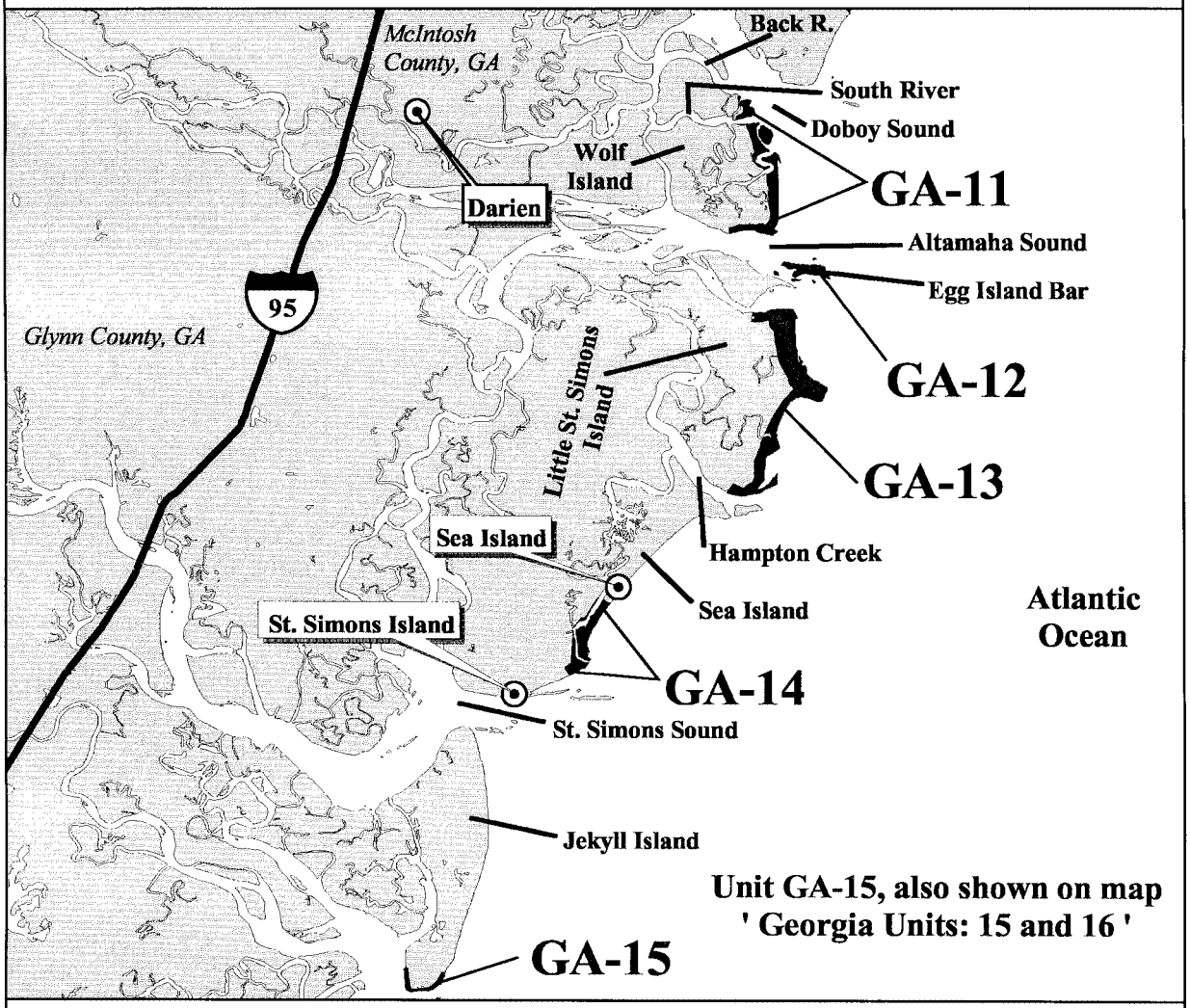
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Georgia Units: 6, 7, 8, 9 and 10

# General locations of the designated critical habitat for the Wintering Piping Plover.

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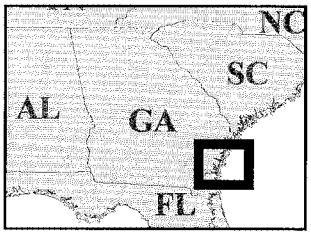


**Distance: Miles**

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N

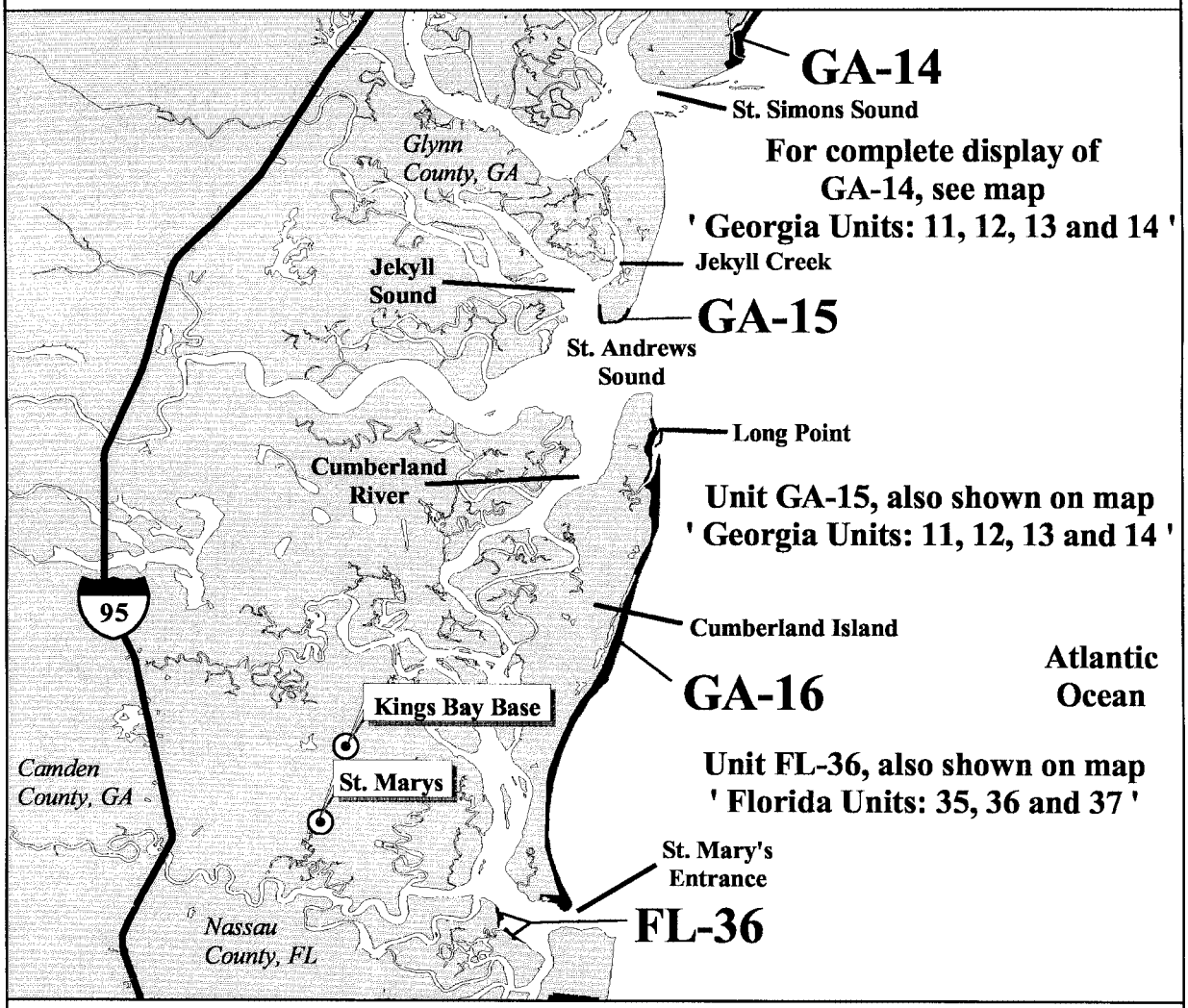
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

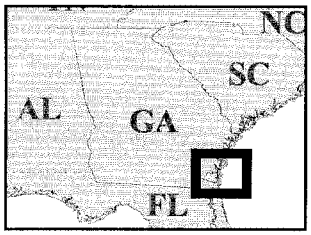
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Georgia Units: 11, 12, 13 and 14

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 5 10

## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Georgia Units: 15 and 16

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*Florida* (Maps were digitized using 1994–95 DOQQs)

Unit FL–1: Big Lagoon. 8 ha (19 ac) in Escambia County

The majority of the unit is within Big Lagoon State Recreation Area. This unit includes the peninsula and emerging sand and mudflats between 0.33 km (0.21 mi) west of the lookout tower along the shoreline and 0.24 km (0.15 mi) east of the lookout tower along the shoreline. Land along the shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. All emerging sandbars to MLLW are included.

Unit FL–2: Big Sabine. 182 ha (450 ac) in Escambia County

The majority of the unit is owned by the University of West Florida. This unit includes areas adjacent to Santa Rosa Sound of Big Sabine Point and adjacent embayment between 8.0 km (5.0 mi) and 11.6 (7.2 mi) east of the Bob Sike's Bridge. It begins 0.10 km (.06 mi) north of SR 399 to MLLW on the Santa Rosa Sound.

Unit FL–3: Navarre Beach. 48 ha (118 ac) in Escambia and Santa Rosa Counties

The majority of the unit is owned by Eglin Air Force Base and Santa Rosa Island Authority. This unit includes lands on Santa Rosa Island Sound side, between 0.09 and 0.76 mi east of the eastern end of SR 399 to MLLW on Santa Rosa Sound side.

Unit FL–5: Shell/Crooked Islands. 1789 ha (4419 ac) in Bay County

The majority of the unit is within Tyndall Air Force Base and St. Andrews State Recreation Area. This unit includes all of Shell Island, Crooked Island West, and Crooked Island East from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–6: Upper St. Joe Peninsula. 182 ha (449 ac) in Gulf County

The majority of the unit is within St. Joseph State Park. This unit includes the northern portion of the peninsula from the tip to 8.0 km (5.0 mi) south along the Gulf of Mexico from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–7: Cape San Blas. 158 ha (390 ac) in Gulf County

The entire unit is within Eglin Air Force Base. This unit includes the area known as the Cape between the eastern boundary of Eglin and mile marker 2.1, including the peninsula and all emerging sandbars. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–8: St. Vincent Island. 146 ha (361 ac) in Franklin County

The majority of the unit is within St. Vincent National Wildlife Refuge. This unit includes the western tip of St. Vincent Island that is adjacent to Indian Pass (0.80 km (0.50 mi) east of tip along Indian Pass, and 1.9 km (1.2 mi) from tip southeast along Gulf of Mexico). The unit also includes St. Vincent Point from the inlet at Sheepshead Bayou east 1.6 km (1.0 mi) to include emerging oysters shoals and sand bars and extends south 0.21 km (0.13 mi) of St. Vincent Point. The unit includes the southeastern tip of St. Vincent Island extending north 1.4 km (0.90 mi) and south and west 2.1 km (1.3 mi). The western tip of Little St. George Island 0.80 km (0.50 mi) from West Pass is included (state owned lands). All sections of this unit include land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–9: East St. George Island. 1433 ha (3540 ac) in Franklin County

The majority of the unit is within St. George State Park. This unit begins 5.3 km (3.3 mi) east of the bridge and extends to East Pass. Shell Point, Rattlesnake Cove, Goose Island, East Cove, Gap Point, and Marsh Island are included. This unit includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur on the Gulf of Mexico, East Pass and St. George Sound.

Unit FL–10: Yent Bayou. 153 ha (378 ac) in Franklin County

The majority of the unit is State owned. This unit is adjacent to the area known as Royal Bluff. It includes the St. George Sound shoreline between 5.9 km (3.7 mi) and 9.5 km (5.9mi) east of SR 65. It includes from MLLW to where densely vegetated habitat or developed structures such as SR 65, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–11: Carabelle Beach. 56 ha (139 ac) in Franklin County

The area within this unit is privately owned. This unit is the peninsula created by Boggy Jordan Bayou. It includes St. George Sound shoreline (south of US 98) 1.6 km (1.0 mi) southwest along US 98 from the Carrabelle River Bridge and extends 1.9 km (1.2 mi) east along the St. George Sound shoreline. It includes from MLLW to where densely vegetated habitat or developed structures such as US 98, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–12: Lanark Reef. 260 ha (643 ac) in Franklin County

The entire unit is State owned. This unit includes the entire island and emerging sandbars to MLLW.

Unit FL–13: Phipps Preserve. 42 ha (104 ac) in Franklin County

This unit includes all of Phipps Preserve (owned by The Nature Conservancy) and any emerging sandbars from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–14: Hagens Cove. 486 ha (1200 ac) in Taylor County

The majority of the unit is within Big Bend Wildlife Management Area. This unit includes all of Hagens Cove and extends from MLLW on north side of Sponge Point to MLLW on south side of Piney Point. The eastern boundary of this unit ends (0.20 mi) west of SR 361. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–15: Anclote Key and North Anclote Bar. 146 ha (360 ac) in Pasco and Pinellas Counties

The majority of the unit is within Anclote Key State Preserve. This unit includes all of North Anclote Bar to the MLLW and the north, south and western sides of Anclote Key from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–16: Three Rooker Bar Island. 76 ha (188 ac) in Pinellas County

The majority of the unit is within Pinellas County Aquatic Preserve. This unit includes all the islands and emerging sandbars of this complex to MLLW.

Unit FL–17: North Honeymoon Island. 45 ha (112 ac) in Pinellas County

The majority of the unit is within Honeymoon Island State Recreation Area. This unit includes from Pelican Cove north to the far northern tip of Honeymoon Island. It includes the western shoreline from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur or the MLLW on the eastern shoreline.

Unit FL–18: South Honeymoon Island. 28 ha (70 ac) in Pinellas County

The majority of the unit is private land. This unit includes the southern end (southern-most 0.32 km (0.20 mi) on western side) of Honeymoon Island and encompasses the far southeastern tip and includes any emerging islands or sandbars to Hurricane Pass. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–19: Caladesi Island. 120 ha (296 ac) in Pinellas County

The majority of the unit is within Caladesi Island State Park. This unit extends from Hurricane Pass to Dunedin Pass on the Gulf of Mexico side. It includes from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–20: Shell Key and Mullet Key. 190 ha (470 ac) in Pinellas County

The majority of the unit is within Fort Desoto Park. This unit includes the Shell Key island complex. It also includes the northwest portion of Mullet Key including the western shorelines from Bunces Pass extending south, stopping 1.4 km (.86 mi) north of Ft. Desoto County Park pier. It includes from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–21: Egmont Key. 153 ha (377 ac) Hillsborough County

The majority of the unit is within Egmont Key National Wildlife Refuge. This unit includes the entire island to MLLW.

Unit FL–22: Cayo Costa. 175 ha (432 ac) in Lee County

The majority of the unit, including its northern and southern boundaries, is within Cayo Costa State Park, and nearly all of the remaining area is in the Cayo Costa Florida Conservation and Recreation Lands (CARL) acquisition project. This unit begins at the northern limit of sandy beaches at the northern end of the island, extends through Murdock Point, which at present has a sandbar and lagoon system, and ends at the former entrance to Murdock Bayou. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–23: North Captiva Island. 36 ha (88 ac) in Lee County

The unit is within the Cayo Costa CARL land purchase project. This unit includes the western shoreline extending from 0.80 km (0.50 mi) south of Captiva Pass to approximately Foster Bay. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–25: Bunche Beach. 187 ha (461 ac) in Lee County

This unit is mostly within a CARL Estero Bay acquisition project. Bunche Beach (also spelled Bunch) lies along San Carlos Bay, on the mainland between Sanibel Island and Estero Island (Fort Myers Beach), extending east from the Sanibel Causeway past the end of John Morris Road to a canal serving a residential subdivision. The unit also includes the western tip of Estero Island (Bodwitch Point, also spelled Bowditch Point), including Bowditch Regional Park, operated by Lee County and, on the southwest side of the island facing the Gulf, the beach south nearly to the northwesterly intersection of Estero Boulevard and Carlos Circle. It includes land from MLLW to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur or, along the developed portion of Estero Island.

Unit FL–26: Estero Island. 86 ha (211 ac) in Lee County

The majority of the unit is privately owned. The unit consists of approximately the southern third of the island's Gulf-facing shoreline starting near Avenida Pescadora to near Redfish Road. The unit excludes south-facing shoreline at the south end of the island that faces Big Carlos Pass rather than the Gulf. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–27: Marco Island. 245 ha (606 ac) in Collier County

Most of the unit is at the Tigertail Beach County Park. The unit's northern border is on the north side of Big Marco Pass, including Coconut Island and all emerging sand bars. On the south side of Big Marco Pass, the boundary starts at the north boundary of Tigertail Beach County Park and extends to just south of the fourth condominium tower south of the County Park. The placement of the southern boundary assures that the unit includes all of Sand Dollar Island, the changeable sandbar off Tigertail Beach. The western boundary includes all the sand bars in Big Marco Pass but excludes Hideaway Beach. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–28: Marquesas Keys. 2937 ha (7256 ac) in Monroe County

The unit comprises the roughly circular atoll that encloses Mooney Harbor, including Gull Keys and Mooney Harbor Key. The entire unit is within Key West National Wildlife Refuge. It includes land from MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur.

Unit FL–29: Boca Grande/Woman/Ballast Keys. 56 ha (138 ac) in Monroe County

These Keys are east of the Marquesas Keys and west of Key West. Boca Grande and Woman Keys are within Key West National Wildlife Refuge. Ballast Key is privately owned. This unit consists only of sandy beaches and flats between the MLLW and to where densely vegetated habitat or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–30: Bahia Honda/Ohio Keys. 372 ha (918 ac) in Monroe County

This unit comprises Bahia Honda Key (including a small island off its southwest shore), which is almost entirely owned by Bahia Honda State Park, plus Ohio Key, which is privately owned. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–31: Lower Matecumbe Key. 19 ha (48 ac) in Monroe County

Part of the unit is at Anne's Beach park, an Islamorada village park. The remaining parts are at Sunset Drive (Lower Matecumbe Beach) and at Costa Bravo Drive (Port Antiqua Homeowners Beach) on the Florida Bay side of the island. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–32: Sandy Key/Carl Ross Key. 67 ha (165 ac) in Monroe County

This unit consists of two adjoining islands in Florida Bay, roughly south of Flamingo in Everglades National Park. The entire area is owned and managed by the National Park Service. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–33: St. Lucie Inlet. 114 ha (282 ac) in Martin County

The unit includes a small area south of the jetty on the north shore of St. Lucie Inlet, from the jetty west 0.42 km (0.26 mi). While the two sides of the inlet are privately owned, the great majority of the unit is on public land in the Saint Lucie Inlet State Preserve, administered by Jonathan Dickinson State Park. It begins on the sandy shoreline south of Saint Lucie Inlet and extends along the Atlantic Ocean shoreline 2.6 km (1.6 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. The unit does not include sandbars within the inlet.

Unit FL–34: Ponce de Leon Inlet. 68 ha (168 ac) in Volusia County

The majority of the unit is within Smyrna Dunes Park and Lighthouse Point Park. This unit includes shoreline extending from the jetty north of Ponce de Leon Inlet west to the Halifax River and Inlet junction. It includes shoreline south of Ponce de Leon Inlet from the inlet and Halifax River junction, extending east and south along the Atlantic Ocean shoreline 1.2 km (.70 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–35: Nassau Sound-Huguenot. 950 ha (2347 ac) in Duval County

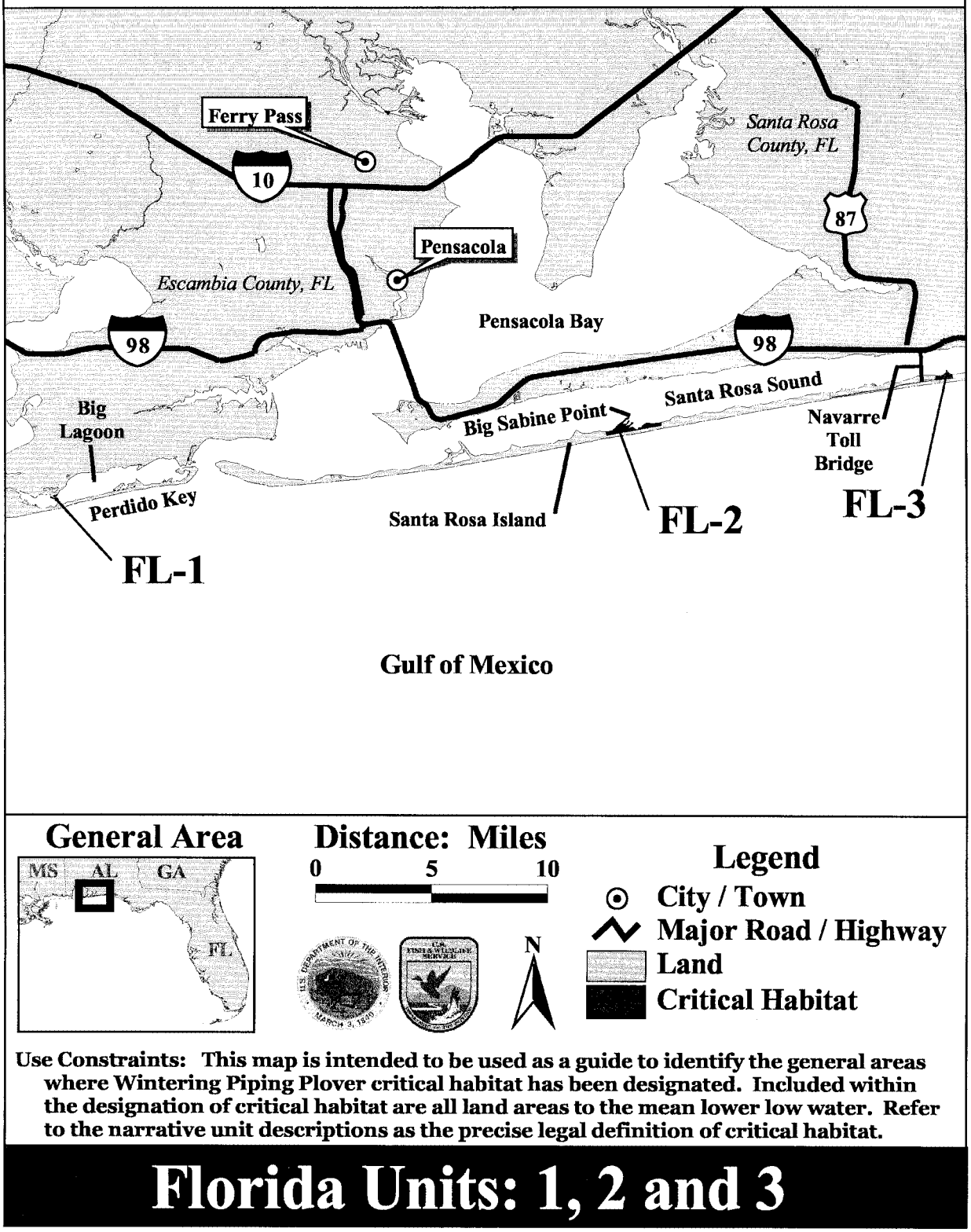
The majority of the unit is within Big Talbot Island State Park, Little Talbot Island State Park, and the Timucuan Ecological and Historical Preserve. This unit includes all emergent shoals and shoreline east of Nassau River bridge and extends to the inlet of the St. John's River. Amelia Island and the northern 2.7 km (1.7 mi) shoreline along Talbot Island are not included. It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur.

Unit FL–36: Tiger Islands. 53 ha (130 ac) in Nassau County

This unit is privately owned. This unit extends from the mouth of Tiger Creek and runs north along Tiger Island 0.8 km (0.5 mi) and south along Little Tiger Island 1.4 km (0.9 mi). It includes land from MLLW to where densely vegetated habitat (including grass or lawns) or developed structures, not used by the piping plover, begin and where the constituent elements no longer occur. Emerging sandbars to MLLW are also included.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.

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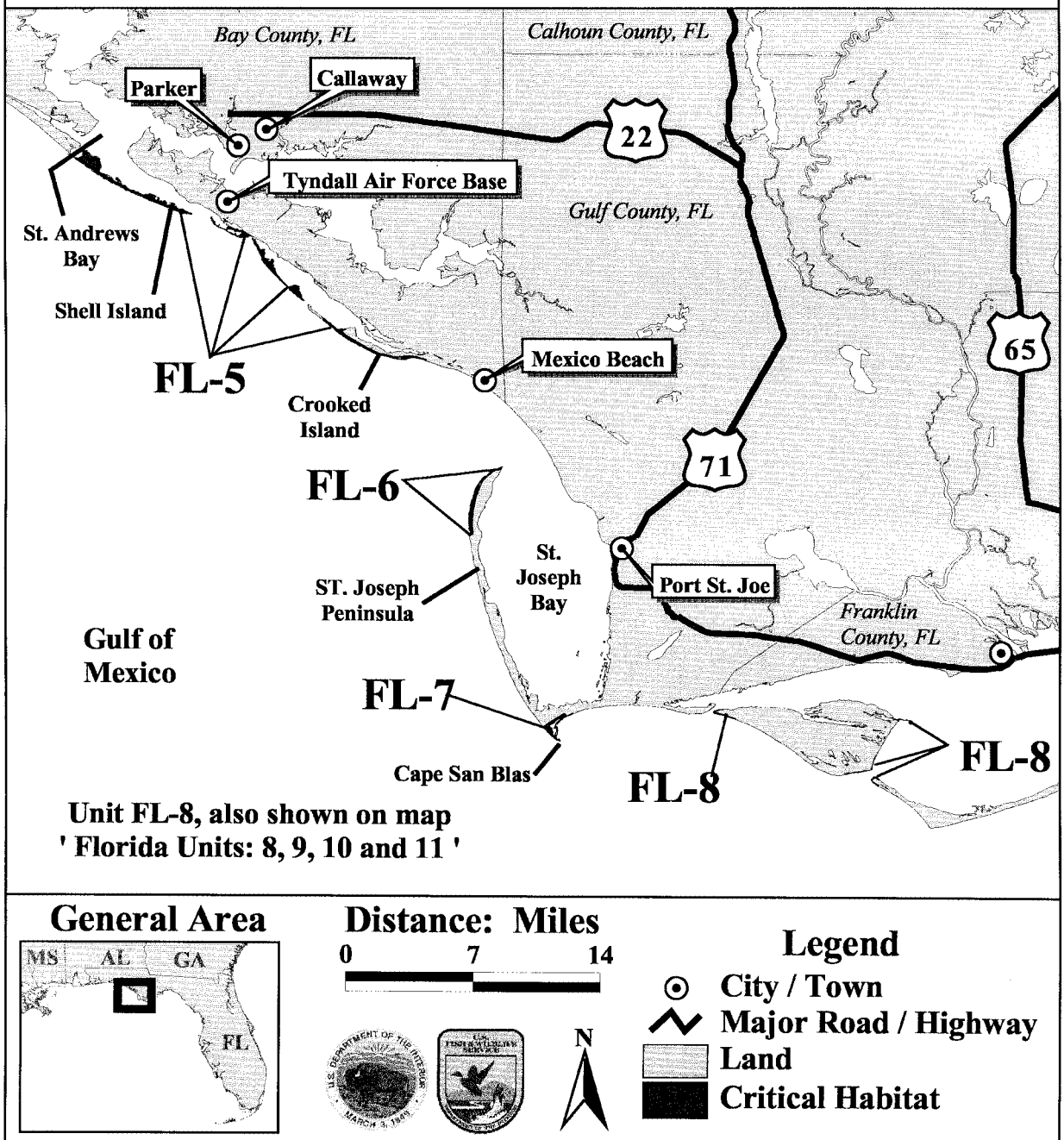
# Florida Units: 1, 2 and 3

# General locations of the designated critical habitat for the Wintering Piping Plover.

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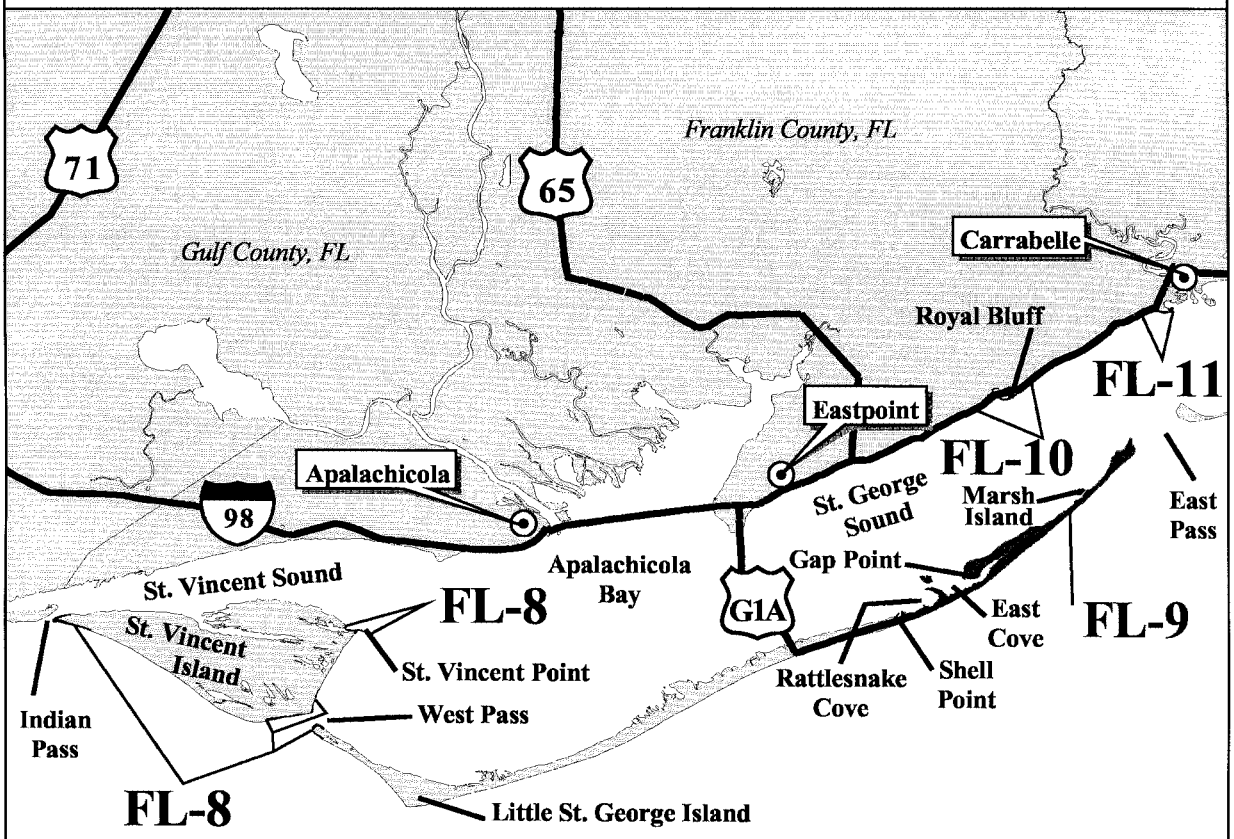
# Florida Units: 5, 6 and 7

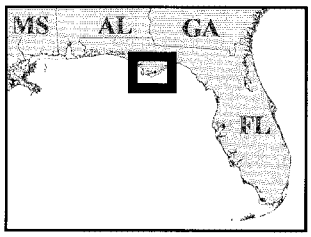
# General locations of the designated critical habitat for the Wintering Piping Plover.




Unit FL-8, also shown on map ' Florida Units: 5, 6 and 7 '

Gulf of Mexico

## General Area




## Distance: Miles

0 5 10

N

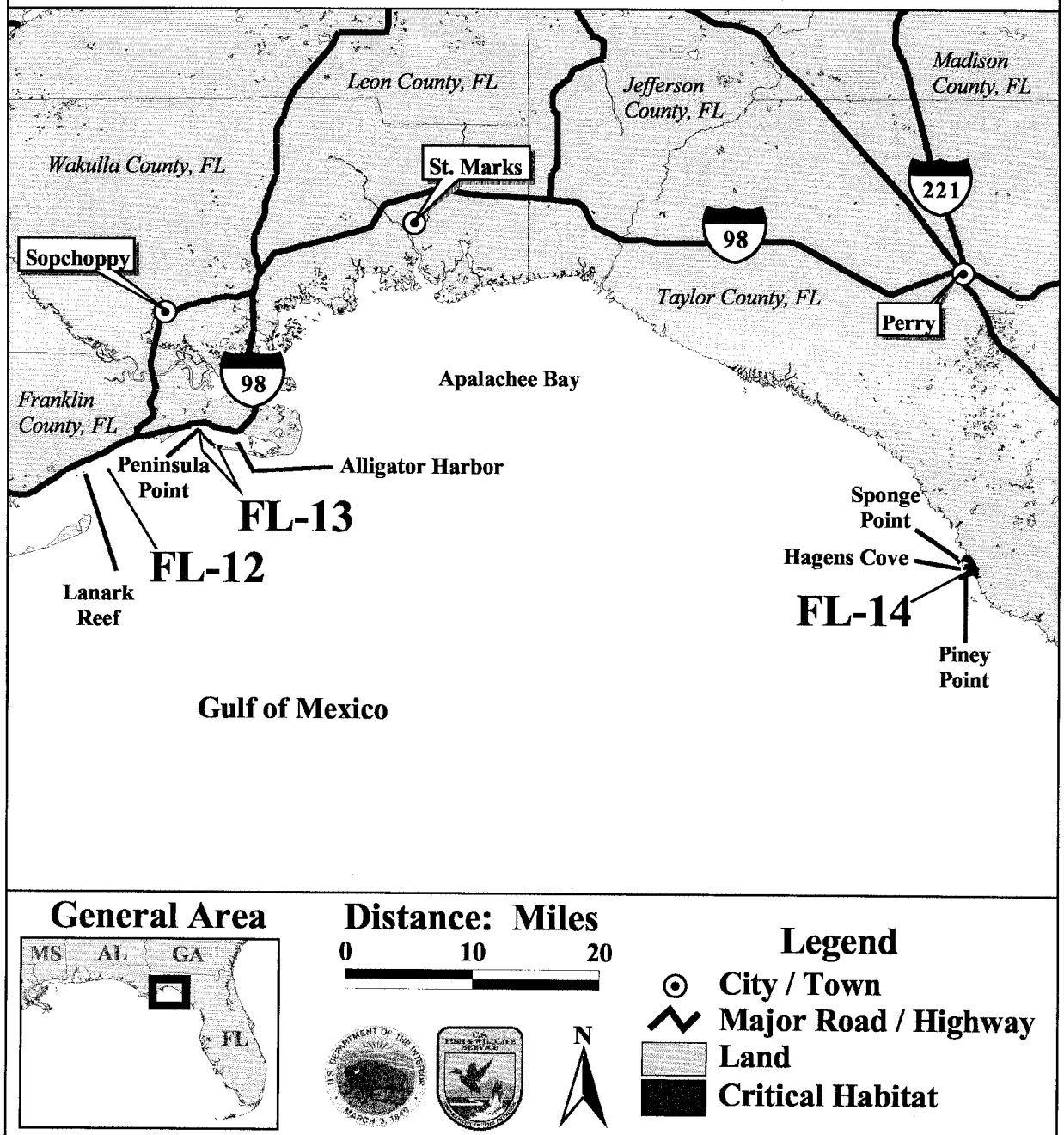
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 8, 9, 10 and 11

# General locations of the designated critical habitat for the Wintering Piping Plover.









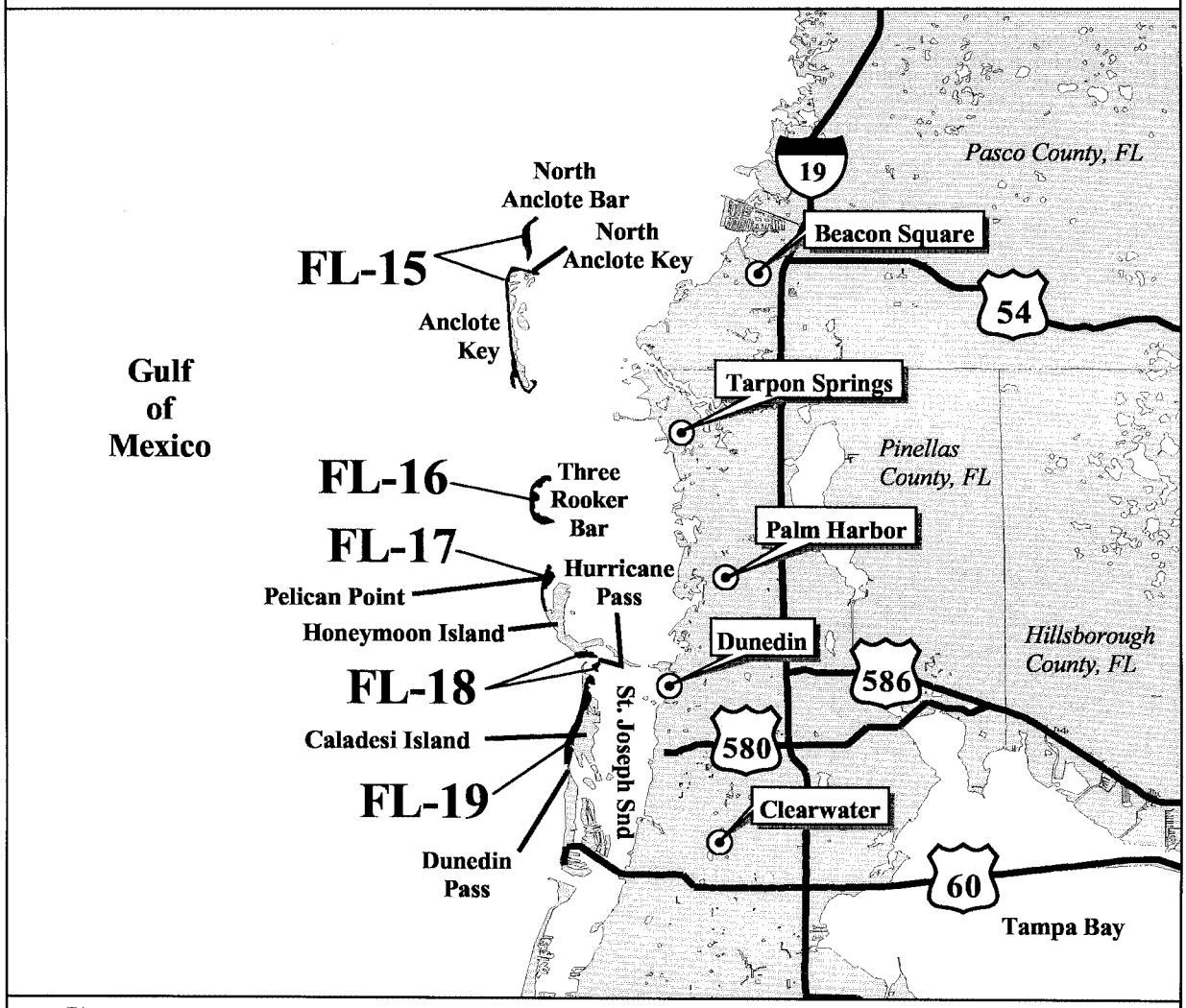

**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

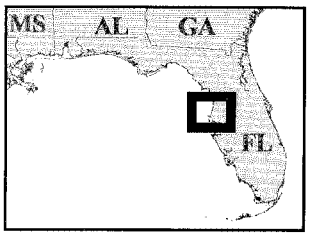
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 12, 13 and 14

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

N

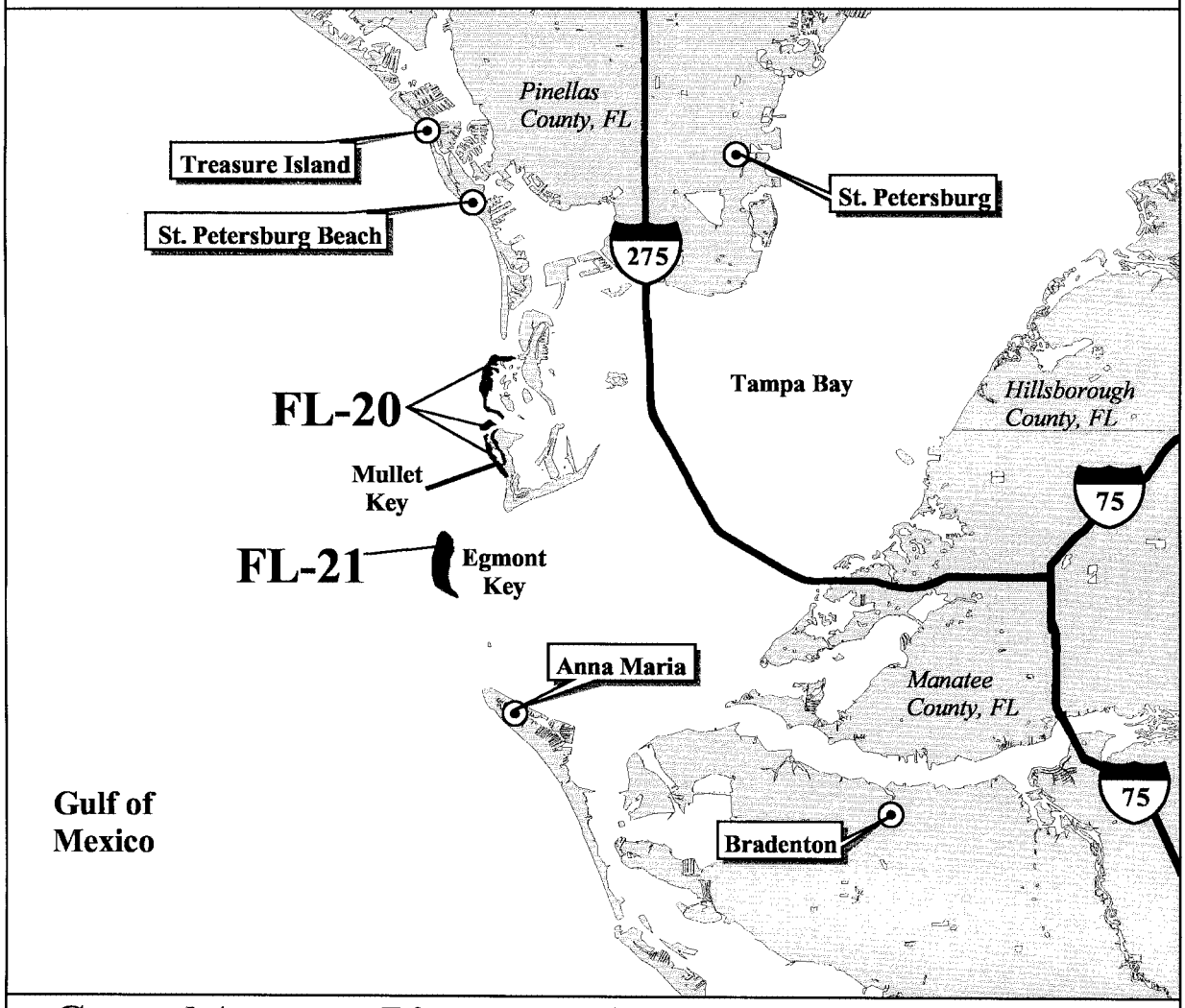
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

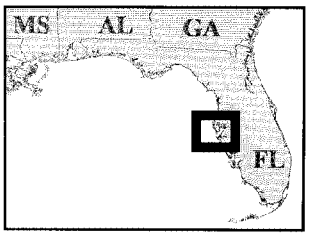
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 15, 16, 17, 18 and 19

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

N

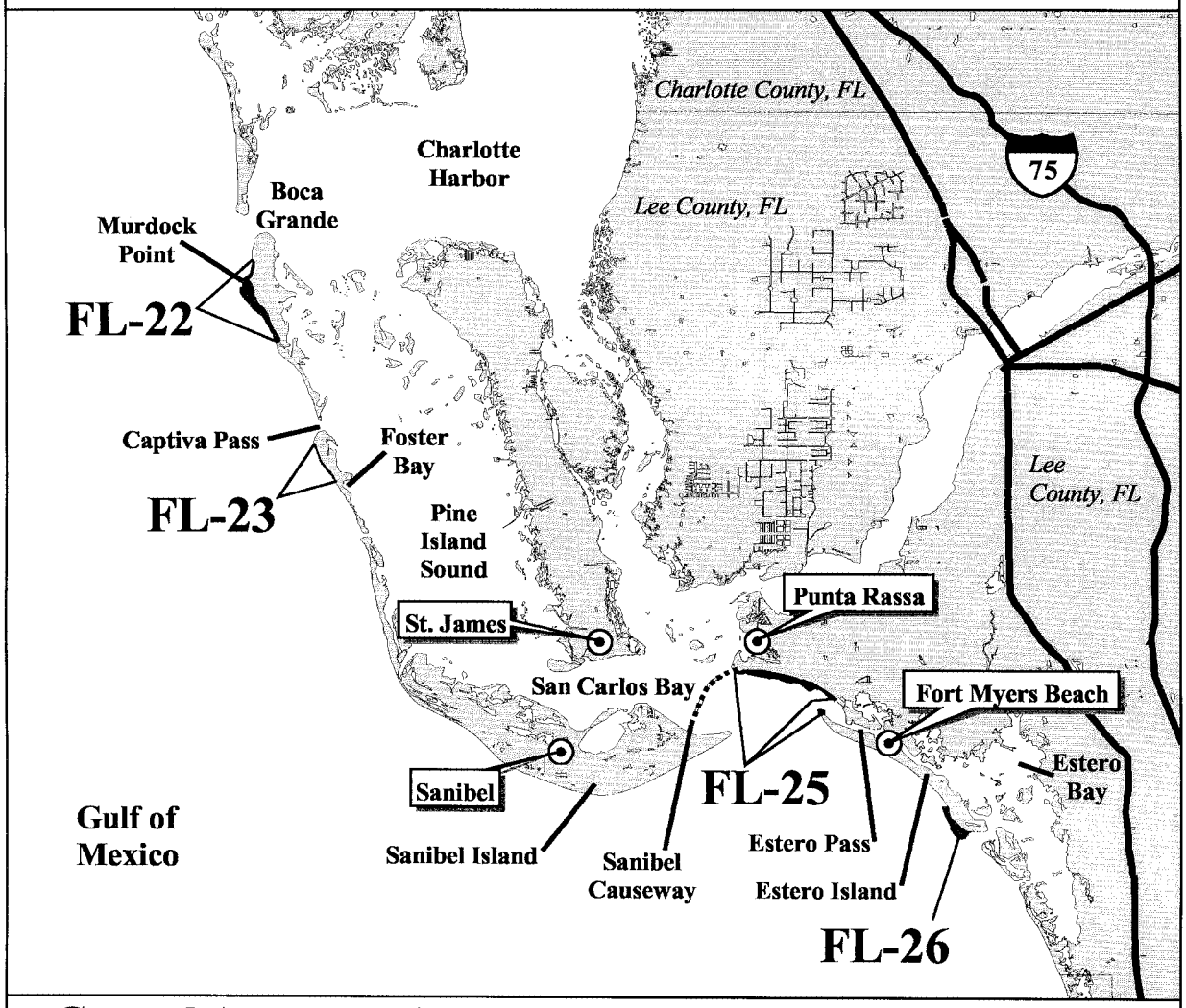
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

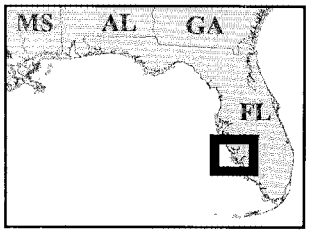
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 20 and 21

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 5 10

N

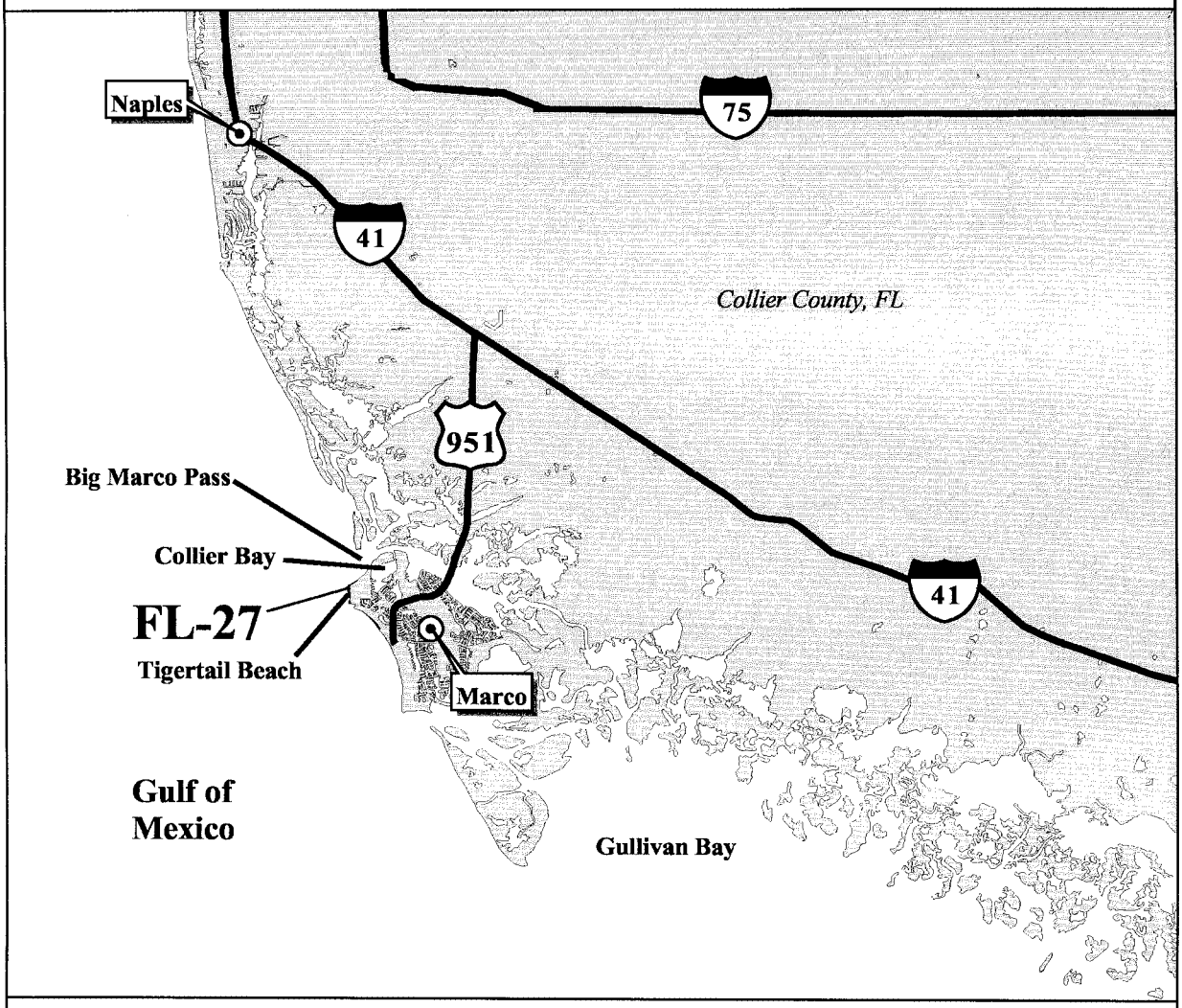
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

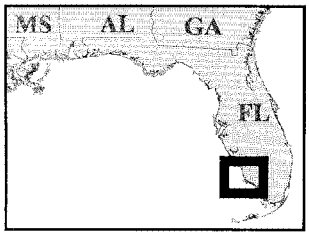
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 22, 23, 25 and 26

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 4 8

N

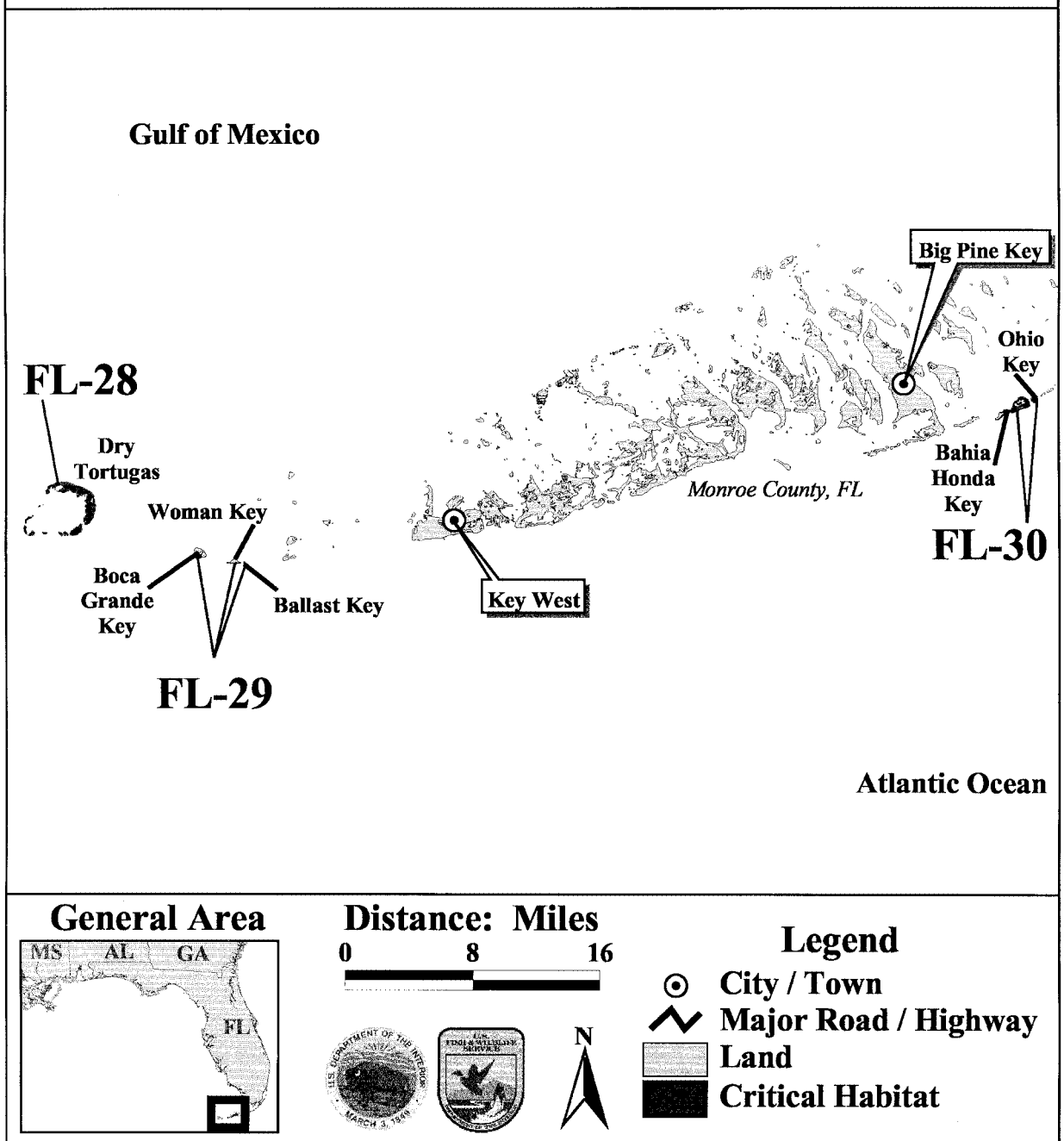
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Unit: 27

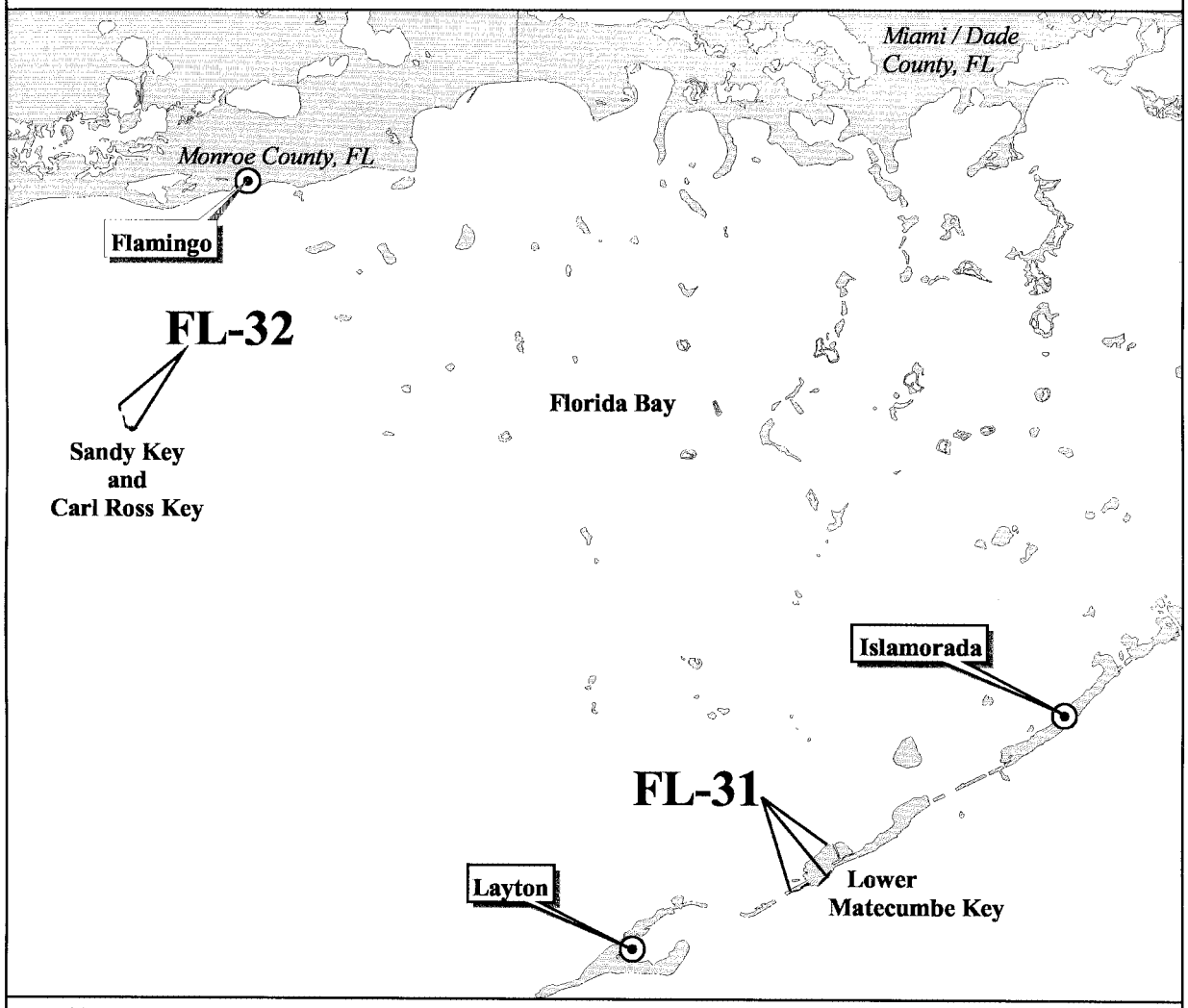
# General locations of the designated critical habitat for the Wintering Piping Plover.



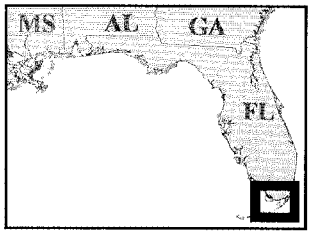

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 28, 29 and 30

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

N

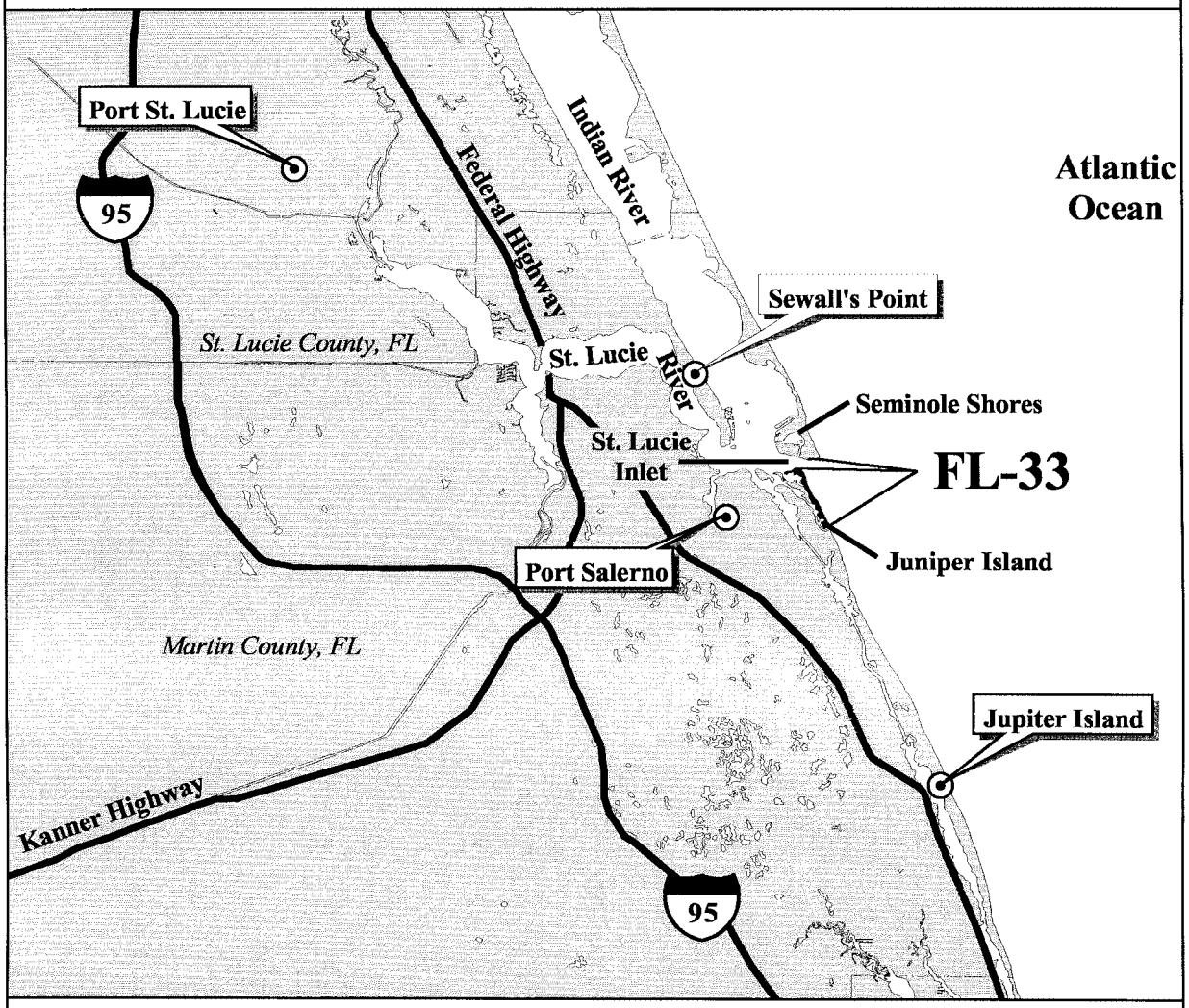
**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

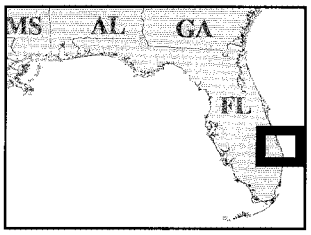
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 31 and 32

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 4 8

N

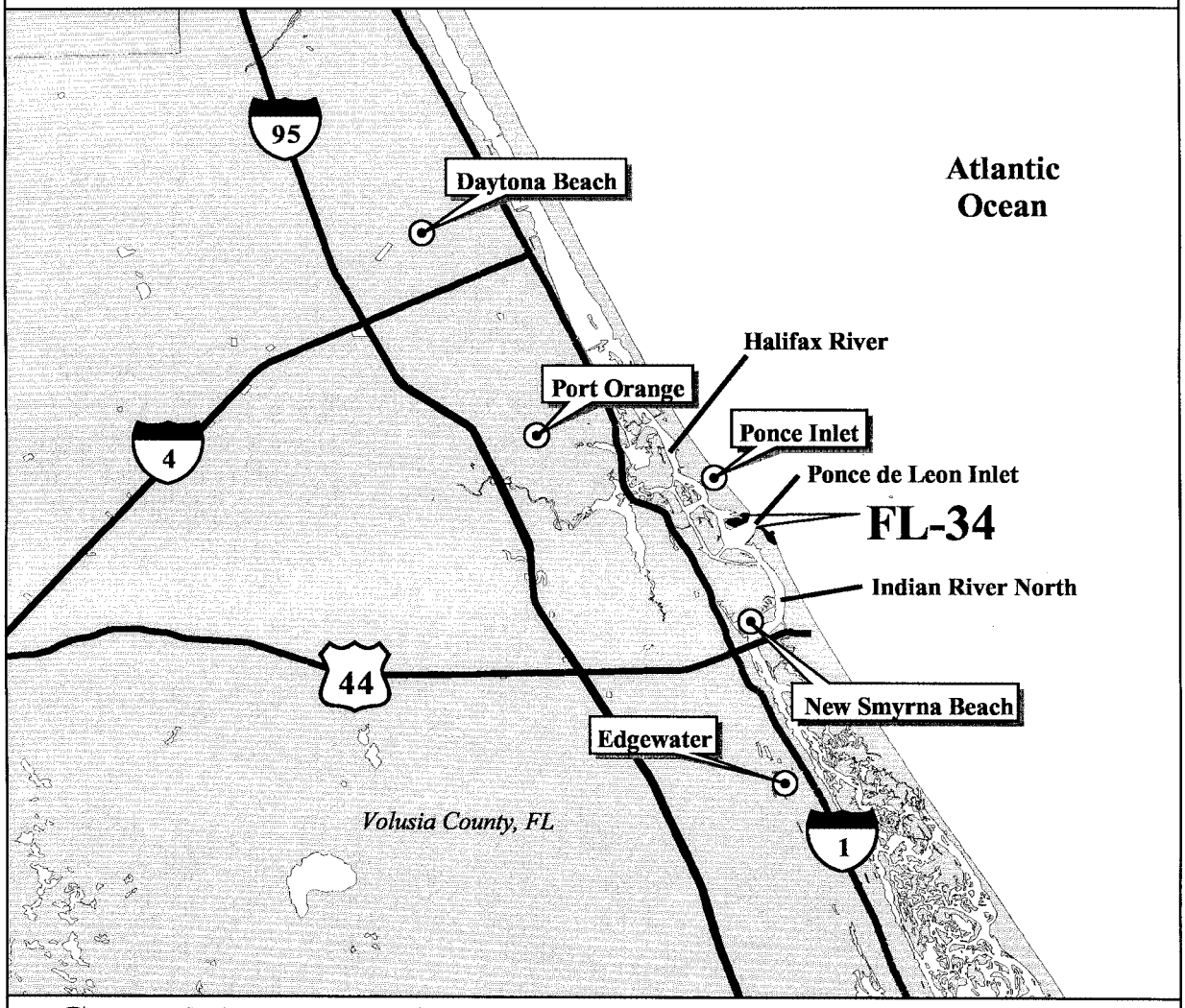
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

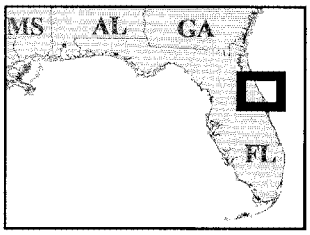
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Unit: 33

# General locations of the designated critical habitat for the Wintering Piping Plover.




**General Area**




**Distance: Miles**

0 4 8

**Legend**

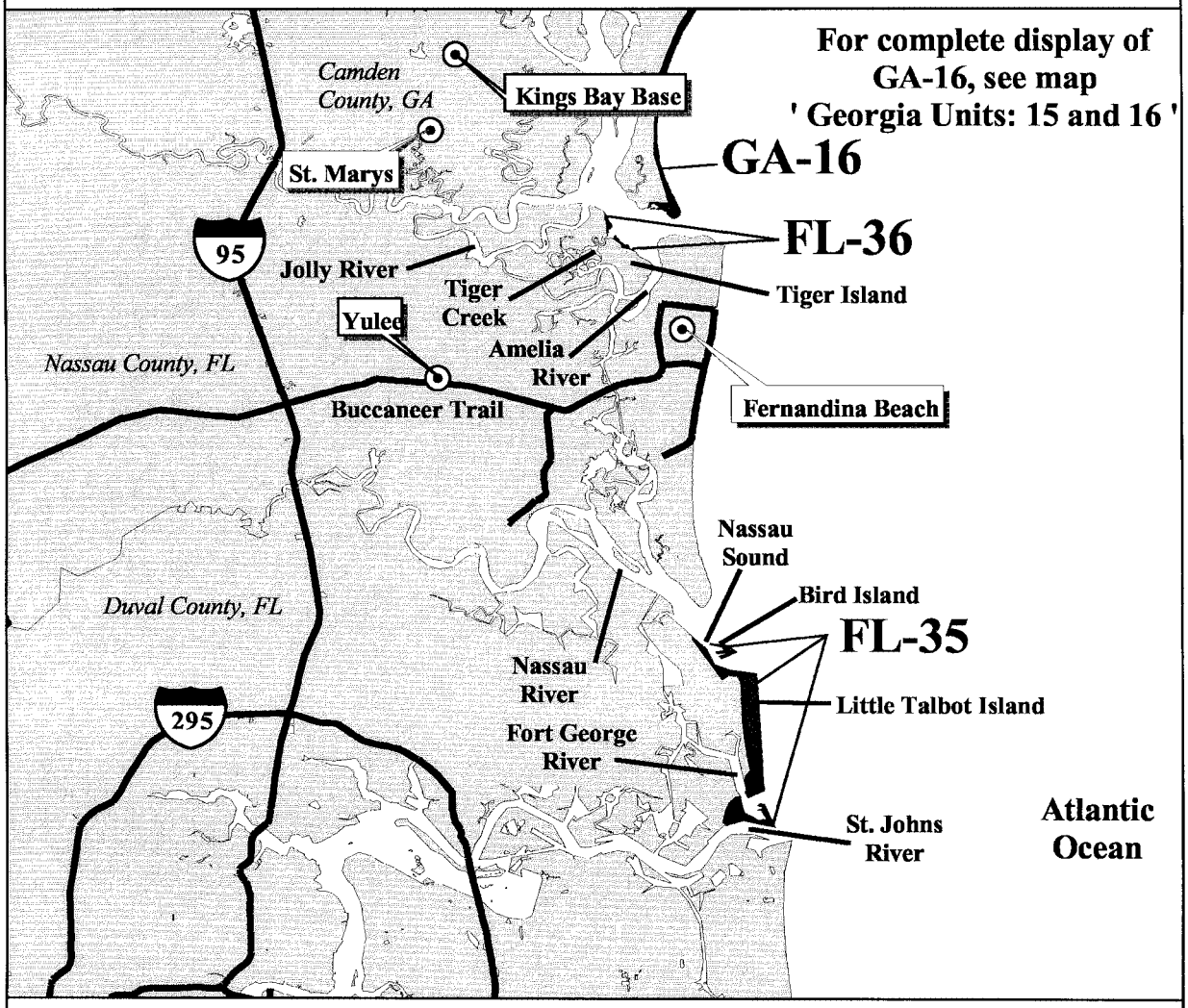
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

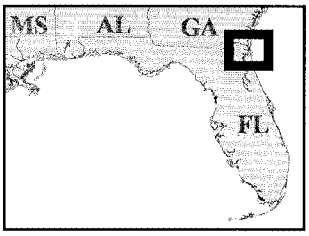
N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Unit: 34

# General locations of the designated critical habitat for the Wintering Piping Plover.




**Distance: Miles**

0 5 10

**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Florida Units: 35 and 36

*Alabama* (Maps were digitized using 1992 DOQQs)

Unit AL–1: Isle Aux Herbes. 227 ha (561 ac) in Mobile County

This unit includes the entire Isle Aux Herbes island where primary constituent elements occur to MLLW and is State-owned.

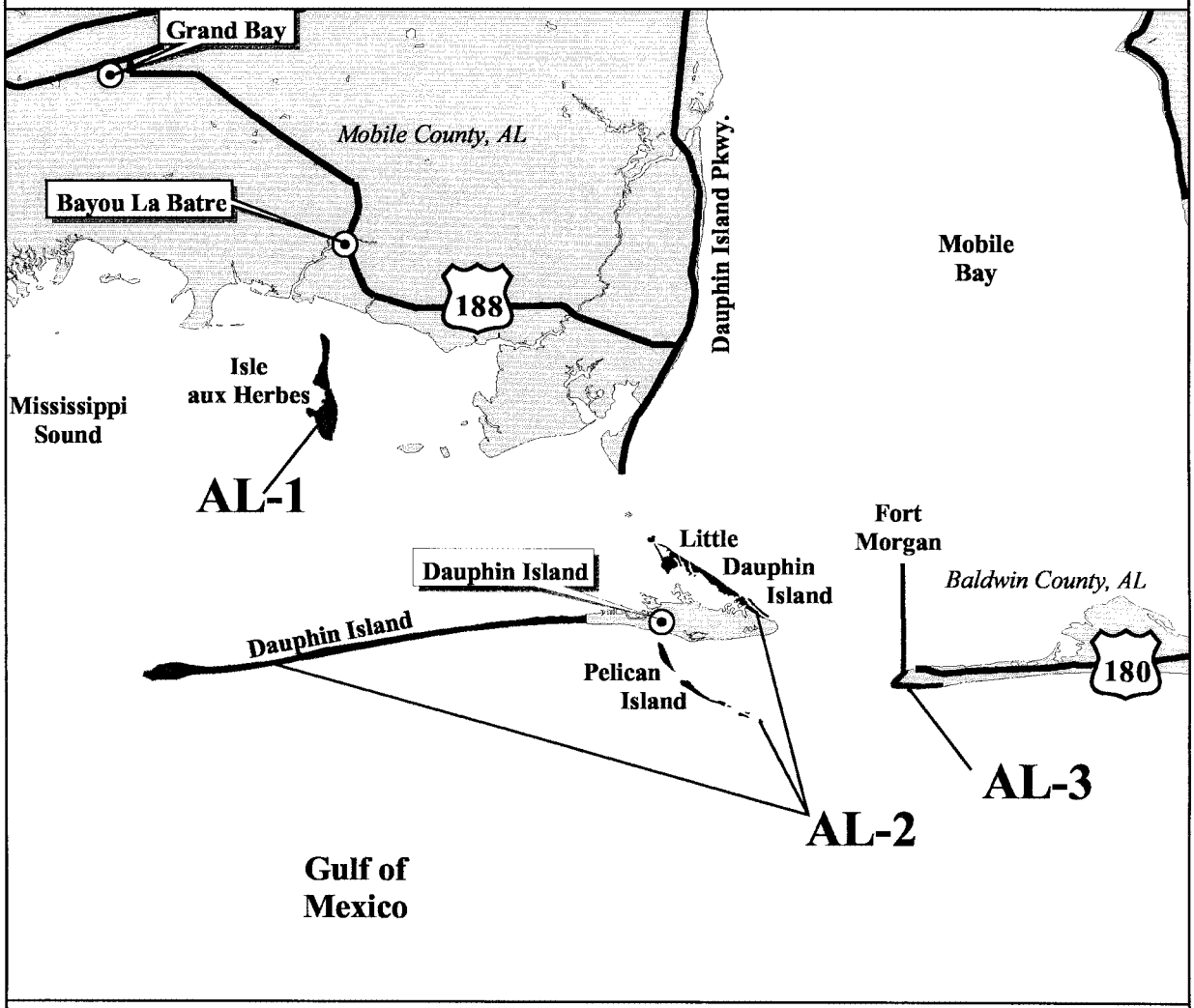
Unit AL–2: Dauphin, Little Dauphin, and Pelican Islands. 880 ha (2,174 ac) in Mobile County

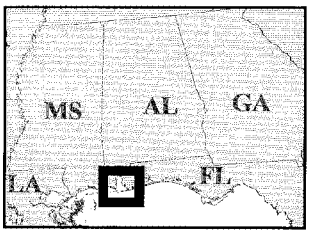
This unit includes all of Dauphin Island where primary constituent elements occur from St. Stephens Street approximately 17.6 km (10.9 mi) west to the western tip of the island to MLLW and all of Little Dauphin and Pelican Islands to MLLW. The area is mostly privately owned but includes State and Federal lands.

Unit AL–3: Fort Morgan. 67 ha (166 ac) in Baldwin County

This area includes Mobile Bay and Gulf of Mexico shorelines within Bon Secour National Wildlife Refuge, Fort Morgan Unit. This unit extends from the west side of the pier on the northwest point of the peninsula, following the shoreline approximately 2.8 km (1.74 mi) southwest around the tip of the peninsula, then east to the terminus of the beach access road and is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The area is State-owned but is leased by the Federal Government.

# General locations of the designated critical habitat for the Wintering Piping Plover.




**Distance: Miles**

0 6 12

**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Alabama Units: 1, 2 and 3

BILLING CODE 4310–55–C

*Mississippi* (Maps were digitized using 1992 and 1997 DOQQs)

Unit MS–1: Lakeshore through Bay St. Louis. 41 ha (101 ac) in Hancock County

This unit extends from the north side of Bryan Bayou outlet and includes the shore of the Mississippi Sound following the shoreline northeast approximately 15.0 km (9.3 mi) and ending at the southeast side of the Bay Waveland Yacht Club. The landward boundary of this unit follows the Gulf side of South and North Beach Boulevard and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–2: Henderson Point. 34 ha (84 ac) in Harrison County

This unit extends from 0.2 km (0.12 mi) west of the intersection of 3rd Avenue and Front Street and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Pass Christian Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–3: Pass Christian. 77 ha (190 ac) in Harrison County

This unit extends from the east side of Pass Christian Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 10.5 km (6.5 mi) to the west side of Long Beach Pier and Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–4: Long Beach. 38 ha (94 ac) in Harrison County

This unit extends from the east side of Long Beach Pier and Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.4 km (2.7 mi) to the west side of Gulfport Harbor. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–5: Gulfport. 39 ha (96 ac) in Harrison County

This unit extends from the east side of Gulfport Harbor and includes the shore of the Mississippi Sound following the shoreline northeast approximately 4.8 km (3.0 mi) to the west side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–6: Mississippi City. 62 ha (153 ac) in Harrison County

This unit extends from the east side of the groin at the southern terminus of Courthouse Road, Mississippi City, MS, and includes the shore of the Mississippi Sound following the shoreline northeast approximately 7.9 km (4.9 mi) to the west side of President Casino. The landward boundary of this unit follows the Gulf side of U.S. Highway 90 and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–10: Ocean Springs West. 11 ha (27 ac) in Jackson County

This unit extends from U.S. 90 and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.9 km (1.2 mi) to the Ocean Springs Harbor inlet. The landward boundary of this unit follows the Bay side of Front Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–11: Ocean Springs East. 7 ha (17 ac) in Jackson County

This unit extends from the east side of Weeks Bayou and includes the shore of Biloxi Bay following the shoreline southeast approximately 1.8 km (1.1 mi) to Halstead Bayou. The landward boundary of this unit follows the Bay side of East Beach Drive and the seaward boundary is MLLW. The shoreline of this unit is privately owned.

Unit MS–12: Deer Island. 194 ha (479 ac) in Harrison County

This unit includes all of Deer Island, where primary constituent elements occur to the MLWW. Deer Island is privately owned.

Unit MS–13: Round Island. 27 ha (67 ac) in Jackson County

This unit includes all of Round Island to the MLWW and is privately owned

Unit MS–14: Mississippi Barrier Islands. 3,168 ha (7,828 ac) in Harrison and Jackson Counties.

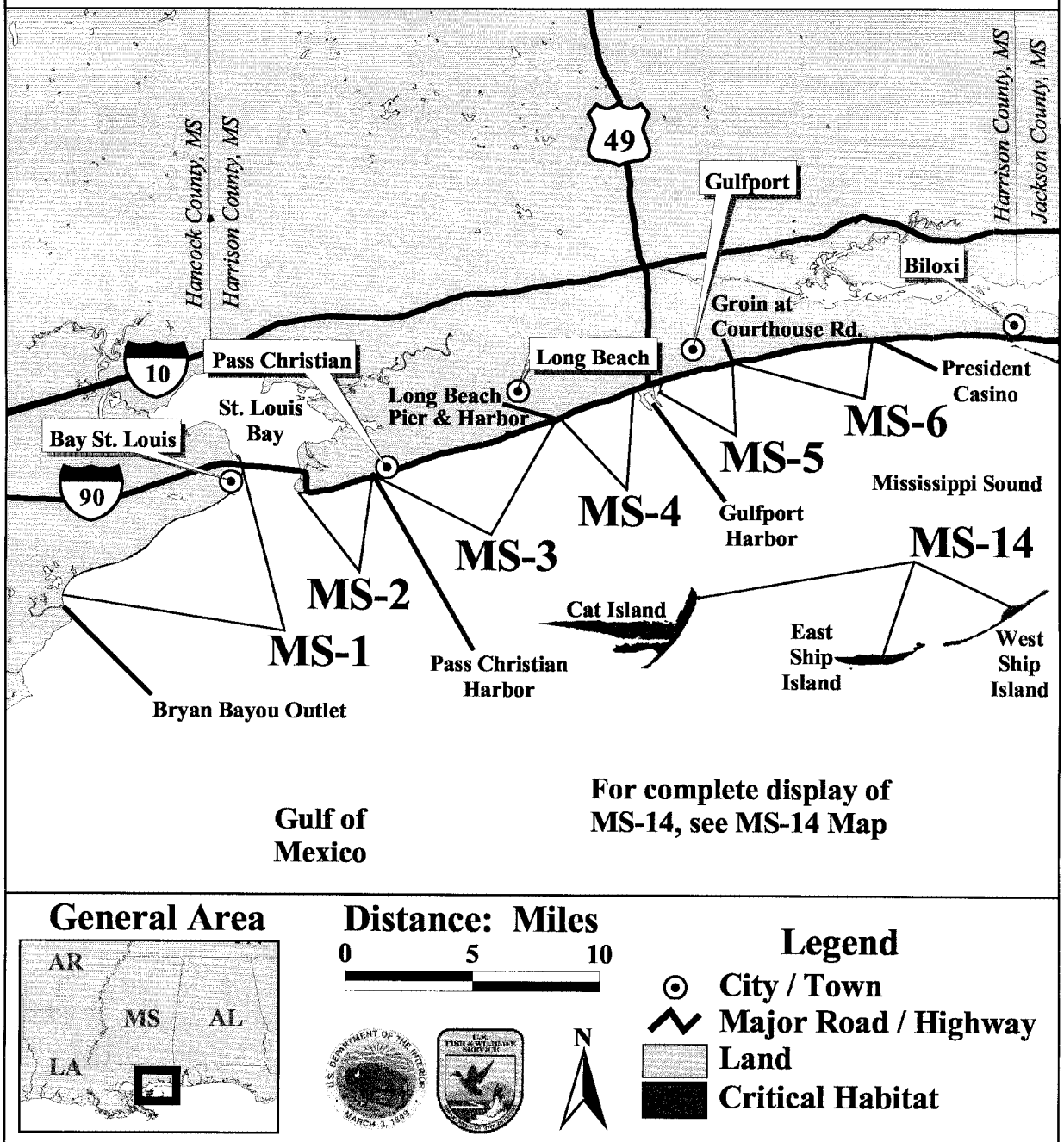
This unit includes all of Cat, East and West Ship, Horn, Spoil, and Petit Bois Islands where primary constituent elements occur to MLLW. Cat Island is privately owned, and the remaining islands are part of the Gulf Islands National Seashore.

Unit MS–15: North and South Rigolets. 159 ha (393 ac) in Jackson County, MS, and 12 ha (30 ac) in Mobile County, AL

This unit extends from the southwestern tip of South Rigolets Island and includes the shore of Point Aux Chenes Bay, the Mississippi Sound, and Grand Bay following the shoreline east around the western tip, then north to the south side of South Rigolets Bayou; then from the north side of South Rigolets Bayou (the southeastern corner of North Rigolets Island) north to the northeastern most point of North Rigolets Island. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. Approximately 4.4 km (2.7 mi) are in Mississippi and 2.9 km (1.8 mi) are in Alabama. Almost half the Mississippi shoreline length is in the Grand Bay National Wildlife Refuge.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 5 10

N

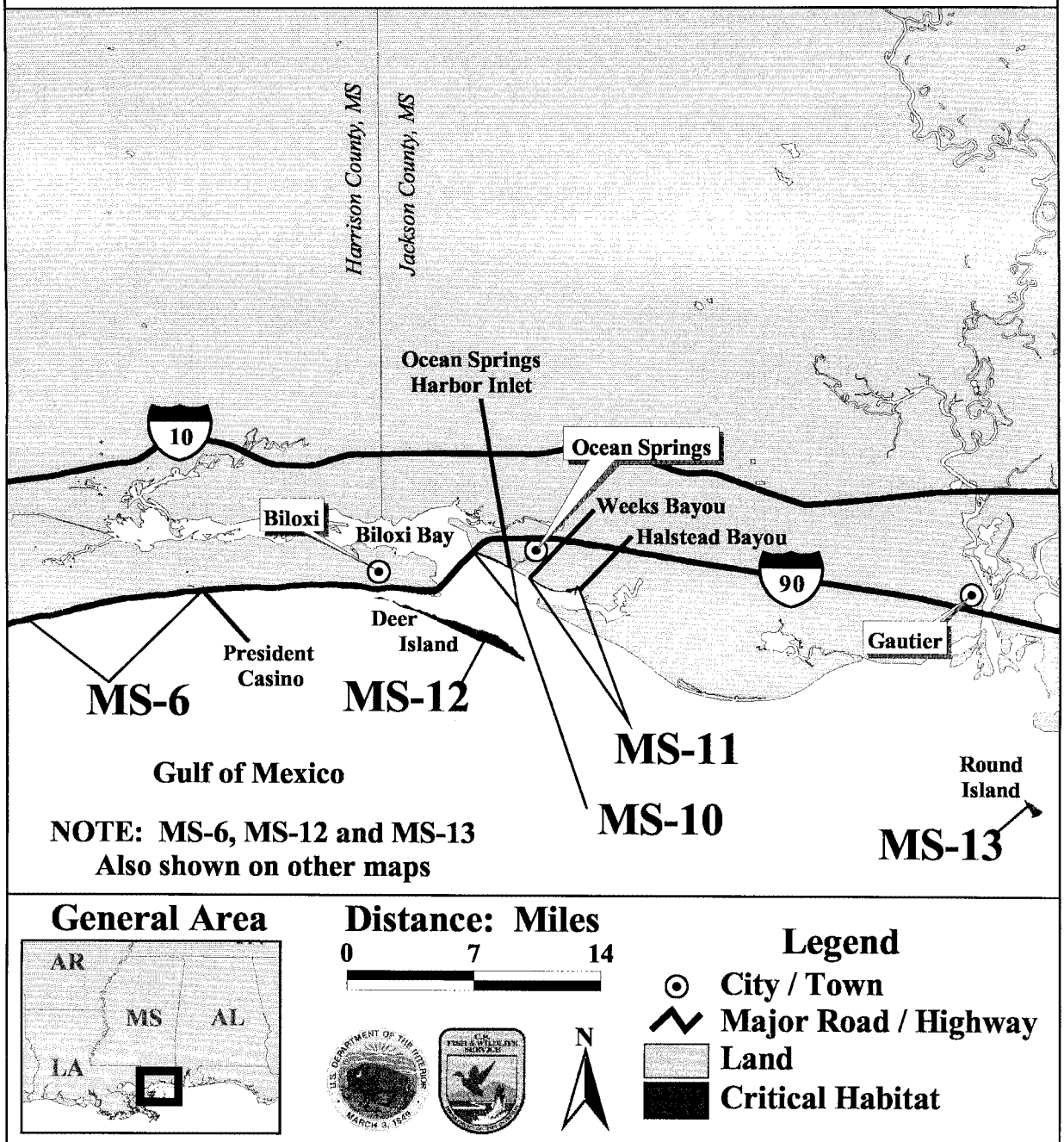
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Mississippi Units: 1, 2, 3, 4, 5 and 6

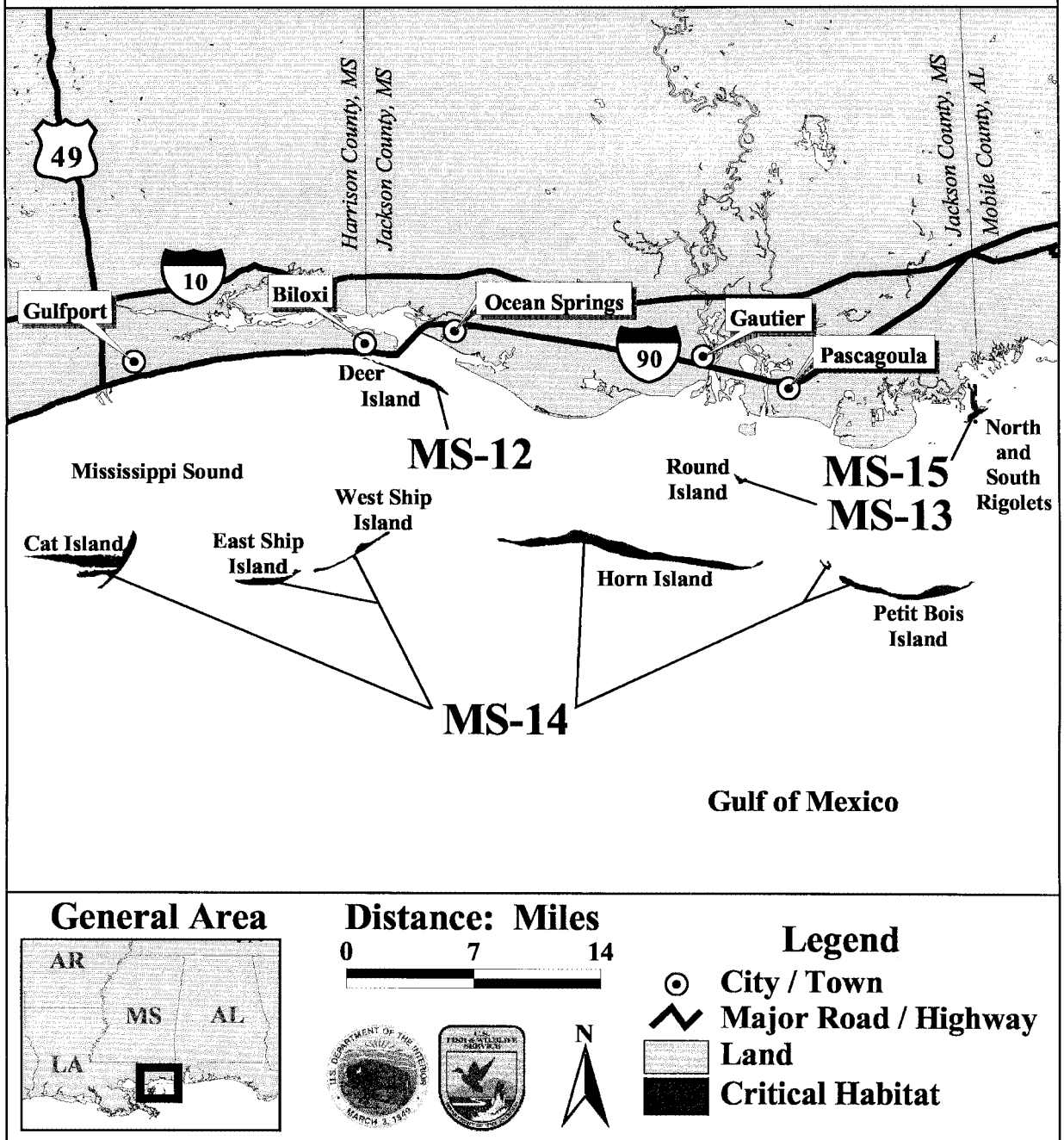
# General locations of the designated critical habitat for the Wintering Piping Plover.




**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Mississippi Units: 10 and 11

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 7 14

N

## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Mississippi Units: 12, 13, 14 and 15

BILLING CODE 4310–55–C

*Louisiana* (Maps were digitized using 1998 DOQQs)

Unit LA–1: Texas/Louisiana border to Cheniere au Tigre. 2,650 ha (6,548 ac) in Cameron and Vermilion Parishes

This unit extends from the east side of Sabine Pass (Texas/Louisiana border) and includes the shore of the Gulf of Mexico from the MLLW following the shoreline east 25.7 km (16.0 mi) to the west end of Constance Beach [approximately 2 km (1.2 mi) east of the intersection of Parish Road 528 and the beach]; it extends from the east end of the town of Holly Beach [0.25 km (0.16 mi) east of the intersection of Baritarick Boulevard and the beach] following the shoreline approximately 97 km (60.3 mi) east to the eastern boundary line of Rockefeller Wildlife Refuge [3.4 km (2.1 mi) east of Rollover Bayou]; and it extends from the east side of Freshwater Bayou Canal following the shoreline east for approximately 15 km (9.3 mi) to 1.3 km (0.81 mi) east of where the boundary of Paul J. Rainey Wildlife Sanctuary (National Audubon Society) meets the shoreline. All three sections of this unit include the land from the seaward boundary of MLLW to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The shoreline in this unit is both state and privately owned.

Unit LA–2: Atchafalaya River Delta. 921 ha (2,276 ac) in St. Mary Parish, LA

This unit is located in the eastern portion of the State-owned Atchafalaya Delta Wildlife Management Area (WMA) and includes all exposed land and islands where primary constituent elements occur east and southeast of the main navigation channel of the Atchafalaya River to the MLLW. The islands located south and southeast of the deltaic splay, Donna, T–Pat, and Skimmer Islands and the un-named bird island, are also included in this unit. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–3: Point Au Fer Island. 195 ha (482 ac) in Terrebonne Parish.

This unit includes the entire small island at the northwest tip of Point Au Fer Island to MLLW, then extends from the northwest tip of Point Au Fer Island following the shoreline southeast approximately 7.7 km (4.8 mi) to the point where the un-named oil and gas canal extending southeast from Locust Bayou meets the shoreline [0.8 km (0.5 mi) southeast from Locust Bayou]. This shoreline is bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. This entire unit is privately owned.

Unit LA–4: Isles Dernieres. 795 ha (1,964 ac) in Terrebonne Parish

This unit includes the State-owned Isles Dernieres chain, including Raccoon, Whiskey, Trinity and East Islands. This unit includes the entire islands where primary constituent elements occur to the MLLW.

Unit LA–5: Timbalier Island to East Grand Terre Island. 2,321 ha (5,735 ac) in Terrebonne, Lafourche, Jefferson, and Plaquemines Parishes

This unit includes: all of Timbalier Island where primary constituent elements occur to the MLLW, all of Belle Pass West [the ''peninsula'' extending north/northwest approximately 4.8 km (3.0 mi) from the west side of Belle Pass] where primary constituent elements occur to MLLW; the Gulf shoreline extending approximately 11 km (6.8 mi) east from the east side of Belle Pass bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; all of Elmers Island peninsula where primary constituent elements occur to MLLW and the Gulf shoreline from Elmers Island to approximately 0.9 km (0.56 mi) west of Bayou Thunder Von Tranc bounded on the seaward side by MLLW and on the landward side to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur; the Gulf shoreline of Grand Isle from the Gulf side of the hurricane protection levee to MLLW; and all of East Grand Terre Island where primary constituent elements occur to the MLLW.

Unit LA–6: Mississippi River Delta. 105 ha (259 ac) in Plaquemines Parish, LA

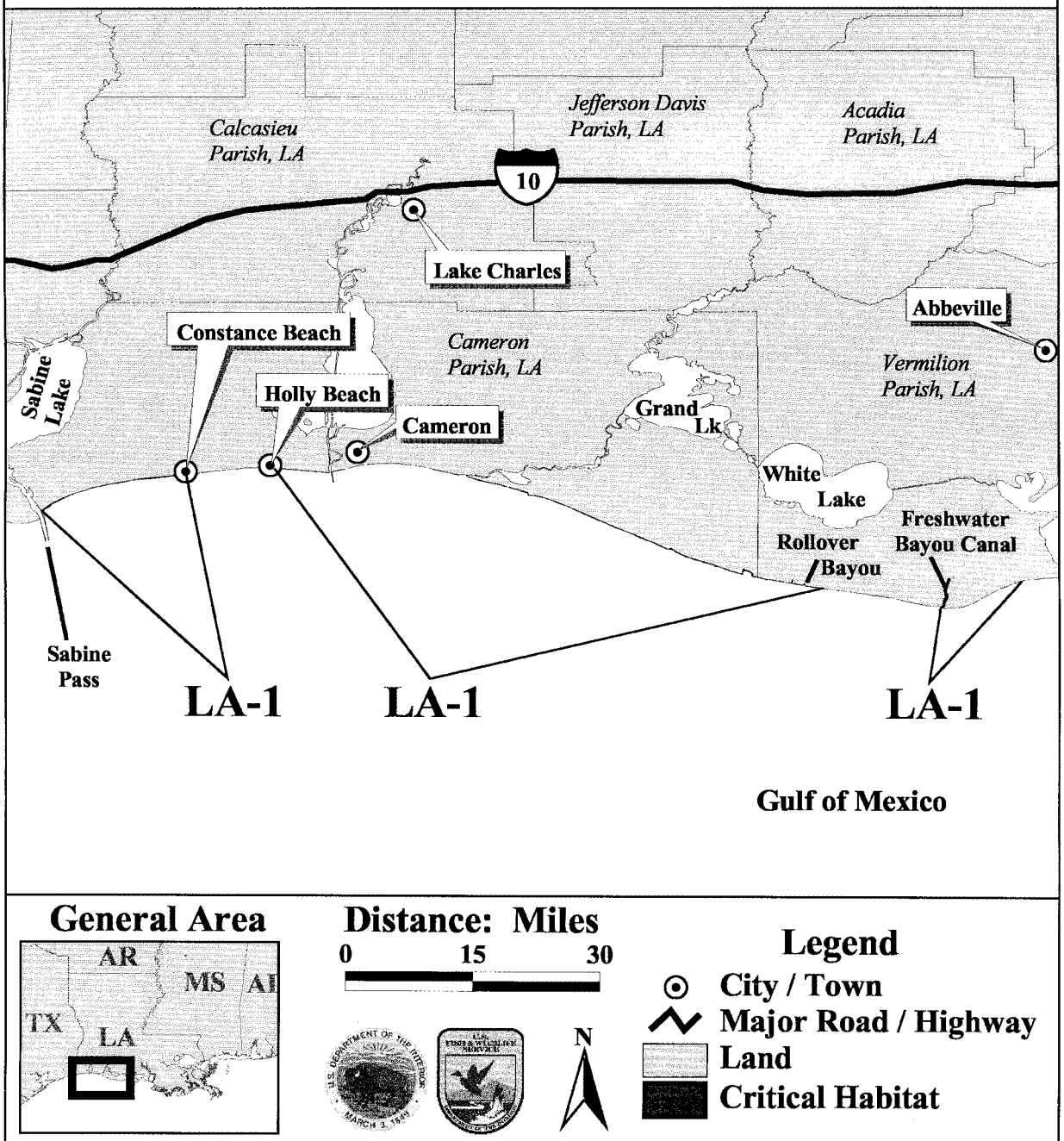
This unit is part of the State-owned Pass a Loutre Wildlife Management Area and includes un-named sand (spoil) islands off South Pass of the Mississippi River near Port Eads. The entire islands to MLLW are included in this unit.

Unit LA–7: Breton Islands and Chandeleur Island Chain. 3,116 ha (7,700 ac) in Plaquemines and St. Bernard Parishes, LA

This unit includes Breton, Grand Gosier, and Curlew Islands and the Chandeleur Island chain. Those islands are part of the Breton National Wildlife Refuge or are state owned. The entire islands where primary constituent elements occur to MLLW are included in this unit.

BILLING CODE 4310–55–P

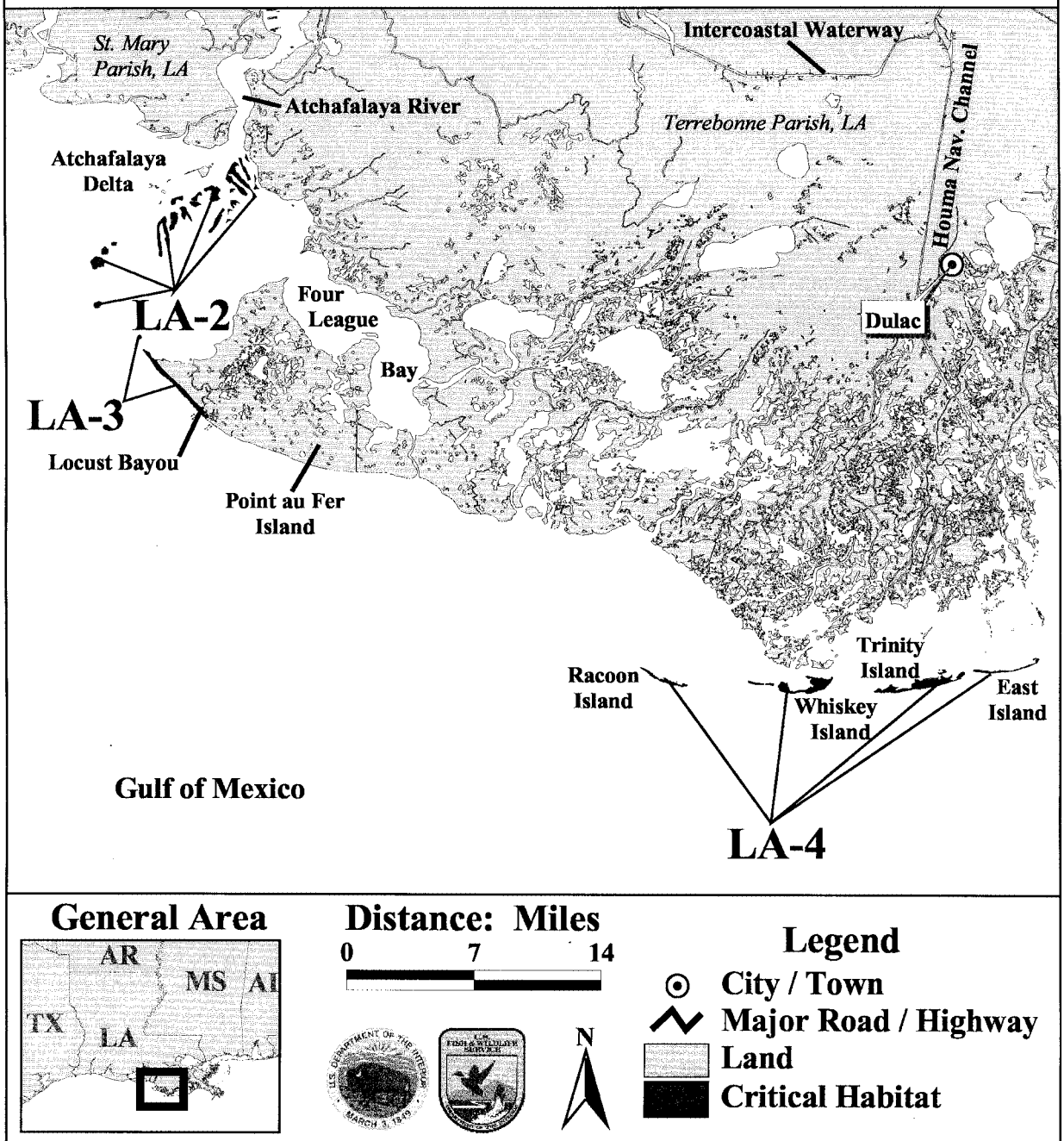
# General locations of the designated critical habitat for the Wintering Piping Plover.




**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Louisiana Unit: 1

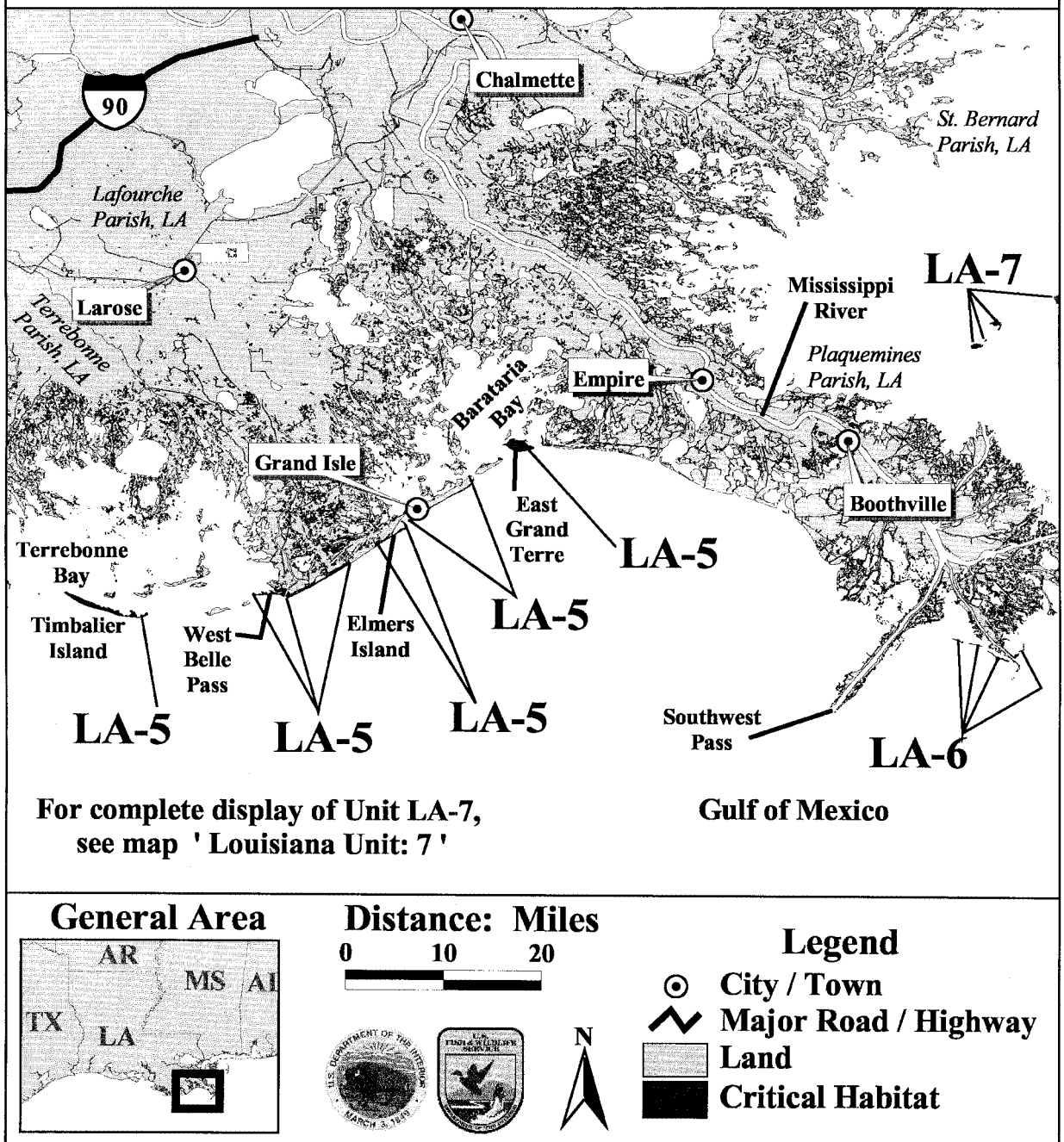
# General locations of the designated critical habitat for the Wintering Piping Plover.




**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Louisiana Units: 2, 3, and 4

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 10 20

N

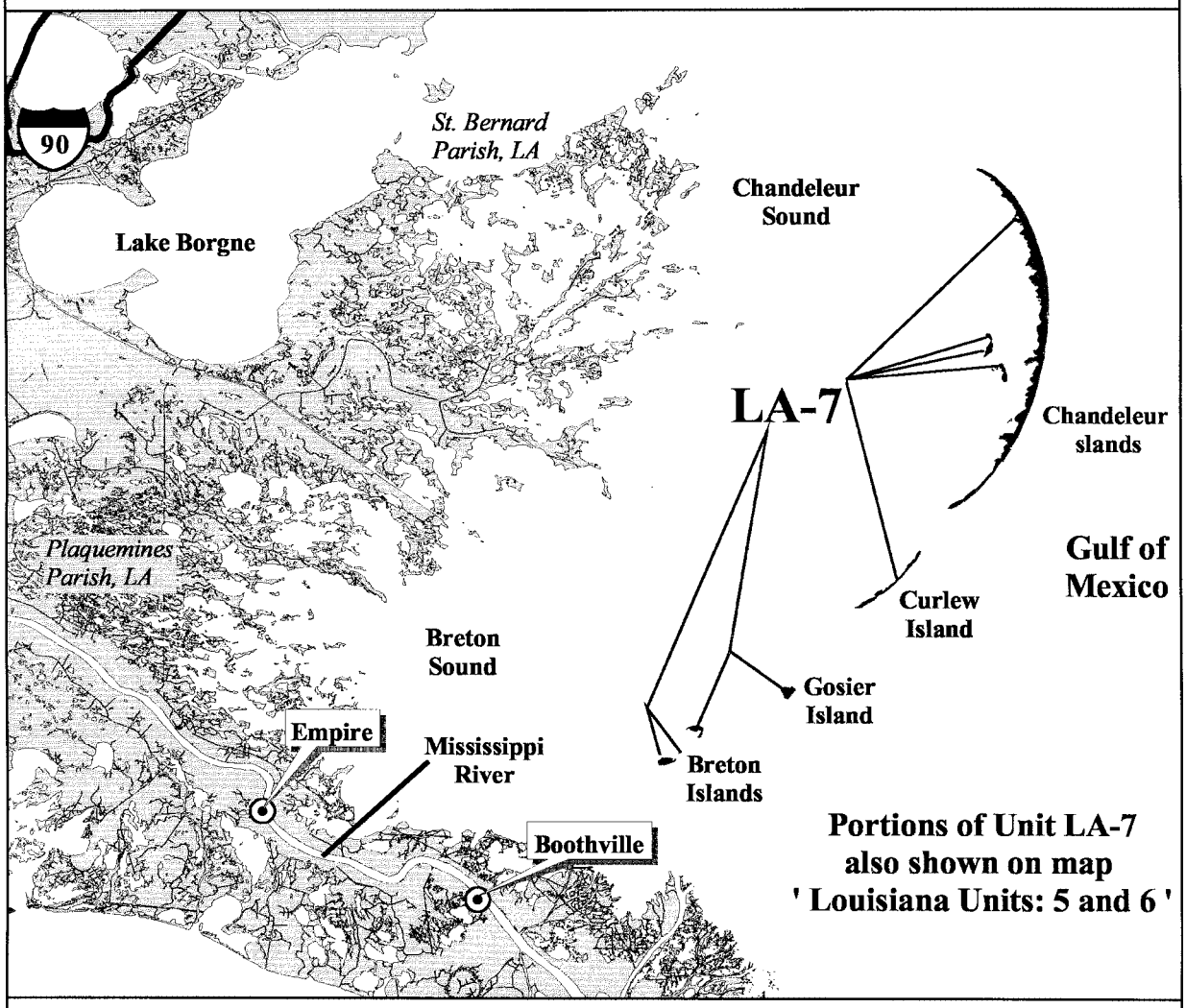
## Legend

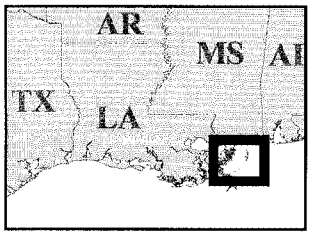
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Louisiana Units: 5 and 6

# General locations of the designated critical habitat for the Wintering Piping Plover.




Distance: Miles

0 7 14 M

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Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Louisiana Unit: 7

BILLING CODE 4310–55–C

*Texas* (Maps were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)

Unit TX–1: South Bay and Boca Chica. 2,920 ha ( 7,217 ac) in Cameron County

The boundaries of the unit are: starting at the Loma Ochoa, following the Brownsville Ship Channel to the northeast out into the Gulf of Mexico to MLLW, then south along a line describing MLLW to the mouth of the Rio Grande, proceeding up the Rio Grande to Loma de Las Vacas, then from that point along a straight line north to Loma Ochoa. The unit does not include densely vegetated habitat within those boundaries. It includes wind tidal flats that are infrequently inundated by seasonal winds, and includes the tidal flats area known as South Bay. Beaches within the unit reach from the mouth of the Rio Grande northward to Brazos Santiago Pass, south of South Padre Island. The southern and western boundaries follow the change in habitat from wind tidal flat, preferred by the piping plover, to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include areas used for roosting by the piping plover. Portions of this unit are owned and managed by the Lower Rio Grande Valley National Wildlife Refuge, the South Bay Coastal Preserve, Boca Chica State Park, and private citizens.

Unit TX–2: Queen Isabella Causeway. 2 ha (6 ac) in Cameron County

The area extends along the Laguna Madre west of the city of South Padre Island. The southern boundary is the Queen Isabella State Fishing Pier, and the northern boundary is at the shoreline due west of the end of Sunny Isles Street. The Queen Isabella causeway bisects this shore but is not included within critical habitat. The eastern boundary is where developed areas and/or dense vegetation begins, and the western boundary is MLLW. This unit contains lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–3: Padre Island. 10,924 ha (26,983 ac) in Cameron, Willacy, Kenedy, and Kleberg Counties

This unit consists of four subunits:

(1) The southern boundary of this subunit is at Andy Bowie County Park in South Padre Island, and the northern boundary is the south boundary of PAIS. The eastern boundary is MLLW in the Gulf of Mexico, and the western boundary is MLLW in the Laguna Madre. Areas of dense vegetation are not included in critical habitat. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(2) The boundaries of this subunit extend from Rincon de la Soledad to the southeast point of Mesquite Rincon, continue from that point west to the Laguna Madre shoreline at its intersection with the King Ranch boundary, and from that point to Rincon de la Soledad. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(3) This subunit is within the Laguna Madre and extends from the western boundary of PAIS to the Gulf Intercoastal Waterway. Its northern boundary is a line extending westward from the northwest corner of PAIS, and its southern boundary is a line extending westward from the southern boundary of PAIS. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

(4) This subunit extends along the gulf shore of Padre Island from the northern boundary of PIAS at the shore, north to the Nueces-Kleberg county line. The inland boundary is where dense vegetation begins, and the seaward boundary is MLLW. This subunit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Portions of this unit are owned and managed by TGLO, and private citizens with a significant portion being owned and managed by The Nature Conservancy on South Padre Island.

Unit TX–4: Lower Laguna Madre Mainland. 4,980 ha (12,307 ac) in Cameron and Willacy Counties

The southern boundary is an east-west line at the northern tip of Barclay Island, and the southern boundary is an east-west line 0.9 km (0.5 mi) south of the boundary of the City of Port Mansfield; the western boundary is the line where dense vegetation begins, and the eastern boundary is the Gulf Intercoastal Waterway. The unit includes bayside flats that are exposed during low tide regimes and wind tidal flats that are infrequently inundated by seasonal winds. Portions of this unit are within the Laguna Atascosa National Wildlife Refuge, are TGLO-owned, or are privately owned. Beaches and interior wetlands may or may not be used each year because of varying water levels, storm events, or changes in beach characteristics and tidal regime. Water stages vary in this area with meteorological conditions. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–5: Upper Laguna Madre. 436 ha (1,076 ac) in Kleberg County

The southern boundary is the northern boundary of PAIS, and the northern boundary is the Kleberg/Nueces County line. The eastern boundary is the line where dense vegetation begins, and the western boundary is MLLW. This unit includes a series of small flats along the bayside of Padre Island in the Upper Laguna Madre. It includes wind tidal flats and sparsely-vegtated upland areas used for roosting by the piping plover. These boundaries receive heavy use by large numbers of shorebirds, including piping plovers. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, and include upland areas used for roosting by the piping plover.

Unit TX–6: Mollie Beattie Coastal Habitat. 241 ha (596 ac) in Nueces County

This unit will be described as two subunits:

(1) Subunit is bounded on the north by Beach Access Road 3, on the east by the inland boundary of critical habitat Unit TX–7, on the south by Zahn road, and on the west by Zahn Road.

(2) The subunit is bounded on the north by Corpus Christi Pass, on the east by US 361, on the south by the north side of Packery Channel, and on the west by the Gulf Intercoastal Watersay.

Some of the uplands are privately owned and the remaining are owned and managed by the TGLO. This unit includes two hurricane washover passes known as Newport and Corpus Christi Passes, and wind tidal flats that are infrequently inundated by seasonal winds. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach. 42 ha (104 ac) in Nueces County

This unit is along a stretch of Gulf beach 8.5 km (5.3 mi) long. It is

bounded on the north by Fish Pass, on the east by MLLW, on the south by St. Bartholomew Avenue, and on the west by a line marking the beginning of dense vegetation. Portions of the unit are managed by the Texas Parks and Wildlife Department as part of Mustang Island State Park. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–8: Mustang Island Beach. 97 ha (239 ac) in Nueces County

This is a stretch of Gulf beach extending from Fish Pass to the Horace Caldwell Pier on Holiday Beach within the City of Port Aransas, TX. The landward boundary is beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–9: Fish Pass Lagoons. 130 ha (323 ac) in Nueces County

This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is the line indicating beginning of dense vegetation, and the bayside boundary is MLLW. It includes interior lagoons and wind tidal flats that are infrequently inundated by seasonal winds. This unit includes upland areas used for roosting by the piping plover.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. 87 ha (216 ac) in Nueces County

This unit encompasses Shamrock Island, an unnamed small sand flat to the north of Wilson's Cut, and a lagoon complex that extends 3.5 km (2.2 mi) to the southwest of Wilson's Cut. Critical habitat includes land to the line marking the beginning of dense vegetation down to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–11: Blind Oso. 2 ha (5 ac) in Nueces County

This unit is the flats of the Blind Oso, part of Oso Bay, from Hans and Pat Suter Wildlife Refuge (owned and managed by the City of Corpus Christi) northeast to Corpus Christi Bay and then southeast along the edge of Texas A&M University—Corpus Christi. The landward boundaries extend to where densely vegetated habitat, not used by the piping plover, begins, and extends out from the landward boundaries to MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–12: Adjacent to Naval Air Station-Corpus Christi. 2 ha (6 ac) in Nueces County

This unit is along the shore of Oso Bay on flats bordered by Naval Air Station-Corpus Christi and Texas Spur 3 to a point 2.5 km (1.5 mi) south of the bridge between Ward Island and the Naval Air Station. The landward boundary is the line where dense vegetation begins, and the boundary in the Bay is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–13: Sunset Lake. 176 ha (435 ac) in San Patricio County

This unit is triangle shaped, with State Highway 181 as the northwest boundary, and the limits of the City of Portland as the northeast boundary. The shore on Corpus Christi Bay is the third side of the triangle, with the actual boundary being MLLW off this shore. This unit is a large basin with a series of tidal ponds, sand spits and wind tidal flats. This unit is owned and managed by the City of Portland within a system of city parks. Some of the described area falls within the jurisdiction of the TGLO. It includes two city park units referred to as Indian Point and Sunset Lake. Much of the unit is a recent acquisition by the city, and management considerations for the park include the area's importance as a site for wintering and resident shorebirds. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–14: East Flats. 194 ha (481 ac) in Nueces County

This unit is bordered on the north by dredge placement areas bordering the Corpus Christi Ship Channel, on the west by MLLW in Corpus Christi Bay, on the east by the limits of the City of Port Aransas, and on the south by an east-west line at the sourthern-most point of Pelone Island. It is also bisected by a navigation channel, which is not included in the critical habitat. A portion of this unit at the west end falls within State-owned (TGLO) intertidal lands. The remainder of the unit is privately owned. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–15: North Pass. 447 ha (1,106 ac) in Aransas County

The unit is bounded on north by North Pass, on the northwest by the line indicating MLLW, on the southwest by the northeast side of Lydia Ann Island, on the south by a line running due east from the northeast side of Lydia Ann Island, and on the southeast by the landward boundary of Unit. This unit is a remnant of a hurricane washover on the privately owned San Jose Island. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur, including upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–16: San Jose Beach. 187 ha (463 ac) in Aransas County

This unit occupies a 33 km (20 mi) stretch of beach from the North Jetty of Aransas Pass at the south, to the confluence of Vinson Slough and Cedar Bayou at the north end of San Jose Island. The inland boundary is the line indicating the beginning of densely vegetated habitat, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–17: Allyn's Bight. 5 ha (14 ac) in Aransas County

This unit includes shoreline of San Jose Island on Aransas Bay from Allyn's Bight to Blind Pass, the channel between San Jose Island and Mud Island. The inland boundary is where the line of dense vegetation begins, and the bay-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–18: Cedar Bayou/Vinson Slough. 3,051 ha (7,539 ac) in Aransas County

Beginning at the confluence of Vinson Slough and Cedar Bayou, this unit's boundary follows the shore of Spalding Cove to Long Reef, then continues along a line extending (2.5 mi) southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of Unit TX–16. The unit boundaries extend landward to the line indicating the beginning of dense vegetation. This unit is a remnant of a hurricane washover area, and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. This area includes a small

section of Matagorda Island National Wildlife Refuge with much of the remaining areas occurring on the privately owned island of San Jose. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–19: Matagorda Island Beach. 395 ha (976 ac) in Calhoun County

This stretch of beach along the Gulf of Mexico on Matagorda Island extends a distance of 60 km (36 mi) from Cedar Bayou on the southwest (where it abuts TX–18), to Pass Cavallo on the northeast. The inland boundary is the line indicating the beginning of dense vegetation, and the gulf-ward boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds. The unit falls entirely within the boundary of the Matagorda Island National Wildlife Refuge.

Unit TX–20: Ayers Point. 397 ha (982 ac) in Calhoun County

This unit is an unnamed lake on Matagorda Island between Shell Reef Bayou and Big Brundrett Lake, with San Antonio Bay to the north. The unit boundary extends landward from the lake to the line where dense vegetation begins and where the constituent elements no longer occur and includes upland areas used for roosting by the piping plover. This unit includes marsh and flats at Ayers Point on Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–21: Panther Point to Pringle Lake. 863 ha (2,133 ac) in Calhoun County

This unit represents a narrow band of bayside habitats on Matagorda Island from Panther Point to the northeast end of Pringle Lake. The landward boundary is the line indicating where dense vegetation begins, and the bayward boundary is MLLW. The unit is entirely within Matagorda Island National Wildlife Refuge. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–22: Decros Point. 450 ha (1,114 ac) at the Matagorda/Calhoun County Line

This unit includes about 7.0 km (4.3 mi) of beach habitat around the island at the western tip of Matagorda Peninsula between the natural opening to Matagorda Bay and the Matagorda Ship Channel. The upland boundary is the line where dense vegetation begins, and the seaward boundary is MLLW. The adjacent upland is privately owned. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–23: West Matagorda Peninsula Beach. 311 ha (769 ac) of Shoreline in Matagorda County

This unit extends 40 km (24 mi) along the Gulf of Mexico from the jetties at the Matagorda Ship Channel to the old Colorado River channel. The inland boundary is the line indicating where dense vegetation begins, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–24: West Matagorda Bay/ Western Peninsula Flats. 756 ha (1,868 ac) in Matagorda County

This unit extends along the bayside of Matagorda Peninsula from 7.5 southwest of Greens Bayou to 2.5 km (1.6 mi) northwest of Greens Bayou. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–25: West Matagorda Bay/ Eastern Peninsula Flats. 232 ha (575 ac) in Matagorda County

This unit follows the bayside of Matagorda Peninsula from Maverick Slough southwest for 5 km (3 mi). The unit begins at Maverick Slough to the northeast and extends 5 km (3 mi) to the southwest, enclosing a series of flats along Matagorda Bay. The upland areas extend to where densely vegetated habitat, not used by the piping plover, begins and where the constituent elements no longer occur and include upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–26: Colorado River Diversion Delta. 5 ha (13 ac) in Matagorda County

This unit follows the shore of the extreme eastern northeast corner of West Matagorda Bay from Culver Cut to Dog Island Reef. The southeastern tidally emergent portion of Dog Island Reef is included within the unit. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The upland areas includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West. 295 (728 ac) of shoreline in Matagorda County

This unit extends along Gulf beach on the Matagorda Peninsula from the mouth of the Colorado River northeast along the peninsula 23 km (14 mi) to a point on the beach opposite Eidelbach Flats. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East. 129 ha (321 ac) in Matagorda County

This unit extends along the Gulf beach on the northeast end of Matagorda Peninsula from a point 0.8 km (0.5 mi) southwest of FM 457 southwest 10 km (6 mi.) to the southwest side of Brown Cedar Cut. This unit abuts with Unit TX–29 to the north. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–29: Brown Cedar Cut. 119 ha (294 ac) in Matagorda County

This unit extends 2 km (1.2 mi.) both southwest and northeast of the main channel of Brown Cedar Cut along the bayside of Matagorda Peninsula in East Matagorda Bay, and abuts unit TX–28 to the southeast. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. The eastern boundary of TX–29 follows the change in habitat from mud flats preferred by the piping plover, to slightly vegetated dune system adjacent to TX–28. This unit includes upland areas used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–30: Northeast Corner East Matagorda Bay. 120 ha (297 ac) in Matagorda County

This unit is bounded on the north by the Gulf Intercoastal Waterway, on the east by the northeast limit of Matagorda bay up the line where dense vegetation begins, on the south by the boundary of Unit TX–28, and on the west by MLLW. It is a system of flats associated with tidal channels. This unit includes upland areas used for roosting by the piping plover and lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–31: San Bernard NWR Beach. 166 ha (410 ac) in Matagorda and Brazoria Counties

This is a unit composed of Gulf beach, 8.0 km (5.0 mi), and extends from the mouth of the San Bernard River to a point along the beach 14.0 km (8.7 mi) to the southwest. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers. 108 ha (269 ac) of shoreline in Brazoria County

This unit is a segment of Gulf beach between the Brazos River and the San Bernard River. This unit borders an area known as Wolf Island. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–33: Bryan Beach and Adjacent Beach. 157 ha (388 ac) in Brazoria County

The boundaries enclose a length of Gulf beach between the mouth of the Brazos River and FM 1495. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. A portion of this area is owned and managed by the Texas Parks and Wildlife Department. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–34: San Luis Pass. 110 ha (272 ac) near the Brazoria/Galveston County line

This unit extends along the Gulf side of Galveston Island from San Luis Pass to the site of the former town of Red Fish Cove (USGS 1:24,000 map, San Luis Pass, Texas; 1963, photorevision 1974). The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. Approximately 57 percent of the unit includes flats in the floodtide delta that are State-owned and managed by the TGLO. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–35: Big Reef. 47 ha (117 ac) in Galveston County

This unit consists of beach and sand flats on the north, west, and east shore of Big Reef, down to MLLW. South Jetty is not included. The area is currently managed by the City of Galveston. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–36: Bolivar Flats. 160 ha (395 ac) in Galveston County

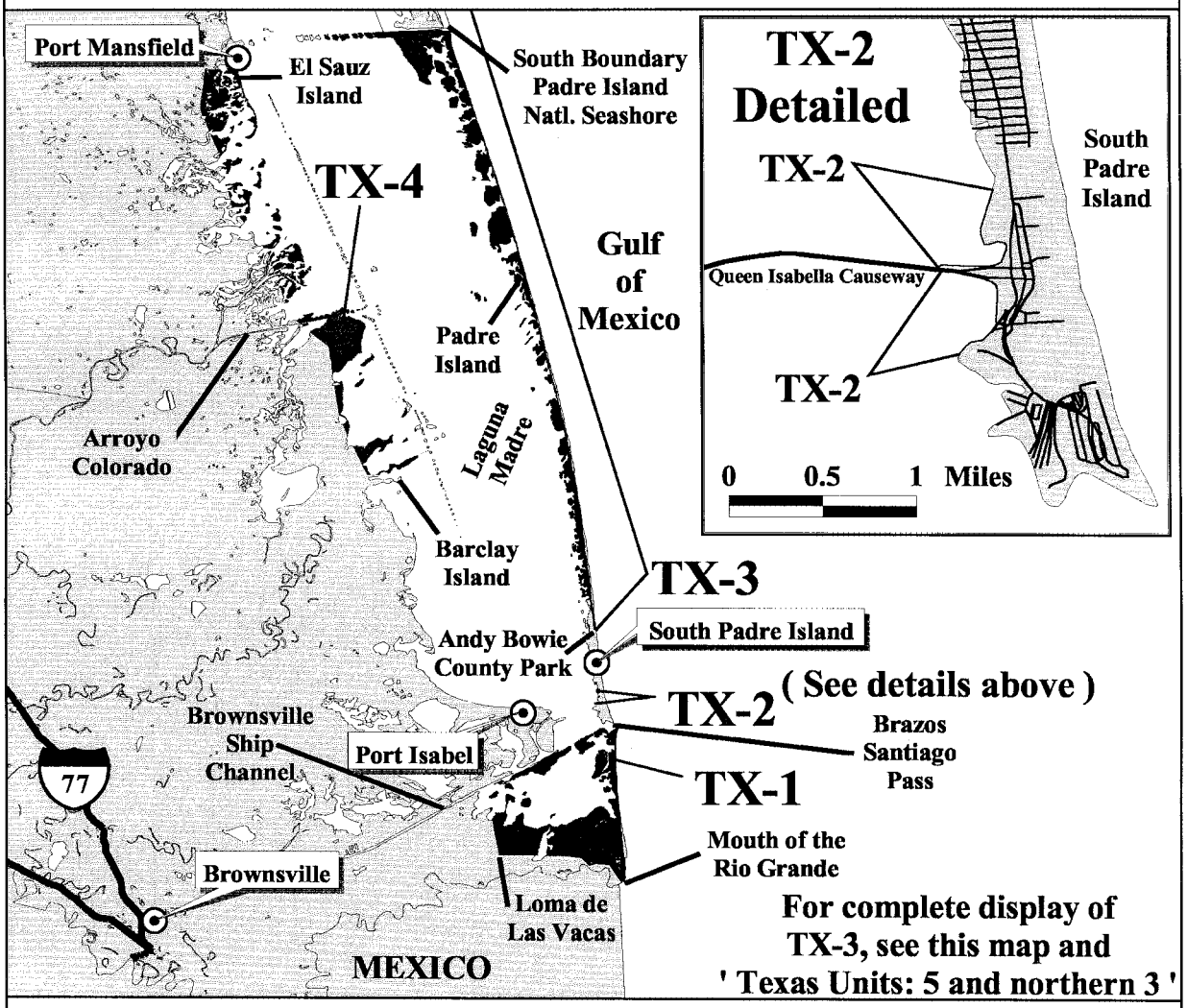
This unit extends from the jetties on the southwest end of the Bolivar Peninsula to a point on the Gulf beach 1 km (0.6 mi) north of Beacon Bayou. It includes 5.0 km (3 mi) of Gulf shoreline. The landward boundary is the line indicating the beginning of dense vegetation, and the gulfside boundary is MLLW. The area is leased from TGLO by Houston Audubon Society and managed for its important avian resources. The upland areas are used for roosting by the piping plover. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

Unit TX–37: Rollover Pass. 6 ha (16 ac) in Galveston County

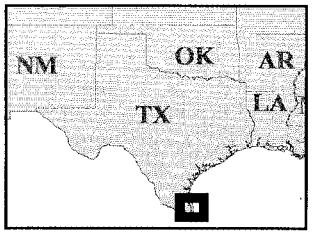
This unit consists of Rollover Bay on the bayside of Bolivar Peninsula. The landward boundary is the line indicating the beginning of dense vegetation, and the bayside boundary is MLLW. It includes flats on State-owned land managed by the TGLO. This unit captures the intertidal complex of the bay, and is bounded by the towns of Gilchrist to the east and the Gulf beach of the Bolivar Peninsula to the south. This unit includes lands known as wind tidal flats that are infrequently inundated by seasonal winds.

BILLING CODE 4310–55–P

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 6 12 Miles

## Legend

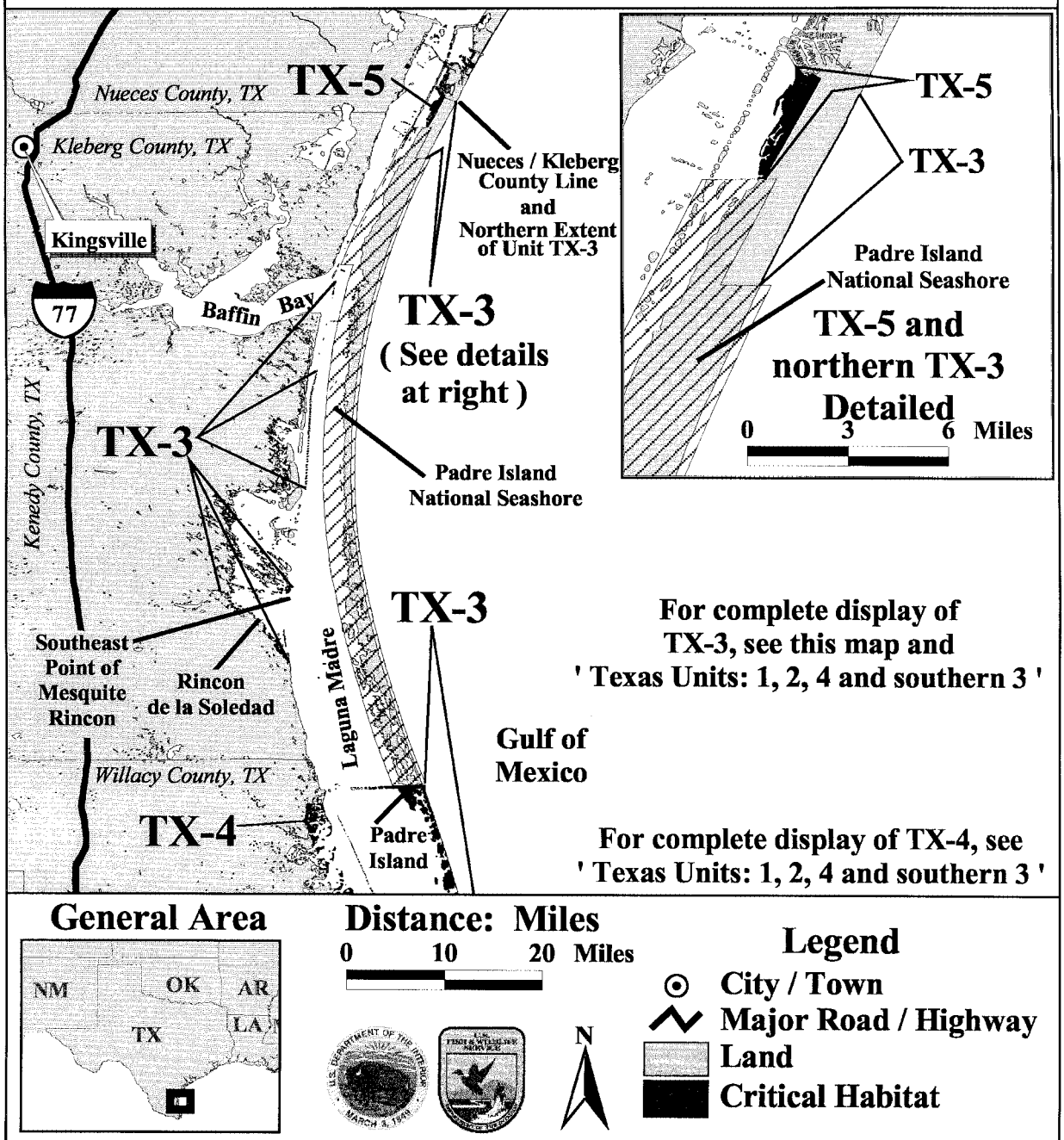
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 1, 2, 4 and southern 3

# General locations of the designated critical habitat for the Wintering Piping Plover.

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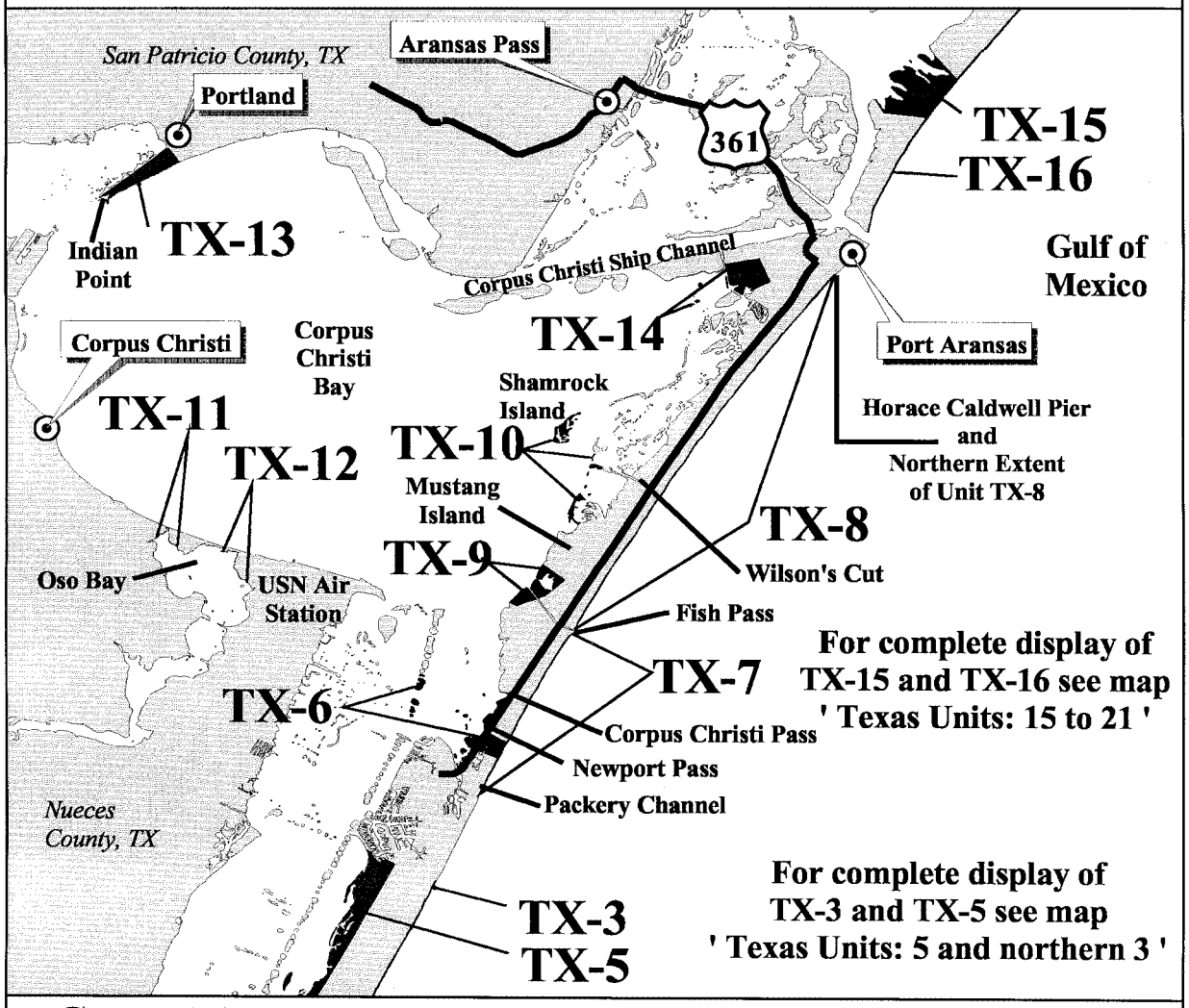
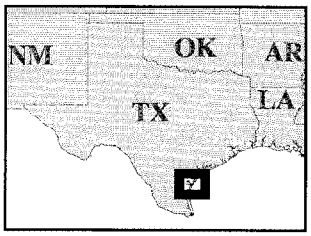
# Texas Units: 5 and northern 3

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 3 6

N

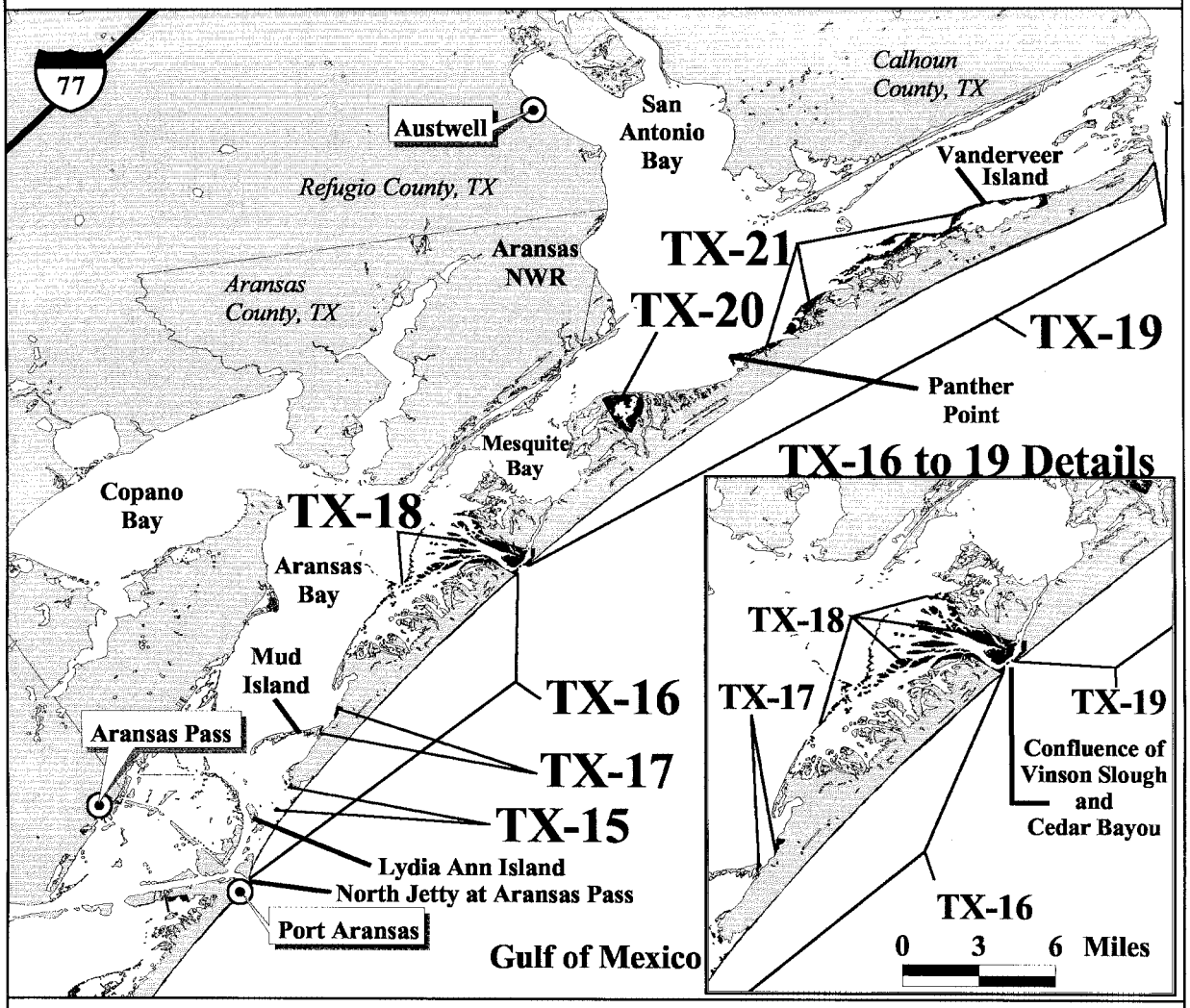
## Legend

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

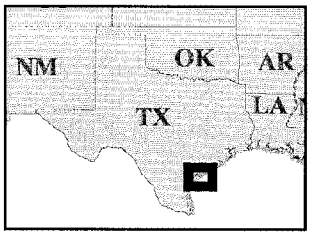
**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 6 to 14

# General locations of the designated critical habitat for the Wintering Piping Plover.




## General Area




## Distance: Miles

0 5 10

## Legend

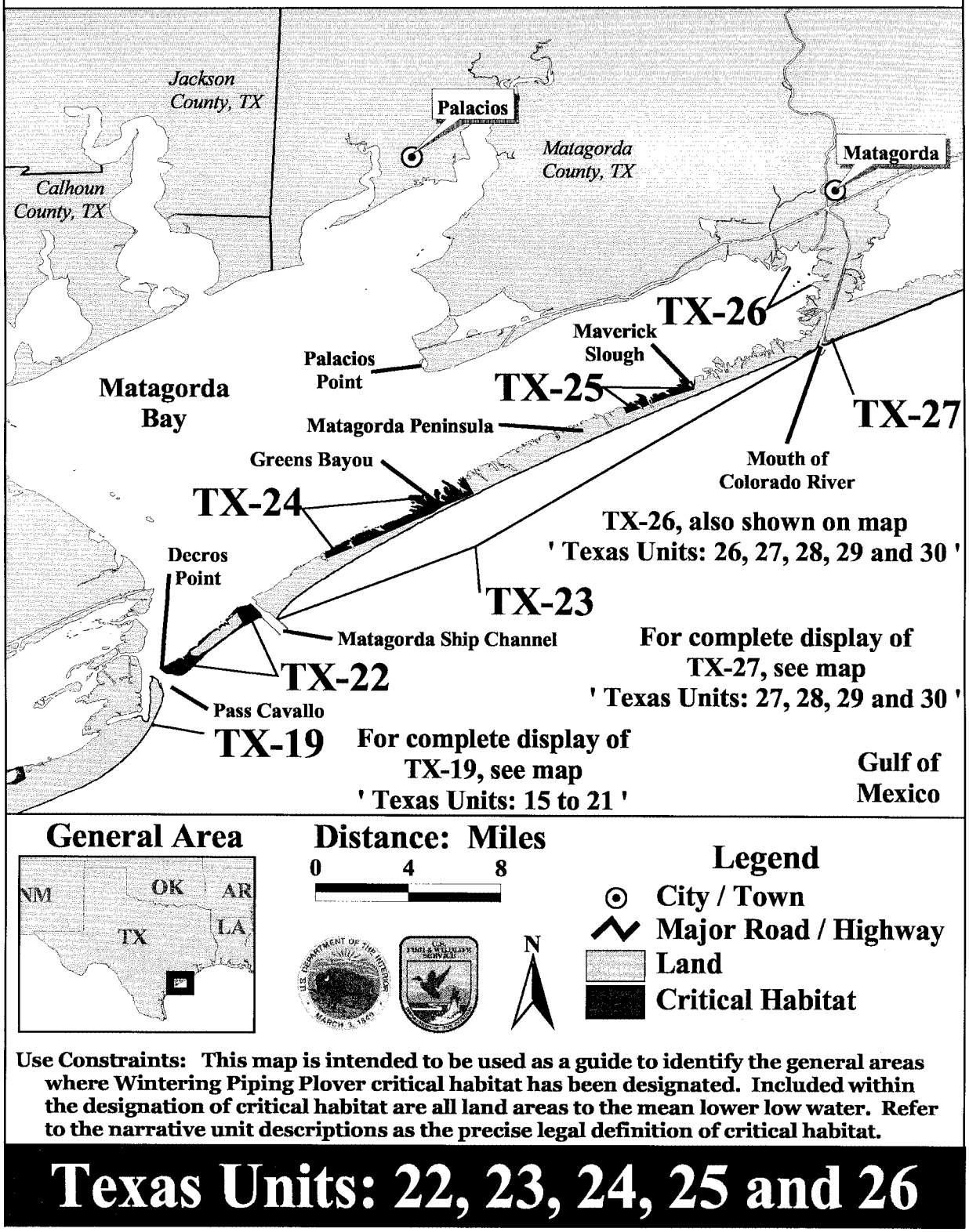
- City / Town
- Major Road / Highway
- Land
- Critical Habitat

N

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 15 to 21

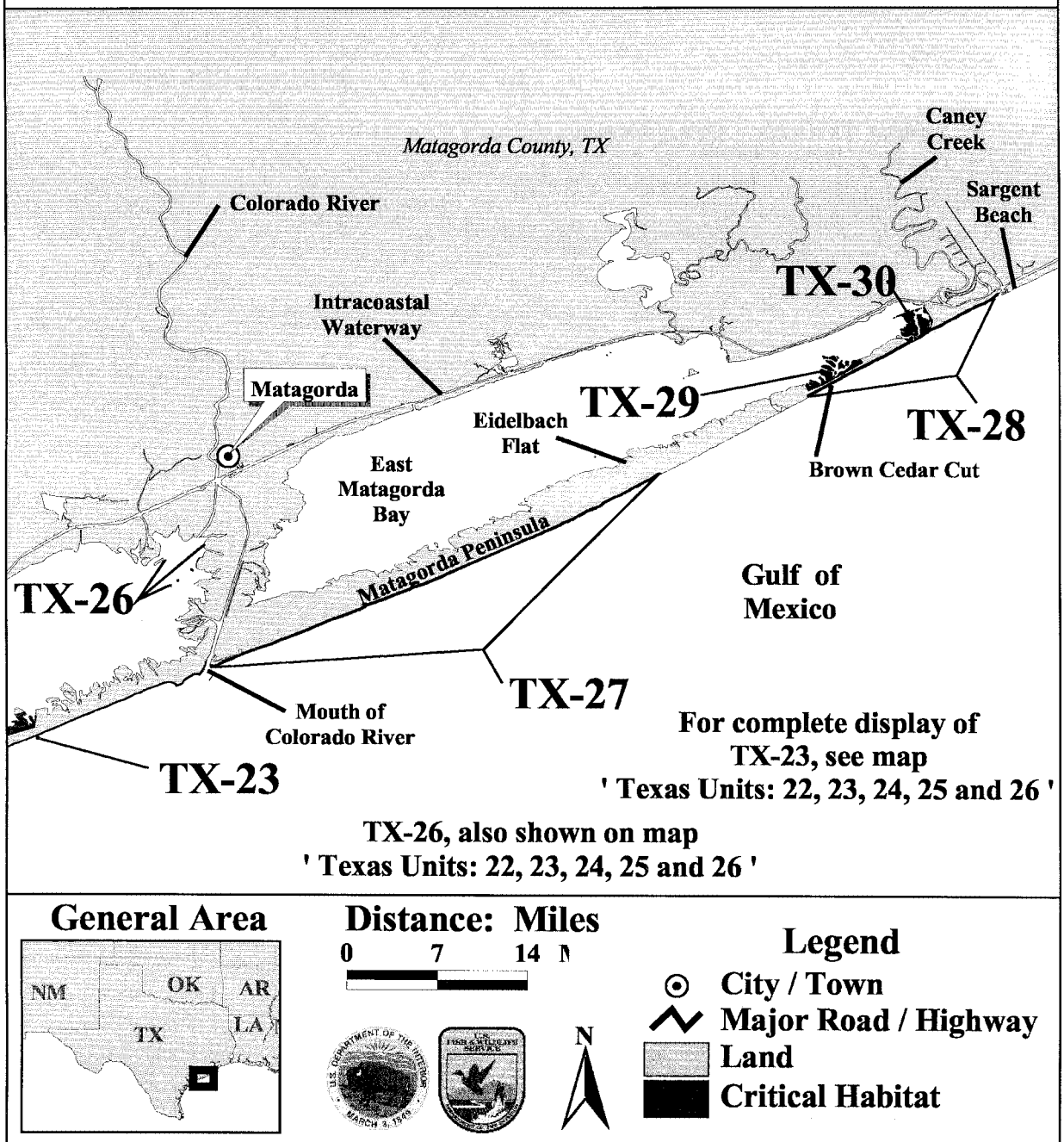
# General locations of the designated critical habitat for the Wintering Piping Plover.




**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 22, 23, 24, 25 and 26

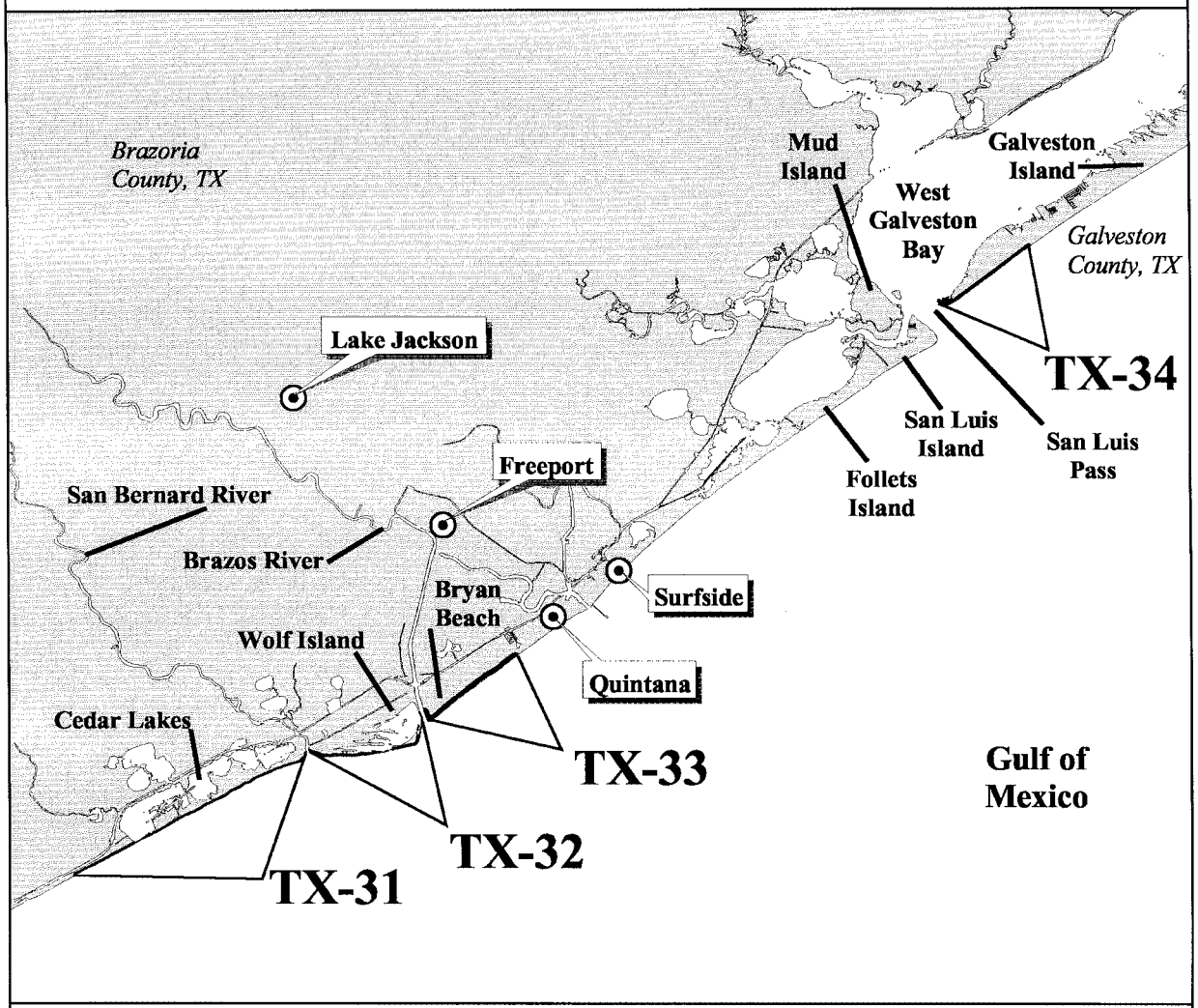
# General locations of the designated critical habitat for the Wintering Piping Plover.

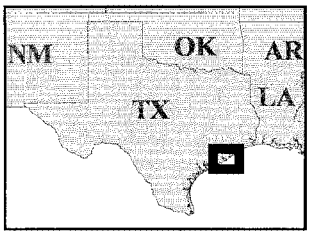



**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 26, 27, 28, 29 and 30

# General locations of the designated critical habitat for the Wintering Piping Plover.




**Distance: Miles**

0 4 8

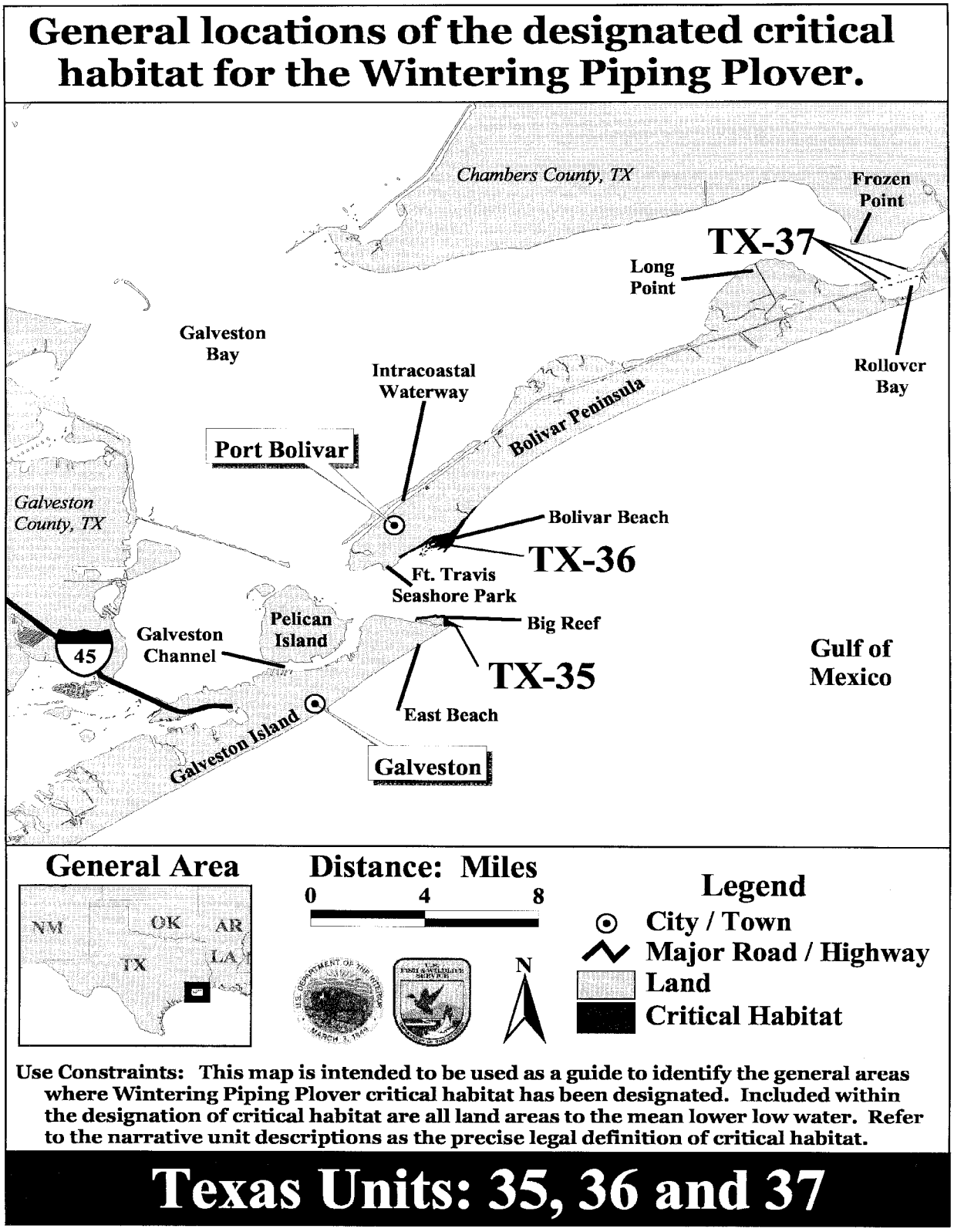
N

**Legend**

- City / Town
- Major Road / Highway
- Land
- Critical Habitat

**Use Constraints:** This map is intended to be used as a guide to identify the general areas where Wintering Piping Plover critical habitat has been designated. Included within the designation of critical habitat are all land areas to the mean lower low water. Refer to the narrative unit descriptions as the precise legal definition of critical habitat.

# Texas Units: 31, 32, 33 and 34




* * * * *

Dated: June 28, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–16905 Filed 7–9–01; 8:45 am]

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Vol. 66, No. 132

Tuesday, July 10, 2001

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**S. 1029/P.L. 107–18**

To clarify the authority of the Department of Housing and Urban Development with respect to the use of fees during fiscal year 2001 for the manufactured housing program. (July 5, 2001; 115 Stat. 152)

**Last List June 27, 2001**

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